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REGULATIONS WITH RESPECT TO CONDUCT OF CIVIL LAW TRANSACTIONS IN THE ACT ON THE RESTITUTION OF POLISH CULTURAL OBJECTS AND THEIR APPLICATION TO MUSEUMS' OPERATION

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Introduction

Since 2017 the Act on the Restitution of Polish Cultural Objects [thereafter: Act] has been an element of the legal system. Its adoption was the implementation into the Polish legal order of Directive 2014/60/UE of the European Parliament and of the Council of 15 Mary 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 (OJ L 159, 28.5.2014).

Apart from the provisions of procedural nature and competence regulations related to the restitution understood as return of the lost cultural goods, the Act also provides for legal dealings and a particular ownership protection in relation to some cultural goods.

The purpose of the paper is to discuss these regulations, in particular in the context of the operations of museums and other institutions running museum activity. Several important publications have been released addressing the issue of restitution and the Act (*Restytucja i ochrona dóbr kultury. Zagadnienia prawne* [Restitutions and Protection of Cultural Goods. Legal Questions], I. Gredka-Ligarska, A. Rogacka-Łukasik (ed.), Sosnowiec 2017; K. Szepelak, *Nowa ustawa o restytucji narodowych dóbr kultury – paradoksy transpozycji przepisów unijnych do prawa polskiego* [A New Act on the Restitutions of National Cultural Goods: Paradoxes of the Transposition of EU Regulations into Polish Law], 'Europejski Przegląd Sądowy' 2017, No. 12; I. Gredka-Ligarska, *Uregulowanie własności narodowego dobra kultury, zwróconego na terytorium RP, w ustawie o restytucji narodowych*

dóbr kultury [Regulating Ownership of Cultural Goods Returned to the Territory of the Republic of Poland in the Act on the Restitution of National Cultural Goods], 'Państwo i Prawo' 2019, No. 8), however, the issues particularly tackled in the present paper (the scope of the public collections concept going beyond the colloquial meaning and henceforth resulting risks for legal dealings) have not been commented in literature.

Basic definitions

For the purpose of the present paper state museums within the meaning of Art. 5.2 of the Act on Museums of 21 November 1996 (consolidated text Journal of Laws 2020, Item 902 [thereafter referred to as the Act on Museums] and local-government museums within the meaning of Art. 5.3 of the Act on Museums will be defined as public museums, the remaining ones will be defined as private museums.[1]

It is assumed that the basic criterion distinguishing private museums from public museums is the lack of legal personality of the first.[2] A reservation has to be made at this point that with such formulated definition also museums organized by public institutions, e.g., research institutes, cultural institutions, public universities, but also units of central government administration other than a minister and a head of a central office, will be defined as private museums.

For the purpose of the present paper there is also a need to define the concept of other public institutions running museum activity. This concept encompasses public institutions which have collections and run museum activity, but are not museums within the meaning of the Act on Museums. Under this category the following fall:

- cultural institutions (of the central and local governments) within the meaning of the Act of 25 October 1991 on Organizing and Running Cultural Activity (consolidated text Journal of Laws 2020, Item 194) in whose structure there operate private museum. As an example of a state cultural institution let us point to the Frederic Chopin National Institute within whose structure the Frederic Chopin Museum operates; this cultural institution was founded with the Act of 3 February 2001 on the Preservation of the Frederic Chopin Legacy (consolidated text Journal of Laws 2020, Item 115);
- other public institutions within which other private museums operate. As an example let us point to the National Ossolinski Institute established as a foundation with the Act of 5 January 1995 on the National Ossolinski Institute Foundation (consolidated text Journal of Laws 2017, Item 1881) in whose structure two museums of the status of a private museum operate: the Lubomirski Princes Museum and the Pan Tadeusz (Master Thaddeus) Museum;
- other public institutions running museum activity. Here we can point to the example of the Jewish Historical Institute, a state cultural institution which, though not having the museum status and not having a private museum within its structures, owns precious collection and runs e.g., activity typical of museums.

Also libraries should be pointed to as entities having cultural goods at their disposal; organized by public entities, they may either act as independent cultural institutions or form a part of another cultural institution (e.g. cultural centre).

For the purpose of further study it has to be borne in mind that in principle public institutions (state and local-government ones) have the status of a unit within the public finance sector, this in harmony with the provisions of Art. 9 of the Act of 27 August 2009 on Public Finance[3] (consolidated text Journal of Laws 2021, Item 305), whereas state institutions (including public tertiary education institutions) additionally boast the status of a state legal person in compliance with the provisions of Art. 3 of the Act of 16 December 2016 on the Principles of State Property Management (consolidated text Journal of Laws 2020, Item 735).

Furthermore, activities connected with cultural goods undertaken directly within the State Treasury, and not state legal persons, need to be borne in mind. These will cover, first of all, the activity of state archives which operate as budgetary units, so in their case it is the State Treasury has ownership of their collections.

Cultural goods: definition

In Art. 2.1 of the Act the concept of cultural goods is defined: they are to be understood as historic monuments (movable and immovable) in the understanding of Art. 3.1 of the Act of 23 July 2003 on the Protection and Guardianship of Historic Monuments (consolidated text Journal of Laws 2021, Item 710) [thereafter: Act on the Protection of Monuments], movables which are not historic monuments, but also their components or sets whose preservation is in social interest for their artistic, historical, or scientific value or in view of their impact on cultural heritage and development.[4]

National cultural goods: definition

Subsequently, in Art. 2.4 of the Act the concept of a national cultural good of the Republic of Poland is defined, encompassing:

1. a historic monument as specified in Art. 51.1 of the Act on the Protection of Monuments;
2. a historic monument as specified in Art.51.4 of the Act on the Protection of Monuments which is not a historic monument as specified in 1);
3. archival material forming part of the national archive resources as specified in Art. 2 of the Act of 14 July 1983 on the National Archive Resource and Archives;[5]
4. a movable item which is not a historic monument provided it is in the museum exhibit inventory in museums which are cultural institutions;
5. library material which is not a historic monument albeit forming part of the national library resources as provided for in Art. 6.1 of the Act on Libraries.[6]

Interestingly, the above categories are not disjoint sets, e.g. archival material can be a historic monument, at the same time registered in a museum inventory. In the context of the paper this means that national cultural goods of the Republic of Poland, are, among others, the following:

- historic monuments entered into public museum inventories;
- items which are not historic monuments entered into public museum inventories;

- historic monuments entered into private museum inventories;
- historic monuments owned by other public institutions running museum activity;
- historic monuments and materials which are not historic monuments, albeit forming part of the national library resources;
- materials forming part of the national archive resources.

Finally, it should be emphasized that the status of a national cultural good of the Republic of Poland will be enjoyed by all the historic monuments as specified in Art. 51.1 of the Act on the Protection of Monuments regardless of the category of their owners, thus also those which are property of private persons and entities (whose consequences will be tackled in Part VII of the present paper).

Public collections: definition

In compliance with Art. 2.6, public collections are all the historic monuments and other cultural goods being the property of:

1. State Treasury;
2. units of the public finance sector;
3. NGOs and entities as specified in Art.3.2 and Art.3.3 respectively of the Act of 24 April 2003 on Public Benefit and Volunteer Work fulfilling public tasks in the domains: of culture, art, preservation of cultural goods and national heritage;
4. other entities using public funding or having such funding at their disposal within the validity of this Act, or having at their disposal historic monuments or other cultural goods which are or have been over the period maintained, directly or indirectly, by preserving or studying them with public funding.[7]

Interestingly, Arts. 51.4 and 56.a.2 of the Act on the Protection of Monuments comprise a narrower than the above definition of public collections defining them as collections owned by the State Treasury, local-government units, or other structural units ranked within the public finance sector.

Collections of the State Treasury and units from the public finance sector

The concept of public collections with regards to the collections owned by the State Treasury and public finance sector units is unequivocal. As provided for by Art. 9.13 of the Act on Public Finance, all the public museums are units of the public finance sector; as a result, all the collections they own will by public collections (Art. 2.6.b of the Act). The remaining three categories provided for in Art. 2.6 require a detailed analysis.

Collections of NGOs

Let us remark that in Art. 2.6.c of the Act, NGOs are listed *expressis verbis*, followed by the entities as specified in Art. 3.2 of the Act on Public Benefit and Volunteer Work; this last provision defines non-governmental organisations.[8]

Non-governmental organisations within the meaning of the Act on Public Benefit and Volunteer Work are those legal persons and organizational units which do not have legal personality and whose legal capacity is provided for with separate legal provisions, including foundations and associations, which additionally:

- are not units of the public finance sector within the meaning of the Act on Public Finance and are not enterprises, research institutes, banks, and companies which are central- or local-government legal persons, and
- do not act to generate profit.

In practice, the most typical NGOs will be associations (ordinary and registered) and foundations. It is noteworthy that numerous private museums are run precisely by associations and foundations.

Collections of the entities specified in Art.3.3 of the Act on Public Benefit and Volunteer Work

Further on in Art. 2.6.c entities as specified in Art. 3.3 of the Act on Public Benefit and Volunteer Work are identified:

1. *corporate entities and entities acting pursant to provisions on relations between the State and the Catholic Church in the Republic of Poland, on relations between the State and other churches and religious unions, and on the guaranteed freedom of conscience and religion, should their statutory objectives encompass public benefit work;*
2. *unions of local self government units;*
3. *social cooperatives;*
4. *joint stock companies, limited liability companies, and sport clubs operating as companies under the provisions of the Act of 18 January 1996 on Physical Culture, which do not operate for profit and allocate all of their profit to perform their statutory objectives, and they do not divide their profit between their members, shareholders, stockholders or employees.*

For the cultural goods being property of NGOs and organisations as specified in Art. 3.3 of the Act on Public Benefit and Volunteer Work to be classified as public collections, Art. 2.6.c of the Act stipulates the condition: those organizations should perform public tasks in culture, preservation of cultural goods and national heritage.

In the context of the issues tackled in the paper, a question arises whether the activity of private museums is implementation of public tasks. In the opinion of the paper's Author, such a conclusion results from the Act on Museums, particularly its Art. 1: *A museum is a non-profit organizational entity which collects and preserves natural and cultural heritage of mankind, both tangible and intangible, informs about the values and contents of its collections, diffuses the fundamental values of Polish and world history, science and culture, fosters cognitive and aesthetic sensitivity and provides access to the collected holdings*.

This regulation does not differentiate the principles for the performance of museum tasks (museum mission) of the museums depending whether their organiser (founder) is

a public or a private entity. Additionally, legal commentators (see particularly K. Zalasińska, *Muzea publiczne. Studium administracyjnoprawne* [Public Museums. Administrative and Legal Study], Warszawa 2013) assume that a museum is an administrative (public) agency namely a unit established to implement public tasks in the domain of intangible services provided to the users towards whom they have privileges in the form so-called institutional authority. This applies to private museums as well (see P. Chmielnicki, *Zakłady administracyjne w Polsce. Ustrój wewnętrzny* [Administrative Agencies in Poland. Internal System], Warszawa 2014). This confirms the view that (…) *the Act defines a certain type of tasks as public, at the same time allowing entities from outside the administration to carry out those tasks* (see Z. Czarnik, J. Posłuszny, *System prawa administracyjnego* [System of Administrative Law], R. Hausner, Z. Niewiadomski, A. Wróbel (ed.), Warszawa 2011).[9]

Therefore, it has to be assumed that NGOs (particularly associations and foundations) which run private museums carry out public tasks in the sphere of culture, art, preservation of cultural goods and national heritage. In consequence, cultural goods that belong to such organisations shall also constitute public collections in harmony with the Act's provisions.

The above thesis will also be applicable to the entities specified in Art. 3.3 of the Act on Public Benefit and Volunteer Work, yet the Author has not come across museums run by such entities.

Collections of other entities using public funding

Finally, let us move on to the category defined in Art. 2.6.d, i.e., other entities using public funding or having such funding at their disposal within the validity of this Act, or having at their disposal historic monuments or other cultural goods which are or have been over the period maintained, directly or indirectly, by preserving or studying them with public funding.[10]

It is an extremely wide category, and in practice it can encompass all the types of entities operating within legal dealings, also physical persons. To be part of this category, the entity has to be using public funding (or simply have it at its disposal) or have at its disposal historic monuments or other cultural goods which are or have been over this period, i.e., since 20 June 2017 (the Act's enactment) maintained, directly or indirectly, with such funding,

The interpretation of this provision is not straightforward. The basic difficulty is to decide whether the use (disposal) of public funding by the entity has to be in connection with cultural goods or whether there is no requirement for such a connection. The Bill's justification might point to the first understanding,[11] however, the literal wording of the regulations seems not to stipulate the necessity for such a connection. This would mean that the concept embraces also an entity having public funding at its disposal with respect to the sphere entirely not connected with cultural goods.

Finally, the wording of Art.2.6 *in principio* (when it speaks of all the *historic monuments and other cultural goods*) may suggest that public financing used even for single cultural goods owned by a given entity causes that its entire collection gains the status of public collections.

An additional element extending the range of the discussed concept, actually of little precision from the legislative point of view, is the description that such funding can be either direct or indirect. It has to be borne in mind that this category will encompass also non-museum collections of private entities and persons, provided they have used, even if too a little extent, public funding e.g., have been given a subsidy for conservation or restoration in compliance with the Act on the Protection of Monuments.

As stipulated by Art. 2.6.d, also studying the collection (e.g., its cataloguing or digitizing) financed with public funding will mean the classifying of all the cultural goods belonging to a given owner to the category of public collections. Thus within the thematic scope of the present paper it needs to be stated that public collections in the understanding of the Act include, e.g.:

1. museum exhibits (historic monuments and other cultural goods) of public museums;
2. historic monuments and other cultural goods that are property of other public institutions running museum activity;
3. historic monuments and other cultural goods that are property of the State Treasury;
4. museum exhibits forming part of private museums whose founders are NGOs and entities as specified in Art. 3.3 of the Act on Public Benefit and Volunteer Work;
5. museum exhibits forming part of private museums whose founders are other entities than NGOs (e.g. physical persons and companies) if they have used public funding as stipulated in the Act;
6. historic monuments and other cultural goods that are property of other entities than NGOs, using public funding within the meaning of the Act, however, not running museums.

The definition of public collections in the Act is very broad, since not only does it apply to public collections in the colloquial meaning (collections of public museums and other public institutions running museum activity), but also collections of the majority of private museums, as well as certain private collections. This broad scope of the concept of public collections in the Act was justified, since in compliance with Art. 8.1 in relation to Art. 2.8 of the Directive 2014/60/EU, the fact that a given cultural good forms part of public collections in compliance with Member State's regulation is one of the premises allowing in the light of the Directive that a much longer time limit applies to return proceedings.

National cultural objects forming part of public collections: definition

For a given item to have the status of a national cultural good belonging to public collections, it has to comply with two criteria: subjective category (be a cultural good as defined in Art. 2.4 of the Act) and ownership category (form part of public collections as defined in Art. 2.6 of the Act).

The table below shows respective categories of items meeting jointly the two criteria with respect to the most frequent collection types.

Regulations with respect to legal dealings

Another of the premises admitting the application of longer time-limit to proceedings for return in compliance with Directive 2014/60/EU consists in covering public collections with special protective regulations within the Member State's legal system.[12] This issue is provided for in Chapter 5 of the Act dealing with the above-analysed term of national cultural goods forming part of public collections and containing regulations with respect to:

- forms of legal act covering the ownership transfer or encumbering of the national cultural good of the Polish Republic forming part of public collections (Art. 45);
- ban on acquisition of the ownership of a national cultural good of the Republic of Poland forming part of public collections from a non-entitled person to dispose of it neither by prescription (Art. 46);
- no statute of limitation on return of a national cultural good of the Republic of Poland forming part of public collections (Art. 47);
- limitation of claims of a buyer of national cultural goods of the Republic of Poland who acquired goods forming part of public collections in good faith from a non-entitled person, as well as of the responsibility of the vendor of such goods versus the buyer in good faith in virtue of the return of undue performance (Art. 48.).[13]

Legal form of ownership transfer

Art. 45 of the Act stipulates the form of the legal act with respect to the transfer of ownership or encumbering of national cultural goods of the Republic of Poland forming part of public collection in such away that this act requires a written form with authenticated date.[14]

Such a wording of the regulation means in the light of the first sentence of Art. 73.2 of the Civil Code that the written form with authenticated date is stipulated and the act made without observing the stipulated form is invalid (*ad solemnitatem*), thus not complying with the stipulation invalidates the action. In harmony with the prevailing opinion, the form of authenticated date *ad solemnitatem* is kept only when the official notary authentication occurs on the same day as the contract is concluded.[15] Authenticated date is thus the date when contract parties present a written declaration of intent authenticated by a notary.

Importantly, in compliance with legal commentaries and the judicature crowned with the Supreme Court Resolution by 7 judges of 28 October 2011 (File No. III CZP 33/1), the form of authenticated date reserved *ad solemnitatem* shall not be replaced with any alternative forms stipulated in Arts. 81.2 and 81.3 of the Civil Code.[16] The transfer of ownership in the understanding of this regulation shall refer first of all to sale, donation, and exchange of items.

A question arises how to understand the concept of *an action related to encumbering* in the discussed regulation. Unquestionably, such encumbering will be found in limited right in property with respect to the item (in particular, pledge or usufruct). In the Supreme Court judicature encumbering can also be an obligatory legal relationship, such as rental or lease contracts.[17] Hence a practical dilemma whether other contracts can be regarded as encumbering a thing. In the Author's view this can be the case of such contracts which limit ownership rights, in particular to its disposal and usage.

In this context contract types which are important in museum praxis have to be pointed to: contract of museum deposit and rental contract (against payment and free of charge).[18] In the case of such contracts the owner agrees to the limitation of his rights to the use of the item.[19] Hence the important question whether these contracts with respect to national cultural goods will be their encumbering in the understanding of the discussed regulation, and in effect will require a written form with authenticated date.

Not judging unequivocally on the issue, an opinion should be expressed that in the light of the above characterization of such contracts this interpretation is plausible. It will be up to the judicature to settle it, however, before this happens, taking into account the certainty of dealings and avoiding the risk of invalidity of a legal action, it is justified to use the written form with authenticated date also in deposit and rental contracts with respect to items which boast the status of national cultural goods of the Republic of Poland.

Obviously, it is necessary to emphasize that the prerequisite for the written form with authenticated date relates to the cases when the item enjoys the status of a national cultural good of the Republic of Poland prior to the legal action, not when it gains such a status as a result of the legal action (e.g., as acquired by the museum).

Ban on acquisition from a non-entitled person OK

In compliance with the general principle stipulated in Art. 169.1 of the Civil Code, if a person not entitled to dispose of a movable disposed of it and hands it over to the acquirer, the latter acquires ownership at the time he takes possession of the thing, unless he is acting in bad faith.

In Art. 169.2 this rule is modified with respect to things lost, stolen or otherwise mislaid by the owner before three years elapse since it was lost, stolen or mislaid; the acquirer may acquire ownership only upon the elapse of the said three years.

Importantly, in harmony with Art. 169.3, this is not applicable to items entered in the Register of Wartime Losses,[20] this implying that an item entered in the Register must not be acquired from a non-entitled person.

The to-date regulation applicable to historic monuments entered in the national Register of Wartime Losses has been substantially completed, since in accordance with Art. 46 of the Act also national cultural goods of the Republic of Poland forming part public collections shall not be acquired from a person not entitled to dispose of it.

Ban on acquisition by prescription

In compliance with Art. 174.1 of the Civil Code, the possessor of movable who is not the movable owner acquires ownership if he posses the movable uninterruptedly for three years as an owner-like possessor, unless he possesses it in bad faith. However, with respect to the item entered in the National Register of Wartime Losses acquisition by prescription shall not be possible, even in the event of good

Collection type	National cultural goods	Forming part of public collections
Public museums	museum exhibits entered into public museum inventories	museum exhibits (historic monuments and other cultural goods) in public museums
	items which are not historic monuments entered into public museum inventories	
	historic monuments and materials which are not historic monuments, classified as forming part of the national library resources	
	materials forming part of the national archive resources	
Other public institutions running museum activity	historic monuments being property of other public institutions running museum activity	historic monuments and other cultural goods being property of other public institutions running museum activity[12]
	historic monuments and materials which are not historic monuments, classified as forming part of the national archive resources	
State Treasury and local government units	historic monuments forming part of the qualified categories as defined in Art. 51.1 of the Act on the Protection of Monuments	historic monuments and other cultural goods being property of the State Treasury and local government units
	historic monuments and materials which are not historic monuments, classified as forming part of the national library resources	
	materials forming part of the national archive resources	
Private museums	historic monuments entered into private museum registers	museum exhibits forming part of private museums founded by NGOs (also entities specified in Art. 3.3 of the Act on Public Benefit and Volunteer Work) museum exhibits forming part of private museums founded by other entities than NGOs (e.g., physical persons and companies) provided they have used public funding in compliance with the Act
	historic monuments and materials which are not historic monuments, classified as forming part of the national library resources	
	materials forming part of the national archive resources	

[12] Let us emphasize that non-historic cultural goods being property of public institutions which are not public museums form part of public collections (Art. 2.6.b of the Act), however, they do not have the status of national cultural goods, unless they form part of the national archival or library resources.

faith. Also in this case Art. 46 of the Act completes the rule introducing the principle that ownership of national cultural goods of the Republic of Poland forming part of public collections shall not be acquired by prescription.

No statute of limitations for return

An important complement to the above regulations is introduced with the regulation of no statute of limitations of claims to return national cultural goods of the Republic of Poland forming part of public collections to their rightful holder (Art. 47 of the Act), whereas in principle the limitations period is six years (Art. 118 of the Civil Code).[21]

In conclusion, the Act equals the status of national cultural goods of the Republic of Poland with items entered in the Register of Wartime Losses with respect to the ban on the acquisition of such items from non-entitled persons, to dispose of them by prescription, and to no statute of limitation of claims to return such items.

As stipulated in Art. 51.2 of the Act, the above regulations are applicable to respectively national cultural goods of the Republic of Poland which are property of Churches and other religious unions, ecclesial legal persons, ecclesial associations and foundations established by ecclesial legal persons, and to legal persons established by other confessional associations, thus in particular to ecclesial museums (Art. 51.2).[23]

Conclusions

The regulations with respect to civil law issues contained in the Act can be divided into two groups.

On the one hand, the Act introduces essential securities for the owners of the items that boast such a status: they shall not be effectively acquired by prescription to their disadvantage or acquired from a non-entitled person, and no statute of limitations shall be effectively applied. This is undoubtedly a solution favourable to owners of items boasting the status of national cultural goods of the Republic of Poland forming part of public collections (the owners are, as demonstrated above, not just museums and other public institutions, but under definite conditions also other entities, including physical persons).

On the other hand, the Act introduces a requirement to comply with a written form with authenticated date as for the legal actions related to ownership transfer or encumbering national cultural goods, on pain of nullity. The requirement may create a practical problem, this not necessarily related to the costs incurred (as they are not substantial),[24] but to the lack of awareness of the contract parties that the subject of the contract forms part of public collections within the meaning of the Act, and therefore a special contract form must apply.

In Polish museum praxis disposing of items from public museum collections is of marginal character,[25] thus at first glace it might seem that the requirement of form provided for in Art. 45 is not a problem for public museums. Let us reiterate then that the concept of national cultural goods of the Republic of Poland forming part of public collections may also apply to private museum collections, and even non-museum collections.

In this context is has to be emphasized that the requirement as for the written form with authenticated date will apply to the following:

- acquisition of cultural goods by public museums and other public institutions from private museums and from non-museum collections (in so far as they are a public collections within the meaning of the Act);
- legal dealings involving national cultural goods among between private museums and collectors (in so far as they are public collections within the meaning of the Act).

Additionally, as pointed above under VII.A, there is argumentation favouring the thesis that the requirement for written form with authenticated date in reference to this category of goods, will apply to deposit and rental contracts as well.

As has been pointed, the basic problem seems to be in the lack of the awareness of the participants of the legal dealings, first of all private owners of cultural goods, that their collections may be a collection that constitutes public collections within the meaning of the Act. In practice, there may have happened numerous situations when after the enactment of the Act, namely after 19 June 2017, contracts related to national cultural goods forming part of public collections (within the meaning of the Act) have been concluded in simple written form. In this event such contracts must be regarded as not concluded in a valid form. A solution in this respect is the validation of such contracts through official authentication of date by a notary in compliance with Art. 81.1 of the Civil Code.

Importantly, the legal action comes into effect only following the authentication of the contract. The problem may become of major importance particularly in the event when the item in question, following the transaction failing to maintain the required form, becomes the object of further dealings. Although it is assumed the concluding a contract in a specific form requires consent of the parties, bearing in mind that in this case this requirement is a statutory prerequisite, the consent of the parties in this regard is presumed. A view thus can be formulated that authenticating with a certified date the contract concluded in a simple written form should be possible also unilaterally by one contract party.

A much more challenging situation is in the case of contracts not concluded in written form; in this case the solution could be to conclude it in the required form, this, however, requiring cooperation of all the relevant parties.

In this context it would be justified to recommend museums (public and private) and public institutions running museum activity, as well as entities performing actions related to cultural goods to verify the contracts concluded after 19 June 2017 with regard to their subject whether the item enjoyed the status of national cultural goods forming part of public collections, the contract form and the possible need to perform its validation. Bearing in mind that doubts may arise as for whether a given item constitutes a national cultural good of the Republic of Poland forming part of public collections (first of all as far as the ownership criterion is concerned), precautionary approach should be recommended, thus to generally apply written form with authenticated date when contracts dealing with cultural goods are involved.

Summary

Civil law regulations provided for in the Act should be generally assessed positively, since they consolidate the system of the protection of cultural goods. However, it seems that the intention of securing the broadest possible range of protection foreseen in Directive 2014/60/EU made the definition of certain concepts too wide, Additionally, some of the notions applied in the Act are not unambiguous.

These two problems apply particularly to the concept of 'public collections' (Art. 2.6) with reference to cultural goods owned by private entities. As pointed to in V.D, particular interpretative difficulties may be inspired by the concepts: 'use of public funding', 'managing public funding', and 'maintenance, directly or indirectly, with public funding' implying the classification into the category in question. All these may cause doubts whether a given item has the status of a national cultural good of the Republic of Poland forming part of public collections, therefore whether the regulation is applicable to a given item.

Another concept requiring greater specification is 'a legal action with respect to an encumbered item' in Art. 45 (see VII.A). In view of the above it is justified to ask the legislator to better specify these concepts.

Abstract: It is the legal regulations related to civil turnover specified in the Act of 25 May 2017 on the Restitution of Polish Cultural Objects (consolidated text, Journal of Laws 2019, Item 1591) in the context of the activity of museums and other institutions running a museum activity that is the topic of the paper. They speak of legal transaction including ownership transfer or encumbering of Poland's cultural goods pertaining to public collections, or the ban on acquiring them from a non-entitled person to dispose of them or by prescription, as well as of the no statute of limitation of claims for their return.

The Author analyses the central concept of the quoted Act: that of the national cultural object of the Republic of Poland pertaining to public collections, while discussing in detail both criteria that are related to it: subject- and ownership-related ones. He points to the fact that the definition of public collections it contains is extremely broad, covering not only public collections in the colloquial meaning of the term, but also the collections of the majority of private museums, as well as non-museum collections of private entities and persons, as long as they have applied public financing.

In the further part of the paper, the civil-law regulations specified in the Act are discussed, with special emphasis on the requested form of the legal transaction including the transfer of ownership or encumbering (in writing with a certified date) suggesting that this can apply also to deposit or lending contracts. He also discusses the praxis and judicature with respect in writing with a certified date, pointing to the possible lack of the awareness of the contract parties that the object of the contract pertains to a public collection in compliance with the provisions of the Act, and that the special legal form of contract should be kept. In this context the Author presents some practical solutions allowing to avoid certain negative consequences.

In the conclusion it is emphasized that the regulation contains certain concepts which might inspire essential interpretative doubts having impact on the application of the discussed regulations.

Keywords: Act on the Restitution of Poland's National Cultural Objects, national cultural goods, public collections, public museums, private museums, ecclesial museums, form of acts in law, accession, de-accession, deposit contract, rental contract, acquisition from a non-entitled person, prescription, no statute of limitation.

Endnotes

[1] Art. 5.1 of the Act on Museums enumerates the circle of founders of private museums, broadly listing: physical persons, legal persons, and organizational units not having legal personality. This means that practically speaking every entity, provided that this is allowed in the regulations related to given entity's system, may be a museum founder.
Certified English translation of the Act at: https://www.eui.eu/Projects/InternationalArtHeritageLaw/Documents/NationalLegislation/Poland/museumsact1996.pdf, trans. Dorota Bartz [Accessed: 28 Aug 2021]

[2] An interesting case of private museums with legal personality has to be pointed to. This is the case of ecclesial museums (Archdiocese Museum in Szczecin and the Museum of the History Monument Frombork. Cathedral Complex) which gained legal personality with the provisions of the Act of 17 May 1989 on the Relations between the State and the Catholic Church in the Republic of Poland (consolidated text Journal of Laws 2019, Item 1347).

[3] An exception here are research institutes excluded from the public finance with the provisions of Art. 9.14 of the Act on Public Finance; meanwhile, they are state legal persons (Art. 3.1.11 of the Act on Principles of Managing State Assets). Act on Real Property Management.

[4] On the concept of cultural goods in the Polish legal system see I. Gredka-Ligarska, *Uregulowanie własności narodowego dobra kultury, zwróconego na terytorium RP, w ustawie o restytucji narodowych dóbr kultury* [Settlement of the Ownership of a National Cultural Good Returned to the Territory of the Republic of Poland in the Act on the Restitution of National Cultural Goods Returned to the Territory of the Republic of Poland], 'Państwo i Prawo' 2019, No. 8.

[5] Consolidated text, Journal of Laws 2020, Item 164.

[6] Consolidated text, Journal of Laws 2019, Item 1479.

[7] On collections in the context of the museum mission see K. Zalasińska, *Muzea publiczne. Studium administracyjnoprawne* [Public Museums. Administrative and Legal Study], Warszawa 2013.

[8] Such wording seems to be a result of a legislative error.

[9] P. Antoniak qualifies private museums as non-public administrative entities, pointing to the fact that they perform public tasks (Ustawa o muzeach. Komentarz [Act on Museums. Commentary]), Warszawa 2012.

[10] Art. 2.8 of Directive 2014/60/EU defines public collections in a much narrower scope: *'public collections' means collections, defined as public in accordance with the legislation of a Member State, which are the property of that Member State, of a local or regional authority within that Member State or of an institution situated in the territory of that Member State, such institution being the property of, or significantly financed by, that Member State or local or regional authority.* [Author's emphasis].

[11] *The definition of 'public collections' adopted in the Bill (Art. 2.6) is based on the subject and ownership criteria* (...) *Such a means of defining is justified by the varied forms of involvement of the state and local governments, both organizationally and financially, in the fulfilment of the constitutional task of making cultural heritage accessible to society and of preserving it: beginning with direct establishment of their own cultural institutions through running such institutions together with NGOs, financing of the activity of such entities in the sphere of national heritage, up to financing the upkeep of the cultural goods (owing to their prominence and in order to secure their public accessibility) which are assets of such entities.* Bill's justification (Sejm document No. 1371), p. 32.

[12] See Bill's justification, p. 32.

[13] The latter issue is of lesser impact from the museums' point of view, that is why it has not been addressed in the present paper.

[14] This regulation obviously does not contravene stricter regulations, in particular the requirement of a notarial deed for contracts of the transfer of the ownership of real estate (Art. 158 of the Civil Code).

[15] Let us emphasize that the requirement of authenticated date will also be fulfilled in the case of a notarized signature authentication and, obviously, a notarial deed.

[16] Polish Civil Code in English at https://supertrans2014.files.wordpress.com/2014/06/the-civil-code.pdf [Accessed: 28 Aug 2021].

[17] Sentence of the Supreme Court of 8 October 2004 (File No. V CK 76/04).

[18] See I. Gredka-Ligarska, P. Gwoździewicz-Matan, W. Kowalski, *Umowy w działalności muzeów* [Contracts in Museum Operations], Gdańsk 2019.

[19] In the event of rental contracts P. Gwoździewicz-Matan points to the fact that the owner is obliged to bear that the lender uses museum exhibits in the way defined in the contract and to refrain from activities impeding the lender the use of them (*Umowa użyczenia muzealium w prawie prywatnym* [Contracts of Lending a Museum Exhibit in Private Law], Warszawa 2015.

[20] The Register created with the provisions of the Act on the Protection and Guardianship of Historic Monuments, covers historic monuments entered into the Register of Historic Monuments or the List of Heritage Treasures, museum exhibits, library materials forming part of the national library resources and archival materials lost by the owner as a result of a prohibited act in the form of the seizure of the item. Once the item is entered into the Register, it is excluded from the regulations related to prescription and acquisition of a thing from a non-entitled person, see I. Gredka, P. Gwoździewicz-Matan, *Cywilnoprawne skutki wpisu rzeczy do krajowego rejestru utraconych dóbr kultury* [Civil Law Results of Entering a Thing into the Register of Wartime Losses], 'Państwo i Prawo' 2016, No. 10.

[21] With respect to items entered into the National Register of Wartime Culture Losses the no statue of limitation is applicable, which stems from Art. 223.3 of the Civil Code

[22] Since with respect to items entered into the National Register of Wartime Culture Losses these regulations are provided for in the Civil Code (Arts. 169.3 and 174.2), Art. 46 of the Act on the Restitution (Art. 51.1 of the Act) does not apply to them.

[23] Certain collections of church museums may already fall under the scope of Art. 2. point 6. lit. c and d of the Act on Restitution.

[24] Top fee for authentication of the time of presenting a document stands at PLN 6 plus VAT per every page.

[25] According to the information obtained from the Department of Cultural Heritage at the Ministry of Culture and National Heritage (email exchange dated 25 Nov 2020) the cases of the application of Art.23 of the Act on Museums have been quire rare, and concerned authorization for exchange or donation of museum exhibits between museums, and not their sale.

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