

SUPERVISION OF MUSEUM ACTIVITY

Rafał Golaś

Warsaw

In the Act on Museums, supervision has been defined in several aspects, e.g., as supervision performed by the responsible minister.

Within the remaining scope, museum supervision should comply with general principles applicable in this respect, taking into account the specificity of museums as peculiar units and of their activity, particularly in the context of the protection and guardianship of historic monuments.

Definition problems

Supervision as such does not have a separate complex statutory regulation. Neither has supervision as such been defined, this leading to difficulties with practical identification of supervision in its practical application.

The general assumption is that supervision in the broadest approach can be perceived as occurring along two tracks. On the one hand, supervision encompasses actions essentially related to authority, albeit going beyond strictly perceived control. In this understanding, apart from verifying competences, supervision may include undertaking of definite authority-related activities towards a supervised entity, e.g. in the form of definite instructions or even application of certain sanctions. In the supervision range of the latter we can include e.g., minister's supervision competences in the form of the decision banning further museum's operations (see remarks below).

On the other hand, the concept of supervision covers also other activities which do not have an authority character, e.g., those consisting in relevant recommendations, which is appropriate in the case of professional supervision. This range of supervision is best illustrated with the competences of museum councils whose task is to provide opinions and evaluations (see remarks below).

Systemic supervision aspects

Control and supervision competences are dispersed, and are connected with different task scopes, attributed to respective organs, services, or inspections, e.g., National Labour

Inspectorate. An example of special supervision can be found in Conservator supervision, provided for in the Act on the Protection and Guardianship of Historic Monuments or construction supervision provided for in the Construction Law.

The supervision aspects which are of basic importance for museums are presented below: they are the ones targeted at the implementation of museums' activity in its basic range concerning museums' tasks stemming from legal and charter provisions.

Interestingly, as for supervision, the situation is different for museums boasting the status of independent units, e.g., being cultural institutions, and museums forming a structural part of other units, e.g., cultural centres. Supervision of those internal museums is conducted on the one hand by the unit's director, e.g., director of the cultural centre within which the museum operates. On the other hand, supervision of the unit which has the museum within its structure, includes in principle this internal museum, constituting an element of a larger whole which can be assessed in various aspects, e.g., personnel or financial.

Furthermore, in the context of supervision it is of importance whether the museum is a public organisation (of central or local government), e.g., commune cultural institution, or whether it is a so-called private museum, organised by a non-public organiser, e.g., a foundation. With respect to private museums certain supervision aspects do not occur, or are less important in comparison with public museums, e.g., with respect to competences of museum councils stipulated for central- and local-government museums, or the public finance aspect.

Minister supervision of museums

In view of the supervisory entitlements of the minister proper for culture and preservation of cultural heritage [thereafter: Minister], museums can be divided into two groups.

Firstly, state-owned museums have to be distinguished, mainly the ones organised by the Minister, therefore it is the

Minister's responsibility to supervise the museums which report to him/her; the analogical situation applies to remaining organisers. Exceptionally, if other museums are registered, the Minister may, e.g., upon consultation with the Council for Museums, delegate his/her authorities to their boards of trustees (Art. 16 of the Act on Museums). Secondly, as for all the remaining museums, the Minister, similarly as with regards to the subordinated to him/her museums, is equipped with special supervision competences provided for in Art. 8 of the Act on Museums. Its provisions stipulate that the Minister can employ controlling measures necessary to this end. In case of a severe breach of the statute and the museum charter, and if the recommendations regarding the redress of confirmed instances of violations in the activity of a museum have not been effective, the Minister, having heard the museum's organiser, and the museum council or the board of trustees, having considered the opinion of the Council for Museums, may, by way of an administrative decision, prohibit any further activity. In this respect the Minister has been provided with a far-reaching authority competence of prohibitive impact.

Minister supervision competences were exposed in the added Art. 6.a of the Act on Museum (in force as of 1 August 2016) in compliance with which the Minister coordinates and implements state policy with respect to museums' activity, e.g. by supervising museums and controlling their activity.

Organiser's supervisory powers

For the organiser supervision of the museum he/she founds, Art. 5.4.3 of the Act on Museums is of basic importance, since it stipulates that entities founding the museums are obliged to supervise them. The organiser's supervisory responsibility is thus of general character, i.e. applying both to public and private museums.

If a public museum has the status of a cultural institution, and is a legal person, it does not mean that there is no subordination, also supervisory, with respect to the organiser. This supervisory relation is reflected in various aspects.

In the personnel aspect, the director of a museum being a cultural institution reports to its appropriate organ, e.g., the organ managing its respective unit of local government, e.g., village mayor (mayor) in the case of a commune museum. The effect of the supervision of the organ over the museum director may lead in extreme cases to the director's dismissal if a premise for director's dismissal provided for in Art. 15.6 of the Act on Organising and Running Cultural Activity occurs, e.g., in the event of violating the law through occupied post. In this context it is worthwhile pointing to two provisions in the Act on Commune Self-Government, i.e., Arts. 30.3.5 and 33.5 of the Act. In compliance with these provisions a village mayor hires and dismisses commune managers of organisational units. A village mayor will exercise supervisory powers with respect to the managers of commune organizational units.

In the sentence of 23 April 2015 (File No. IV SA/Po 1320/14, Lex No. 1711627) Voivodeship Administrative Court in Poznan stated, among others, that *the above regulations, in particular Art. 33.5 of the Act on Commune Self-government, and rulings unequivocally demonstrate that the organiser (in this case President) has the entitlements of*

institutional superior towards managers of commune organisational units, including managers of cultural institutions and that village mayor (mayor, city mayor) (...) also has the authority to dismiss director of a cultural institutions if there are reasonable grounds for doing so.

Furthermore, an appropriate organ, e.g., minister or an organ of a local-government unit, constitutes a superior unit towards directors of public museums making administrative decisions, e.g., refusal to disclose public information. Art. 17.3 of the Code of Administrative Proceedings stipulates that, in principle, organs superior to public administration are respective superior organs.

Meanwhile, Art. 229.3 of the Code of Administrative Proceedings stipulates that the proper organ for consideration of complaints about the tasks or activity of managers of commune organisational units, thus, among others, of directors of museums which are cultural institutions, is essentially the commune council (town council, city council).

Supervision of institution's (museum's) finance management

Supervision also covers museum's management of finance. Although in the case of public museums operating as cultural institutions Art. 27.1 of the Act on Organising and Running Cultural Activity provides that these institutions manage their assigned finances and assets independently following the principle of their effective application, independence in this respect does not mean entire freedom, since a public museum as a cultural institution and a unit of public finance sector is particularly obliged to comply with regulations specifying conditions in this respect, and particularly abide by the provisions of the Act on Public Finance or the Public Procurement Law Act.

In harmony with Art. 29.5 of the Act on Organising and Running Cultural Activity, in the case of self-government cultural institutions the annual financial report is approved by the executive organ of the local-government unit.

An important element in the financial context can be seen in the Act of 7 October 1992 on the Regional Chambers of Auditors. The chambers are state organs of supervision and control of financial management by e.g., structural units of self-governments, including self-government legal persons; they conduct financial control, including fiscal liabilities and public procurement of those units on the grounds of compliance with the law and conformity of the documentation with the state of affairs (Art. 1.5 of the above Act). The Chambers may control the above units not just upon a motion tabled by local-government units, but also those tabled by e.g. central-government organs, the latter in the event of public funding having been assigned to those units (Art. 7.2 of the above Act).

Supervision versus independence of museums as cultural institutions

Organiser supervision of public museums with the status of cultural institutions should be considered bearing in mind the independence of such institutions stemming from its particular status and the attribute of legal personality

assigned to them by law. Therefore, supervision of a public museum does not entitle its organiser to undertake activities not provided for in the regulations, this confirmed by judicature.

When analysing the issues of supervision of public museums' activity not only the provisions of the Act on Museums have to be taken into consideration, but also of the Act on Organising and Running Cultural Activity. According to the Supreme Administrative Court (NSA), in the view presented in the sentence of 4 April 2001 (File No. SA/Sz 2268/00, Lex No. 49253) *the legal regulation shaping unequivocally establishment of units of culture, their status, functioning, and financing (Arts. 9, 10, 11, 13, 14 and 27 of the Act of 1991 on Organising and Running Cultural Activity) refers directly to libraries and cultural centres run by local-government units.*

This sentence can apply to the museums which are cultural institutions. Art. 4 of the Act on Museums unequivocally stipulates that in matters not provided for in this Act, provisions of the Act on Organising and Running Cultural Activity shall apply.

On the other hand, the subjective independence of a museum as a cultural institution does not rule out its subordination to its organiser, this pointed to by NSA in the ruling of 7 September 2017 (File No. II OSK 1790/17, Lex No. 2348658).

In this ruling, quoting the above-mentioned Art. 6.a of the Act on Museums, the Court states, e.g., that *the independence of a cultural institution (stipulated in Arts. 14.1 and 14.2 of the Act on Organising and Running Cultural Activity) as well as its assigned institutional authority do not alter the character of the legal bond existing between a state cultural institution and the Minister of Culture and National Heritage expressed in the organiser's entitlement to unilaterally influence the activity of culture units in a legally binding way, using its institutional authority. The organizational connection existing between the organiser and a state cultural institutions signifies that the organiser's act as for the transformation of a cultural institution is an act of internal management, and as such does not fall under the control of an administrative court.*

Supervisory competences of museum councils

A museum council is an organ statutorily foreseen only for state and local-government museums. The supervisory competences it is attributed are not applicable to remaining non-public museums. In the case of the latter, the supervisory organ shall be defined in the charter given to the museum by its organiser (see Art. 6.2.4 of the Act on Museums).

As for the supervisory aspect, the Act on Museums in Art. 11.2.1 stipulates that the museum council shall supervise the performance of museum's responsibilities in respect of the collections held and the general public, and in particular the implementation of goals defined under Art. 1.

The supervisory character shall be exercised also by the competences of museum councils defined in Art. 11.2.2 stipulating that the museum council shall evaluate the museum's activity on the basis of the annual activity report submitted by the director, and shall issue opinion on the museum annual activity report submitted by the director.

In this context, the authority of the museum council

resembles that of supervisory boards in commercial companies. For example, pursuant to Art. 219.3 of the Code of Commercial Companies, supervisory board's responsibilities in a limited liability company will include e.g., evaluation of reports and statements referred to in Art. 231.2.1 of the Code, namely the management board report on the operations of the company and financial statements for the previous financial year. In both cases, the evaluation concerns operation reports, of a museum or company respectively.

The museum council can thus be perceived as an organ supporting museum's organiser, obliged to supervise it (see remarks above). The organiser appoints council members, e.g., from the candidates proposed by the organiser, who, however, shall not constitute more than one third of the composition of the museum council (Art. 11.5.1 and Art. 11.6 of the Act on Museums).

This systemic relation between the organiser and the museum council in the context of its supervisory tasks was pointed to by the Voivodeship Administrative Court in Cracow with the sentence of 5 March 2020 (File No. II SA/Kr127/20, Lex nr 2973811). In this sentence the Court rules e.g., that *the museum council is a statutory organ of supervision and the establishing this organ by the proper organ of the county local government (regardless of the fact that pursuant to the Act it is 'by itself' connected with appointing council members) is connected with exercising public tasks by the county self government, including, among others, organising a museum by the county local government, co-contributed to by the legal entity of the museum council.*

Also the Supreme Administrative Court with its sentence of 28 April 2006 (File No. II OSK 525/05, Lex No. 209426) spoke of those dependencies claiming that *the right to adopt a resolution on dismissal of a museum council member by voivodeship council as an independent decision on the issue, does not mean, however, that the resolution can be adopted freely, thus without reasons justifying such resolution.*

Regardless, however, of such basic relations between museum councils and museum organisers, such relations are also present between the council and the Minister who, pursuant to Art. 11.5.5. of the Act on Museums, proposes candidates for museum councils. Not only do museum councils play an essential role in the performance of the supervisory authority of the Minister (see Art. 8 of the Act on Museums and the above remarks), but also of Minister's other competences, e.g., consent for exchange, sale or donation of museum exhibits granted by the Minister upon the request of the museum director, accompanied by the opinion of the museum council (see Art. 23.2 of the Act on Museums).

Importantly, museum councils do not operate in registered museums which have, instead, boards of trustees, since the organiser of a registered museum is entitled to delegating his/her authority to the board of trustees, also with respect to supervision of the museum in the implementation of museum's responsibilities towards its collection and the general public (Arts. 16–18 of the Act on Museums).

Professional aspects of supervision

Contrary to the Libraries Law in the Act on Museums there is no provision for an analogical professional supervision as with respect to public libraries forming part of the national

library network (see Art. 20.1.5 of the Libraries Law stipulating that a voivodeship library shall perform professional supervision of commune and county public libraries with respect to the implementation of public tasks as specified in Art. 27.5 of the Law).

This does not, however, mean that the regulations important in view of the supervision of museums lack professional aspects stemming from the specificity of museum operations, particularly in the context of their amassed collections which require protection against many dangers. Since, in principle, museums gather collections, including museum exhibits of the status of historic monuments, an important role in the supervision of museums in this professional aspect is assigned to proper voivodeship conservators of historic monuments, this provided for with the regulations of conservatory supervision as stipulated in Chapter 4 of the Act on the Protection and Guardianship of Historic Monuments. Pursuant to Art. 38.1.3 of the Act, voivodeship conservator of monuments or employees of the Voivodeship Office for the Preservation of Historic Monuments assigned by him/her shall control complying with and applying regulations for the preservation and guardianship of historic monuments, and while performing the control, they are authorized in particular to evaluate the preservation state, conditions of keeping and protection of registered historic monuments as well as historic monuments in e.g., museums.

It is necessary to observe at this moment that pointing in Art. 38.3.2 of the above-mentioned Act to historic monuments forming part of collections of various public institutions, including museums, besides historic monuments entered in the register of historic monuments, results from the fact that the register in question does not include historic monuments listed in museum inventories, thus having the status of museum exhibits (Art. 11 and Art. 13 of the Act on the Preservation and Guardianship of Historic Monuments).

Professional aspects of supervision are also visible in the regulations stipulating museums' internal structure. Apart from the general provisions in this respect, e.g., regulations of management control contained in the Act on Public Finance, supervisory tasks are assigned to museum staff. For instance, pursuant to Art. 32.3 of the Act on Museum, an employee ranking among the professional group of museum curators, who is assigned a task of mounting an exhibition based on his/her genuine idea, organising it, and factually supervising it, plays the role of the exhibition curator. Performing this function consists then in e.g., implementing the professional supervision of the exhibition.

As for the professional personnel of museums, including

museum curators, qualification requirements are formulated in Arts. 32.a–33.d of the Act on Museums. These qualifications are an essential condition for a candidate to be employed on a position specified in the above-mentioned regulations, thus guaranteeing appropriate fulfilment of the museum's responsibilities towards collections and the general public, as well as its statutory goals.

The fact that adequately high qualifications of museum employees are important also in the perspective of supervision can be best testified by point 24 of the template of the application to have a museum listed in the State Museum Register, this being an annex to the Regulation of the Minister of Culture and National Heritage of 13 May 2008 on the Mode of Running the State Register of Museums; it contains the preconditions and mode of making the entries, as well as the circumstances under which a control can be ordered to verify whether the museum continues to fulfil the preconditions of the entry into the Register (Journal of Laws 2008, No. 91, Item 567). In accordance with this point information has to be provided on the individuals exerting professional supervision of respective collection segments (educational background, experience: descriptively, as an annex).

Furthermore, definite tasks with respect to professional supervision of museums lie with specialized organs and institutions.

Minister's consultative and advisory organ is the Council for Museums and National Memorial Sites whose task it is to e.g., formulate opinions on the issues related to the performance of tasks stipulated in the Act on Museums and museum charters by museums, as well as opinions on issues related to museum exhibits in museums of central and local government (see Art. 1.1. of the Regulation of the Minister of Culture and National Heritage of 14 February 2017 on the Detailed Scope of the Activities of the Council for Museums and National Memorial Sites, the mode for appointing its members and the Chairman, Journal of Laws of 2017, Item 494, with amendments).

Meanwhile, the coordination and supervision of the logistics of the transportation of some more valuable collections, as defined in Art. 23 of the Regulation of the Minister of Culture and National Heritage of 2 September 2014 on Protecting Museum Collections against fire, theft, and other dangers that may threaten them with destruction or loss (Journal of Laws 2014, Item 1240), is performed by the state cultural institution whose statutory goal is to identify and propagate standards in museology and collection protection, namely the National Institute for Museums and Public Collections (NIMOZ).

Abstract: Supervision of museums should be perceived taking into account both specific regulations: addressed directly to museums, particularly in the Act on Museums, as well as general regulations assuming supervision mechanisms in different respects, e.g., construction process or HR. This complex perspective: systemic and normative, is essential not only with respect to the supervision in a narrow basic meaning of the term, associated in the first place with an inspection of the supervised entity and application of respective executive actions, e.g., undertaken in the form of

administrative decisions, but also the supervision in a broader perspective, understood as a whole range of support provided to a museum, including issuing recommendations, evaluations, and opinions important for its operation.

In the context of 'external' supervision implemented by appropriate organs and entities, the following are of basic importance: the museum's organiser (founder) supervision, constituting one of the organiser's basic statutory responsibilities, as well as the supervision of the minister responsible for culture and preservation of national heritage, with respect

to e.g., the preservation and care of historic monuments and museum operations; additionally, it is the matter of conservation supervision performed by Voivodeship Conservators of Historic Monuments as organs specialized in the preservation and care of historic monuments, the latter constituting, e.g., museum collections.

As for the 'internal' supervision aspects, the role of museum councils, obligatory in public museums (state ones or organised by local governments), needs to be emphasized.

Their statutory responsibility is to e.g., supervise how museums fulfil their responsibilities with respect to the collection and the public, in particular how they fulfil the goals as specified in Art.1 of the Act on Museums.

The questions of supervision are also important for non-public museums (their founders) which in the event of violating either the Act's provisions or their own charter have to be prepared that supervisory activities might be applied to them, up to the ban on their further operations.

Keywords: minister supervision, museum's organiser supervision, conservator supervision, supervisory competences of museum councils, factual supervision.

Rafał Golat

Legal adviser at the Ministry of Culture and National Heritage and Sport, author of numerous book and press publications on culture-related law, civil law, copyright, and fiscal law.

Word count: 6 699; **Tables:** –; **Figures:** –; **References:** –

Received: 06.2021; **Reviewed:** 07.2021; **Accepted:** 08.2021; **Published:** 08.2021

DOI: 10.5604/01.3001.0015.2413

Copyright©: Some rights reserved: National Institute for Museums and Public Collections. Published by Index Copernicus Sp. z o.o.



This material is available under the Creative Commons – Attribution-NonCommercial 4.0 International (CC BY-NC 4.0). The full terms of this license are available on: <https://creativecommons.org/licenses/by-nc/4.0/legalcode>

Competing interests: Authors have declared that no competing interest exists.

Cite this article as: Golat R.; SUPERVISION OF MUSEUM ACTIVITY. *Muz.*, 2021(62): 208-213

Table of contents 2021: <https://muzealnictwo.com/issue/13664>

