

# NORMATIVE AND LEGAL CONSEQUENCES OF ADOPTING A NEW ICOM MUSEUM DEFINITION

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In his *Logical-Philosophical Treatise*, Ludwig Wittgenstein contained the famous 5.6 Thesis: *The limits of my language mean limits of my world.*<sup>1</sup> This co-author of the contemporary analytic philosophy briefly and succinctly emphasized the meaning of the language in the process of describing the surrounding world and of ‘taming’ the objects that are found in it. It is through naming things that man fulfils the organizing function of an almost every dimension of the life: political, economic, social. Within the sphere that is of interest to us: concerning the museum, it is essential to define that basic concept similarly as the other fundamental notion of museum objects.

However, the present paper focuses on the first of those notions which was defined in the ICOM Code of Ethics for Museums in the following way: *A museum is a non-profit, permanent institution in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment.*<sup>2</sup> Naturally, this definition is complemented with other resolutions in the *ICOM Code of Ethics for Museums*, in particular those which relate to museums’ functions and their constitutive principles. Interestingly, following Stanisław Waltoś, we can observe that the definition of the museum, new at the moment of its adoption, following the amendments to the ICOM Code was similar to the earlier ones in the sense that *the basic elements of the definition as formulated by the old Code, following the ICOM Statutes, did not alter.*<sup>3</sup> Although the purpose of the paper is not to analyse changes in the very definition of the museum, adopted by ICOM at different points in time, such an evolution of the concept should be also borne in mind. From the perspective of the organization it is not, actually, the most

prominent and possibly the most normatively meaningful act that is the most important. For it is the ICOM Statutes which also contains in its Art. 3.1 the museum definition.<sup>4</sup>

During the 26<sup>th</sup> ICOM General Assembly in Prague, on 21 October 2022, a new definition of the museum was adopted, reading as follows: *A museum is a not-for-profit, permanent institution in the service of society that researches, collects, conserves, interprets and exhibits tangible and intangible heritage. Open to the public, accessible and inclusive, museums foster diversity and sustainability. They operate and communicate ethically, professionally and with the participation of communities, offering varied experiences for education, enjoyment, reflection and knowledge sharing.*<sup>5</sup>

The adoption of this definition by ICOM aroused a wide debate participated, however, mainly by museum professionals, which is not really surprising. Let us recall here that debates on the adoption of a new museum definition are much older than it may seem,<sup>6</sup> and while reaching merely the previous 25<sup>th</sup> ICOM General Conference held in Kyoto in 2019, let us recall that it was there that an aborted attempt at introducing a new museum definition, much differing from the previous ones, took place.<sup>7</sup>

Law sources are often ordered according to, e.g., hierarchic positioning of the legislative organ within the system of organs of a democratic state. In the analysed case, however, we have to do with an international NGO that ICOM is. By this token, organization’s documents are not sources of law. The doctrine documents produced both by ICOM and ICOMOS are at most the source of international law of ‘soft’ character, meaning not binding law.

Obviously, it is possible to implement the normative accomplishments of such an expert organization in the domestic legislation of respective states. This can be done

in two ways. The first assumes that some norms from those documents are 'copied' into the domestic legislation of respective states. In this way legal norms modelled on the norms worked out by an international organization are created. The second may incorporate norms of the kind in the legal system in a dynamic manner, in the process of law application, which happens thanks to general reference clauses. Such a general clause is contained in Art. 34 of the Act of 21 November 1996 on Museums (consolidated text: Journal of Laws 2022, Item 385).<sup>8</sup>

The legal definition of the 'museum' can be found in Art. 1 of the Act on Museums where we read that *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.*

Importantly, this legal definition of objective nature<sup>9</sup> is further specified in the interpretation of Art. 2 which defines the means of fulfilling the goals in the definition.<sup>10</sup> Let us also recall Art. 3 of the Act which specifies that museums can be created either for one or many spheres of human activity as well as for nature assets.

Following the above overview of the definitions in their relation to the new ICOM museum definition several conclusions can be reached. Firstly, what museums are in the legal sense, namely in the application of the law, is finally decided upon by the domestic legislator. Therefore, in these terms the ICOM definition is of no relevance. At most, it can be taken into account in the process of the interpretation of an unspecified notion when the organ decides to reach for the non-systemic interpretation guidelines (that are outside the legal system).

Secondly, the ICOM definition may be of importance in the legislative process when the decision is made to amend the museum law, also with respect to the legal museum definition. In such a situation the legislator may resort to the opinion of experts: museum professionals in order to react to the transformations occurring in museology.

Thirdly, and which refers to the two above points, particularly the second one, the ICOM definition may have the integrative quality in the sense that it will lead to standardizing the law in various countries worldwide. Nonetheless, this has to be evaluated in a much more distant time perspective.

Fourthly, as for the name range: the museum range in the understanding of the subsequent above-quoted definitions is close, and simply identical in its core. Therefore, the new ICOM definition is approximate in its range to the previous one, albeit not identical with it, as it also is to the definition in Art. 1 from the Act on Museums. The essence of legal definitions is the recreation in the law interpretation process, being one of the stages of the law application, what is included in its range, and at the same time answering the question whether the thing the definition is supposed to concern, is the designatum of the given name. In this sense the new ICOM definition did not introduce any revolutionary changes; instead, the changes were substantial in the event of the proposed Kyoto definition.

Fifthly, as for the very content of the new ICOM museum definition it can arouse doubts to the extent in which it is

of a postulative nature. Indeed, definitions in their essence respond to the question 'how is it?', but they do not project the reality. In more precise terms, a classical definition follows the scheme: 'A is B featuring C qualities', and not the one which reads: 'A is B featuring C qualities and additionally D desired qualities'. In this sense, the new ICOM museum definition has its defaults. This, however, does not go to say that 'postulative' definitions are not formulated in legal regulations. Yet, they do not define their object, but point to the qualities to which it should aspire. If one assumes that the borderline between 'what is' and 'what should be' can be 'fluid', such a definition may be acceptable. This leads to the situation in which a given addressee of the law undertakes actions or abandons actions in order to comply with the statutory premises and to be able to reach the status of the defined object; speaking more precisely, to be considered as the name's designatum.

Nevertheless, the above-mentioned discussion concerning the content of the new ICOM museum definition is valuable, since it is multifaceted. It refers to the museums' idea and value, their role in the contemporary world, their functions and tasks, as well as the changes they have been undergoing. Meanwhile, for a lawyer its logical and linguistic dimension is a priority: where museology and representatives of other disciplines connected with the activity of contemporary museums analyse the very definition logically and linguistically, there such remarks can be valuable in the process of the interpretation of the law. Namely, such interpretation of the binding law which takes the so-called doctrinal context into consideration with reference to the very museum concept. For if law interpretation is the recreation of contents and meanings, such a suggestion may be of importance.

Finally, we can fully agree with Patrycja Antoniak who writes as follows: *Regardless of its evolution the museum definition, also the legal one, continues to use, and will most likely always use, a number of vague concepts, if only of the kind of 'cultural goods and natural heritage of mankind' or 'basic historical values'. This turns the discussed definition into one of an open character. In order to understand it and interpret, it is actually essential to refer to the extra-normative contents in the form of the output mainly of museology and historical sciences. Furthermore, its interpretations will depend on the historical and conservation policy assumed at a given moment. In this context we can thus state that the 'museum' concept is similarly as that of 'public interest' a residual concept (flexible), and each single time it requires balancing between the values which are subject to legal protection (for example: between the value of allowing the use of the amassed collection in the way securing its effective dissemination and the value in the form of a permanent preservation of the collection).*<sup>11</sup>

As a consequence, the literal wording of the very museum definition is not of major relevance. Meanwhile, the name ranges are to a great extent identical. And if we were to define the tendency, it reflects the extension of the name range, albeit not entirely spontaneous and free. It is also worth recalling that the debate on the protection of the museum name in the Polish law (though not only Polish) is a topic worthy of separate considerations, actually already undertaken before.<sup>12</sup>

Therefore, what is of major relevance in the adopted, or, as was the case of the Kyoto proposal ICOM's attempts

at subsequent changes in the museum name content, is that ideological and postulative layer. It is decisively of less relevance to the legal dimension, yet its importance for the development of contemporary museology cannot be overestimated, since the ideological and world-outlook changes are an immanent part of the contemporary times, while museums, although in reality fulfilling the petrifying function in the first place, have to remain sensitive to the changes in the surrounding world, or otherwise they will lead to self-petrification.

The title of the paper promised some normative and legal consequences of the adoption of the new ICOM museum definition. However, the posed question should be rephrased: what are the current or potential normative and legal consequences of the adoption of this definition? It is an

important question, yet only the observation of legislative amendments to the law of museums of respective countries will give us the proper answer. Therefore, since I began this paper recalling a thesis from Wittgenstein's *Logical-Philosophical Treatise*, maybe it would be worthwhile to conclude our considerations with the possibly most famous of the theses it contains. Today we do not know as yet what significance the newly-adopted ICOM museum definition will have for the legal systems dedicated to cultural heritage preservation, and in particular to the museum law.<sup>13</sup> Naturally, the achievements of Polish futurology are major, however, my intention was not to write a futurology paper. Therefore, while patiently awaiting further developments of legislative events, we should follow Wittgenstein's 7 thesis: *Whereof one cannot speak, thereof one must be silent.*<sup>14</sup>

**Abstract:** During the 26<sup>th</sup> ICOM General Conference in Prague in 2022 a new museum definition was adopted. However, debates on it are much older, and while reaching merely the previous 25<sup>th</sup> ICOM General Conference held in Kyoto in 2019 let us recall that it was there that an aborted attempt at introducing the new museum definition, much differing from the current one, took place. It is the normative and legal consequences of the adoption of the new ICOM museum

definition that are the subject of the paper. It is possible for the normative ICOM output to be implemented in the domestic legal regulations. Interpretations and observations related to the question are contained in the paper, however they finally lead to the conclusion that the literal wording of the museum definition as such is not of major importance. As for the tendency, this shows the extension of the name's range although not conducted entirely spontaneously and freely.

**Keywords:** ICOM, museum definition, museum legislation, interpretation of the law.

## Endnotes

- <sup>1</sup> L. Wittgenstein, *Tractatus logico-philosophicus*, <https://www.gutenberg.org/files/5740/5740-pdf.pdf>, trans. by C.K. Ogden (Accessed: 10 September 2023).
- <sup>2</sup> ICOM Code of Ethics for Museums at <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf> (Accessed: 9 September 2023).
- <sup>3</sup> *Ibidem*, p. 12.
- <sup>4</sup> Definition contained in Art. 3.1; International Council of Museums (ICOM) Statutes, as amended and adopted by the Extraordinary General Assembly on 9<sup>th</sup> June 2017 (Paris, France).
- <sup>5</sup> Translation by Jarosław Suchan provided on the ICOM website (Poland). See <https://icom-poland.mini.icom.museum/nowa-definicja-muzeum> (Accessed: 27 June 2023). The original definition in English is as follows: *A museum is a not-for-profit, permanent institution in the service of society that researches, collects, conserves, interprets and exhibits tangible and intangible heritage. Open to the public, accessible and inclusive, museums foster diversity and sustainability. They operate and communicate ethically, professionally and with the participation of communities, offering varied experiences for education, enjoyment, reflection and knowledge sharing.*
- <sup>6</sup> D. Folga-Januszewska, 'Muzeum: definicja i pojęcie: Czym jest muzeum dzisiaj?', *Muzealnictwo*, 49 (2015), pp. 200-203; *eadem*, *Muzealnictwo*, 61 (2020), pp. 39-57.
- <sup>7</sup> See more J. Wasilewska, 'Spór o nową definicję muzeum na konferencji generalnej ICOM w Kioto', *Zbiór Wiadomości do Antropologii Muzealnej*, 16 (2019), pp. 175-180; D. Folga-Januszewska, *Dzieje pojęcia muzeum...*, pp. 39-57; F. Mairesse, 'Różnorodność muzeów w świetle definicji z Kioto', *Muzealnictwo*, 61 (2020), pp. 75-79; M. Lorenc, 'Polityczność nowej definicji muzeum ICOM, czyli manewrowanie transatlantykami wśród gór lodowych', *Muzealnictwo*, 61 (2020), pp. 164-171; see also M. Lorenc, 'Proszę się cofnąć do przodu! – O polityce partycypacji w pracach ICOM nad „Praską definicją muzeum”', *Muzealnictwo*, 63 (2022), pp. 165-172.
- <sup>8</sup> In harmony with Art. 34 of the Act on Museums, in the course of their employment, museum employees shall observe the generally accepted norms of professional ethics, and in particular shall not trade in objects that remain within the scope of interest of the museum and shall not undertake any activities such as collecting, issuing expert opinions or valuation of objects, which may give rise to a conflict of interest with the museum at which the person has undertaken employment. For more see K. Zeidler, 'Art. 34 [Etyka muzealnictwa]', in: Z. Cieślak, I. Gredka-Ligarska, P. Gwoździwicz-Matan, I. Lipowicz, A. Matan, K. Zeidler, *Ustawa o muzeach. Komentarz*, Warszawa 2021, pp. 482-491.
- <sup>9</sup> See P. Antoniuk, *Ustawa o muzeach. Komentarz*, Warszawa 2012, pp. 16-19.
- <sup>10</sup> In harmony with Art. 2 of the Act on Museums, a museum shall implement the goals specified in Art. 1 through, in particular: 1) collecting art works within the scope determined by statute, 2) cataloguing and scientific classification of collections, 3) maintaining collections in conditions that safeguard their proper and safe preservation, and storing them in a manner that ensures access for scientific purposes, 4) securing and maintenance of collections and, as far as practicable, securing archaeological movable art works and other immovable tangible cultural and natural assets, 5) arranging permanent and temporary exhibitions, 6) organizing research and scientific expeditions, including archeological, 7) conducting educational activities, 7a) encouraging and conducting artistic and culture-promoting activities, 8) providing access to collections for educational and scientific purposes, 9) ensuring proper environ-

ment for visitors and access to exhibits and collected information, 10) conducting publishing activity.

<sup>11</sup> P. Antoniak, *op. cit.*, pp. 30-31.

<sup>12</sup> See J. Pruszyński, 'Muzea. Muzealnictwo. Prawo muzeów', *Santander Art and Culture Law Review*, 1 (2015), pp. 9-40.

<sup>13</sup> More on museum legislation in Poland see *Prawo muzeów*, ed. by J. Włodarski, K. Zeidler, Warszawa 2008; K. Zalańska, *Muzea publiczne. Studium administracyjnoprawne*, Warszawa 2013; as well as commentaries on the Act: P. Antoniak, *op. cit.*; A. Barbasiewicz, *Ustawa o muzeach. Komentarz*, Warszawa 2021; Z. Cieślak, I. Gredka-Ligarska, P. Gwoździewicz-Matan, I. Lipowicz, A. Matan, K. Zeidler, *op. cit.*

<sup>14</sup> L. Wittgenstein, *op. cit.*, p. 83.

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