

THE INFLUENCE OF LEGAL REGULATIONS IN THE AREA OF PROTECTION OF CULTURAL PROPERTY ON THE CULTURAL SECURITY OF THE SECOND POLISH REPUBLIC IN THE YEARS 1918-1939

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Received on 25th April ; accepted after revision October 2016

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Abstract:

The article attempts to analyse the significance of the legal output in the area of protection of cultural property enacted in the period of development of the Second Polish Republic. The paper advances the thesis that the years 1918-1939 were characterised by the crucial legislative output regarding the protection of cultural property, which guaranteed the possibility of protecting the tangible cultural heritage of the Polish nation in the difficult period of restoring the foundations of its statehood.

*The defence of the above thesis relies on both the literature and source materials, including mainly the materials stored in the Central Archives of Modern Records (Archiwum Akt Nowych) in Warsaw and archival materials published in *Wojskowe Teki Archiwalne*. Taking account of the specific nature of the selected topic, the key material comprised legal acts concerning the protection of historic monuments in the period of the Second Polish Republic and the adopted research method was the analysis of such materials.*

On the basis of the presented information it can be stated that the Second Polish Republic was a period of particular significance for the development of the Polish legal system in the area of protection of cultural assets. In the years 1918-1939, the legal protection of cultural property represented the way of enhancing the cultural security, consisting in the systematic development of legal norms. The development of the cultural property protection law was based on a number of legal acts passed both in the 1920s and in the 1930s. In the Second Polish Republic the cultural property protection law made it possible to combine the social function of safeguarding historic monuments with the public function in the protection of historic monuments, which had a favourable impact on the protection of the national heritage.

Keywords:

the Second Polish Republic, cultural property, historic monument, legal system, legal protection, cultural security



INTRODUCTION

The protection of cultural assets is unquestionably interdisciplinary in its nature, since the regulations governing the protection of cultural property belong to different branches of law, including, among others, administrative law, criminal law, and also international law. The definition of cultural property adopted in the paper was formulated in the Hague Convention of 1954. This position was adopted because in the years 1918-1939, in Poland, the term "cultural property" did not function in its legal and formal meaning. This notion appeared only after the Second World War. In practice, it would be justified to write about a legal system in the area of protection of historic monuments in the years 1918-1939. The preliminary research of the contemporary works cited in the paper suggests clearly that – taking account of the historical perspective of the whole 20th century – it is possible to write about the protection of cultural property in the case of the period preceding the Second World War, because at the time of the Second Polish Republic the complex standards for the protection of cultural property were generally formulated and developed in independent Poland¹. In Art. 1 of the Convention the cultural property is defined as the movable or immovable property of great importance to the cultural heritage of respective nations. It includes, first of all, monuments of art, history and architecture, archaeological sites, some groups of buildings, works of art, books and manuscripts of historical, artistic or archaeological interest as well as scientific collections and important collections of books or archives. Furthermore, cultural property comprises also the buildings used to preserve and exhibit the movable cultural property as well as the centres containing monuments, i.e. the centres with a large amount of the above-mentioned cultural property².

The article supports the view that the protection of cultural property comprises the standards concerning different movable and immovable cultural property, including also historic monuments. The latter belong to the cultural property, but they may not be identified with it, according to their respective definitions, since there are examples of cultural property other than historic monuments, such as memorials, statues, urban planning assumptions or building interiors³. Undoubtedly, the protection of historic monuments can be regarded as the most important part of the protection of cultural property during the analysed period of the Second Polish Republic.

¹ Cf. M. Gdowska, *Administracyjnoprawne aspekty ochrony dóbr kultury w Polsce. Relacja między dobrem kultury a zabytkiem*, [in:] *Prawne wyzwania ochrony dóbr kultury we współczesnym świecie*, ed. by M. Adamus, P. Dobosz, D. Guzek, A. Mazur, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2015, p. 48.

² Konwencja o ochronie dóbr kulturalnych w razie konfliktu zbrojnego wraz z regulaminem wykonawczym do tej Konwencji oraz Protokół o ochronie dóbr kulturalnych w razie konfliktu zbrojnego z dnia 14 maja 1954 roku (The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention and the Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954) (Dz.U. /Journal of Laws/ 1957, No. 46, item 212).

³ A. Siwek, *Między zabytkiem a dobrem kultury współczesnej*, „Kurier Konserwatorski” 2011, No. 10, p. 5.



The objective set in the article is to define and provide the characteristics of the significance of the legal output created in the period of development of the Second Polish Republic in the area of protection of cultural property, in the meaning provided above. The paper advances the thesis that the years 1918-1939 were characterised by the crucial legislative output regarding the protection of cultural property, which guaranteed the possibility of protecting the tangible cultural heritage of the Polish nation in the difficult period of restoring the bases of its statehood.

1. SIGNIFICANCE OF THE LEGAL OUTPUT IN THE AREA OF PROTECTION OF CULTURAL PROPERTY DURING THE FIRST DECADE OF THE SECOND POLISH REPUBLIC

It should be emphasised that in the legal output of the Second Polish Republic in the area of protection of cultural property the legislator did not use the term “cultural property” and in the language of the law and the legal language the terms “historic monument” or “historic object” were used⁴. The historic monuments of those times could be classified as cultural property, because they functioned as assets of artistic, historical or archaeological value and of particular significance for the development of the Polish culture⁵. Although it is obviously possible to use the notion “cultural property” with regard to the heritage of the previous historical periods, the term as such appeared relatively late and resulted from the increased significance of international protection of cultural property, including various historic monuments, already after the Second World War.

The Polish authorities became interested in the issues related to the protection of cultural assets when the Great War was coming to its end, still before the formal proclamation of the independence of the Polish state. On 6 February 1918, the Council of People’s Commissars issued a decree on the protection of monuments of the past and monuments of art belonging to the Polish Nation⁶. In the same period the Society for the Preservation of Monuments of the Past (*Towarzystwo Opieki nad Zabytkami Przeszłości*), operating in Russia, made an announcement to the Polish research workers and science supporters to prepare the inventory of monuments of the Polish civilisation and culture held in public and private collections within the territory of Russia⁷. A dozen or so days before the formal proclamation of the independence of the Polish state the Regency Council issued a decree on the care of monuments of art and culture⁸. This decree, for the first time in the history of the restored Polish state, stated

⁴ Ibidem, pp. 4-5.

⁵ A. Książopolska-Kukulska, *Dobra kultury jako przedmiot ochrony w prawie karnym*, „Prokurator” 2007, No. 2, pp. 113-114.

⁶ J. Pruszyński, *Organizacja ochrony zabytków w dwudziestoleciu międzywojennym*, „Ochrona Zabytków” 1988, No. 41, p. 84.

⁷ J. Miler, *Działalność Towarzystwa Opieki nad Zabytkami Przeszłości na terenie Rosji*, [in:] “Spotkania z Zabytkami” 2006, No. 12, p. 34.

⁸ Dekret Rady Regencyjnej z dnia 31 października 1918 roku o opiece nad zabytkami sztuki i kultury (Dz.U. 1918, No. 16, item 36). It would be difficult to dispute the position presented in the literature on the subject that the issuing of this legal act still before the formal proclamation of independence showed the special significance of the protection of cultural property and civilisational and cultural



that all monuments of culture and art which were in Poland and had been entered into the inventory of such cultural property were under legal protection (Article 1)⁹. The responsibility for the said protection was entrusted to the public authority – the Ministry of Religious Cults and Public Instruction (Article 2) and conservators of monuments of art and culture, appointed by the head of this department (Article 3).

The decree of the Regency Council on the care of monuments of art and culture made a distinction between immovable (Articles 12-17) and movable (Articles 18-22) historic monuments and, furthermore, provided for the protection of archaeological sites and finds (Articles 23-27). The catalogues of immovable and movable historic monuments were quite extensive, which was related to the scope of legal protection of the Polish cultural property after the Great War – even despite the fact that the legislator chose not to formulate a legal definition of a historic monument¹⁰. Furthermore, Articles 28-33 of the discussed decree contained the provisions on the dispossession of a movable or immovable historic monument for the benefit of the state. Art. 34 and Art. 35 described the scope of criminal liability for offences against the provisions of the decree. The penalty for infringing these provisions included imprisonment of three months and, in addition, an equivalent fine in the case of destroying a monument or reducing its value as a result of damage. The decree provided also for the exercise of forfeiture by court action in the case of the attempted secret import or export of a cultural assets into or out of the Second Polish Republic. It can be stated that the discussed decree was the first legal act of such great import regarding the need for the legal protection of cultural property in the Second Polish Republic¹¹.

The decree of the Chief of State of 3 January 1919, concerning the approval of designs of statues on the grounds of their artistic merits, was another legal act concerning the

heritage of the Polish nation for Polish politicians and for the emerging structures of the Polish statehood. Cf. K. Zalasńska, *Prawna ochrona zabytków nieruchomych w Polsce*, Wolters Kluwer Polska, Warszawa-Kraków 2010, p. 29.

⁹ The historic monuments included in the relevant inventory, exclusively, were subject to protection and actions taken by conservators, and the detailed provisions regarding the entry of monuments to such inventory were contained in the subsequent regulation of the Minister of Arts and Culture. Cf. Rozporządzenie Ministra Sztuki i Kultury z dnia 9 kwietnia 1919 roku w przedmiocie wpisywania zabytków sztuki i kultury do inwentarza (M.P. /Monitor Polski, Official Journal of the Republic of Poland/ 1919, No. 81). However, it should be remembered that pursuant to Art. 11 of the discussed decree the legal protection was intended for all cultural property representative of the culture and art of the past epochs and existing for at least 50 years, provided that such cultural assets were included in the said inventory.

¹⁰ K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Wolters Kluwer Polska, Warszawa-Kraków 2007, p. 45.

¹¹ It would be difficult to dispute the position presented in the literature, according to which the decree was the first legal act in the history of Poland combining the preservation of historic monuments with the protection of such monuments. The former was related to the society's involvement in the protection of the national cultural heritage, whereas the latter concerned the participation of specialised bodies of the state administration in creating and implementing the legal bases for the protection of cultural property significant for the Polish nation. Cf. B. Rymaszewski, *Polska ochrona zabytków*, Scholar, Warszawa 2005, p. 39.



area of protection of historic monuments¹². It obliged individuals and different types of public institutions and private organisations that intended to erect a memorial, statue or figure or to fix or hang a commemorative plaque to submit a design of such asset for approval on the grounds of its artistic merits by the Minister of Arts and Culture (Article 1). The designs had to include drawing projections, explaining precisely both the idea and the details of its execution, as well as an annexe containing drawing and photographic data that would demonstrate sufficiently the relation between the contemplated statue and its environment (Article 2). A failure to observe the above instructions would result in the removal of the asset pursuant to the regulation of the Minister of Arts and Culture (Article 4). Furthermore, the sanctions applied in the case of a failure to fulfil the obligation imposed by the said decree included imprisonment of up to three months or a fine of up to 3,000 Polish marks (Article 7). The said decree can be deemed as one of the first manifestations of the attempt to impose some kind of order regarding the presence of monuments in the public space, which aimed at eliminating efforts to arbitrarily erect statues and other similar monuments. The position adopted by the public authorities, specifically by the Minister of Arts and Culture, on the basis of artistic merits, was to serve as the key determinant for setting in order the legal system in its part concerning historic monuments from the beginning of 1919.

It should be added that the issue of protecting the Polish cultural property was also raised by the diplomats of the Second Polish Republic, headed by Ignacy Paderewski, on the international arena. It took place during the Paris Peace Conference held after the Great War. Poland sent to Paris a special Revendication Commission (*Komisja Rewindykacyjna*) to represent the Polish interests concerning the restitution of the Polish cultural property. Postulates supported by its members had been prepared in advance by the Archives Department of the Bureau of Preparatory Work for the Peace Conference (*Wydział Archiwalny Biura Prac Kongresowych*), established on 10 January 1919. The Polish authorities sought to recover the cultural property looted during the partitions and the Great War also through negotiations with Germany, Soviet Russia and Austria¹³. The issue was brought to the international level, but it was also accompanied by the efforts to create an internal, strong and complex system for the protection of cultural property and, more broadly, the whole national heritage.

Different types of archives collections, containing the information important for the nation's identity and history, unquestionably form a part of the cultural heritage of a given nation. In practice, the authorities of the Second Polish Republic quickly noticed the need to extend legal protection to include also the archives, being an element of protected cultural property. It was manifested by issuing by the Chief of State a decree on the organisation of the state archives and care of archival materials on 7 February

¹² Dekret Naczelnika Państwa z dnia 3 stycznia 1919 roku o zatwierdzaniu projektów pomników ze stanowiska artystycznego (Dz.Pr.P.P. /Journal of Laws of the Polish State/ 1919, No. 5, item 93).

¹³ D. Matelski, *Rola muzeów i muzealników polskich w ratowaniu i restytucji utraconego dziedzictwa kultury w XX-XXI wieku (cz. I - do 1945 r.)*, „Rocznik Muzeum Wsi Mazowieckiej w Sierpcu” 2011, No. 2, pp. 66-69.



1919¹⁴. This legal act comprised as many as 46 articles and governed the scope of protection of the central, local and private archives (with the technical and scientific support provided by the state), and also addressed the issues of the revendication of the archives collections belonging to the state, the staffing of the state archives or the organisation of the work of field and corresponding archivists of the State Archives Department, forming a part of the structure of the Ministry of Religious Cults and Public Instruction. Pursuant to the decree the Qualification Commission was established, whose task was to assess the qualifications of the candidates for public offices related to the protection of cultural property in the form of archives (Article 30). The Archives Council was also instituted and entrusted with the responsibility for, among others, taking active care of archives and preparing legislative motions connected with their conservation (Article 31)¹⁵.

The Treaty of Riga, ending the Polish-Bolshevik war, included references indicating the special interest of the authorities of the Second Polish Republic in the issues related to the strengthening of the legal protection of cultural property at the time of developing the bases of statehood. The Treaty signed on 18 March 1921, in Art. 11 obliged Russia and Ukraine to return to Poland various objects of historical and artistic significance which had been taken from the territory of the Republic of Poland since 1 January 1772¹⁶. First, it concerned any war trophies taken away from Poland up to 1918, including flags, military ensigns, standards, regimental insignia, cannons and weapons. Second, it was ordered to return such cultural property as libraries and book collections, collections of archives, historic monuments, works of art and Polish archaeological finds and objects of national, historical, scientific and artistic importance. In addition, the obligation included the return of such manifestations of Polish tangible cultural assets as plates, films, maps, drawings, plats, records, documents and seals of the state, local, social and religious offices and institutions. The above-mentioned cultural assets were to be returned regardless of the circumstances or regulations issued by the former authorities and irrespective of the fact to which natural or legal persons they belonged after they had been taken away from Poland. The provisions of the Treaty did not include the objects representing a state secret and concerning the period after 1870, or the archives and other documents related to the struggle of the for-

¹⁴ Dekret Naczelnika Państwa z dnia 7 lutego 1919 roku o organizacji archiwów państwowych i opiece nad archiwaliąmi (Dz.Pr.P.P. 1919, No. 14, item 182).

¹⁵ It would be difficult to challenge the position according to which both the date of issuing the said decree and the scope of issues it addressed showed the importance of archives for the protection of the Polish Cultural property shortly after the regaining of independence. Cf. B. Woszczyński, *Dekret archiwalny po odzyskaniu niepodległości*, „Biuletyn Wojskowej Służby Archiwalnej” 1998, No. 21, p. 8. It seems that the fact that archives were, in principle, first to be legally protected was important for the protection of the Polish nation's identity and the state, in the context of the legal system for protecting the cultural assets just being created in the interwar period.

¹⁶ Traktat pokoju między Polską a Rosją i Ukrainą podpisany w Rydze dnia 18 marca 1921 roku (Dz.U. 1921, No. 49, item 300).



mer tsarist authorities with the Polish revolutionary movements after 1876 (the latter were to be returned on the basis of a separate bilateral agreement)¹⁷.

Owing to the fact that Art. 11 of the Treaty of Riga established the grounds for returning the Polish cultural assets, it then became possible to develop the national legislation regarding the protection of such assets. On 31 October 1918, this kind of protection was extended to include the area of the eastern provinces¹⁸ and of the former Prussian district¹⁹. It resulted from two subsequent regulations of the Council of Ministers which guaranteed the higher degree of legal protection for the Polish cultural property in the period when the foundations of the independent statehood were still being strengthened. In both regulations it was resolved that the legal protection applied to all historic monuments of culture and art that were within the borders of the territory of Poland and had been entered into the inventory of monuments. Special forms of legal protection were prescribed for all cultural assets which belonged to the state institutions or Polish citizens, but which were at that time outside the borders of the Second Polish Republic. In Art. 2 and Art. 3 of the regulation extending the scope of legal protection of cultural property to encompass the area of the former Prussian district it was also emphasised that the responsibility for such protection at the level of the central administration of the state rested with the Ministry of Religious Cults and Public Instruction, and practical activities related to the exercise of this protection were entrusted to conservators of monuments of art and culture, appointed by the minister heading the said central administration authority²⁰.

2. REGULATION OF THE PRESIDENT OF THE REPUBLIC OF POLAND, OF 6 MARCH 1928, ON THE CARE OF HISTORIC MONUMENTS AS AN IMPULSE FOR CREATING STANDARDS FOR THE PROTECTION OF CULTURAL PROPERTY IN THE SECOND POLISH REPUBLIC

On 6 March 1928, the Polish President issued a regulation on the care of historic monuments²¹, which had a significant influence on the development of the Polish system

¹⁷ It has been observed that Art. 11 of the Treaty of Riga in practice gave rise to the revindication, unprecedented in the Polish history, of the national cultural property, plundered as a result of various historical events adverse for Poland. It is of interest that at the beginning the action of returning the Polish cultural property encountered even practical problems and perturbations, caused by the difficulties with finding the appropriate places for locating such a large amount of the recovered library collections and archives in particular. Cf. H. Łaskarzewska, *Traktat ryski. Fakty i refleksje*, „Kwartalnik Cenne, Bezcenne, Utracone” 2013, No. 1, pp. 62-67.

¹⁸ Rozporządzenie Rady Ministrów z dnia 26 września 1921 roku w przedmiocie rozciągnięcia na województwa: nowogródzkie, poleskie i wołyńskie oraz na powiaty: grodzieński, wołkowyski i białowieski województwa białostockiego mocy obowiązującej dekretu z dnia 31 października 1918 roku o opiece nad zabytkami sztuki i kultury (Dz.U. 1921, No. 83, item 585).

¹⁹ Rozporządzenie Rady Ministrów z dnia 20 lutego 1922 roku w przedmiocie rozciągnięcia mocy obowiązującej dekretu o opiece nad zabytkami sztuki i kultury na obszar byłej dzielnicy pruskiej (Dz.U. 1922, No. 14, item 122).

²⁰ These provisions clearly refer to or, actually, repeat the legal provisions contained in the decree of the Regency Council on the care of monuments of art and culture of 31 October 1918.

²¹ Rozporządzenie Prezydenta Rzeczypospolitej z dnia 6 marca 1928 roku o opiece nad zabytkami (Dz.U. 1928, No. 29, item 265).



for protecting the cultural property in the Second Polish Republic. The President's action relied on two key legal bases, including Art. 5 of the Act of 2 August 1926, amending and supplementing the March Constitution (the so-called August Novelisation)²², and the Act of 2 August 1926, on Authorising the President of the Republic of Poland to Issue Regulations Having the Force of the Law²³. The President's powers to issue regulations having the force of the law undoubtedly enhanced the prestige of the issue of protecting the cultural property in the Second Polish Republic and its essence from the point of view of legitimating the cultural security of the restored Polish state.

In the regulation on the care of historic monuments the legal definition of such monuments appeared for the first time, which was important for strengthening the consistency of the legal system designed for their protection in the Second Polish Republic. It was stated that "each object, both immovable and movable, characteristic of the certain epoch and having artistic, cultural, historical, archaeological or paleontological value, corroborated by the decision issued by the relevant state authority, and, therefore, qualifying for preservation" was a historic monument²⁴. Furthermore, in Art. 2 of the quoted regulation the legislator presented a wide catalogue of historic monuments using the term "in particular", which opened up the possibility of extending this catalogue on the basis of any further possible regulations.

The regulation led to the reorganisation of the system for legal protection of cultural property in the Second Polish Republic. It was evidenced by the devolution of relevant competences, by transferring different powers from the central level to the local agencies, represented by the provincial conservators of monuments²⁵. The provincial authorities of the general administration became the first instance with regard to the protection of historic monuments in Poland, whereas the Minister of Religious Cults and Public Instruction was the second instance authority (Article 5). After 1928, the activities related to the protection of cultural property developed in practice towards highly advanced specialisation, as monument conservators were the expert bodies in protecting these assets, acting as the first instance (Article 6). It was also decided to

²² Ustawa z dnia 2 sierpnia 1926 roku zmieniająca i uzupełniająca Konstytucję Rzeczypospolitej z dnia 17 marca 1921 roku (Dz.U. 1926, No. 78, item 442).

²³ Ustawa z dnia 2 sierpnia 1926 roku o upoważnieniu Prezydenta Rzeczypospolitej do wydawania rozporządzeń z mocą ustawy (Dz.U. 1926, No. 78, item 443).

²⁴ Art. 1 of the regulation of the President of the Republic of Poland on the care of historic monuments of 6 March 1928.

²⁵ K. Złasińska, *Prawna ochrona...*, op. cit., p. 37. On the other hand, it is hard to agree completely with this view, as the actual devolution and decentralisation of public authority functions with regard to the protection of cultural property in the Second Polish Republic underwent certain modifications. Already in March 1930, in the Ministry of Home Affairs the office of General Conservator of Monuments was established, which, undoubtedly, showed the centralist tendency with regard to the administrative and legal protection of cultural property in the Second Polish Republic in this period. Similar opinions can also be found in the literature of the subject. Vide: J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna, t. 1*, Zakamycze, Kraków 2001, p. 362; K. Zimna-Kawecka, *Ochrona zabytków i organizacja urzędów konserwatorskich w Polsce okresu międzywojennego (na przykładzie woj. pomorskiego) a unormowania Ustawy z dn. 23 VII 2003 r. o ochronie zabytków i opiece nad zabytkami*, „Wiadomości Konserwatorskie” 2010, No. 27, p. 130.



provide the possibility of appointing commissions composed of lay and clerical members when a more specialist protection was required for historic monuments performing various social and cultural functions (Article 7). Regional conservation commissions cooperated with conservators of historic monuments (Article 9).

It should be added that the quoted regulation included a separate chapter entitled "Care of historic monuments". It was the intention of the authorities of the Second Polish Republic to combine the public function of protecting the cultural property with the social function of caring of it. In the described period the Polish society was clearly interested in the possibility of ensuring a higher degree of protection and care of its own tangible national heritage. Pursuant to Art. 13 of the said regulation, a number of non-public entities were obliged to cooperate with the relevant conservation authorities, including, literally listed, boards of municipal associations, parishes, organisations that cared of monuments in accordance with their articles of association, legal persons from the church and monastic environments, and also any public law corporations²⁶.

A significant shortcoming of the regulation was the insufficient extension of penal provisions related to the crimes against the cultural property. The legislator addressed only a few practical manifestations of unlawful actions concerning monuments, including procedural omissions consisting in the failure to notify properly the conservation authorities of the first instance (Articles 35-37), destroying a monument or reducing its value (Article 36), failure to discontinue the works that might damage a monument or lead to its destruction (Article 38), export or attempted export of a historic monument from the country without a relevant permit (Article 40) and making it impossible for the conservation authorities to perform their duties (Article 41)²⁷. The sentencing related to the above-mentioned prohibited acts was within the competence of district (*powiat*) courts, i.e. the courts of magistrates (Article 43)²⁸. According to the literature of the subject, the penal provisions contained in the discussed regulation made it nec-

²⁶ It might suggest the far-reaching approach of the authorities of the Second Polish Republic to the strengthening of the integration between the society and the legal system in the area of protecting the cultural property. It meant in practice the permanent integration between the system for the legal protection of cultural property and the system for the care of such property, ensured by various non-public entities.

²⁷ A similar view is also pointed up in the literature, where it is emphasised that the said regulation lacks, among others, penal provisions regarding such acts affecting cultural assets, including historic monuments, as, for example, theft, robbery, fraud, dealing in stolen property or embezzlement. In practice, this led to the situation where such prohibited acts affecting cultural property were, from the point of view of the criminal law, treated as the acts against property, in accordance with the provisions of the then applicable criminal law. The classification of evident cultural assets as normal property, in the described cases, could undermine the strengthening of the system of protection of cultural property in Poland in the interwar period. Cf. A. Sońnicka, *Przestępstwo i wykroczenie przywłaszczenia w polskim prawie karnym*, Wolters Kluwer Polska, Warszawa 2013, p. 118.

²⁸ The fact that the described cases were to be submitted for consideration to the courts of magistrates evidenced that crimes related to monuments, in accordance with the discussed regulation, were entrusted to the judicial bodies responsible in principle for examining minor civil offences. In practice, these bodies were competent for both civil and penal cases.



essary to strictly establish prohibited acts related to historic monuments. They were based on casuistry²⁹.

In the period starting with the effective date of the discussed regulation the implementation of the enhanced protection of cultural property in Poland was also supported by the regulation issued by the Minister of Religious Cults and Public Instruction on the maintenance of a register of historic monuments of 17 July 1928³⁰. Pursuant to this regulation, a two-stage division was introduced in practice, into sections and subsections for historic monuments protected by the provisions of applicable law. The first section included immovable historic monuments, divided into subsections for monuments of art, prehistoric and archaeological monuments. The second section comprised movable moments, divided into five subsections for monuments of art, prehistoric and archaeological monuments, paleontological monuments, archives and library collections. What is important is that the registers of monuments thus catalogued were to be maintained by all provincial offices (Paras. 1-2 of the quoted regulation).

3. PROTECTION OF CULTURAL PROPERTY IN THE SECOND POLISH REPUBLIC IN THE 1930S

In the period of development of the Second Polish Republic the years 1930s were the time of the further formation of the consistent system for protecting the cultural property. At the beginning of June 1930, an instruction was issued, which described the rights and obligations of conservators, acting as provincial expert bodies within the general administration authorities³¹. Its provisions formed a valuable supplement for the provisions contained in the regulation of the President of 1928, concerning the scope of activities of monument conservators. The instruction stated that a conservator is an expert officer of the Provincial Office responsible for the care of Polish historic monuments and his relevant prerogatives were described in detail³². The instruction contained also a directive for conservators' cooperation with other entities in the process of establishing the characteristic features of the objects that could be recognised

²⁹ M. Trzciniński, *Przestępczość przeciwko zabytkom archeologicznym. Problematyka prawno-kryminalistyczna*, Wolters Kluwer Polska, Warszawa-Kraków 2010, p. 42. It should be remembered that in practice the penal provisions contained in the discussed regulation concerned not crimes but offences. The meticulous differentiation of penalties and the high severity of penal sanctions and measures may further confirm the restrictiveness of the Polish legal system for protecting the cultural property after the President's regulation on the care of monuments came into force on 6 March 1928.

³⁰ Rozporządzenie Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 17 lipca 1928 roku o prowadzeniu rejestru zabytków (Dz.U. 1928, No. 76, item 675).

³¹ Instrukcja Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 2 czerwca 1930 roku wydana w porozumieniu z Ministrem Spraw Wewnętrznych o prawach i obowiązkach Konserwatorów, jako fachowych organów wojewódzkich władz administracji ogólnej (M.P. 1930, No. 156, item 239).

³² These prerogatives included, among others, taking initiative with regard to any orders arising from the provisions on the care of historic monuments, implementing orders related to conservation and taking inventory of historic monuments and also performing the function of manager of the Art Department of the Provincial Office, in the case such office was established in the relevant unit of the local government. Vide: Ibidem.



as historic³³. Moreover, at the beginning of the 1930s, the significance of interaction between provincial conservators and the central administration in the system of legal protection of cultural property in Poland was also strengthened by creating regional conservation commissions in January 1931³⁴. Their main task was to interact with the provincial authorities, representing the general administration, in exercising the care of historic monuments.

On 23 September 1932, the Council of Ministers passed a regulation on the methods of protecting historic objects belonging to the State³⁵. It was another significant manifestation of the strengthening of the system of legal protection of national cultural assets in the 1930s³⁶. Para. 1 of this regulation imposed an obligation on every person being in possession of a historic monument, in the meaning of the provisions of the President's regulation of 1928, consisting in notifying of this fact the conservation authorities of the first instance. In Para. 5 the representatives of the said authorities were given the prerogatives to grant consent and to control any works affecting historic monuments³⁷. Para. 6 imposed an obligation on managers of historic monuments, consisting in protecting these monuments by maintaining them in the proper condition and, moreover, by immediately notifying the conservation authorities of the first instance of any event that could affect the condition of the protected monuments.

On 25 January 1933, an act was signed, amending the regulation on the care of historic monuments issued by the Head of State on 6 March 1928³⁸. It included a crucial supplement, consisting in the introduction of the ban on exporting works of art from Poland without the permission granted by the conservation authority of the first in-

³³ Among such entities the following were listed: the Director of the State Archaeological Museum, directors of the state archives, the Director of the State Zoological Museum, and also directors of the state libraries. Vide: § 4 Instrukcji Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 2 czerwca 1930 roku wydanej w porozumieniu z Ministrem Spraw Wewnętrznych o prawach i obowiązkach Konserwatorów, jako fachowych organów wojewódzkich władz administracji ogólnej.

³⁴ Nine such commissions were created, each of them operating in the area of one province or two at a maximum, except for the commission for the Lvov, Tarnopol and Stanisławów Provinces. Rozporządzenie Ministra Wyznań Religijnych i Oświecenia Publicznego i Ministra Spraw Wewnętrznych z dnia 15 stycznia 1931 roku o utworzeniu okręgowych komisji konserwatorskich (Dz.U. 1931, No. 16, item 84).

³⁵ Rozporządzenie Rady Ministrów z dnia 23 września 1932 roku o sposobie chronienia przedmiotów zabytkowych, będących własnością Państwa (Dz.U. 1932, No. 89, item 750).

³⁶ J. Izdebski, *Ochrona dóbr kultury w systemie norm prawa administracyjnego*, „Muzealnictwo” 2014, No. 55, p. 227.

³⁷ The preserved archives show that they were also authorised to order to discontinue any works – quite often in cooperation with the officials from the district authority office (*starostwo powiatowe*) – if such works had been started without prior permission. It can be exemplified by the order to discontinue technical works during the renovation of the castle in Baranów Sandomierski in 1931. Cf. Sprawozdanie z działalności Konserwatora Okręgowego na Województwo Lwowskie, Stanisławowskie i Tarnopolskie od 1 stycznia do 30 czerwca 1931 r., AAN, Ministerstwo Wyznań Religijnych i Oświecenia Publicznego, catalogue ref. 7028, sheet 320.

³⁸ Ustawa z dnia 25 stycznia 1933 roku o zmianie rozporządzenia Prezydenta Rzeczypospolitej z dnia 6 marca 1928 roku o opiece nad zabytkami (Dz.U. 1933, No. 10, item 62).



stance, i.e. the provincial or regional conservator of historic monuments. Such permission could be granted for a permanent or temporary export. In both cases the levels of stamp duties were determined. In the case of a permanent export, the level of such duties depended on the value of the monument and it varied from 15% of the estimate (in the case of a monument having a value of 10,000 zlotys) to the maximum level of 25% of the estimate (in the case of a monument having a value above 100,000 zlotys), with three interim levels being applied, i.e. 17%, 20% and 22% of the estimate. In the case of granting a permission for a temporary export it was possible to charge a security deposit, equivalent to the value of the stamp duty in the case of a permanent export of the historic monument, which was refunded as soon as such monument was brought back to Poland. It is worth mentioning that the said regulation provided also for a penal sanction of imprisonment of up to three months or a fine of up to 5,000 zlotys and, in addition, a financial penalty for the State Treasury in the amount equal to the value of the historic monument together with the forfeiture of the possible security deposit if the person who had temporarily exported the historic monument failed to bring it back to the territory of Poland within the set time limit. In the literature of the subject the above-mentioned amendment is regarded as the manifestation of additional strengthening of the legal system in the area of protection of cultural property in Poland in the interwar period³⁹.

In March 1933, the legislator decided to strengthen the protection of cultural assets stored in the public museums. The Act on the Care of Public Museums was signed on 28 March 1933⁴⁰. In Art. 1 of this Act a public museum was defined as any collections related to culture, art or nature, except for libraries which were organised under the criterion of their scientific, commemorative or artistic value and which remained the property of the state, local governments or other institutions and public law corporations or individuals or associations, provided that these collections were made available to the public. In Art. 2 the Minister of Religious Cults and Public Instruction was assigned the functions of care, control and supervision and also the function of approving the statutes of public museums. In the performance of his functions the Minister would rely on the opinions and advice provided by the members of the State Museum Council, established pursuant to Art. 3 of the said Act⁴¹.

³⁹ It is of interest that the adopted legal solutions – at least those concerning the level of export duties and security deposits – clearly referred to Articles 16, 17 and 18 of the Cardinal's edict, *Lex Pacca*, issued in 1820, and subsequently endorsed by Pope Pius VII, which governed the issues related to the principles of protecting historic monuments, including works of art in particular. Cf. D. Matelski, *Wpływ ustawodawstwa państwa kościelnego na prawodawstwo polskie w zakresie wywozu dzieł sztuki w latach 1918-2010*, „Przegląd Polsko-Polonijny” 2011, No. 1, p. 253.

⁴⁰ Ustawa z dnia 28 marca 1933 roku o opiece nad muzeami publicznymi (Dz.U. 1933, No. 32, item 279).

⁴¹ These were nine members appointed pursuant to the decision made by the head of the Ministry of Religious Cults and Public Instruction and seven members selected by the Association of Museums in Poland, after the candidates had been approved by the head of the said Ministry. Cf. Rozporządzenie Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 13 lutego 1935 roku o Państwowej Radzie Muzealnej (Dz.Urz. MWRiOP /Official Journal of the Ministry of Religious Cults and Public Instruction/ 1935, No. 2, item 11).



One of the circulars of the Under Secretary of State in the Ministry of Religious Cults and Public Instruction, issued in October 1936, was an interesting archival document concerning the protection of cultural property in the discussed period. It concerned the protection of the character of cities and old town historic districts⁴². The document contained instructions regarding administrative activities aimed at ensuring a better protection of historic buildings in the Polish cities and regulating any issues connected with the construction activity in the historic parts of the cities. The circular contained a statement that the protection of the old town buildings and spaces should be based on the assumption that any changes or urban and architectural innovations were to be made “to the least possible extent and only in the case of a necessary and considerable need”⁴³. With regard to the construction activity it was recommended to create new centres outside the historic parts of the cities, so that any new architectural solutions were implemented in the newly built districts. It should be emphasised that the said circular did not formulate any required legal regulations, apart from repeating the relevant provisions contained in the President’s regulation on the care of historic monuments of 6 March 1928.

Legislative works aimed at strengthening the significance and consistency of the legal system in the area of protection of cultural property in the Second Polish Republic were intensified in 1939. Pursuant to the regulation of the Minister of Religious Cults and Public Instruction, issued on 24 January 1939, the territory of Poland was divided into eleven conservation regions⁴⁴. On 30 March 1939, an Act was passed on the Withdrawal of Offices, People and Property from the Endangered Areas of the State⁴⁵. In Art. 6 of this Act it was stated that the protection of cultural assets could be exercised either by safeguarding them at their sites and drawing up a relevant register or by evacuating them. The Act did not provide for moving works of art outside Poland. The level of risk related to the threat of war was calculated realistically and in connection with the need to protect the tangible cultural heritage of the state and of the Polish nation, safeguarded since 1918. It seems that the state authorities were guided by the necessity of securing the just restored legal system for protecting the cultural assets against another interference of potential aggressors⁴⁶.

⁴² Okólnik Podsekretarza Stanu w Ministerstwie Wyznań Religijnych i Oświecenia Publicznego Nr 113 z dnia 24 października 1936 roku o ochronie charakteru miast i starych dzielnic staromiejskich, AAN, Ministerstwo Wyznań Religijnych i Oświecenia Publicznego, catalogue ref. 7054, sheets 97-98.

⁴³ Ibidem.

⁴⁴ These were the Kielce, Kraków, Lublin, Lvov, Pomeranian, Poznań, Silesian, Warsaw City, Warsaw, Vilnius and Volhynia Regions. Cf. § 1 Rozporządzenia Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 24 stycznia 1939 roku o podziale obszaru Rzeczypospolitej Polskiej na okręgi konserwatorskie (Dz.U. 1939, No. 10, item 56).

⁴⁵ Ustawa z dnia 30 marca 1939 roku o wycofaniu urzędów, ludności i mienia z zagrożonych obszarów Państwa (Dz.U. 1939, No. 29, item 197).

⁴⁶ However, the view presented in the literature, according to which the discussed Act was passed too late to fulfil the said requirement of protecting the cultural security of the Second Polish Republic, can be called into question. Cf. D. Matelski, *Losy polskiego dziedzictwa kulturalnego w latach drugiej wojny światowej i po jej zakończeniu w historiografii*, „Studia Podlaskie” 2007/2008, v. XVII, p. 300. It should be remembered that the Polish state on the one hand did not consider the armed attack by



In the middle of May 1939, in the face of the identified German threat, a conference was organised by the head of the State Archives Department with the directors of the respective Warsaw archives. As a result of this conference the guidelines regarding procedures and standards for safeguarding cultural assets in case of war were issued. In principle, they were the repetition of the wording used by Władysław Zawistowski, Ph.D., Director of the Department of Art of the Ministry of Religious Cults and Public Instruction, one month earlier. The said guidelines were divided into two detailed categories regarding the protection of cultural assets, i.e.⁴⁷:

- guidelines for protection on site – in this case protection was to be ensured for movable historic monuments, such as museums, libraries, archives collections and other public collections, church vaults and the most valuable historic monuments held by individuals and public law corporations;
- guidelines for protection exercised by evacuating cultural assets – in this case protection was to be ensured exclusively for works of art of exceptional value, the Polish ones in the first place, including in particular old prints, manuscripts as well as archival materials related to the history of the Polish statehood.

At the end of August 1939, the Ministry of Religious Cults and Public Instruction sent a special questionnaire to the archives and museums throughout the country to fully identify the number and condition of the Polish cultural assets in connection with the preparations to protect these assets in case of the outbreak of war within the territory of the Second Polish Republic⁴⁸. On 5 September 1939, several days after the outbreak of the Second World War, the Chief Evacuation Commissioner, Colonel Ludwik Boćiański, issued a regulation on the organisation of protection of historic monuments within the area of operations. The regulation was not published in any official jour-

the Soviet Union as feasible in 1939, while on the other hand, between March and April 1939, the works aimed at ensuring the enforcement of the created standards and procedures for protecting cultural assets in case of a possible war were intensified in practice. In the spring 1939, the identified level of German threat to Poland was undoubtedly higher, as judged by the Polish authorities, than the level observed throughout the year 1938. Furthermore, it should be remembered that from June to August, a large scale evacuation of Polish archives and museum and library collections was organised, from the central and western provinces, where they were gathered, towards the Eastern Borderlands. More information on this subject, vide: C. Skuza, *Wojenne i powojenne losy polskich skarbów narodowych*, Wydawnictwo Naukowe Wyższej Szkoły Oficerskiej Wojsk Rakietowych i Artylerii, Toruń 1994, pp. 20-24.

⁴⁷ Wytyczne dyrektora Departamentu Sztuki Ministerstwa Wyznań Religijnych i Oświecenia Publicznego [kwiecień 1939 rok], AAN, Ministerstwo Wyznań Religijnych i Oświecenia Publicznego, catalogue ref. 7054, sheets 307-309.

⁴⁸ Kwestionariusz rozesłany przez Ministerstwo Wyznań Religijnych i Oświecenia Publicznego do placówek muzealnych i archiwów w związku z przygotowaniem do akcji ochrony zabytków na wypadek działań wojennych [sierpień 1939, brak daty dziennej], „Wojskowe Teki Archiwalne” 2015, vol. 6, part 1: Przygotowania obronne państwa 1935-1939. Prawo i administracja, p. 473.



nal⁴⁹. Despite this fact it represented an additional element of the legal system in the area of protecting the cultural property in Poland in the years 1918-1939, demonstrating the then urgent need to ensure additional protection for the cultural assets of special importance for the Polish nation⁵⁰. The protection of such assets was necessary also in the area where actual warfare took place and was to be intensified.

CONCLUSIONS

Summarising the content of the article the following general conclusions can be drawn:

- Legal protection of cultural property in Poland in the years 1918-1939, such cultural property being then classified on the basis of the key notion of a historic monument, was one of very important achievements of the Second Polish Republic in the area of strengthening the foundations of cultural security of the restored state.
- Legal protection of cultural property in the Second Polish Republic was systematically extended, which was demonstrated by passing an increasing number of legal acts both in the 1920s and in the 1930s, and also by strengthening such protection directly before the outbreak of the Second World War.
- Legal system designed to protect the cultural property in the Second Polish Republic was developed to form a consistent and integrated combination of the protection of such property based on public law and the needs of the Polish society manifested in this area.

The description of the legal acts referred to in this paper, documents and views presented in the literature on the subject makes it possible to confirm the thesis laid out in the introduction that the interwar period of the Polish history was characterised by a significant legal output in the area of protection of cultural property. It created the possibility of protecting the tangible cultural heritage of the Polish nation during the difficult period of reconstructing the foundations of statehood. Both the number of legal acts passed in this period and their wide objective scope provided the possibility of strengthening systematically the administrative and legal protection of the Polish

⁴⁹ Its text can be found in the archive collections of the Central Archives of Modern Records. Vide: Rozporządzenie Głównego Komisarza Ewakuacyjnego z dnia 5 września 1939 roku, AAN, Ministerstwo Wyznań Religijnych i Oświecenia Publicznego, catalogue ref. 7054, sheet 317.

⁵⁰ It is worth adding that the legislative works on this regulation – which is evidenced by the preserved archival materials – were initiated already in April 1939. Vide: Pismo naczelnika Wydziału Nauki Ministerstwa Wyznań Religijnych i Oświecenia Publicznego do Wydziału Sztuki ministerstwa w sprawie planowanego pisma do Ministra Spraw Wojskowych dotyczącego organizacji ochrony zabytków na wypadek działań wojennych z dnia 19 kwietnia 1939 roku, „Wojskowe Teki Archiwalne” 2015, vol. 6, part 1: Przygotowania obronne państwa 1935-1939. Prawo i administracja, p. 469; Pismo Ministra Wyznań Religijnych i Oświecenia Publicznego do Ministra Spraw Wojskowych zawierające dezyderaty w sprawie organizacji ochrony zabytków na wypadek działań wojennych z dnia 27 kwietnia 1939 roku, „Wojskowe Teki Archiwalne” 2015, vol. 6, part 1: Przygotowania obronne państwa 1935-1939. Prawo i administracja, p. 470.



cultural assets. Noticeably, the legislator was able to develop a consistent legal system in this area in a relatively short time, which made Poland stand out among other European states after the end of the Great War. Furthermore, all legal norms produced in relation to the care of historic monuments were developed during the period of restoration of the Polish statehood, under difficult geopolitical and internal conditions.

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HOW TO CITE THIS PAPER

Landmann T., Wełyczko L., (2017) The influence of legal regulations in the area of protection of cultural property on the cultural security of the Second Polish Republic in the years 1918-1939. *Zeszyty Naukowe Wyższa Szkoła Oficerska Wojsk Lądowych im. gen.*



Tadeusza Kościuszki Journal of Science of the gen. Tadeusz Kosciuszko Military Academy of Land Forces, 49 (1), p. 41-60, <http://dx.doi.org/10.5604/17318157.1234847>



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