

# AMENDMENTS TO THE ACT ON MUSEUMS

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**Abstract:** The Act of 21 November 1996 on Museums, which has been in force for over 20 years (*Dziennik Ustaw* [Journal of Laws] /Dz.U./ of 2017, item 972, as amended), has been amended a dozen or more times. As many as seven of those amendments entered into force in the last two years (2016-2017). They were, to a large extent, adjustments and concerned, i.a. competence requirements for museum professionals (Dz.U. of 2017, item 60), removals of museum exhibits from a museum inventory (Dz.U. of 2016, item 1330, and of 2017, item 1086) and replacing the Council of Museums by the Council of Museums and Memorial Sites (Dz.U. of 2016, item 749). Amendments concerning admission charges in museums were systemic (Dz.U. of 2017, item 132) as were restitution amendments introduced in Article 57 of the Act of 25 May 2017 on the restitution of national cultural goods, including a new penal provision added to the Act on Museums (Art. 34a in new chapter 5a – Dz.U. of 2017, item 1086).

Apart from amendments described in this article mention is due to amendments concerning an informative aspect. Within

this context, amendments to the Act on Museums in force since 16 June 2016, provided for in Article 29 of the Act of 25 February 2016 on the Re-use of Public Sector Information (Dz.U. 2016, item 352, as amended), are of great significance. References to this Act can be found in section 4 of Art. 25 and section 4 of Art. 25a of the Act on Museums, added by this amendment, which regulate introducing and charging admission fees for museum collections prepared and made accessible for purposes different than touring, and for providing access to images of museum objects. Article 31a of the Act on

Museums added by this amendment was repealed by Art. 34 of the Act of 10 June 2016 (Dz.U. of 2017, item 132) on Delegating Workers in the Framework of Providing Services, which simultaneously added Article 30a of the Act on Museums, whose contents corresponded to this regulation. The latter article provides that access to information guaranteeing the protection of museum exhibits is limited for the sake of *procedures for securing collections against fire, theft and other hazards that might result in destruction or loss of collections*.

**Keywords:** secondary vocational education, basic vocational education, removals from inventory, extension of regulation, restitution of national cultural goods, concessions and exemptions from charging fees in state museums, Council of Museums and Memorial Sites.

The Act of 21 November 1996 on Museums (Journal of Laws /further as Dz.U./ of 2017, item 972, as amended) has been amended upon several occasions. The majority of those amendments have been considered in the above uniform text (they were published in Dz.U. of 2016, item 352, 749, 868 and 1330 and in Dz.U. of 2017, item 60 and 132). A single amendment was published later, i.e. in Dz.U. of 2017, item 1086.

Amendments in question were the outcome of other systemic transformations demanding a suitable change of regulations on museums consisting either of the introduction of entirely new statutory regulations demonstrating a connection with the activity pursued by museums, or

norms changing the already binding acts within a range essential also for museums.

## Qualifications of museum professionals – adjustive change

Owing to the fact that changes pertaining to the education system provided for in Act of 14 December 2016 the Law of School Education (Dz.U. of 2016, item 59, as amended) provided for new types of schools and new levels of education (three-year basic vocational school and two-year secondary vocational school respectively – cf. art. 18, par. 1, point 2, letter c) and e) and art. 20, par. 2 and 3 of the above

Act), suitable changes, in force as of 1 September 2017, adapting regulations recognizing qualifications for museum professionals were introduced into the Act on Museums.

Changes within this range are essential for staff members employed in museums as senior renovator, renovator, and trained renovator. The requirement of secondary education in the case of persons thus employed was supplemented by an alternative requirement of possessing secondary vocational education, i.e. education as understood in art. 20, par. 3 of the Law of School Education. Additionally, in the case of the post of a trained renovator the requirement of possessing basic vocational education was supplemented by an alternative requirement of secondary stage vocational education as comprehended in art. 20, par. 2 of the Law of School Education (cf. art. 32c, par. 8–10 of the Act on Museums in the version granted by art. 22 of the Act of 14 December 2016. Regulations introducing the Act – the Law of School Education – in: Dz.U. of 2017, item 60 with changes.).

### Changes concerning removal from the inventory

Art. 24 of the Act on Museums, regulating principles of removing museum exhibits from an inventory, was changed twice in the 2016–2017 period. The normative aspect of those changes consisted of a significant expansion of this article by adding as many as five new paragraphs within the range of both amendments pertaining to it.

Par. 3–5 of art. 24 of the Act on Museums, in force from 25 November 2016, were added to the Act on 10 July 2015 on amending the Act on the Protection and Care of Monuments and the Act on Museums (Dz.U. of 2016, item 1330 – cf. art. 2 of that Act). In other words, these changes were connected with an amendment of regulations concerning historical monuments, which in the case of being stored in museums must be suitably recorded in accordance with the provisions of the Regulation of the Minister of Culture of 30 August 2004 on the scope, form, and method of registering in museums (Dz.U. no. 202, item 2073).

In accordance with art. 24, par. 1 of the Act on Museums the Minister of Culture and the Protection of National Heritage issues, upon the basis of an application filed by the director of a state-owned or self-government museum, permission for removal from the inventory in the case of a change in the legal status of a museum exhibit or an error in the inventory record.

Prior to the entry into force of the above regulation there was no regulation providing for the inclusion into the Register of monuments of a museum exhibit removed from the inventory, e.g. in connection with its sale by a self-government or a museum to another object. At present, such a procedure is based on par. 3, art. 24 of the Act on Museums, which provides that in the case of a museum exhibit, which is a monument, permission for removing it from the inventory can be issued with the reservation of the condition of its inclusion into the Register of monuments, and the removal being performed the moment the museum exhibit is entered into the Register of monuments.

For the purpose of preserving systemic cohesion it was simultaneously provided in par. 4, art. 24 of the Act on Museums, added on the same day, that in the case mentioned in par. 3 the regulation of art. 11 of the Act of

23 July 2003 on the Protection and Care of Monuments (Dz.U. of 2017, item 2187) is not applied. The introduction of this exclusion was necessary since in accordance with art. 11 of the Act on the Protection and Care of Monuments inclusions into the Register do not take place in the case of, e.g. a monument recorded in the museum inventory. If such an exception from this principle had not been provided then there would occur a contradiction between the regulation of the Act on Museums allowing dependence between removing museum exhibits from the inventory on its previous inclusion in the Register of monuments and the prohibition from art. 11 of the Act on the Protection and Care of Monuments, which, as a rule, excludes entering a given monument into the Register as long as it is present in a museum inventory, i.e. until it is removed from it.

Taking into account the fact that the decision about entering a monument into the Register is subjected, as are all other decisions, to verification by means of its possible prosecution, it was rendered precise in par. 5, art. 24 of the Act on Museums, binding as of 25 November 2016, that in the case of challenging the decision to enter into the Register of monuments a museum exhibit removed from the inventory upon the basis of permission mentioned in par. 3 of that article, removal from the inventory is regarded as invalid.

The above changes, consisting of adding par. 3–5 in art. 24 of the Act on Museums, are essential within the context of increasing the protection of monuments removed from museum inventories, since in the case of those monuments, and thanks to their inclusion among Registered monuments, it is possible to apply regulations of the Act on the Protection and Care of Monuments, referred exclusively to monuments entered into the Register. Take the example of art. 36, par. 1 of the above Act, determining the range of permissions issued by the voivodeship conservator of monuments encompassing, i.a. a permanent transference of a movable monument entered into the Register together with a violation of the traditional outfitting of the interior in which the monument is situated (cf. point 7 of this provision).

Par. 6 and 7, art. 24 of the Act on Museum were added, with a binding force as of 20 June 2017, by means of an amendment of the Act on Museums, provided for in art. 57 of the Act of 25 May 2017 on the Restitution of National Cultural Assets (Dz.U. of 2017, item 1086). The provisions provide, respectively:

1) in the case of issuing upon the basis of art. 39, par. 1 or art. 43, par. 1 of the Act on the Restitution of National Cultural Assets a permanent export permission concerning an object entered into an inventory of museum exhibits in a museum that is a cultural institution, it becomes removed from the inventory on the day when the export became legitimate (art. 24, par. 6 of the Act on Museums), 2) in the case of a sentence enjoining to return to the territory of a European Union state an object entered in an inventory of museum exhibits in a museum that is a cultural institution and comprising a national cultural good abroad, mentioned in art. 18, par. 1. of the Act on Restitution of National Cultural Assets, it becomes removed from the inventory on the day when the sentence became valid (art. 24, par. 7 of the Act on Museums).

The comprehension of the essence of the above changes calls for a wider discussion on regulations of the restitution of national cultural goods.

## Changes concerning the restitution aspect

The above indicated Act on the Restitution of National Cultural Assets, further as: Restitution Act, introduced Directive 2014/60/EU of the European Parliament and Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 (*The Official Journal of the European Union*, 2014.159.1 as amended).

According to art. 2, point 1 of the Restitution Act a movable object, which is not a monument as well as components or sets of monuments whose preservation lies in social interest owing to their artistic, historical, or scientific value or their significance for cultural heritage and development, is a cultural good as understood in art. 3, point 1 of the Act on the Protection and Care of Monuments.

Although the museum context was not emphasised in the above definition it remains indubitable that museum exhibits can be also classified as cultural goods according to their above comprehension as testified by the statutory definition of a cultural good exported illegally from the territory of the Republic of Poland. This is in particular a cultural good whose export took place unlawfully with the violation of provisions binding in the Republic of Poland and pertaining to objects comprising, i.a. museum items, regardless of the time when the export took place (art. 2, point 3, letter b) of the Restitution Act).

The national cultural good of the Republic of Poland is a special conceptual category encompassing, i.a. an object, which is not a monument as long as it is included in the inventory of museum exhibits in museums that are cultural institutions as comprehended in art. 10, par. 2 of the Act of 25 October 1991 on Organising and Conducting Cultural Activities – Dz.U. of 2017, item 862 (cf. art. 2, point 4, letter d) of the Restitution Act).

Changes in the Act on Museums provided for in the Restitution Act pertain, apart from above-mentioned amendments regarding removal from the inventory, to limitations of the export of museum objects. Pertinent changes resulting from art. 57 of the Restitution Act consist of adding two articles to the Act on Museums: art. 29a and art. 34a (the second is the only article in new chapter 5a in the Act on Museums, which has been given the title: “Penal provision” – cf. further comments). As regards their objective aspect both those regulations concern museum exhibits, which are not monuments as understood in art. 3, point 1 of the Act on the Protection and Care of Monuments, entered into inventories of museum objects in museums serving as cultural institutions.

On the other hand, the normative context for the above two articles of the Act on Museums added by the Restitution Act is composed of provisions of the Act on the Protection and Care of Monuments. The essence of the provision contained in art. 29a of the Act on Museums entails conditions for the export of museum objects indicated in that article.

As a rule, such museum exhibits cannot be exported on a permanent basis with the exception of cases defined in art. 26 and art. 42 of the Restitution Act, when export takes place as part of the enforcement of a verdict enjoining the return of a national cultural good, mentioned in art. 18, par. 1 of the

Act, in the territory of a European Union state or else upon the basis of permissions mentioned in art. 39, par. 1 or art. 43, par. 1 of that Act (art. 29a, par. 1 of the Act on Museums).

Temporary export of above-mentioned museum exhibits calls for obtaining suitable permission, e.g. one-time permission for the temporary export of a museum object; in the case of such permissions suitable use is made of provisions of art. 53-57 of the Act on the Protection and Care of Historical Documents (art. 29a, par. 2-4 of the Act on Museums).

The regulation of the Minister of Culture and National Heritage of 16 August 2017 on permissions for temporary export of museum exhibits which are not monuments and are entered in museum inventories in museums that are cultural institutions (Dz. U. of 2017, item 1693) was issued upon the basis of art. 29a, par. 4 of the Act on Museums.

In turn, art. 34a of the Act on Museums is a penal provision and provides for penal liability for exporting abroad without permission a museum object, which is not a monument in terms of art. 3, point 1 of the Act on the Protection and Care of Historical Documents, and which is entered into the inventory of exhibits in a museum that is a cultural institution, or for not importing into the country this type of a museum exhibit after its export abroad, within the period of the validity of the permission.

## Restitution aspect of public collections

A considerable part of the Restitution Act is composed of procedural provisions dealing with cases pertaining to the return of national cultural goods illegally exported within the European Union, i.e. from the territory of the Republic of Poland to another Union state or from its territory to Poland, as well as with procedures concerning the return from the territory of the Republic of Poland of cultural goods transferred from the territory of foreign states (chapter 2–5 of the Restitution Act).

Regardless of conditions connected with restitution procedures emphasis is due to a definition of public collections contained in art. 2, point 6 of the Restitution Act. In accordance with this definition public collections consist of all monuments and other cultural goods comprising the property of subjects listed in the above regulation, which include, i.a. units of the public finances sector. Owing to the fact that, as has been mentioned above, museum objects are included within the conceptual range of a cultural good as understood in the discussed Act, and that museums, in their capacity as cultural institutions, without doubt possess the status of units of the public finances sector, museum objects comprising the property of those museums are undeniably public collections as understood above.

This ascertainment is essential since chapter 5 of the Restitution Act provides for special principles concerning national cultural goods of the Republic of Poland belonging to public collections, i.a. objects that are not monuments as long as they are listed in the inventories of museum exhibits in museums that are cultural institutions (cf. above remarks).

These principles to a considerable degree provide for special preconditions concerning the turnover in national cultural goods of the Republic of Poland belonging to public collections, defining in particular the fact that: 1) legal

activity encompassing the transference of ownership or encumbrance of this sort of goods is conducted in a written form with a date, 2) ownership of this sort of goods cannot be purchased from a person not entitled to have it at his disposal or by means of prescription, 3) a cause of action aimed at delivering this sort of good applied to subjects mentioned in art. 2. point 6 of the Restitution Act, i.a. units of the public finances sector, is not subject to the statute of limitation (art. 45–47 of the Restitution Act).

### Changes concerning museum admission fees

Changes in the Act on Museums provided for in art. 2 of the Act of 15 December 2016 on amending the Act on entitlement to discounted travel for public transport services and certain other laws (Dz. U. of 2017, item 132), became binding as of 21 April 2017. These changes pertain to art. 10 of the Act on Museums, i.e. the question of museum admission fees.

The amendment in question was of a systemic character consisting of an essential expansion of the above-mentioned article, which was connected with the normalisation within its contents of a suitable range of a part of regulations contained in the earlier legal state in the no longer binding Regulation of the Council of Ministers of 10 June 2008 defining the eligibility for discounted admission fees or free of charge admission to state-owned museums and the types of documents confirming eligibility (Dz. U. no. 160, item 994).

The above amendment added two new paragraphs, i.e. 3a and 3b, to art. 10 of the Act on Museums, defining respective categories of persons entitled to discounted admission fees in state-owned museums (par. 3a) and categories of persons entitled to free of charge admission to those museums (par. 3b). Consequently, it became necessary to suitably re-edit art. 10, par. 1 of the Act on Museums by establishing new regulations. Today, the paragraph in question provides that entry to museums is payable, with the exception of par. 3b, and free of charge when the suitable subject, mentioned in art. 5, par. 1, decides so.

In connection with this systemic change it became necessary to simultaneously adapt the contents of art. 10, par. 4 of the Act on Museums containing a basis for issuing a suitable executive regulation, and upon this basis to issue a new regulation, i.e. the Regulation of the Council of Ministers of 20 July 2017, in force from 2 August 2017, on the type of documents confirming entitlement to discounted entry charge or free admission to state-owned museums (Dz.U. of 2017, item 1471). The range of this Regulation was suitably limited in comparison with the previous regulation from 2008.

In turn, a Regulation of the Minister of Culture and National Heritage of 1 August 2016 on the list of state-owned martyrology museums with no admission fees (Dz.U. of 2016, item 1158) became binding as of 1 August 2016. Just like the previous pertinent regulation, i.e. the Regulation of the Minister of Culture and National Heritage of 9 May 2008 on the list of state-owned martyrology museums with no admission fees (Dz.U. no. 90, item 550), the currently binding regulation mentions in its appendix three museums: 1) Memorial and Museum Auschwitz-Birkenau in Oświęcim, 2) State Museum at Majdanek in Lublin, and 3) Museum Stutthof in Sztutowo.

The need to issue a new pertinent regulation was caused by changing the basis of its edition, i.e. art. 10, par. 5 of the Act on Museums, changed as of 1 August 2016 by art. 4, point 5 of the Act of 29 April 2016 on amendments of the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation and certain other acts (Dz.U. of 2016, item 749).

### Council of Museums and Memorial Sites

Remaining changes in the Act on Museums, provided for in art. 4 of the above amendment of 29 April 2016 and in force as of 1 August 2016, were basically an adjustment. This amendment served as a basis for closing down, i.a. the Council for the Protection of Struggle and Martyrdom Sites, while the Act of 21 January 1988 on the Council for the Protection of Struggle and Martyrdom Sites – Dz.U. item 2 and of 1996, item 496 as amended (cf. art. 10 and art. 21 of the above amendment) lost legal validity.

The closure of the above-mentioned Council called for suitable changes or revoking those regulations of the Act on Museums in which the Council had been previously indicated.

The first to be revoked were art. 18, par. 2 and art. 23, par. 3 of the Act on Museums requiring that opinions be given by the already non-existent Council for the Protection of Struggle and Martyrdom Sites concerning regulations providing that: *Competent local administration bodies and local self-government entities may in registered museums directly subordinated to them delegate their authority to a board of trustees* (revoked art. 18, par. 2 of the Act on Museums) and that: *State museums and local government museums may exchange, sell or donate museum objects* (revoked art. 23, par. 3. of the Act on Museums).

The above two revoked regulations of the Act on Museums became superfluous owing to the fact that in the above ranges, and in accordance with, respectively, art. 16, art. 17 and art. 23, par. 2 of the Act on Museums, the required opinion is that of the Council for Museums and Memorial Sites/Council for Museums and Places of National Remembrance, described in those regulations as the Council of Museums, i.e. using the abbreviated name indicated in art. 5a, par. 2 of the Act on Museums.

Two other regulations of the Act on Museums, which established the Council for the Protection of Struggle and Martyrdom Sites, i.e. art. 6, par. 5. and art. 11, par. 5, point 5, were also revoked. The first provided for the competence of the above-mentioned Council concerning the coordination of museum statutes on its features. On the other hand, revoked art. 11, par. 5, point 5 served as a basis for the Council for the Protection of Struggle and Martyrdom Sites to propose candidates to museum councils in museums pursuing activity within the range of the properties of the Council.

The abolition of the Council for the Protection of Struggle and Martyrdom Sites necessitated a suitable adjustment change regarding the range of the name, competence, and composition of the opinion-advisory organ acting alongside the minister responsible for matters of culture and the protection of national heritage. Currently, such an organ is the Council for Museums and Memorial Sites, a counterpart of the earlier Council of Museums, established in the regulations of the Act on Museums under basically the same abbreviated name.

Within this terminological context art. 5a, par. 2 of the Act on Museums, changed by the above amendment of 29 April 2016, provides that the merger mentioned in par. 1 of the article in question, i.e. a merger of a museum with other cultural institutions acting upon the basis of regulations on organising cultural activity, can take place after a positive opinion is expressed by the Council for Museums and Memorial Sites, further known as: Council for Museums.

A suitable change affected also par. 1 and 2, art. 7 of the Act on Museums, defining the sort of questions for which the Council for Museums is suitable and who suggests (elects) its members. According to a recent version of art. 7, par. 1 of the Act on Museums, the Council of Museums is *an advisory and consultative body for management, financing and cultural policies pertaining to museology*, but also regarding issues connected with national memory sites, including Holocaust memorials. On the other hand, art. 7, par. 2 of the Act on Museums was changed by an additional definition, namely, that three out of ten members of the Council indicated by the minister responsible for matters of culture and the protection

of national heritage represent martyrology museums.

Changes within this range also took place upon the level of the executive act due to the fact that on 14 February 2017 the Minister of Culture and National Heritage issued a detailed Regulation concerning the range of the activity of the Council of Museums and Memorial Sites, and the way of appointing its members and Chairman (Dz.U. of 2017, item 494), preceded by an analogous regulation of 9 May 2008 (Dz.U. of 2008, item 530).

The above amendment of 29 April 2016 added to the Act on Museums, art. 6a provided that the minister responsible for matters of culture and the protection of national heritage coordinates and implements state policy concerning the activity of museums and the range of national memory sites, including Holocaust memorials and war cemeteries and graves, in particular by, i.a. the creation of museums, supervision over museums, and control over their activity as well as formulating opinions about the state of the protection of Holocaust memorials and museums of struggle and martyrology (cf. par. 1, point 1, 2 and 6 of the above article).

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