

## MUSEUMS AND PUBLIC LAW

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### GENERAL REMARKS

Changing patterns in policy, national economy and public administration cause the changes in attitude to the problems of culture, its goods and their protection. Said objects : monuments and sites, cultural landscape and historic immovables are taken into consideration more often than museum treasures, that seem to be properly saved.<sup>1</sup> The general legal act—The Law on the Protection of the Goods of Culture and Museums of 1962<sup>2</sup> is partly novelized, but the attention is paid to the organization of local administration, its duties and rights, and some doubts concerning definitions—not always legible—such as “evident culture goods.” Most problems had been caused by the years of the supremacy of state economy over cultural functions of powers. The majority of historic objects became, due to nationalization acts since 1946, a state property and were being used without observing their cultural values. As to museum pieces—due to post-war changes most of them, previously the property of private persons, had been deposited in museums—but the problems of their organization, employment of the staff and responsibility of the State for this part of cultural heritage stored in public museums had never been solved.

The common attitude to museums is limited to their functions in exposition, while storage of goods, their conservation and forms of evaluation treated as inner problems of museums, are not often discussed. Only a small group of specialists know the dangers threatening the bulk of treasures stored in museums—not only theft or fire, but also natural destruction. Legal problems, such as responsibility for this part of national property, forms of evaluation, procedure of inscription and safe-keeping of goods in storerooms are laying in a shadow. These problems worthy of talking about, are only in small part legally regulated. The museum

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<sup>1</sup>About 9.5 million of museum pieces in above six hundred museums and public collections.

<sup>2</sup>*The Journal of Laws (Dziennik Ustaw)* 1962, No. 10/48.

of the future has an important role to play in social education and therefore some of traditional forms of its activity should be changed, some obligations confirmed, and some actions promoted.

Museum visitors often think only about a rich collection of specimens, antiquities, curiosities and art objects<sup>3</sup> put together in buildings known once as temples of art, and being store-houses both of treasures and relics of the past. Their creation depended on rich collectors of "rarities," the glimpse of their richness, the spoil of voyages. Their foundation in a form of contract caused certain duties controlled by boards of trustees. Some of the museums have been financed through benevolent donations or local spends. Individuality of directors—usually eminent experts—put the whole power to organize the activity of inner museum in their hands. Hence, organization, forms of work, rights and duties of the employees of museum institutions are not better known to the public, as bread production to eaters. How the contents of the word museum has been changed since foundation of the first public institution, how broad is its activity, how many employees of various specializations—not only art historians—are being engaged to form the final product : the exposition, is still unknown to the majority of users. Some parts of activity of the museum have been up to now regulated in the form of orders or instructions, and we can mention two significant moments : the accession by purchase, or owing to noble generosity of a collector, and the visible exposition, while the remaining doings rest in a shadow of common ignorance.

The history of museums in Poland since the 18th century deserves profound research,<sup>4</sup> difficult, however, because of lack of sources. No museum or collection founded then exists at present.<sup>5</sup> All of them have been destroyed, robbed, deplacé, again organized in reborn Poland, and once again destroyed, almost completely during World War II. The political changes, and the necessity to preserve many valuable objects acquired to reorganized museums made the political rulers visualize the museum as an immense unit of valuable objects, "university of culture," owned by the whole nation, financed from budgetary funds, thus becoming a part of public administration.

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<sup>3</sup> About 1 to 10% of the whole collection.

<sup>4</sup> See S. Komornicki, T. Dobrowolski, *Museology [Muzealnictwo]* Cracow 1947; K. Malinowski, *Forerunners of the Polish Museology*, Poznań 1970 ; W. Gluziński, *U podstaw muzeologii [An Introduction to Museology]*, Warsaw 1980.

<sup>5</sup> See E. Chwalewik, *Zabytki polskie w Ojczyźnie i na obczyźnie [The Polish Relics of the Past at Home and Abroad. Museums, Galleries]*, Warsaw—Cracow 1927, vols I—II.

*CONTEMPORARY REGULATION*

As stated in the Law, "Museum—the institution assembling, preserving and displaying objects of art, technology and science, as well as natural curiosities—leads research and promotes education according to its statute, in cooperation with other institutions, organizations and societies having the similar aims."<sup>6</sup> The definition only slightly different from pre-war regulation<sup>7</sup> does not stress profound changes in the position of the museum.

Each of three main duties — assembling, preserving and opening access of the collection, has the same importance. When fulfilling their functions according to the Law, museums as parts of public service realize the State policy in promoting culture, and the trust of national property gathered in their storerooms. Created by a legal act like a public enterprise, having statute, rights and duties, a museum belongs to the group of public institutions, like schools and universities. It is, therefore, distinguished by :

1. Individualization of organization ;
2. Denomination and qualification of organs (keepers and councils) ;
3. Non-profit activity ;
4. Material substrate and clearing of budgetary resources ;
5. The power to define rights and duties of users (visitors, research workers).

The general forms of activity, common to all the museums owned by the State and its agencies, substantial and planned, cannot be replaced by any other organization. The protection of museum pieces depends on the fact that they are being stored in the public museum. Within a legal definition<sup>8</sup> its main tasks are :

1. collecting of goods of culture and the documentation referring to them;
2. inventorying, catalogueing and elaborating museum objects;
3. storage of objects in a safe way, and rendering them accessible to researchers ;
4. protecting museum objects and archaeological sites ;
5. organizing exhibitions (permanent and temporary) ;
6. leading educational activity ;
7. promoting researches, expeditions and excavations ;
8. opening collections for scientific-educational purposes ;
9. publishing inventories, catalogues, guides and informatory books.

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<sup>6</sup> The Law of 1962 (see 2.), Art. 45.

<sup>7</sup> The Law of March 28, 1933 on Museums, Dz. U. 1933, No. 32/279.

<sup>8</sup> See art. 45 (footnote 6) and 46 of the Law of 1962.

Upon general regulations of the Labour Law, all the employees, staff and workers, as well as the persons doing their duties in the museum according to its statutory activity (guides, researchers) ought to follow the regulations and orders of the director. The director's responsibility is to conform all the forms of protection, research and exposition of goods, planned (and confirmed by superior organ), to financial resources. The character of activity and qualifications of employees with the titles of keepers, curators, conservators and cataloguers (responsible for inventorying and very often having scientific degrees) makes the museum an advisory board for the local administration responsible for the protection of the monuments and sites. Each museum has in its organization a scientific council with the competences almost similar to that of university faculties.

The National Culture Law of 1984<sup>9</sup> provides that museums should "take part in cultural education, promotion of folklore and regional activities, recognizing and fulfilling cultural interests of local community" by expositions, lectures, films and panels for school children. The broad activity foreseen by lawmaker causes many problems concerning sources, usable floor area both for exposition and storage of museum objects. The high qualifications required are not always adequate to salary, causing troubles for managing persons.

Some questions to be solved in the future regulations, should have been realized in previous legal acts. The pattern of great-hearted men, doing their duties in spite of difficulties made the state administration blind to the needs of the museum employees. At present, when insufficiently paid, they do not want to engage themselves even in the most interesting work.

The position of museum and its management depends on the kind and quality of museums. From over 600 museums, less than 10% has sufficient area of exposition, almost all have the storage and conservation problems. Even the biggest National Museums in Warsaw and Cracow have a permanent exposition of no more than 1,5% of their collections. The number of visitors in 20 of them<sup>9 10</sup> exceed all limits, when the small local museums have no guests. Some of district museums subordinated to local authorities,<sup>11</sup> or central museums of technology,<sup>12</sup> army<sup>13</sup> and leading

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<sup>9</sup> The Law of April, 26, 1984, Dz. U. 1984, No. 26 (129). Now novelized.

<sup>10</sup> The National Museums in Warsaw, Cracow and Poznań, the castles of Wawel, Łańcut, Nieborów, palace in Wilanów.

<sup>11</sup> Above 50—mainly town museums, but with the reform of selfgovernment the said number will increase.

<sup>12</sup> Submitted to the Chief Technical Organization (NOT).

<sup>13</sup> The Museum of the Army in Warsaw and the local branches.

museums<sup>14</sup> have at present better situation than those subordinated to the Ministry of Culture and Art.<sup>15</sup> Most of local autonomous museums have been centralized after World War II, and depended on Ministry or have been incorporated as branch museums into the National Museum in Warsaw.<sup>16</sup> Coming back to the system of local activities, the museums of towns, local associations<sup>17</sup> and societies<sup>18</sup> created independently from central budget may be the solution in safe-keeping of goods.

#### *MUSEUM OBJECTS—DOCUMENTATION*

The main, however unobserved duty of utmost importance, is storage of information concerning museum objects together with them. The full documentation about makers, owners, users, founders, technology, material together with the bibliography makes an object more valuable. General statistics tell about 9,5 million of objects in the Polish museums<sup>19</sup> which is doubtful in light of research. Inventorying, catalogueing and gathering documentation is still not finished, even in the national museums. The wording “object in museum”<sup>20</sup> as an equivalent of inventoried one cannot be used, and the criteria of subdivision of museum pieces and their value depend on the quality of employees.

The Law of 1962<sup>21</sup> says that legally protected are the goods of culture, when registred as monuments, the objects in museum, and—what is doubtful—“evident” objects bearing historic character. Independently of their kind (movable, immovable), age and form of storage, all objects defined as goods of culture are worth to be protected. The list of the Art. 5 of the mentioned Law of 1962 exemplifies certain art objects such as “sculpture, painting, decorative objects, handicrafts, weapons, robes, coins,” “folklore objects,” “referring to progress in technology and material

<sup>14</sup> Royal Castle in Cracow—for museums in residences, the Museum of the Army—for military collections, the Museum of Archaeology in Warsaw—for all archaeological museums.

<sup>15</sup> Above 47 central, leading and specialized museums.

<sup>16</sup> As branches of the National Museum in Warsaw are organized : palaces in Łazienki, Krośniewice, Królikarnia (museum of sculpture), Nieborów (residence) and Wilanów (royal palace)—now criticized for too heavy system of administration.

<sup>17</sup> i.e. associations of promotion of science and culture of the local level (Płock, Cracow, Poznań, Toruń, Gdańsk).

<sup>18</sup> Moniuszko Museum, Chopin Museum in Żelazowa Wola, Artisanal Museum, Scout Museum in Katowice, the museums of the Polish Tourist Society.

<sup>19</sup> Saving nothing about ten church provincial museums. memorials and private collections.

<sup>20</sup> Art. 4 of the Law of 1962 does not mention “registred” goods.

<sup>21</sup> Art. 4 of the Law of 1962.

culture” as well as relating to important personalities, dates and facts of history, but the protection of them is obligatory when they are registered.

The state register kept by local administrative officer (called : conservator) does not mention museum objects. The fact of inscribing them in the repertory of a museum equalize the object with registered one. The wording of the Art. 64 of the Law of 1962 is clear : “Objects in the property of museums should, be inventoried” and means the duty of inscription in a repertory not later than 30 days after acquisition. This formal inscription does not mean evaluation of an object, referring to style, authorship, provenience, attribution and scope of preservation. According to Inventory Law of 1964,<sup>22</sup> museums are obliged to keep the books of accession (acquisition), storage, movement of goods, deposits, as well as general inventory and card-index. Each act of taking an object out of storeplace, withdrawal from exposition, lending, depositing or forwarding to anybody for any purposes should be notified. The information in the card-index should be sufficient to distinguish an object—which is very important for missing or destroyed objects. No action can be investigated, when the object is not showed in the documents. No object can be cancelled off the inventory book unless the supervisory organ of the museum decides so. The fact of inscription i.e. incorporation of a certain object into the collection is not easy. In the past, when museum collection consisted of art objects and original creations of a defined authorship and provenience such inscription caused less doubts. The modern museum, however, covers the whole human culture. Rapid growth of technology made many things of everyday use museum pieces, causing temptation to expose them or to put them in the museum store-house because of their probable value.

#### VALUE AS LEGAL FACTOR

Evaluation of an object should be defined according to certain acquirements and criteria. As many foreign laws, the Polish Law of 1962 uses the following touchpoints.<sup>23</sup>

Historic value—an argument basing on age and hence rarity of an object as “testimony of human activity, concepts and customs.”<sup>24</sup> On the

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<sup>22</sup> The Order of the Minister of Culture and Art of April 18, 1964, Dz. U. 1964, No. 17/101.

<sup>23</sup> Art. 2—“The good of culture in a wording of law is any movable or immovable object, of the past or present times, having importance for heritage and cultural progress because of its historic, scientific or artistic value.”

<sup>24</sup> Art. 1 of the Law of 1962.

other hand, particular links with historical events, places or persons eminent and worthy of our memory<sup>25</sup> are taken into consideration. We may observe, therefore, personal attitudes based on the emotions of a generation that took part in certain events<sup>26</sup> or trends to justify the social policy and political system.

Artistic value strictly connected with the sense of beauty decorativeness, aesthetic value seems to be the most changeable and disputable factor, depending on current artistic trends and modes. For an art historian criteria of style can be helpful, but never decisive. National wealth, life level, number of similar objects may help to evaluate art object as universally or locally important.

Scientific value is an inseparable factor in evaluating almost all the things as potential objects of research. Such research refers to objects, as well as to their creators, technology of production and methods of preservation and usually should precede a verdict of inscription. Raising problems of authenticity depend more and more on using modern technologies and laboratory equipment out of reach of most of the museums.

Cultural value—a factor used most frequently for justification of value of a “good of culture” is the easiest to apply and the most difficult to motivate. “Importance for cultural heritage and social growth”<sup>27</sup> is probably the hardest thing to prove, and as all others, mentioned above, may help only to gather the most important items from the bulk of things and relics of the past. Outside the system of the protection of the goods of culture we find another factor :

Material value, i.e. value measurable in means of payment. Noble assumption of protection make many experts avoid noticing that value. It may grow depending on collection trends, or even investments.. The so called *praetium affectionis*—a special value of an object for his owner changes a priceless object into a real good of culture. Material value could be modest for collectors of the past, but wide access to culture and its goods has changed the perspective, and while talking about goods of culture we cannot ignore it.

Evaluation of museum pieces is not limited to the moment of acquisition. Each of the factors mentioned, however changeable, should be considered in case of such legal actions as insurance, destruction or even burglary—to realize the legal responsibility.

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<sup>25</sup> Art. 5.4 and 5.11 of the Law of 1962.

<sup>26</sup> Memorials of Fight and Martyrdom, prisoners and extermination camps., places of executions and fights for independence.

<sup>27</sup> Art. 2 of the Law of 1962—see footnote 23.

*GOODS IN TRADE*

The rules of trade turnover are applicable to the museum pieces and goods of culture in general. When in past times museums have been founded due to collectors' passions, their generosity or snobism, purchase was not only the form of museum acquisition, nor the most important. Lack of legal regulations in many countries, knowledge of value and pecuniar interests of collectors, and limited actions of customs offices made only a small part of them liable to duty. Owing to these, some world museums became extremely rich. At present, the trade of goods of culture in many countries is limited and restricted, to avoid impoverishment and pillage of collections. In Poland the destruction of museums and collections during almost 150 years of foreign rules, in World War II and the first years after the war caused peculiar interest in the protection against exporting goods apparently without value. The Law of 1962 prohibits<sup>28</sup> taking abroad all the objects bearing the values mentioned above, or "museum value,"<sup>29</sup> produced before the 9th of May, 1945—not only listed in the registers. The restriction is caused by the fact that inscription of a private property object is not possible, and the owner's rights in this respect are limited only by export prohibition. The problem of evaluating such goods of culture is difficult because of the fact that only the Minister of Culture and Art is authorized to forward an export licence, and—that the formal evaluation of an object seems to be transmitted into customs office. Neither the Minister, nor the customs officer has the possibility to describe undoubtedly even the age of an object, saying nothing about significance and value. The problem is only partly regulated in the practice of state museums creating so-called purchase commissions for their own purposes. They consist legally<sup>30</sup> of the director, three qualified employees and experts invited. The opinion basing on the material authority in the matter makes it binding for the museum. For the time being, no commission or expert exist doing the similar expertises on request of individual persons, and nobody is certified as an expert within his specialization. It comes out of fact, that expressing opinion of artistic value in general is far more easier than

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<sup>28</sup> Art. 41 says : "Taking the goods of culture abroad is prohibited" upon the penal restrictions of Art. 74 of the same Law of 1962. The Order of Minister of Culture and Art of 1973 specifies the general term of prohibition—the date of May 9, 1945.

<sup>29</sup> The Customs Law of 1983, March 18 speaks about "art objects such as furniture, ceramics, glass, metal and tapestry objects, militaria, coins, nature objects of 'museal value'."

<sup>30</sup> The inner regulation for the Ministry of Culture and its museums of January 20 (1959) *Bulletin of the Ministry of Culture*, 1959, No. 3/28.



issuing a document—certificate in legal sense. The procedure of affidavit could be (but is not) applicable to forwarding such certificates of binding character to anybody's request, but only from listed experts of officially recognized authority. The problem seems to be easy to be legally regulated, but causes serious problems of authenticity.

The raising role of experiment in science, and progress in technology betrayed many past opinions. Objects recognized then as authentic, museum treasures of the highest value became in the light of tests—false. Even advanced studies cannot help to nominate an expert whose authority is undoubtful. The problem arises, when by purchase, or selling, the museum or other customer needs to know with certitude that the object bought is authentic. A risk when buying objects on an antiquity market grows because of many objects intentionally and skillfully falsified. The higher price paid by a respected antiquarian could diminish it, but the doubt causes no responsibility in that matter. The expertize, approving and certifying the fact of origin, becomes one of the most important questions to be solved.

Museum and public law—the problem of the utmost importance is not solved yet. The years of centralized rule in regulating all the problems of museums, the so-called nationalization of the private property because of its cultural value, proved that public administration may interfere in culture only in a very limited sphere. Without creation of local museums, promotion of local initiatives and financing collectors' movement, the care of goods of culture locked in museums is helpless. The role of law should be limited to regulation of the problems of management, testing of employees and experts and the responsibility for the treasure owned by public institutions. Thus, the law legal regulation, different from the Law of 1962 upon the Protection of the Goods of Culture and Museums, and new organization of public services in this sector are urgently needed. The problems of goods of culture and museum objects should have been taken into consideration long ago. Now, when talking about new, free and democratic form of ruling and management, we can neither put the protection of our cultural heritage apart for the future, nor unconditionally give goods of culture to the persons or organisms of private Law—without stating responsibility for this part of common treasure. Even when changing patterns of public administration to more active, selfgoverned and conscious, we cannot forget: museums are never enterprises and companies, nor eleemosynary institutions. They are subjects to public Law, and an important part of our culture. Even crisis in economy cannot limit or temporarily suspend their activity and existence without serious losses. The regulation of museums' Law is urgently needed with respect to existing opinions of museal experts and conservators.