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Original article

Legal regulations in the field of cultural heritage protection in Poland after 1989 – evaluation attempt

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ABSTRACT

This article attempts to analyze the legal regulations developed in the field of cultural heritage protection after 1989, with particular reference to the acquis after 2003. A thesis has been formulated that the period after 1989 was characterized by a clear redefinition of objectives and priorities in the field of cultural heritage protection compared to the period of the People's Republic of Poland.
To prove the thesis, the author referred to legal acts and jurisprudence, as well as to literature based on studies and articles from scientific journals on the legal protection of monuments. The research methods used were the legal acts analysis method and the literature analysis method.
The presented content shows that the issue of legal protection of cultural heritage in Poland after 1989 was treated as one of the most important aspects of the long-term cultural policy of the state, although the work on the new law lasted for a relatively long time, 14 years after the political and structural transformation. The 2003 Act regulated a number of important issues regarding the protection of monuments and the care for monuments, redefining, and in many aspects setting, new directions in the field of cultural heritage protection in Poland. At the same time the legislator rejected the possibility of continuing the direction in this sphere, which had been chosen in the period between 1944 and 1989.

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KEYWORDS

cultural good, monument, legal protection, Constitution of the Republic of Poland

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1. Introduction

The cultural heritage protection in Poland in the twentieth century was a constant subject of legislation that appeared and was redefined in various conditions of development of the Polish history in that century. During the interwar period, at the end of the World War II and the first few years after its end, as well as in the era of the development of the People's Republic of Poland, the Polish authorities tried as closely as pos-

sible to address complex issues related to the cultural heritage protection. The scope of the legal protection of monuments was different in these cases, although earlier achievements and failures could certainly constitute valuable knowledge for the Polish authorities after 1989. After the political and structural transformation of that year, the issue of legal protection of the cultural heritage became even more important, while the legislator decided to change the statutory basis of such protection in comparison with the statutory provisions that were in force in the PRL.

The considerations presented in the article are a continuation of two articles previously written by the author, i.e. concerning the legal protection of the cultural heritage in Poland, during the interwar period and in the years 1944-1989 respectively. The author has been trying to close a cycle, aiming at the popularization of knowledge about the described field of activity of the Polish state in the twentieth century. The aim of the article is to present and evaluate the importance of legal regulations in the field of cultural heritage protection in Poland after 1989, taking into account the scope of statutory legal protection of monuments after 2003.

The thesis is that the regulations regarding cultural heritage protection in Poland after 1989 constituted a clear redefinition of objectives and priorities in this field compared to the period of the People's Republic of Poland. This thesis was made in the correspondence and taking into account the evaluation attempt, which the author of the paper had undertaken in his previous article on legal regulations in the sphere of cultural heritage protection in the years 1944-1989.

2. Reasons for analysis of legal cultural heritage protection in Poland in the years 1989-2002

After 1989 there were turbulent changes not only on the Polish political scene, but also in all the branches of law. The acquis communautaire of the PRL in many aspects was crossed out and the repressive and propaganda tone of many legal regulations was to be replaced by legal regulations adapted to the requirements of the democratic state being created. Legal regulations during the several years after the 1989 political and social breakthrough were fundamental and sustainable, and the legal protection of cultural heritage became one of the areas of such changes. As highlighted in the literature, when it comes to the above mentioned changes the abolition of the central command and distribution system and the adoption of the local self-government model, which began to function democratically instead of "top-down territorial state administrative bodies" were of significant importance[1].

What characterizes the legal protection of cultural heritage in Poland after 1989 is the separation of this protection from the deep ideological influence created by the central authority and thus the strengthening of the criminal law protection determined by the norms of administrative law. The issue of cultural heritage protection after the 1989 breakthrough was enhanced by the norms of administrative law protecting common

[1] K. Bronski, *Rola dziedzictwa kulturowego w rozwoju lokalnym. Doswiadczenia polskie doby transformacji (po 1989 r.),* [in:] "Zeszyty Naukowe Akademii Ekonomicznej w Krakowie" 2006, vol. 706, p. 7.

goods, which monuments or museums were perceived to be. Interventions of the public administration in the field of cultural heritage protection were maintained, although their nature changed compared to those ones characteristic for the years 1944-1989. As noted in the literature, the transformation of the importance of the administrative law norms resulted from changes in the social, political and economic conditions of the Polish state[2].

In order to create a consistent system of the cultural heritage protection, in 1991 the legislator decided to clarify various issues related both to the organization and to conducting activities of cultural character. On October 25 of that year, the Act on organizing and conducting cultural activities was adopted[3]. Art. 1 (1) stated that cultural activities should be understood as any activity that results in the creation, popularization as well as protection of culture. Especially the last manifestation of the activity was of key importance from the point of view of the subject matter of the article. For the first time after 1989, a statutory legal act was adopted, which regulated the state patronage of the cultural heritage protection, as one of the areas of the Poland's and the Poles' national heritage protection. The care for monuments became a very important field, due to which the state through its institutions could carry out such patronage, especially in the area of financing the monument protection (Art. 1 (3) of the analyzed Act). Pursuant to Art. 8 of the aforementioned Act, ministers and heads of state central offices were obliged to organize cultural activities through state cultural institutions. It was also important to determine the financial management rules of such institutions (Art. 27-33).

In the aforementioned Act, it was decided to refer to the acquis communautaire of Poland in the interwar period, and especially to the definitions contained in the Decree of the President of Poland of March 6, 1928 on the monuments protection[4]. Unlike the 1962 Act on the cultural heritage protection worked out in the PRL, it was decided to use the unified definition of a monument, at the same time renouncing the interchangeable concept of the "cultural good". In spite of this, the legislature did not clarify the concept of "monument", leaving this matter to be developed in the course of further work on a new law regulating in a complex way the scope of monument protection and preservation.

The cultural heritage protection in Poland after 1989 required, according to the Polish legislator, a separate objective reference to the activity of museums, as key cultural institutions responsible for the described protection. Such a position can be defended in reference to the fact that in 1996 the separate Act on museums was adopted[5]. The

[2] J. Izdebski, *Ochrona dobr kultury w systemie norm prawa administracyjnego*, [in:] "Muzealnictwo" 2014, vol. 55, p. 228.

[3] Act of October 25, 1991 on organizing and conducting cultural activities (consolidated text: Journal of Laws of 2012, item 406).

[4] Decree of the President of Poland of March 6, 1928 on the monument protection (Journal of Laws of 1928, No. 29, item 265).

[5] Act of November 21, 1996 on museums (consolidated text: Journal of Laws of 2012, item 987). In its content, it referred to the concept of cultural goods protection rather than monuments, indicating

regulations adopted within it significantly changed the provisions regarding the activity of museums contained in the 1962 Act on the cultural heritage protection. Due to the entry into force of the provisions of the 1996 Act, derogations of detailed executive acts were also made to the Act adopted during the PRL. It concerned repealing in whole the following legal acts issued by the Minister of Culture and Arts:

- ordinance of September 11, 1962 on the conduct of activities of the museum, exhibition and immovable monument guide (M.P. of 1962, No. 77, item 361);
- ordinance of December 17, 1962 on the conditions of transferring exhibits (M.P. of 1963, No. 3, item 12);
- ordinance of April 18, 1964 on inventory of exhibits (Journal of Laws of 1964, No. 17, item 101);
- ordinance of July 5, 1972 amending the ordinance on the conduct of the activities of the museum, exhibit and immovable monument guide (M.P. of 1972, No. 36, item 201).

The entry into force of the Act on museums contributed to a significant transformation of this subject area of cultural heritage protection in Poland after 1989. It anchored the process of repealing former legal provisions developed during the PRL, which have been very critically evaluated by the decision-makers of the democratic authorities as well as many contemporary historians and museum workers[6]. It can be assessed that such changes were intended to prepare a susceptible basis for the new statutory regulation of the legal protection and preservation of monuments, as part of the cultural and national heritage.

An extremely interesting problem faced by the Polish authorities after 1989 in the field of monument protection was the settlement of issues related to the protection of cemeteries and memorial sites of victims of wars and other repressions. It was of particular importance in Poland's relations with Russia, especially since the Polish state in the years 1944-1989 was heavily influenced by the Soviet political ideology, which was also reflected in the field of cultural heritage protection developed in the PRL. The authorities faced the need to regulate the protection of cemeteries and other memorial sites, and this subject caused and continues to cause considerable controversy in the

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that one of the constitutive objectives of any museum is the collection of cultural goods within the statutory scope, cataloging of such goods, storage, protection, preservation and organization of exhibits, as well as making them available for educational and scientific purposes (Art. 2 of the Act on museums).

[6] Cf. K. Burski, *Normatywne podstawy ochrony dobr kultury w PRL. Studium historyczno-prawne*, [in:] *Prawo a ochrona dobr kultury*, ed. M. Adamus, P. Dobosz, D. Sokolowska, Uniwersytet Jagiellonski, Krakow 2014, p. 86; R. Golat, *Prawo kultury i sztuki. Zbior przepisow z komentarzem*, Wydawnictwo Prawnicze, Warszawa 1997, passim; J. Pruszynski, *Dziedzictwo kultury Polski - jego straty i ochrona prawna, t. II*, Zakamycze, Krakow 2001, p. 288. Criticism of solutions adopted in the field of cultural heritage protection during the PRL was also presented by the author of this article in the preceding article presenting the acquis and the importance of cultural heritage protection in the years 1944-1989.

Polish society[7]. On February 22, 1994 in Cracow an Agreement was signed between Poland and the Russian Federation, which regulated the protection of Soviet cemeteries as well as other memorial and resting sites located in the territory of Poland[8]. In Art. 3 of the Agreement, the protection of graves, gravestones, monuments and other memorial sites of people have been guaranteed, and it has also been ensured that they are kept in proper condition. The Russian Federation has adapted similar obligations to the resting places of Poles, who were buried in the area of the former Soviet Union[9].

Equal significance can be attributed to the efforts of the legislator to regulate the issue of Poland and Germany's cooperation in the field of protection of victims' graves of World War II. On December 8, 2003 both states adopted an Agreement on graves of victims of wars and totalitarian violence[10]. For Poland this meant accepting the obligation to protect, document, register, decorate, properly preserve and maintain the resting places of the fallen Germans on the territory of Poland as a result of World War I and World War II.

It can be assessed that both the Agreements signed with the Russian Federation and the Germans constituted a significant direction of the transformation of Polish law on cultural heritage protection after 1989. It concerns the direction of the extension of this protection under international bilateral agreements and the inclusion of this issue into the broader context of international relations with neighbors. The aforementioned examples of international agreements show that the cultural heritage protection in Poland after 1989 was also oriented towards protecting the cultural heritage of other countries. In turn, the need to ensure greater protection of Polish cemeteries and resting places of the fallen in wars and repressions citizens located outside the Republic of Poland, were the main objective to be achieved. This is a very interesting manifestation of the extension of the legal protection of monuments after 1989, although it is a very controversial issue in connection with the sentiments of a part of the

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7 J. Adamska, Pamiec i miejsca pamieci w Polsce po II wojnie swiatowej, „Przeszlosc i Pamiec" 1998, vol. 1, p. 5; J. Mazurkiewicz, Niepozadani czerwonoarmisci, ignorowani niemieccy antyfaszysci i honorowani esesmani. O statusie prawnym i realiach grobow oraz cmentarzy wojennych radzieckich i niemieckich w Polsce, Wydawnictwo Uniwersytetu Wroclawskiego, Wroclaw 2016, pp. 13-23.

8 Agreement of February 22, 1994 between the Government of the Republic of Poland and the Government of the Russian Federation on graves and memorial sites of victims of wars and repression (Journal of Laws of 1994, No. 112, item 543).

9 It is worth adding that Poland adopted similar international agreements also in relations with the government of Ukraine and Belarus, respectively in 1994 and 1995. Cf. Agreement of March 21, 1994 between the Government of the Republic of Poland and the Government of Ukraine on the protection of memorial and resting sites of victims of war and political repression (Journal of Laws of 1994, No. 112, item 545); Agreement of January 21, 1995 between the Government of the Republic of Poland and the Government of the Republic of Belarus on the protection of graves and memorial sites of victims of wars and repression (Journal of Laws of 1997, No. 32, item 185).

10 Agreement of December 8, 2003 between the Government of the Republic of Poland and the Government of the Federal Republic of Germany on graves of victims of wars and totalitarian violence (M.P. of 2005, No. 55, item 749).

Polish society about the excessive importance given by the authorities to the protection of former Soviet and German cemeteries and monuments.

The references to the influence of constitutional provisions on the state of cultural heritage protection in Poland after 1989 cannot be omitted either. In 1997 the new Constitution of the Republic of Poland was adopted. According to Art. 5 the state has assumed the role of a national heritage guard. Art. 6 of the Polish Constitution also obliged the state to create conditions for popularizing as well as guaranteeing equal access to cultural goods as a source of national identity and a testimony of its existence and development. In the same article, the state pledged to help the Poles outside Poland maintain their relationships with the so-called cultural heritage. In Art. 73 of the Basic Law, "freedom of artistic creation, scientific research and publication of their results, freedom of teaching and freedom of the use of cultural goods" [11] has been guaranteed for every Polish citizen.

It should be added that also other, more general constitutional rules, exerted some influence on the statutory model adopted later on for the cultural heritage protection in Poland. It concerns the principle of the democratic state of law (Art. 2 of the Basic Law), the principle of sustainable development (Art. 5), the principle of decentralization of public authority (Art. 15(1)) and the participation of local authorities in the implementation of public tasks (art. 16 (2)), as well as the principle of protection of property and the right of inheritance with determining the conditions of legal expropriation (Art. 21 (1-2)). All these principles are to set a general scope of legal protection of cultural heritage in Poland after 1997[12].

3. The nature of statutory cultural heritage protection in Poland after 2003

On July 23, 2003 the Polish legislator decided to implement a new statutory regulation on the cultural heritage protection in the state - the Act on the protection and care for monuments was adopted[13]. Already at the outset, when attempting to analyze the im-

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[11] Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997, No. 78, item 483). As rightly noted in the literature of the subject, the legislator of the constitutional system did not, however, decide to adopt a precise technology apparatus with the regard to the issue cultural heritage protection. In one place, such protection is mentioned, but in the other, the need to protect the national heritage, and in yet another the cultural heritage, without distinguishing between them. M. Trzcinski, K. Zeidler, *Wyklad prawa dla archeologow*, Wolters Kluwer Polska, Warszawa 2009, p. 33. It is traditionally assumed, however, that the cultural goods protection should be viewed, in the light of the constitutional law, as one of the most import_ant areas of cultural heritage protection, which is understood as part of the national heritage. In turn, the lack in the basic law of the definition of cultural good, cultural heritage and national heritage was, according to one of the Polish constitutionalists, to reflect clear and common understanding of both these concepts in the law and the public consciousness. Cf. B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, C.H. Beck, Warszawa 2009, p. 55.

[12] National Culture Program "Protection of monuments and cultural heritage" for the years 2004-2013, Ministry of Culture and National Heritage, Warszawa 2004, p. 6.

[13] Act of July 23, 2003 on the monuments protection and care (consolidated text: Journal of Laws of 2014, item 1446).

portance of this Act, it should be noted that the scope of cultural heritage protection in Poland was included in 151 articles against the background of 86 articles contained in the earlier Act of February 15, 1962 on the cultural heritage protection[14]. It should therefore be assumed that, in the opinion of the Polish legislator, after 1989 many more matters required a more precise definition in the law, in terms of the national heritage protection compared to the regulations adopted by the legislator in the era of the PRL.

However, before the Act on the protection and care for monuments was adopted, in Polish law an essential provision had been made, defining the so-called contemporary cultural goods. This was done under Art. 2 (10) of the March 27, 2003 Act on spatial planning and development[15]. The Act stated that contemporary cultural goods are non-monument cultural goods in the form of memorial sites, statues, buildings, their interiors and details, building complexes, landscape and urban planning, which should be recognized as approved heritage for today's generations, as long as they are of high historical or artistic value. Such contemporary cultural goods have been granted the necessary legal protection in the context of the implementation of the principles of spatial planning and development by other entities. It has been assessed that the aforementioned provision was important for the cultural heritage protection in Poland after 1989[16].

Art. 3(1) of the aforementioned Act provides a legal definition of a monument as cultural good protected by law. According to this definition, a monument is a property or a movable object, but also their parts or assemblies, which are a work of a human or relate to his/her activity and at the same time constitute a testimony of a past epoch[17], or their preservation is of the social interest. The latter is determined by the artistic, historical or scientific value held by a monument. In comparison with the definition of

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[14] Act of February 15, 1962 on the cultural goods protection (Journal of Laws of 1962, No. 10, item 48).

[15] Act of March 27, 2003 on spatial planning and development (consolidated text: Journal of Laws of 2015, item 199).

[16] K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Wolters Kluwer Polska, Warszawa-Krakow 2007, p. 44. It can be explained by stating that the legislator accepted the possibility of legal protection not only of objects treated as monuments – in accordance with the subsequent Act of July 23, 2003 – but also of non-monument objects of historical or artistic value. It should be assumed that, thanks to the Regulation in question, the legislator could prevent the possible destruction or loss of objects important to the national heritage in the light of the starting process of creating and updating the monument register. This was very important, as precise regulations on the registration of monuments were created only by the Decree of the Ministry of Culture and National Heritage of 2004, and then they were redefined in the analogous Regulation of 2011, which will be discussed later in this article.

[17] It is worth mentioning that the doctrine emphasizes that the passage of time itself cannot constitute a sufficiently important premise for an object to be included in the monument list. Whether an object is a testimony of a past epoch depends not only on the passage of time, but also largely on the historical, artistic or scientific value of such monument, as well as its importance to the social interest and the cultural heritage of the nation. See: P. Antoniak, *Przepisy ogolne*, [in:] *Ustawa o ochronie zabytkow i opiece nad zabytkami. Komentarz*, ed. M. Cherka, Wolters Kluwer Polska, Warszawa 2010, p. 44.

a cultural good adopted in the 1962 Act, the presented definition of a monument was more precise. It was not possible after 2003 to call any movable or immovable object a monument, but only those that were works of humans or related to their activities. The 2003 statutory definition of a monument also rejected the possibility of using this term for contemporary objects. Compared to the Regulation of 1962, the criteria for classifying monuments on the basis of their artistic, historical and scientific value were maintained.

In the literature, there is a certain view critical of the aforementioned legal definition of a monument that is in force in the current legal status. This criticism is based on the belief in the exclusion from the legal protection of the part of cultural heritage that could not be included in the monument register since they were not works of human and, above all, because they were produced today, and therefore could not be treated as a testimony of the past[18]. Such a position can be polemically referred to, as the legislator has left a wide range of interpretations of monuments, if one looks at the possibility of including in this group the objects, which preservation is in the public interest. A large part of contemporary cultural goods can undoubtedly fit in with the public interest, allowing such goods to be subject to the provisions of the commented law. In turn, in the case of objects that are not works of human and are not related to his/her activity, the provisions of the 2003 Act did not have to cover many types of objects, especially those that are a result of nature forces, as the scope of the legal protection of such things was determined based on provisions of other legal acts[19].

While trying to answer the particularly interesting question of why the Polish legislator finally chose the term „monument" instead of „cultural good" used in the current international law, the importance of two main premises should be signaled. The first of these was the adoption of the common practice of naming that was used in the Polish society, even in spite of the wording of the cultural heritage protection Act developed during the PRL. The Polish society most often used the term „monument" to present the particular value of a movable or an immovable object for the cultural and national heritage. The second premise is of historical nature and it expressed the willingness of the legislator to refer to the modern favorable assessment of the acquis communautaire from the interwar period. Both in the Decree of the Regency Council of January 1918 on the provisional organization of the Primal Authorities in the Kingdom of Poland as well as in the presidential Decree of March 1928 on the monument protection, the term „monument" was used to describe the state's efforts to protect this part of the Polish and Poles' cultural heritage[20].

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[18] I. Bernatek-Zagula, *Prawna ochrona dobr kultury - problemy terminologiczne*, „Przeglad Prawa Konstytucyjnego" 2012, vol. 4, p. 144.

[19] A good example is the protection of objects produced by the forces of nature, such as erratic boulders, rocks, caves, trees and others. According to Art. 3(1) on the protection and care for monuments, they could not be classified as monuments but they have been treated as legally protected natural monuments under the Act of April 16, 2004 on the protection of nature (consolidated text: Journal of Laws of 2015, item 1651).

[20] See more I. Bernatek-Zagula, *Prawna ochrona…*, op. cit., p. 145. It might also be necessary to mention the third premise of the legislator's action, i.e. the reluctance to continue the acquis commu-

Under Art. 4 and Art. 5 of the Act on the protection and care for monuments, a detailed range of protection and care for objects treated as monuments was defined. The monument protection is a task of the state administration, which consists of:

- creating legal, financial and organizational conditions for the permanent preservation of monuments, their maintenance and management;
- acting to prevent threats that can damage a monument, causing damage to its value;
- counteracting theft, disappearance and illegal export of monuments outside the Polish borders;
- thwarting the destruction and misuse of monuments;
- controlling both the state of preservation and the purpose of monuments;
- taking into account the protection of monuments in spatial planning and development as well as implementing priorities in the field of environmental protection.

As far as the scope of legal protection of monuments is concerned, their owners or holders became responsible for such care. Their actions were to serve some of the most important goals. Among these goals were the following:

- scientific research as well as documentation of monuments;
- carrying out restoration, conservation and construction works as well as works at a given monument;
- securing and maintaining the monument, together with taking care of its surroundings in the best possible condition;
- using the monument in a way that guarantees the lasting preservation of its value;
- promoting and popularizing the knowledge about the monument and its importance for the Polish culture and history.

It can therefore be assessed the standards set by the 2003 Act led, in practice, enabled the realization of the long-awaited postulate to join the legal protection of monuments implemented by the country with the monument protection implemented by the society itself. The legislator sought to separate the law and the practice of its implementation from ideological-political inclinations, which were so characteristic of the cultural heritage legal protection during the PRL. Owners and holders of monuments were obliged to carry out specific tasks in order to strengthen their ability to care for these

nautaire developed in the field of cultural heritage protection during the PRL. After 1962, the term “cultural good” was adapted to the domestic legal order of law, although the legislator used that in an interchangeable manner with the term “monument”. The Polish authorities after 1989 very crticically evaluated the achievements of the PRL in the field, seeking to redefine it and protect and care for those cultural goods, which could not be classified as monuments entered in the relevant monument registers.

goods, participating in activities for a common purpose[21]. The adopted participatory model corresponded to the tendencies characteristic in this area for the European Union law and Community cultural policy. The legislator sought to prepare for a fuller harmonization of this branch of law in the light of the coming to an end in 2003 process of applying for the EU membership[22].

What distinguishes the 2003 Act is the enumerative statement of legal forms of monuments protection in Poland. According to Art. 7 of the commented Act, the legal protection of monuments is realized through the following four forms:

- entry of the monument into the monument registry[23];
- recognition of an object as a historical monument;
- establishment of a cultural park;
- determining the basis of protection under the local spatial plan, the decision on the location of investments for public purposes, the decision on the road investment permit, the decision on building conditions, the decision to invest for the establishment of an airport for public use or the decision on the location of the railway line.

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[21] It should be remembered that the scope of protection and legal care for monuments listed in Art. 4 and 5 of the 2003 Act had an exemplary character, as evidenced by the wording „especially" used by the legislator in the text of these legal acts. This means that the content of these regulations does not constitute an enumerative and finite catalog of objectives pursued by administrative bodies and owners and holders of monuments respectively. Both groups can also carry out many other tasks, often with mutual cooperation, in order to guarantee a fuller range of legal protection and care for monuments. Cf. P. Antoniak, *Przepisy ogolne…*, op. cit., p. 33.

[22] More on the impact of Community law on the Polish legislation in the field of monuments protection see: K. Zalasinska, *Prawna ochrona zabytkow nieruchomych w Polsce*, Wolters Kluwer Polska, Warszawa-Krakow 2010, pp. 117-126.

[23] The register of monuments is run – in relation to monuments located in the voivodeship – by the voivodeship conservator of monuments (Art. 8 of the Act), whereas the national record of monuments – based on monuments information cards located in the voivodeship records – is run by the General Conservator of Monuments (Art. 22 of the Act). It can be stated that the decision to appoint the General Conservator of Monuments was an interesting manifestation of the legislature's reference to the acquis communautaire in the field of cultural heritage protection of the Second Polish Republic, when this function existed from 1930. In the period of the PRL it existed only periodically (in the years 1944-1951 and after 1973) and in the place of the General Conservator of Monuments the Head of the Board of Museums and Monuments Protection working with the Minister of Culture and Arts was acting on the ministerial level. See: T. Krochmal, *Problemy ochrony zabytkow przed nielegalnym wywozem z kraju*, Aspra-Jr, Warszawa 2006, p. 124. After 2003 a person on the described position was assigned the role of the highest specialized monument conservation authority by the Ministry of Culture and National Heritage. As added in the literature, after the entry into force of the Act in question, the cooperation of the General Conservator of Monuments with the voivodeship conservator of monuments and the cooperation of the latter with the starosts and the mayors became particularly significant. The new law on the protection and care for monuments was to contribute to the efficient decentralization of the protective function with respect to entities responsible for such protection by the administration. Monuments records became one of the most important areas for implementing this protection. See: J. Szalygin, *Rejestr i ewidencja zabytkow nieruchomych oraz ruchomych w dzialaniach Narodowego Instytutu Dziedzictwa*, „Ochrona Zabytkow" 2012, vol. 1-2, p. 121.

The entry into force of the new Act on the protection and care for monuments has led to important changes also in the field of the creation of the monuments registration, their records at the level of individual local governments and on the level of the national list of monuments that were stole nor exported outside the borders of Poland in an illegal way. Whereas the statutory provisions laid down only the obligation to adopt the detailed regulations in this respect, in practice they were adopted by the Decree of the Minister of Culture and National Heritage of May 14, 2004[24], which was replaced by the Decree of May 26, 2011[25]. The latter has been in force in the present legal situation and allows for systematizing the protection of monuments due to the created registers divided into three groups. In „A" group the register of immovable monuments is kept, in „B" group the register of movable monuments, while in „C" group the register of archeological monuments. Each of the books covering the listed groups of monuments contains information such us registration number, entry into the register, subject matter and scope of protection, location or storage of the monument, land and mortgage register number or real estate number, information about the owner or holder of the monument, as well as other comments, especially information about the transfer of an entry from the previous book.

It is worth to mention another accomplishment of the legal protection of monuments in Poland after 1989 compared with the protection of 1944-1989, namely the implementation of the actual monuments protection by the local government. While in the PRL the central authorities imposed principal directions of action and set the ways of enforcing them by the voivodeship conservators of monuments, the scope of the local government's activity, especially after the 1999 reform, was based on the key principle of the democratic state of law. The practical manifestations of prerogatives given to self-government bodies under the 2003 Act included the following:

- keeping the register of monuments in the voivodeship territory by the voivodeship conservator of monuments (Art. 8 of the Act);
- giving the starost the possibility of placing on an immovable monument a sign informing about the legal protection of this monument, when acting in agreement with the voivodeship conservator of monuments (Art. 12 of the Act);
- entrusting the municipal council with the possibility of adopting a resolution under which a cultural park is created, after hearing the opinion of the voivodeship conservator of monuments (Art. 16 of the Act);
- customizing the development strategies and spatial plans to the provisions of the protection and care for monuments by the voivodeship, district and municipal authorities (Art. 18 of the Act).

[24] Decree by the Minister of Culture and National Heritage of May 14, 2004 on keeping a register of monuments, national, provincial and municipal records of monuments and the national list of monuments stolen or exported abroad illegally (Journal of Laws of 2004, No. 124, item 1305).

[25] Decree by the Minister of Culture and National Heritage of May 26, 2011 on keeping a register of monuments, national, provincial and municipal records of monuments and the national list of monuments stolen or exported abroad illegally (Journal of Laws of 2011, No. 113, item 661).

On the voivodeship, district and municipal levels, since 2003 it has become possible to draw up the so-called programs for the monuments protection, based on the register of monuments (Art. 21 of the Act on the protection and care for monuments). The latter was not an independent form of monument protection, as it was not indicated in the enumerative catalog of the legal forms of monument protection in Art. 7 of the commented Act[26], but it constituted a very important basis for the implementation of the actual protection of monuments by the local governments[27]. It is therefore appropriate to agree with the position expressed in the literature that only after 1989 and more precisely – after 2003 – it has become possible to give local governments levels of shared responsibility in the field of legal protection and care for monuments[28].

When comparing the 2003 Act with the cultural heritage protection law from the PRL, it should also be stated that a number of other important legal issues that were omitted or marginalized in the latter have been settled in the former. It was important to formulate regulations on the restitution of monuments, which were illegally exported from Poland as well as to give the state authorities a transparent mission and competence to reclaim such monuments (Art. 62-70 of the Act). It is equally important to realize the precise distinction between the rules of financing the monuments care (Art. 71-83 of the Act) and the imposition on the Minister of Culture and National Heritage in cooperation with the General Conservator of Monuments the responsibility to create the national program for protection and care for monuments and grounds for the protection of monuments in the case of an outbreak of an armed conflict or a crisis (Art. 84-88 of the Act). The 2003 Act has also redefined the scope of the so-called social care for monuments (Art. 102-107), adapting the law provisions to the current needs and challenges of cultural policy, as well as requirements of the Community law.

Finally, one can agree with some criticism of the Act being discussed, which is expressed in the literature. There is emphasized a certain difference between the content of the penal provisions included in the protection and care for monuments Act and the provisions included in the Penal Code in relation to actions directed at these goods[29]. The Art. 294 § 2 of the Penal Code states that a perpetrator of offenses such as theft, usurpation, fraud, destruction of an object or intentional felony in relation to the so-called goods of particular importance for culture is subject to a penalty of imprisonment for a period of 1 to 10 years[30]. The 2003 Act lacks references to such a concept, as the legislator has consistently used the term „monument", despite the knowledge of the provisions of the Penal Code, which was adopted in 1997. In addi-

[26] This position has been upheld by the current jurisdiction. Cf. Judgment of the Provincial Administrative Court in Poznan of September 15, 2010, IV SA/Po 428/10, LEX No. 758501; Judgment of the Provincial Administrative Court in Warszawa of March 23, 2007, IV SA/Wa 163/07, LEX No. 335145.

[27] Z. Duniewska, B. Jaworska-Debska, M. Stahl, *Prawo administracyjne materialne. Pojecia, instytucje, zasady*, Wolters Kluwer Polska, Warszawa 2014, p. 449.

[28] P. Bialoruski, A. Rozenau-Rybowicz, D. Szlenk-Dziubek, *Atlas kultury wspolczesnej wojewodztwa malopolskiego*, Urzad Marszalkowski Wojewodztwa Malopolskiego, Krakow 2009, p. 9.

[29] I. Bernatek-Zagula, *Prawna ochrona…*, op. cit., p. 147.

[30] Act of June 6, 1997 – The Penal Code (Journal of Laws of 1997, No. 88, item 553, as amended).

tion, whereas the 2003 Act mentions only the destruction or damage of a monument as actions directed at these goods in accordance with Art. 108 of the Act, in the corresponding Art. 294 § 2 of the Penal Code the scope of such activities is broader, but it concerns the unspecified by legal definition goods of particular importance for culture. This is to contribute to the creation of a broad general clause, without its explicit definition in a specific act, which in the practice of creating criminal responsibility leads to the possibility that "there will be difficulties in establishing a list of regulations" [31].

Criticism of the Act was also formulated in connection with Art. 31 (1), under which the total cost of the necessary construction work or archeological research on monuments entered in the monuments register was put on the investor, usually on the owner or user of the antique property concerned[32]. However, the Ombudsman challenged this principle, calling for a framework for state participation in clear funding for such work or research. This view was shared by the judges of the Constitutional Court in the judgment of October 8, 2007, under which the Minister of Culture and National Heritage was obliged to grant financial support to a person carrying out the aforementioned work or research in a situation where its cost exceeds 2% of the planned investment (added Art. 82a(1) of the Act)[33]. It can be assessed that such a change certainly contributed to the improvement of cultural heritage protection in Poland[34].

Conclusions

The conducted analysis allows the formulation of some basic conclusions. They include the following:

- legal regulations in the sphere of cultural heritage protection in Poland after 1989 were characterized by a far-reaching redefinition of provisions and legal norms against the background of the years 1944-1989, including the period of validity of the statutory act of 1962 in the PRL. The cultural heritage protection law and, in detail, the monuments protection law, has been di-

[31] I. Bernatek-Zagula, *Prawna ochrona…*, op. cit., p. 147.

[32] The validity of criticism was additionally supported by the case law of the Constitutional Court, which expressed the view that it cannot be constitutionally allowed that the statutory restrictions on the monuments protection create a situation, in which a property generates losses for the owner and, in spite of that, the legal obligation to keep an object in a state that guarantees its use by third parties is upheld. Cf. Judgment of the Constitutional Court of October 10, 2000, file P. 8/99, OTK ZU No. 6/2000, pos. 190).

[33] Judgment of the Constitutional Court of October 8, 2007, file K 20/07 (Journal of Laws of 2007, No. 192, item 1394).

[34] It is worth adding that the adoption of a new financing principle for construction works and archeological research at historic real estates was complementary to the international law, also obliging the Polish state to provide at least co-financing of archeological rescue works. This was directly determined by the European Convention for the preservation of archeological heritage of January 16, 1992 (Journal of Laws of 1996, No. 120, item 564). The introduced change was in line with the nature of the property right limitation justified by the public-legal interest and confirmed by the case law of the Constitutional Court. Cf. Judgment of the Constitutional Court of May 25, 1999, file SK 9/98, OTK ZU No. 4/1999, pos. 78.

rected at new priorities and challenges faced by the Polish state after the political and structural as well as economical and social breakthrough after 1989;

- the legal protection of cultural heritage in Poland after 1989 was characterized by the legislator's activity in the sphere of extending such protection to the rules and norms of constitutional rank as well as bilateral agreements with neighboring countries;
- after 2003, the statutory scope of the legal protection and care for monuments ought to be considered, while distinguishing the material importance of a monument in the light of the cultural good definition under the 1962 Act from the PRL period. It seems reasonable to write about the monuments protection as part of the cultural policy of the state, which also includes the more broadly understood cultural heritage protection based on the international provisions, which bounds the Polish state;

The presented content allows the thesis put forward at the outset to be proved, according to which after 1989 the legal regulations in the field of cultural heritage protection in Poland constituted a clear redefinition of objectives and priorities in this sphere compared to the period of the People's Republic of Poland. Some constructions have been taken over or inspired by the acquis communatutaire of the Second Polish Republic, not the PRL. The legislator critically evaluated the solutions worked out in the years 1944-1989, and the scope of necessary legislation changes was so great that it influenced the long-lasting development of the new law on the cultural heritage protection after the breakthrough of 1989. After 2003, it is important to write about the legal language of the protection and care for monuments, despite their obvious links with the protection and care for cultural goods.

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The author declared no conflict of interests.

Author contributions

Author contributed to the interpretation of results and writing of the paper. Author read and approved the final manuscript.

Ethical statement

The research complies with all national and international ethical requirements.

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