

**Legal protection and safety of works of art and other objects
with historical or scientific value borrowed from other countries
for the purpose of temporary exhibitions organised
within the territory of Poland**

Jacek Dworzecki – Izabela Nowicka – Andrzej Urbanek – Izabela Szkurlat

Prof. et. Prof. Jacek Dworzecki, PhD.
Military University of the Land Forces in Wroclaw
Academy of the Police Force in Bratislava
e-mail: jacekdworzecki@o2.pl
<https://orcid.org/0000-0002-9357-5713>

Assoc. Prof. Izabela Nowicka, PhD.
Military University of the Land Forces in Wroclaw
e-mail: izabela.nowicka@awl.edu.pl
<https://orcid.org/0000-0001-8974-0803>

Assoc. Prof. Andrzej Urbanek, PhD.
Pomeranian University in Slupsk
e-mail: andrzej.urbanek@apsl.edu.pl
<https://orcid.org/0000-0003-0667-4068>

Msc. Izabela Szkurlat, PhD.
Pomeranian University in Slupsk
e-mail: izabela.szkurlat@apsl.edu.pl
<https://orcid.org/0000-0001-6320-8421>

Muzeológia a kultúrne dedičstvo, 2022, 10:2:77-88
DOI: 10.46284/mkd.2022.10.2.5

Legal protection and safety of works of art and other objects with historical or scientific value borrowed from other countries for the purpose of temporary exhibitions organised within the territory of Poland
The article presents issues involving legal protection of borrowed works of art designated for temporary exhibitions outside the territory of their country of origin, which have frequently constituted the most crucial elements of national heritage of that country. Moreover, the mechanisms and regulations applied in the scope of insurance covering works of art and other objects with historical or scientific value which formed part of exhibitions organised by museums worldwide have been portrayed. The article presents experiences and solutions applied in this regard in Poland further to specifying international legal regulations that refer to the discussed issue.

Keywords: collections mobility, collections in transfer, museum, legal protection of works of art

Introduction

The question of what a twenty-first-century museum is to be like is one we certainly are unable to answer. We may however strive to pinpoint certain outlining directions of shifts that touch upon those constituting a mainstream of social life of the highest institutions within the national system of culture.¹ Following the indications of experts, the old model of museum-

¹ STASIAK, Andrzej. O Potrzebie rewolucji w polskim muzealnictwie XXI wieku [On the need for a revolution in twenty-first-century Polish museology]. In: STASIAK, Andrzej. (eds) *Kultura i turystyka – razem czy oddzielnie?* [Culture and tourism – together or separately?]. Łódź: WSTH Publishing, 2007, pp. 115–134.

templum faded away a long time ago and has been replaced by the model of museum-forum, thus, audience-friendly and audience-open institution, which is attentive when it comes to the needs and individual experiences of all visitors.² This undoubtedly stems from a number of initiatives undertaken by the museum personnel, targeted at exposing museum exhibits to the widest possible group of recipients. The changing social reality has imposed on these institutions and specifically on the people that represent them a broader perspective in the perception of the role museums ought to play in social awareness as well as a flexible reactivity and openness to changes in the forms and methods by which to stay connected to the audience. Nowadays this challenge is faced not only by the museum employees of a given country but also by the whole international society, including state authorities. In this context considerations regarding the protection and safety of works of art and other movable items with historical, artistic or scientific value borrowed for temporary exhibitions organised in the territory of a given country have gained significance. The current form of the binding regulations in this scope has shaped itself on the basis of experiences gained by individual countries, which resulted in the implementation of international legal frameworks and general assumptions, these achievements subsequently entering the regulations of individual countries. It does not however mean that legal protection over movable items with historical, artistic or scientific value borrowed for temporary exhibitions organised in the territory of a given country has become trouble-free. The country and insurance guarantees necessary to execute the adopted form of protection became a critical issue. Restrictions on culture promotion through the displaying of works of art stem not only from the lack or shortage of legal regulations but also from the occurrence of situations with an unexpected course or nature, such as the SARS-CoV19 pandemic.

Shaping provisions and regulations concerning the legal protection of movable items with historical, artistic or scientific value which are borrowed for temporary exhibitions outside the borders of their country of origin

The history of military conflicts has been inextricably linked to appropriations, takeovers of museum and private collections or conducting changes in the scope of the existing state territories. Furthermore, changes in the character of property (nationalisations) as a result of political transformations also pose a threat to cultural heritage. Whereas demands for the return of works of art stolen during military conflicts supported by legal regulations covered by the acts of international law and the binding EU law hardly raise any concerns,³ the consequences of nationalisation in certain European countries (i.e. formation of Croatia, Montenegro, Serbia,

² ROKOSZ, Katarzyna. Program edukacyjny [The educational programme]. In: *ABC Organizacji wystaw czasowych w muzeach* [ABC of temporary exhibition organisation in museums], vol. 1, 2012, p. 21.

³ Convention on protection of cultural goods in case of military conflicts together with the Executive Regulations to the Convention and the Protocol on Protection of Cultural Goods in case of military conflicts signed in the Hague on May 14, 1954 (Journal of Laws from 1957, No 46, item 212); European Cultural Convention elaborated in Paris on December 19, 1954, Journal of Laws from 1990 no 8, item 44); European Convention regarding the protection of archaeological heritage, elaborated on May 6, 1969 in London; Convention concerning means targeted at prohibiting and preventing illegal transport, export and relocation of cultural heritage, elaborated in Paris by the General Conference of the United Nations Organization for Education, Science and Culture during the seventeenth session held on November 16, 1972 (Journal of Laws from 1976, no 32, item 190); UNIDROIT Convention on stolen or illegally exported cultural heritage goods, concluded on June 24, 1995.

Slovenia in 1991) have triggered almost unresolvable political-ownership issues.⁴

In January 2008 Russia cancelled the exhibition “...from Russia: French and Russian painting works of art 1870–1925” which should have commenced at the end of January at the Royal Art Academy in London. Russian authorities justified their decision with fear, indicating British law as not protecting the paintings against claims on the side of the successors of former owners from whom the Soviet authorities had taken away these works of art during the October Revolution of 1917.⁵ The Russian side rejected the arguments made by the British authorities whereby it was noted that international law protects the works of art borrowed abroad against confiscation. As a result, the British government was forced to introduce additional provisions designated to protect the paintings against all lawsuits and excluding their withholding even for one day.

In 2012, Poland found itself in a similar situation, when the Czech Ministry of Culture, in fear of confiscation, did not allow the export to Warsaw of the exhibition “Europa Jagellonica” presenting the most precious items and works of art of such artists as Albrecht Duerer, Lucas Cranach Starszy, Veit Stoss and Master Paul from Levoca. The goal of the exhibition was to present the social, political and economic processes of the era during the times of the Jagiellonian reign in Poland, the Czech Republic and Hungary.⁶ This situation as well as other similar ones led the Polish authorities into believing that there is a necessity to ensure the protection of foreign works of art that are transported into Poland as part of international exhibition borrowings.

Undoubtedly, the present legal state both with respect to the procedure of “borrowing” a work of art senseu stricte and the insurance procedure in this scope is a result of a number of actions on an international scale, targeted at securing the works of art on the one hand and consolidating the procedures on the other. Hence, the adoption of principles elaborated by the International Council of Museums gathered in the Code of Ethics of ICOM.⁷ The provisions of the Code indicate that “If there are no formulated rules in a given country, it may apply for the issuance of a Directive of Proceeding to the Secretary Office of ICOM, national ICOM committee or relevant international committee of ICOM. National organizations and specialized organizations involved in museum activity are advised to form supplementary rules based on this code.”⁸

The international community undertook certain individual initiatives in the above scope, an example of this being France in 1994,⁹ and five years later, statutory protection against

⁴ Regulation of the Council of the European Union 3911/92 on December 9, 1992 no. 395 Council Directive no. 93/7/EEG of March 15, 1993 regarding return of cultural goods exported in breach of the law from the territory of the Member State (Official Journal of March 30, 1993 establishing provisions for the purpose of implementing the Council Regulation (EEG) No 3911/92 regarding exporting cultural goods (Official Journal from 1993 no. 77); Regulation of the Council (EC) No 116/2009 of December 18, 2008 regarding exporting cultural goods (Official Journal Of EU from 2009, no 39).

⁵ Source: <https://wyborcza.pl/7,75399,4804377.html> (accessed June 25, 2021).

⁶ Source: <https://dzieje.pl/kultura-i-sztuka/czechy-nie-wysla-27-dziel-do-polski-na-wystawe-europa-jagellonica> (accessed June 25, 2021).

⁷ WALTOŚ, Stanisław. Kodeks Etyki ICOM dla Muzeów [ICOM Codex of Ethics for Museums], Warsaw: Wolters Kluwer, 2009, pp. 11–14.

⁸ WALTOŚ, Stanisław. Kodeks Etyki ICOM dla Muzeów [ICOM Codex of Ethics for Museums], Warsaw: Wolters Kluwer, 2009, p. 10.

⁹ Law no. 94-679 of August 8, 1994, Article 61. Source: https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000006698549 (accessed 28 June 2021).

confiscation was introduced in Germany.¹⁰ Similar regulations were adopted in 2002 in Belgium and,¹¹ a year later, in Austria.¹² In 2005, a regulation protecting against confiscation was adopted in Switzerland and a year after that in Romania.¹³ The same solutions were introduced in 2007 in Great Britain¹⁴ and in Israel.¹⁵ Some EU member states, such as Lithuania and Estonia, have implemented protection measures against confiscation while not forming separate acts but rather including proper provisions in the Civil Code.¹⁶ Furthermore, actions of the international community as part of the Mobility of Collection programme deserve special attention.

The subject of increasing the mobility of collections has been on the common EU cultural agenda since the Greek presidency in 2003 and has been addressed in a number of conferences held in the Netherlands, the United Kingdom, Finland and Germany. In 2005, the expert report *Lending to Europe* was published. The report identified obstacles to the exchange of cultural moveable heritage between the member states of the European Union. The report and the conferences resulted in *The Action Plan for the EU Promotion of Museum Collections' Mobility and Loan Standards* (2006). In 2006, during the Finnish Presidency, working groups were set up to produce standard documents and proposals relating to specific areas of interest. In 2009, the European Commission set up an “Open Method of Coordination” Committee on Collections Mobility which produced its final report in June 2010. Thus, progress has already been made and collections mobility has already gained some momentum. However, the results still need to be worked on and information has to be disseminated in the heritage and museum community.¹⁷

Obviously, these are not the only legal actions targeted at securing borrowed works of art, though they have shaped the current state of legal regulations and the directions of actions of museum experts from the European Union member states, including Poland.

¹⁰ Gesetz deutschen Kulturgutes gegen Abwanderung, KultSchG. Source: https://www.uni-trier.de/fileadmin/fb5/inst/IEVR/Arbeitsmaterialien/Staatskirchenrecht/Deutschland/Religionsnormen/Zweiter_Teil_Denkmalsschutz_Kulturgut_gegen_Abwanderung.pdf (accessed June 29, 2021).

¹¹ Belgium: The Programme Law of December 24, 2002. However, the Belgian regulation has not been applied since 2004.

¹² Bundesgesetz über die vorübergehende sachliche Immunität von Kulturgut-Leihgaben zum Zweck der öffentlichen Ausstellung”.

Source: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003081> (accessed June 14, 2021).

¹³ Act 438/27 from 2006 ratifying the UN Convention 2004 59/38 adopted on December 2, 2006

¹⁴ Public Acts 2007 Tribunals Courts and Enforcement Act 2007. Explanation of the principles: https://www.culture.gov.uk/what_we_do/cultural_property/5122.aspx; Copy of Part 6. Tribunals Courts and Enforcement Act: https://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_13#pt6; Copy of The Protection of Cultural Objects on Loan (publication and Provision of Information) Regulations 2008; https://www.opsi.gov.uk/si/si2008/uksi_20081159_en_1; Copy of the State Immunity Act 1978: https://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1978/cukpga_19780033_en_1 (accessed June 25, 2021).

¹⁵ Cultural Assets Loan Law (Limitation of Judicial Authority) z May 1, 2007.

¹⁶ Civil Code of the Republic of Lithuania July 18, 2000; VIII-1864; Vilnius, updated on December 16, 2008; XI-65; art. 9

¹⁷ Collections Mobility 2.0-Lending for Europe 21st c., <https://www.culture.gov.gr/en/service/SitePages/view.aspx?iID=2366> (accessed June 10, 2021).

Polish regulations in the scope of the legal protection of movable items with historical, artistic or scientific value borrowed for temporary exhibitions organised in the territory of the Republic of Poland

Poland has been an active participant of actions striving to form relevant conditions in order to ensure legal protection over movable items with historical, artistic or scientific value borrowed for temporary exhibitions organised in the territory of the Republic of Poland. It became a necessity which stemmed from historical determinants of the Polish state, combined with political, social and economic shifts throughout the whole of Europe and even the world.

In 2009, the Polish Ministry of Culture and National Heritage undertook, at the request of the Polish National Committee ICOM, works on the preparation of provisions introducing the issue of the protection against confiscation of objects borrowed from abroad by Polish national and self-governmental museums. As pointed out by D. Folga-Dlugoszewska, “works were long-term, though it was reiterated on a number of occasions that it was crucial to provide protection and smoothness of cultural exchange between Polish and foreign institutions of culture”.¹⁸ In the opinion of the ministry representatives involved in legal changes, the fast introduction of the necessary regulations was designated to allow the Polish state to realise the commitments specified, among others, in Art. 6 of the Constitution of the Republic of Poland, according to which point 1 States “The Republic of Poland creates conditions of dissemination and equal access to the goods of culture which have been a source of identity for the Polish nation, its persistence and growth”, as well as the provision of point 2 that “The Republic of Poland provides help to the Poles residing abroad in maintaining their ties with the national cultural heritage”.¹⁹

In April of 2014, the Polish Sejm commenced legislative works concerning the deregulation of more than one hundred professions. In the framework of these works, the MPs also handled the issue of legal protection over movable items with historical, artistic or scientific value borrowed for temporary exhibitions organised in the territory of the Republic of Poland (the so-called museum immunity). As a consequence of these actions of August 5, 2015 the Act on amending the acts that regulate the conditions of access to certain professions was adopted.²⁰ In article 5 of this act changes concerning the Act on Museums in force from November 21, 1996 were introduced. An institution of immunity for borrowed objects for the duration of a given exhibition was introduced, prior to the submission of any potential claims raised by third parties. Art. 31 a in its full version adopted the following wording:

1. A movable item with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised in the territory of the Republic of Poland, also referred to as “movable item”, may be covered by legal protection, if: 1) its transfer into the territory of the Republic of Poland rests in the public interest; 2) it cannot be found within the territory of the Republic of Poland;

¹⁸ FOLGA-JANUSZEWSKA, Dorota. Muzea w Polsce – jakich ustaw potrzebujemy pilnie? The change in the guarantee rules and the implementation of work on the act on securing against confiscation preceded by the act on the examination of origin [Museums in Poland – what laws do we need urgently? The change in the guarantee rules and the implementation of work on the act on securing against confiscation preceded by the act on the examination of origin]. In: SZAFRAŃSKI, Wojciech. ZALASIŃSKA, K. (eds.) Prawna ochrona dziedzictwa kulturowego [Legal protection of cultural heritage], Poznań: Wydawnictwo Poznańskie, 2009, pp. 93–103.

¹⁹ The Constitution of the Republic of Poland of April 2, 1997, adopted by the National Assembly on April 2, 1997, adopted by the Nation in a constitutional referendum on May 25, 1997, signed by the President of the Republic of Poland on July 16, 1997. (GOV Official Journal 1997 no. 78 item 483).

²⁰ Act of August 5, 2015 on amending acts that regulate conditions of access to performing certain professions (Journal of Laws from September 30, 2015 item 1505).

3) its transfer to the territory of the Republic of Poland complies with the law; 4) it was not transported from the territory of the Republic of Poland illegally; 5) the organisation of a temporary exhibition without covering this item with legal protection would not be possible or would result in not proportionally high costs of its exhibition towards the costs of exhibition organisation; 6) the temporary exhibition will be organised by: a) an institution of culture in the meaning of the Act of October 25, 1991 on organising and conducting cultural activities or b) a museum that is not a cultural institution, entered into the list referred to in art. 5b paragraph 1 – further referred to as “exhibition organiser”.

The above legal regulations set the directions of the protection procedure towards movable items with historical, artistic or scientific value that are borrowed from abroad for a temporary exhibition organised in the territory of the Republic of Poland. Implementing acts were subsequently adopted directly to the above-specified acts in the form of regulations, such as:

- Regulation of the Minister of Culture and National Heritage of October 14, 2015 regarding a request for coverage with legal protection of movable items with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland;²¹
- Regulation of the Minister of Culture and National Heritage of October 14, 2015 regarding the notification template regarding the export to the territory of the Republic of Poland and notification template regarding the export out of the territory of the Republic of Poland of a movable item of historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland covered by legal protection;²²
- Regulation of the Minister of Culture and National Heritage of October 14, 2015 regarding the registration card of a movable item with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland covered by legal protection.²³

State Treasury guarantee versus commercial insurance

An issue that ought to be discussed in the context of the protection of borrowed works of art is that of insuring such items as well as their coverage with State Treasury guarantees. The growing costs of exhibitions, rentals and the maintenance of museums have led to the issues around insuring borrowed objects and, in particular, expanding insurance in the form of state guarantees being presented from a slightly different angle. Mobility of museums has been intrinsically linked with the necessity to secure the material interest of the party which displays the museum items in case of the occurrence of a random event resulting in damage to, or the deterioration or theft of the loaned objects. A substantial increase of accident risk

²¹ Regulation of the Minister of Culture and National Heritage of October 14, 2015 on request for coverage with legal protection of movable items with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland (Journal of Laws from 2015, item 1749).

²² Regulation of the Minister of Culture and National Heritage of October 14, 2015 regarding notification template regarding import to the territory of the Republic of Poland and notification template regarding export out of the territory of the Republic of Poland of a movable item of historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland (Journal of Laws from 2015, item 1769).

²³ Regulation of the Minister of Culture and National Heritage of October 14, 2015 regarding registration card of a movable item with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland covered by legal protection (Journal of Laws from 2015, item 1719).

appears in the course of international borrowing while the museum objects travel across large distances by various means of transport.²⁴ Furthermore, the practice of introducing sureties on the side of the State Treasury has triggered a change in the principle of their granting to the minimum insurance value of borrowed objects, from the level of which the guarantee amount was calculated. In pursuit of savings, many organisers of exhibitions have undertaken attempts to borrow works of art without insuring them while at the same time concluding the so-called agreements of “interinstitutional trust”. This form of mutual regulations has not however been adopted and commercial insurance has become the most frequently applied solution, which due to the extensive nature of costs, absorbs a large part of the public funds designated for the realisation of exhibitions.²⁵

In the Polish legal system both a surety and insurance constitute an institution in the scope of civil law. The institution of surety was regulated by Articles 876–887 of the Act of April 23, 1964 on Civil Code.²⁶ In accordance with Art. 216 of the Constitution of the Polish Republic the principles and mode of granting financial sureties by the Polish state must be specified in a legal act. The realisation of such construed obligation is encompassed by the Act of May 8, 1997 on sureties and guarantees provided by the State Treasury and some legal entities.²⁷ In accordance with its provisions, the Council of Ministers may grant sureties to non-residents (that is, foreign entities) for payments of compensations on account of damages, destructions or thefts of unsecured exhibition objects in Poland, the owners or authorised holders of which are non-residents. The total value of exhibition items must exceed the equivalent of 500,000 euros. Such a surety is granted at the request of the exhibition organiser which must be submitted to the relevant minister for culture and national heritage matters who subsequently recommends the request to the Council of Ministers. The request is elaborated on the basis of the Regulation of the Council of Ministers from June 8, 2012 on granting sureties or guarantees and the mode of granting sureties and guarantees by the State Treasury.²⁸

Yet another possibility within Polish law is so-called commercial insurance. Foreign exhibitions usually possess governmental guarantees and this takes away some liability from the insurance companies. Besides, the scope of protection of the works of art borrowed from a foreign country is quite large. Further, it is often combined with a visit of foreign insurance specialists in Poland and the elaboration of special reports regarding the requirements concerning protection for a given exhibition.²⁹

Polish national museums with small budgets at their disposal usually solely purchase the insurance for the most precious works of art. In fact, solely the largest cultural institutions and organisations can afford to insure works of art and other items with historical or scientific value,

²⁴ GREDKA, Iwona. State Treasury sureties and commercial insurance: comparative analysis. In: *Muzealnictwo* vol. 54, 2013, pp. 234–239.

²⁵ FOLGA-JANUSZEWSKA, Dorota. Subject areas and recommendations. In: DE LEEUW, Ronald. ACIDINI, Cristina. BERG, Kristian. FOLGA-JANUSZEWSKA, Dorota. HARTUNG, Harald. KVIETKAUSKAS, Rolandas. MATASSA, Freda. RAPETTI, Rodolphe. SCHAUERTE, Günther. WÄRE, Ritva. (eds) *Lending to Europe: Recommendations on collection mobility for European museums*. Rotterdam: Tripiti, 2005, pp. 11–13.

²⁶ Act of April 23, 1964 on Civil Code (Journal of Laws from 1964 number 16, item 93 as amended).

²⁷ Act of May 8, 1997 on sureties and guarantees granted by the State Treasury and some legal entities (Journal of Laws from 1997 number 79, item 484).

²⁸ Regulation of the Council of Ministers of June 8, 2012 on applying for granting sureties or guarantees and the mode of granting sureties and guarantees by the State Treasury (Official Journal 2012, item 675).

²⁹ Source: <https://www.parkiet.com/gospodarka/art25998351-dzielo-sztuki-pod-ochrona> (accessed March 20, 2021).

which are addressed by the insurance companies as significant risk-bearing works of art. Due to the above-described risk carried by the legal protection of movable items with historical, artistic or scientific value borrowed from abroad for temporary exhibitions organised in the territory of Poland, one of the insurance companies organising insurance policies of museum exhibits is Powszechny Zakład Ubezpieczeń SA. The insurance procedure concerning the discussed exhibits was specified in the General Terms and Conditions of Insurance for Exhibitions and Fairs Experts adopted on October, 24 2016 by way of resolution of the Management Board of Powszechny Zakład Ubezpieczeń SA.³⁰

Powszechny Zakład Ubezpieczeń SA, which is the largest Polish insurance company, holds state treasury guarantees covering the entire scope of its business as well as three types of offered insurance policies dedicated to the sector of works of art, including:

- insurance during transport to an exhibition or art fairs – in Poland and abroad (offered in five scopes);
- insurance against fire and other natural disasters during storage and exposition;
- insurance against theft with burglary and robbery during storage and exposition.

In accordance with the content of § 3 of the General Terms and Conditions of Insurance for works of art and museum exhibits offered by Powszechny Zakład Ubezpieczeń SA, this insurance covers museum exhibits, exhibition and trade items specified contractually indicated by the insurer, encompassing museum exhibits, exhibition and fair items, including works of art, artistic goods and industrial goods, referred to as “property”, presented during exhibitions or fairs in the country or abroad.

One should point out that property the transport or import into Poland of which is prohibited cannot constitute the subject of insurance unless such prohibition does not concern the insured property as per the date of insurance agreement conclusion. Importantly, the insurance sum for a work of art or for another property valuable from the perspective of national heritage specifies the insured item based on the value of insurance subject at the time of its submission for insurance purposes. The insurance sum may be specified according to the replacement value, accounting gross value or factual value. Upon request of the insurance company with regards to the works of art, the insurance sum towards a property may be specified according to the purchase price, replacement value or market value. Furthermore, the insurance sum cannot exceed the value of insurance subject and if the contractually agreed insurance sum exceeds the value of the insurance subject (overinsurance), then Powszechny Zakład Ubezpieczeń SA is responsible for damages solely up to the value of the insurance subject. In case of underinsurance, that is, when the contractually agreed insurance sum is lower than the value of the insurance subject, Powszechny Zakład Ubezpieczeń SA bears responsibility for damages up to the level at which the insurance sum differs from the value of the insurance subject. What is more, if during the period of insurance coverage an increase in the value of insured works of art occurs, the insuring entity may, in agreement with the insurer, increase the insurance sum pursuant to the payment of an additional insurance premium. Undoubtedly, the insurer envisaged a number of conditions that exclude or limit the liability of Powszechny Zakład Ubezpieczeń SA and specified in detail the obligations of the insured party and the insurer which stem from the insurance agreement regarding establishing the level

³⁰ Resolution No UZ/425/2016 of the Management Board of Powszechny Zakład Ubezpieczeń SA of October 24, 2016 with amendments established by way of resolution No UZ/2015/2018 of July 6, 2018
Source: https://www.pzu.pl/_fileserver/item/1513542 (accessed March 26, 2021).

of damages, recourse claims etc.

Experts note that one cannot identify a surety agreement with an insurance contract, nor perceive a surety institution directly as a substitute for a commercial insurance provider. One ought to bear in mind that insurances are a manifestation of liability of a guarantee nature, whilst an institution for the provision of compensation for damaged, destroyed or lost exhibition exhibits, as per the Act on guarantees and sureties granted by the State Treasury and some legal entities, is structured as a classic surety and not a guarantee.

Legal protection of movable items with historical, artistic or scientific value borrowed for a temporary exhibition organised in the territory of the Republic of Poland

Undoubtedly museums have been forced to deal with what has happened since 2020 – that is, SARS-CoV-19 pandemic. The Polish Ministry of Culture and National Heritage and the Chief Sanitary Inspector announced the guidelines for organisers of cultural events during the SARS-CoV-19 pandemic in Poland.³¹ Regardless of the restrictions in 2019, 959 museums and museum branches remained active (1.5% more than in 2018). Museums displayed 2,700 exhibitions and organised more than 5,000 temporary exhibitions in the country (including 117 exhibitions from abroad).³² In 2020, when the SARS-CoV-19 pandemic spread worldwide, 932 museums and museum branches maintained their activities in Poland.³³ 16.6 million visitors were welcomed. The museums displayed 2,400 exhibitions and organised 3,000 temporary exhibitions in the country (including 41 exhibitions from abroad). 50.9% of museums and museum branches limited their cultural activities due to the SARS-CoV-19 pandemic, that is, temporarily did not display or offer their cultural portfolio to the audience. The majority of entities, however, limited their activities in March (47.0%), thus, in the first month after the introduction of restrictions by the Polish government due to the spread of the virus. Museums realised open-air exhibitions and outdoor events. Almost 19% of Polish museums also reached out with their exhibition offer beyond Polish borders. The majority of them were organised in the Czech Republic, Germany and France.³⁴ Exhibitions organised in France enjoyed the largest popularity, being visited by a total of more than 85,000 visitors, the aetiology of origin of several exhibited items dating back to the French revolution, drawing reference to the principle of *bien national*. Confiscations undertaken in the period of the French revolution covered most of all church authorities, aristocracy or emigrants and were targeted at enriching the national heritage of the forming republic.³⁵

During the pandemic, works of art borrowed from the foreign museum centres that were used during temporary exhibitions organised in Poland were covered by legal protection of movable items with historical, artistic or scientific value (the so-called museum immunity). One of such examples of the above-specified museum immunity was the protection of

³¹ Source: <https://www.gov.pl/web/kultura/wytyczne-dla-organizatorow-imprez-kulturalnych-i-rozrywkowych-w-trakcie-epidemii-wirusa-sars-cov-2-w-polsce> (accessed June 22, 2021).

³² Source: <https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/dzialalnosc-muzeow-w-2019-roku,12,3.html> (accessed June 22, 2021).

³³ Starting with data from 2020, solely museums that operate on the basis of the statute or bylaws agreed with the relevant minister on culture and protection of natural heritage are referred to as museums, in accordance with Art. 6 of the Act of November 21, 1996 on museums (Journal of Laws from 2012, item 987 as amended).

³⁴ Source: <https://nimoz.pl/dzialalnosc/wydawnictwa/seria-statystyka-muzeow> (accessed June 24, 2021).

³⁵ PROKÚPEK, Marek. Systém řízení francouzských národních muzeí [Management system of French national museums]. In: *Museology and Cultural Heritage*, vol. 5, 2017, Is. 1, p. 160.

museum items borrowed in 2021 from such countries as Germany. It drew reference to the area of functioning of the Royal Residence in the areas of the former Republic of Poland. The document concerning the legal protection of the above-specified collections was signed by the Minister of Culture and Natural Heritage.

Conclusions

The museum sector constitutes one of the key components supporting the national identity and cultural heritage of every modern society forming an organised statehood. Globalisation and mass communication have contributed to the transformation of the transmission and the role assigned to museums over generations. Thus, bearing in mind the impact of museums on shaping the social identity of citizens forming a state organism, all initiatives that enable the full and broadest possible access to museum resources originating not only from the native country gain particular significance. Activities in this regard ought to constitute a commitment made by the whole international community. Nevertheless, the burden of necessary actions that serve the purpose of familiarising the society with cultural heritage and works of art that originate not only from the area of their own country will always rest on the side of state authorities organising exhibitions or expositions. The legal protection of movable items with historical, artistic or scientific value borrowed for a temporary exhibition organised within the territory of the Republic of Poland is always subjected to assessment by Polish as well as foreign museum experts and insurance specialists as well as Polish citizens striving for museum novelties.

References

- FOLGA-JANUSZEWSKA, Dorota. Subject areas and recommendations. In: DE LEEUW, Ronald. ACIDINI, Cristina. BERG, Kristian. FOLGA-JANUSZEWSKA, Dorota. HARTUNG, Harald. KVIETKAUSKAS, Rolandas. MATASSA, Freda. RAPETTI, Rodolphe. SCHAUERTE, Günther. WÄRE, Ritva. (eds) *Lending to Europe: Recommendations on collection mobility for European museums*. Rotterdam: Tripiti, 2005, pp. 11–13.
- FOLGA-JANUSZEWSKA, Dorota. Muzea w Polsce – jakich ustaw potrzebujemy pilnie? The change in the guarantee rules and the implementation of work on the act on securing against confiscation preceded by the act on the examination of origin [Museums in Poland - what laws do we need urgently? The change in the guarantee rules and the implementation of work on the act on securing against confiscation preceded by the act on the examination of origin]. In: SZAFRAŃSKI, Wojciech. ZALASIŃSKA, K. (eds) *Prawna ochrona dziedzictwa kulturowego* [Legal protection of cultural heritage]. Poznań: Wydawnictwo Poznańskie, 2009.
- GREDKA, Iwona. State Treasury sureties and commercial insurance: comparative analysis. In: *Muzealnictwo* vol. 54, 2013.
- PROKUPEK, Marek. Systém řízení francouzských národních muzeí [Management system of French national museums]. In: *Museology and Cultural Heritage*, vol. 5, 2017, Is. 1.
- ROKOSZ, Katarzyna. Program edukacyjny [The educational programme]. In: *ABC Organizacji wystaw czasowych w muzeach* [ABC of temporary exhibition organisation in museums], vol. 1, 2012.

STASIAK, Andrzej. O Potrzebie rewolucji w polskim muzealnictwie XXI wieku [On the need for a revolution in 21st-century Polish museology]. In: STASIAK, Andrzej (eds). *Kultura i turystyka – razem czy oddzielnie? [Culture and tourism: together or separately?]*. Łódź: WSTH Publishing, 2007.

WALTOŚ, Stanisław. Kodeks Etyki ICOM dla Muzeów [ICOM Codex of Ethics for Museums]. Warsaw: Wolters Kluwer, 2009.

Law regulations

The Constitution of the Republic of Poland of April 2, 1997, adopted by the National Assembly on April 2, 1997, adopted by the Nation in a constitutional referendum on May 25, 1997, signed by the President of the Republic of Poland on July 16, 1997. (GOV Official Journal 1997 no. 78 item 483).

Convention on protection of cultural goods in case of military conflicts together with the Executive Regulations to the Convention and the Protocol on Protection of Cultural Goods in case of military conflicts signed in the Hague on May 14, 1954 (Journal of Laws from 1957, No 46, item 212).

Act of April 23, 1964 on Civil Code (Journal of Laws from 1964 number 16, item 93 as amended).

European Convention regarding the protection of archaeological heritage, elaborated on May 6, 1969 in London.

Convention concerning means targeted at prohibiting and preventing illegal transport, export and relocation of cultural heritage, elaborated in Paris by the General Conference of the United Nations Organization for Education, Science and Culture during the seventeenth session held on November 16, 1972 (Journal of Laws from 1976, no 32, item 190).

European Cultural Convention elaborated in Paris on December 19, 1954, Journal of Laws from 1990 no 8, item 44).

Regulation of the Council of the European Union 3911/92 on December 9, 1992 no. 395 Council Directive no. 93/7/EEG from March 15, 1993 regarding return of cultural goods exported in breach of the law from the territory of the Member State (Official Journal from March 30, 1993 establishing provisions for the purpose of implementing the Council Regulation (EEG) No 3911/92 regarding exporting cultural goods (Official Journal from 1993 no. 77).

UNIDROIT Convention on stolen or illegally exported cultural heritage goods, concluded on June 24, 1995.

Act of November 21, 1996 on museums (Journal of Laws from 2012, item 987 as amended).

Act of May 8, 1997 on sureties and guarantees granted by the State Treasury and some legal entities (Journal of Laws from 1997 number 79, item 484).

Cultural Assets Loan Law (Limitation of Judicial Authority) z May 1, 2007.

Civil Code of the Republic of Lithuania 18 July 2000; VIII-1864; Vilnius, updated on December 16, 2008; XI-65.

Regulation of the Council (EC) No 116/2009 from December 18, 2008 regarding exporting cultural goods (Official Journal of EU from 2009, no 39).

Regulation of the Council of Ministers of June 8, 2012 on applying for granting sureties or guarantees and the mode of granting sureties and guarantees by the State Treasury (Official Journal 2012, item 675).

Act of August 5, 2015 on amending acts that regulate conditions of access to performing certain professions (Journal of Laws from September 30, 2015 item 1505).

Regulation of the Minister of Culture and National Heritage from October 14, 2015 on request for coverage with legal protection of movable items with historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland (Journal of Laws from 2015, item 1749).

Regulation of the Minister of Culture and National Heritage from October 14, 2015 regarding notification template regarding import to the territory of the Republic of Poland and notification template regarding export out of the territory of the Republic of Poland of a movable item of historical, artistic or scientific value, borrowed from abroad for a temporary exhibition organised within the territory of the Republic of Poland (Journal of from 2015, item 1769).

Resolution No UZ/425/2016 of the Management Board of Powszechny Zakład Ubezpieczeń SA of October 24, 2016 with amendments established by way of resolution No UZ/2015/2018 from 6 July 2018

Internet sources

<https://www.parkiet.com/gospodarka/art25998351-dzielo-sztuki-pod-ochrona> (accessed March 20, 2021).

https://www.pzu.pl/_fileserver/item/1513542 (accessed March 26, 2021).

<https://www.culture.gov.gr/en/service/SitePages/view.aspx?iID=2366> (accessed June 10, 2021).

https://www.ris.bka.gv.at/GeltendeFassung_wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003081 (accessed June 14, 2021).

<https://www.gov.pl/web/kultura/wytyczne-dla-organizatorow-imprez-kulturalnych-i-rozrywkowych-w-trakcie-epidemii-wirusa-sars-cov-2-w-polsce> (accessed June 22, 2021).

<https://stat.gov.pl/obszary-tematyczne/kultura-turystyka-sport/kultura/dzialalnosc-muzeow-w-2019-roku,12,3.html> (accessed June 22, 2021).

<https://nimoz.pl/dzialalnosc/wydawnictwa/seria-statystyka-muzeow> (accessed June 24, 2021).

https://culture.gov.uk/what_we_do/cultural_property/5122.aspx (accessed June 25, 2021).

<https://wyborcza.pl/7,75399,4804377.html> (accessed June 25, 2021).

<https://dzieje.pl/kultura-i-sztuka/czechy-nie-wysla-27-dziel-do-polski-na-wystawe-europa-jagellonica> (accessed June 25, 2021).

https://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_13#pt6 (accessed June 25, 2021).

https://www.opsi.gov.uk/si/si2008/uksi_20081159_en_1 (accessed June 25, 2021).

https://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1978/cukpga_19780033_en_1 (accessed June 25, 2021).

https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000006698549 (accessed June 28, 2021).

https://www.uni-trier.de/fileadmin/fb5/inst/IEVR/Arbeitsmaterialien/Staatskirchenrecht/Deutschland/Religionsnormen/Zweiter_Teil_Denkmalsschutz_Kulturgut_gegen_Abwanderung.pdf (accessed June 29, 2021).