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LEGAL AND ORGANISATIONAL CONDITIONS OF MONUMENTS PROTECTION IN THE EVENT OF ARMED CONFLICT OR EMERGENCIES

Summary:

The protection of historic properties in case of an armed conflict and crisis situations should be a part of public tasks. The fundamental act regulating the issue of the historic buildings preservation in Poland is the Act of 23 July 2003 on the protection of monuments and the care of historical monuments. In terms of the monuments protection in case of danger, the managers of the organisational units, and bodies preparing monuments protection plans or employees authorized by them are responsible for the organisation, co-ordination, and directing of the preparatory work. In turn, the heritage preservation plans are an integral part of the civil defence plans and are the subject to the annual update.

Key words: *heritage preservation, armed conflict, crisis situation*

The fundamental act regulating the issue of historic properties protection in Poland is the Act of 23 July 2003 on the protection of monuments and the care of historical monuments¹, that implements the Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State². The Act defines the object, the scope and the form of historic buildings

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¹ The Act of 23 July 2003 on protection of monuments and care of historical monuments (Journal of Laws 2014, item 1446, as amended).

² Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ,WE L 74 of 27 March 1993.

protection, as well as the care of historical monuments, and the rules for creation of the national programme for the protection of historical monuments and financing of conservation and renovation work, and building works at historical sites, also the organisation of the historical monuments protection authorities. It should also be noticed that the Act does not violate the regulations on museums, libraries, as well as Polish language, environmental law, nature conservation, on real property management, on planning and spatial development, construction law, on the protection of personal data, and on the protection of classified information. .

Heritage preservation refers inter alia to taking actions by the public administration authorities, which aim at: ensuring the legal, organisational and financial conditions that enable the long term preservation of the historical sites and their development and maintenance; prevention of risks that may affect the monuments value, and preventing destruction and inappropriate use of historical heritage. Moreover, public administration authorities are obliged to protect from theft, loss or illegal export of monuments abroad, monitor the monuments condition and purpose and take into account protection tasks in planning and spatial development as well as in the environment development³. The owner or the historic building holder is additionally obliged to carry out conservation, restoration and building works at the historical site, the protection and maintenance of the monument and the surroundings in the best possible condition, as well as use of the historical site in accordance with the long term preservation of its cultural value⁴.

Immovable historical properties, regardless the state of their preservation, in particular: cultural landscapes, urban and rural layouts, building assemblies, works of architecture and construction, construction of defence works, technical objects, including mines, ironworks, power stations and other industrial plants, cemeteries, parks, gardens and other forms of designed green area, sites commemorating historical events, or activity of personalities of high standing or institutions, all are subject to protection and care. Also archaeological heritage, being the field legacy of the prehistoric settlement, cemeteries, barrows, relics of economic,

³ The Act of 23 July 2003 on the protection of monuments ..., Article 4.

⁴ Ibid, Article 5.

religious and artistic activity, as well as traditional names of the building are subject to protection and care⁵.

In order to perform tasks connected with the protection of monuments, four types of protection have been identified:

- register of monuments;
- listing as historical monuments
- creation of culture park;
- establishing protection in local spatial planning or adequate decision⁶.

The legal basis for listing a property into the register of monuments constitutes the decision of the Provincial Monument Preservation Officer, who simultaneously keeps the register of monuments for the province heritage. The register may also include the historical site of the registered monument, as well as the geographical, historical or traditional name of the monument. The register listing of the immovable monument is entered in the Land and Mortgage Register of the property at the request of the Provincial Monument Preservation Officer⁷.

The District Governor in compliance with the Provincial Monument Preservation Officer, may place on the registered immovable monument a sign informing that the monument is eligible for protection. The design of the sign placed on the registered immovable monuments was defined in the Regulation of the Minister of Culture of 9 February 2004 on the design of the information sign placed on the immovable monuments entered in the register of monuments⁸. The procedure in case of the removal of a monument of the register is initiated automatically either at the request of the monument owner or the perpetual usufructuary, of the land the property is situated. The removal of the registered monument

⁵ Ibid, Article 6.

⁶ That is in the decision on the public interest investment location, decision on land development, decision concerning the permission for the implementation of road investment, decision concerning the location of a railway line, or decision concerning the permission for the implementation of public civil aviation (source: Act of 23 July 2003 on the protection of monuments..., Article 7).

⁷ At the request of the Provincial Monument Preservation Officer the information concerning the register of the immovable monument is announced in the provincial official journal.

⁸ Regulation of the Minister of Culture of 9 February 2004 on the design of the information sign placed on the immovable monuments entered in the register of monuments, Journal of Laws from 2004 No. 1669, item 259.

takes place in the case of the destruction of historical, artistic or scientific value or when the building value being the basis for the monument register listing has not been confirmed by new academic findings. In the event of a monument's removal from the register, the building sites are also removed from the register. The register removal is the result of the decision of the Minister competent of Culture and National Heritage.

The immovable registered monument or a cultural park presenting a special value for culture may be classified as the historical monument. The historical monument recognition is credited by the President of the Republic of Poland, due to the regulation, at the request of the Minister competent of Culture and National Heritage, however the proposal must be reviewed by the Polish Council for the Protection of Monuments. The removal of the immovable registered monument as the historical monument follows the same procedure⁹. The Minister competent of Culture and National Heritage may additionally present to the World Heritage Committee a proposal regarding the historical monument register to 'World Heritage List', in order to protect the monument under the Convention concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972.¹⁰

A culture park is created in order to protect cultural landscape and preserve the distinctive natural areas including the immovable monuments characteristic for the building and settling local tradition. The decision concerning the cultural park creation is taken by the Council of Municipality resolution, after an opinion of the Provincial Monument Preservation Officer. The resolution defines the name of a culture park, its borders, a way of protection, as well as prohibitions and restrictions in force on its territory. Moreover, a head of commune (a mayor, the President of a city), in agreement with the Provincial Monument Preservation Officer, is supposed to prepare a culture park protection plan, which is due to be approved by the Council of Municipality. Additionally, in the areas where a culture park has been created, the local spatial planning is made¹¹. In the park, or in some of its parts, the prohibitions and restrictions may be established regarding: carrying out construction works, and industrial, agricultural, livestock farming,

⁹Act of 23 July 2003 on the protection of monuments..., Article 15.

¹⁰ Convention on the Protection of World Cultural and Natural Heritage, adopted in Paris on 16 November 1972, Journal of Laws from 1976 No. 32, items 190 and 191.

¹¹Act of 23 July 2003 on the protection of monuments..., Article 16.

trading or service activity; the change in the way of immovable monuments use; the placement of boards, notices, advertisements and other signs not linked to the culture park protection, except for the road signs and signs connected with the protection of order and public safety; collection and storage of waste¹².

Discussing the issue of the immovable monuments protection, one should notice that the monuments protection and care is taken into consideration while preparing and updating the spatial planning of the country, the provinces' strategy development, the provinces' spatial planning, the spatial planning of the inland maritime waters, the territorial sea, and the exclusive economic zone, analysis and studies within the spatial planning of the district, the municipals' strategy development, studies of conditions and directions of the spatial development of municipals and the local plans of spatial development¹³ or the opinion regarding the decision on establishing public interest investment location, the decision regarding the development conditions, the decision concerning the permission for implementation of the road investment, the decision concerning the location of the railway line, or the decision concerning the permission for the implementation of the public civil aviation¹⁴. In the mentioned above concepts, strategies, analysis, plans and studies, in particular the national protection and care programme of monuments is met, there are solutions necessary to prevent monuments risks, and ensure the protection while realising the investments and restoring to the best condition, as well as the purpose and land planning are established, with regard to the monument care. Furthermore, projects and changes of the spatial planning development

¹² Ibid, Article 17.

¹³ Within studies of the spatial planning in the district, and the local plans of spatial development, the following protection is taken into account: the immovable registered monuments, and their sites; other immovable monuments listed in the municipal monuments registry; culture parks.

¹⁴ Regarding the decision concerning the location of the public type investment, the decision referring to the development conditions, the decision relating to the permission for the implementation of the road investment, the decision concerning the location of the railway line, or the decision concerning the permission for the implementation of the public civil aviation, in particular the protection and care of immovable, registered monuments and their sites is taken into account, and other immovable monuments that are listed in the municipal monuments registry.

are subject to compliance with the Provincial Monument Preservation Officer in terms of the building development and land planning¹⁵.

The monuments registry is a basis for the creation of programmes concerning the monuments care by provinces, districts and municipalities. The national monuments registry, as a collection of the registration cards of the monuments listed in the province monuments registry, is kept by the General Monument Preservation Officer. In turn, the Provincial Monument Preservation Officer is responsible for the provincial monuments registry in the form of the registration cards listed in the province. Whereas, a head of commune (a mayor, the President of a city), is responsible for the municipal registry of the immovable monuments in the municipality.

The monuments protection bodies should be mentioned here. They include: the Minister competent for Culture and National Heritage, on behalf of whom the tasks and the competences are performed by the General Monument Preservation Officer and the head of commune, on behalf of whom the tasks and the competences are performed by the Provincial Monument Preservation Officer¹⁶.

The protection of monuments in case of an armed conflict and crisis situations refers to planning, preparation and implementation of the preventive, documentation, rescue and renovation projects in order to save the monuments from destruction, damage, or loss¹⁷. The organisation and way of the monument protection in case of the armed conflict or crisis situations, including administrative tasks of the appropriate level and the organisational units owning the monuments, directing the way of conducting the preventive works, was defined in the Regulation of the Minister of Culture and National Heritage of 25 August 2004 on the organisation and protection of the historical sites in the event of armed conflict and emergencies. Planning, preparation and implementation of the preventive, documentation, protective, rescue and renovation projects is achieved in four phases:

- prior to an armed conflict or crisis situation by preventive and preparatory measures;

¹⁵ Act of 23 July 2003 on protection of monuments..., Articles 18 – 20.

¹⁶ Ibid, Article 89.

¹⁷ Regulation of the Minister of Culture and national heritage of 25 August 2004 on the organisation and protection of the historical sites in the event of armed conflict and emergencies, Journal of Laws from 2004 No. 212 item 2153, § 1.

- in the period of increasing imminent threat of war by pre-crisis readiness by the competent crisis management authorities¹⁸;
- in time of and during an armed conflict or crisis situations by responding;
- after an armed conflict or crisis situations by protection and documents evidence.

Prevention and preparatory works include in particular the following projects and tasks: preparation of monuments protection plans in the event of the armed conflict or crisis situations, if they have not been made earlier, and their update; the control and improvement of the historical buildings technical condition; installing and maintaining the efficiency of the devices and security systems of the monuments, including detection and alarm signalling and keeping the evidence of monuments documentation. Also, at this stage, designing and implementing of technical and engineering work takes place, protecting the monuments, inter alia by increasing the class integrity and the improvement of the construction properties, protection against explosives, gales, snowstorms, floods or other reason flooding, landslides or collapses of the ground, as well as cover and casing of the specially valuable fragments vulnerable to destruction. Increasing readiness includes: the disassembly and hiding of the most valuable architectural details and the equipment elements; preparation and placement of the Hague Convention signs¹⁹; collection and keeping in readiness of the devices, equipment, tools, packaging and materials necessary to perform the protective works and rescue operations; organisation of the hazard monitoring system, and alarm and signalling; assigning and preparing of the human teams to safety work; organisation of owners, administrators and monuments users cooperation, as well as public administration authorities, special services and institutions, Armed Forces of the Republic of Poland, and the volunteering. During the responding, rescue actions are performed, and support is given to the fire-fighting units. The last stage- protection and documentation evidence– refers to the tasks

¹⁸ Defined in Article 12, paragraph 1 of the Act of 18 April 2002 on the state of natural disaster, Journal of Laws from 2002 No. 62, item 558 as amended.

¹⁹ Convention on the protection of cultural goods in the event of an armed conflict including implementing the Regulations of this Convention and the Protocol for the protection of cultural goods in the event of armed conflict, signed in Hague of 14 May 1954, Journal of Laws from 1957, No. 46, item 212.

performance linked to the protection of monuments against further destruction, documenting events, loss and action taken, and informing the competent public administration authority bodies regarding loss, action taken and possible help required.

The organisation and way of the monuments protection in the event of an armed conflict and crisis situations is planned in the organisational units that own the historical buildings and at the individual stages of administration, listing the resource state bound to the protection, as well as the risk, intention to act, a way of realisation, the necessary forces and means and the time and cost of the implementation in the prepared plans of the monuments protection (organisational units²⁰, municipal²¹, district²², province²³, national²⁴). The plans should include the necessary information in order to perform the preparatory works and the efficient coordination and protection management in the individual stages of operation, also the list of people authorized to take decisions and direct the protection should be available, and the ways of information transfer at all stages of the management should be specified. It should be noticed that the monuments protection plans are made accordingly to the

²⁰ The plan of the monuments protection of the organisational unit in the event of armed conflict or crisis situations is prepared by the manager of the organisational unit owning monuments, in compliance with the Provincial Monument Preservation Officer, and presented to be approved by a head of commune (a mayor, the President of a city).

²¹ The municipal plan of monuments protection in the event of armed conflict and crisis situations is prepared by the head of commune (the mayor, the President of a city); the plan is subject to agreement with the Provincial Monument Preservation Officer and the relevant competent authority of the civil defence in the district.

²² The district plan of the monuments protection in the event of armed conflict and crisis situations is prepared by the head of a district; the plan is a subject to agreement with the Provincial Monument Preservation Officer and the relevant competent authority of the civil defence in the province.

²³ The province plan of the monuments protection in the event of armed conflict and crisis situations is prepared by the Provincial Monument Preservation Officer, in agreement with the governor and the Head of the Civil Service.

²⁴ The national plan of the monuments protection in the event of armed conflict and crisis situations is prepared by the Minister competent of Culture and National Heritage. The Minister competent of Culture and National Heritage also coordinates the implementation of tasks to protect monuments against the risks of the crisis situations and presents the Director-General of the United Nations Educational, Scientific and Cultural Organisation a proposal regarding the registry of the monument to 'The International Register of protected Cultural Goods of special Care', in order to protect the monument, based on the Hague Convention.

potential and realistic risk, in particular in the event of: fire, flood, torrential rain, other reason flooding; gale; construction disaster, technical failure, chemical breakdown; demonstrations, and street riots, looting or vandalism; terrorist attack; armed conflict, according to 'Instruction for the preparation and implementation of plans for the preservation of historical monuments in the event of armed conflict and emergencies', the Annex to the Regulation from 2004 on the organisation and protection of the historical sites in the event of armed conflict and emergencies.

The control of regulations use and compliance concerning the monuments protection and care, is conducted by the Provincial Monument Preservation Officer or by the employees of the Provincial Heritage Monuments Protection Office acting on his behalf.

An important issue in terms of the monuments protection is the financing of the protection and care. The financing linked to the renovation and conservation work, and building works at historical sites, are the responsibilities of an individual or organisational unit, entitled to hold a legal title to the property, however, if the legal title to the monument is held by the local authority unit, financing is the competence of the municipality²⁵. It should be noticed that the entities that are the owners or holders of the registered monument, or possessing such a monument under a permanent supervision, may apply for a government grant of the state budget relating to the financing of the conservation and renovation and building works at the historical site. The grant for co-financing may be administered by the Minister competent of Culture and National Heritage out of the financial resources of the part of the state budget 'The Culture and Protection of the National Heritage' and by the Provincial Monument Preservation Officer out of the financial resources of the state budget, in the part where the governor is responsible for disposing.

The grant may be administered to both co-financing of the necessary conservation and renovation works, and building works, at the registered historical building, determined on the basis of the estimate, approved by the Provincial Monument Preservation Officer, that are performed in the year of the application submission by the applicant, regarding a grant, as

²⁵ Conservation, renovation and building works at the historical sites that are owned by the organisational units, included in the public finance sector, are financed out of the funds given accordingly to by the disposer of the budgetary resources either the local authority unit, to whom the units are liable to.

well as for works carried out in the period of three years preceding the year of application regarding the donation. The amount of the subsidy may be given up to 50% of necessary funds for the implementation of works at the historical site, however if the monument represents a historical, artistic or scientific value, or requires technologically complex work, the grant may be given up to 100% of the necessary funds for the implementation of works. The subsidy may also be given up to 100% of the necessary funds for the implementation of works in case of the necessity of the immediate conservation and renovation or building works. The grant may be offered also by the body competent of the municipality, district, or provincial self-government according to the regulations defined and accepted by the body up to resolution 100% of the necessary funds for the implementation of works at the historical site by the applicant.

The legislator anticipated the wide range of expenses connected with the conservation, renovation and building works, that the grant may be given to:

- preparation of technical and conservation expertises;
- performance of conservation or architectonic research;
- preparation of conservation evidence;
- programme development of conservation and renovation works;
- preparation of construction project according to the rules of the building law;
- preparation of project relating to the interior design;
- protection, maintenance and preservation of the monument value;
- structural stabilization of components responsible for the monument or their reconstruction to the extent necessary to preserve the monument;
- renovation or supplementation of plaster and architectonic lining or their complete reconstruction, including the characteristic colour of the monument;
- reconstruction of the damaged monument appurtenances, provided the reconstruction does not exceed 50% of the original material of the appurtenance;
- renovation or complete reconstruction of windows, including door frames and shutters, exterior door, roof rack, roofing, gutters and drain pipes;

- the modernisation of electrical installation in wooden monuments or in historical buildings that have original, made of wood components and appurtenances;
- completion of the moisture proof isolation;
- supplementation of the ground outlines of the works of the defensive architecture and immovable archaeological monuments of own forms of landscape;
- activities to exhibit existing, original elements of historic layout of the park or garden;
- the purchase of conservation and building materials, necessary to perform works at the historical site;
- the purchase and assembly of the burglar installation, and the fire protection and lighting protection installation.

Summing up, the monuments protection should belong to public tasks, which performance is justified by public interest, manifesting itself in the preservation of concrete objects and maintaining them by law and state organisational measures in the condition regarded as adequate. It should be noticed that the legislator is obliged to shape the law in the way as not to restrict the freedom of citizens, if it is not required by the essential public or individual interest, protected by the Constitution. The plans of the monuments protection though are an integral part of the civil defence plans and are subject to the annual update. It should also be pointed out that the managers of the organisational units and bodies preparing the plans of the monuments protection or the authorized employees, in compliance with the competent civil defence organs are responsible for the organisation, coordination and direction of the preparatory works in terms of the monuments protection, in the event of armed conflict or emergencies.

Legal acts

- [1.] Act of 23 July 2003 on protection of monuments and the care of historical monuments, Journal of Laws from 2014 , item 1446 as amended.
- [2.] Regulation of the Minister of Culture of 9 February 2004 on the design of the information sign placed on the immovable monuments entered in the register of monuments, Journal of Laws from 2004 No. 1669, item 259.

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- [3.] Convention on the Protection of World Cultural and Natural Heritage, adopted in Paris of 16 November 1972, Journal of Laws from 1976 No. 32, items 190 and 191.
- [4.] Regulation of the Minister of Culture and national heritage of 25 August 2004 on the organisation and protection of the historical sites in the event of armed conflict and emergencies, Journal of Laws from 2004 No. 212 item 2153.
- [5.] Convention on the protection of cultural goods in the event of armed conflict including implementing Regulations of this Convention and the Protocol for the protection of cultural goods in the event of armed conflict, signed in Hague of 14 May 1954 , Journal of Laws from 1957 No. 46, item 212.
- [6.] Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State, OJ,WE L 74 of 27 March 1993.