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HISTORICAL COMPONENT PARTS
AND MOVABLE APPURTENANCES OF MONUMENTS
THE OBJECT OF THE ENTRY
IN THE REGISTER OF MONUMENTS –
NOTES *DE LEGE LATA* AND *DE LEGE FERENDA*

1. PRELIMINARY REMARKS

The presented article aims to analyse the provisions of the law governing the object entered into the register of movable monuments under the currently applicable law, taking into consideration the status of a movable thing under civil law as a self-contained thing, component part or appurtenance. The article goes on to present some notes on the entry of items of fixed equipment pertaining to immovable monuments (this applies chiefly to church buildings) as component parts or movable appurtenances appended to immovable monuments. These notes can provide an opportunity for further legislative work in order to propose the content of regulations on the act on the protection and care of monuments.¹ The final part concerns the way of protecting folklore (intangible cultural heritage) by entering movable assets into the register of monuments along with an immovable monument as movable things which are treated as appurtenances of a particular place. The scope of our study does not encompass the special characteristics of archaeological monuments.²

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¹ Act of 23 July 2003 on the protection and care of monuments, Journal of Laws of 2014, item 1446 as amended [hereafter cited as PCM].

² See the study of regulations concerning movable archaeological monuments: M. TRZCIŃSKI, “Ochrona ruchomych zabytków archeologicznych,” in *Raport dotyczący stanu ochrony prawnej oraz*

The legal acts governing cultural heritage protection in Poland are many; this is due to the non-homogenous character and the wealth of elements that constitute cultural heritage. The fundamental legal act which underlies this system is the act on the protection and care of monuments, which in other countries has a status of codified law. This act defines in particular the object of protection and contains a legal definition of the monument. The act relies on the principle that historical objects are protected whether or not they have been recorded in a special register (list). This principle, however, is not fully implemented because many provisions of law that form norms concerning the protection of monuments are limited merely to monuments mentioned in a specific list. This is so because restrictions and obligations imposed on the owner of a historical property can be enforced only when it is certain whether a given object really constitutes a monument. The historical character of a thing is not an objectively measurable feature which can be evaluated by anybody, so authorities establish lists of monuments subject to special protection which is different to the care of monuments that are not listed. At present, there are many registers of objects which possess the status of a monument:

1) the register of monuments (with separate sections for movable, immovable and archaeological monuments); in the case of immovable monuments the provision requires that the entry in the register be disclosed in the land and mortgage register of the property – art. 9 para. 4 PCM);

2) records of monuments (which also contain monuments entered into the register, mainly immovable monuments and without the owner's consent; movable monuments are recorded at the provincial and national level but not at the municipal level, subject to the owner's consent in the case of movable monuments that have not been entered into the register);

3) the List of Heritage Treasures does not overlap with the register (movable monuments are entered *ex officio* or when requested), but an entry in this list may coincide with the one in the provincial records of monuments;

4) the national list of monuments which have been stolen or illegally exported (art. 23 PCM);

5) the National Register of Lost Cultural Property (encompassing movable objects entered into the register of monuments, recorded in the List of Heritage Treasures or in a museum inventory), the question being whether this register can include

kierunków zmian w zakresie prawnej ochrony zabytków ruchomych w Polsce, prepared as part of the National Programme for the Protection and Care of Monuments for 2014–2017, commissioned by the National Institute for Museums and Public Collections, ed. K. Zeidler (Gdańsk, 2016), 87–113.

lost component parts but deducted from the real property entered into the register of immovable monuments;

6) museum inventories (movable or immovable museum assets with a limited ownership status which belong to a registered museum or to a museum organiser without legal personality, books of deposits, and museum item record sheets);

7) a list of objects that are the property of the State Treasury or units of local government, introduced by the act on the organisation and involvement in cultural activities whose principal role is to carry out cultural activities;³

8) church inventories (mentioned in art. 64 para. 2 PCM); internal regulations of the Catholic Church of 1973 provide for the maintenance of special records to be used by proper diocesan organs and church administrators in order to protect works of art and cultural assets against theft; diocesan and religious departments develop the methods of taking inventories of such items and provide document templates to make such inventories;⁴

9) movable monuments included in collections recorded pursuant to specific provisions are collections listed in the National Library Resource; also collections listed in the National Archival Resource.⁵

³ Regulation of the Minister of Culture and National Heritage of 5 April 2013 on the list of locations belonging to the State Treasury or units of local government and involved mainly in cultural activities or locations which were established for such activities and cannot be used exclusively for other kinds of main activity, and on the manner in which locations are reported for registration, Journal of Laws, item 507 as amended.

⁴ The universally applicable provisions of national law, such as PCM, do not directly set apart sacred monuments elsewhere. The doctrine lays down that the record-keeping activity of institutions of the Catholic Church is initiated pursuant to art. 25 para. 1 of the Concordat (the concordat between the Holy See and the Republic of Poland) of 28 July 1993, Journal of Laws of 1998, No. 51, item 318), as well as pursuant to §5 of the norms of conduct in matters concerning sacred art promulgated by the Polish Episcopal Conference on January 25, 1973; see J.S. PASIERB, *Ochrona zabytków sztuki kościelnej*, amended and supplemented edition (Warsaw: Biblioteka Towarzystwa Opieki nad Zabytkami, 1995), 180–189, and T. SIENKIEWICZ, “Administracyjnoprawne warunki ingerencji administracji publicznej w sposób korzystania z obiektów sakralnych Kościoła Katolickiego wpisanych do rejestru zabytków,” *Studia z Prawa Wyznaniowego* 16 (2013): 301–31.

Moreover, the provision of art. 25 para. 2 of the Concordat lays down that competent public authorities and the Polish Episcopal Conference determine the rules of making available those cultural goods owned or controlled by the Church.

⁵ Act of 14 July 1983 on the national archival resource and archives, Journal of Laws of 2015, item 1446 as amended; Act of 27 June 1997 on libraries, Journal of Laws of 2012, item 642 as amended.

2. THE DEFINITION OF A MOVABLE MONUMENT IN THE PROVISIONS OF THE ACT ON THE PROTECTION AND CARE OF MONUMENTS

Law is not an empirical science hence it is not intended to reflect the reality in detail but rather to enable the pursuit of goals which are socially beneficial. Provisions of law do not objectively explain what a thing, matter etc. are – these are addressed by other sciences, for example physics. The perception of each legal norm requires interpretation during the process of application of law. In a system of law it is mandatory for administrative and judicial authorities – which apply the law – to interpret it. In practice, there are problems with the distinction between movable and immovable monuments, in particular with respect to parts of fixed equipment or interior decorations. When interpreting the provisions concerning the entry into the register of monument, apart from the provisions containing legal definitions (art. 3 PCM), we need to take into consideration also other provisions of the act from which it is apparent that a movable monument can be transferred into a museum, archive or a library in the course of a temporary seizure providing it is threatened by destruction (art. 50 PCM). The provisions concerning exports can be applied only to movable monuments. The following application areas of the definition of a movable monument can be therefore distinguished:

1) matters connected with registration: an entry into the register as requested by the owner, tightened requirements for an entry carried out *ex officio*, List of Heritage Treasures, list of stolen monuments, the national register of lost monuments, monument records only at the provincial and central level, inventory of museum assets (including books of deposits);

2) matters related to land development and construction law are important mainly with respect of archaeological monuments – the participation of the provincial inspector of monuments in planning and construction works, the zones of archaeological protection in local land development plans;

3) matters related to collections;⁶

4) matters related to restrictions on the exports of movable monuments;

5) transactions involving movable monuments (the right of pre-emptive purchase belongs to a registered museum⁷ or province), the right to pre-emptive purchase

⁶ Collections are defined by art. 6 para. 1 point 2 letter b as collections of items gathered and sorted in accordance with the ideas of those who created these collections.

⁷ The provision of art. 20 para. 2n of the act of 21 November 1996 on museums, Journal of Laws of 2012, item 987 as amended.

resting with a registered museum,⁸ questions related to the acquisition of a movable thing by a person who is not entitled to do so (art. 169 CC),⁹ and acquisitive prescription (art. 174 §2 CC);

6) administrative proceedings regarding obligations imposed on an owner or holder of a monument concerning the protection and maintenance of the material substance, making the monument available for examination, and the duty to pay for the maintenance of the monument;

7) information obligations imposed on the owner of a movable monument laid down by PCM;

8) specific regulations concerning the finding of a movable monument, treasure or archaeological monuments laid down by the civil code and the act on found property;¹⁰

9) the possibility of taking over the ownership of a monument or establishing temporary seizure (art. 50 PCM).

Art. 3 point 1 defines the notion of monument: this will be an immovable or movable object, parts or groups of thereof. However, the legislator decided to split this category into two groups with distinct objects. This implies that, *de lege lata*, **monument is either a movable or immovable object** because the assignment of a thing to one set precludes the assignment thereof to the other. Pursuant to art. 3 point 1 and point 3 PCM, the movable monument is a movable object, its part or a group of movable objects, made by man or connected with human activity, bearing testimony to a past era or an event,¹¹ the preservation of which lies in the interest of society due to its historical, artistic or scientific value.¹²

At the same time, analysis of art. 3 point 1 with respect to point 2 calls for an extension to the definition of a movable monument along the lines that **a movable**

⁸ Provision of art. 20 para. 1 of the act on museums.

⁹ Act of 23 April 1964, The Civil Code, Journal of Laws of 2017, item 459 as amended. [hereafter cited as CC].

¹⁰ Act of 20 February 2015 on found property, Journal of Laws of 2015, item 397.

¹¹ Monument is a thing which bears testimony to a past era or an event, which means that the constitutive element of its definition is its old age, see I. GREDKA, *Ubezpieczenia dóbr kultury w muzeach i zbiorach prywatnych* (Kraków: Wydawnictwo Universitas, 2013), 35 and the cited literature.

¹² The statutory conditions permitting a particular object to be recognised as a monument have an evaluative character. The historical, artistic or scientific value is assessed in a discretionary manner by administrative authorities which interpret those provisions. It is demonstrated in doctrine that the Polish legislator used an ordinary alternative when determining the features defining a monument as a legal category, which implies that it is sufficient for an object to manifest only one of the three enumerated values. See K. ZEIDLER, "Wartość zabytku jako kategoria normatywna," in *Wokół problematyki prawnej zabytków i dzieł sztuki*, ed. W. Szafrński (Poznań: Wydawnictwo Poznańskie, 2008), 2:41.

monument is not real property or its part because these categories of things are included in another group and they are termed immovable monuments. Therefore, obviously, a part of real property cannot be a movable monument, for example a mural, mosaic, terracotta tile or other wall and ceiling decorations, such as polychromes, cartouches attached to planar faces of a building, sgraffito decorations and other decorative elements made of plaster, pulpits, sculptures, decorations of fixed elements of a building, baptismal fonts and others, as long as they are made as fixed elements or decorations for a particular building and are permanently fixed in place, including stairs, handrails, door frames, doors and windows, including shop windows and stained glass.

So a historical component part of an immovable property is not a movable monument despite in practice the decorative elements of the walls, ceilings and floors are entered into the register of movable monuments (this is the case mainly with sacred architecture). However, this practice is not consistent with the interpretation of the provisions defining a movable monument as a movable object; neither is it consistent with the interpretation of the regulatory provisions concerning the maintenance of a register, whereby it is permissible to transfer a movable monument to another province.¹³ Meanwhile, it is impossible to detach decorations from walls and other surfaces without damaging the immovable monument itself or its integrity (protected by the right of the composition of a decoration).

Within the meaning of art. 45 CC, things are material objects only.¹⁴ Under civil law, no legal definition of a movable thing is provided, except that things are divided into movable and immovable, component parts and movable appurtenances. Apart from things, there are many other entities which can be the subject of legal transactions, for example energy, rights (e.g. receivables, stocks) or intangible assets (e.g. works). Things are objects of legal transactions occurring among people. They are also objects of administrative proceedings; they are distinguished from intangible assets such as works or digital content by the fact that they are material objects

¹³ Provision of §7 of the regulation of the Minister of Culture and National Heritage of 26 May 2011 on the maintenance of a register of monuments, national, provincial and municipal monument records, and the national list of stolen or illegally exported monuments, *Journal of Laws*, No. 113, item 61.

¹⁴ It is assumed in the legal literature that, in the normative sense, things are only such material objects which constitute material elements of nature (in a natural or processed state), isolated to such an extent that they can be treated as self-contained goods in legal transactions as long as they are financial assets and their condition is such that they can be controlled by people – see J. WASILKOWSKI, *Prawo rzeczowe w zarysie* (Warsaw: Państwowe Wydawnictwo Naukowe, 1957), 12–114; T. DYBOWSKI, *Ochrona własności w polskim prawie cywilnym* (Warsaw: Wydawnictwo Prawnicze, 1969), 36; S. RUDNICKI, “Komentarz do art. 45 k.c.,” in *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna*, ed. S. Dmowski and S. Rudnicki (Warsaw: Wydawnictwo Prawnicze LexisNexis, 2003), 172–73.

(only these objects of legal transactions can be perceived using the sense of touch). The dual division¹⁵ of objects of legal transactions into movable and immovable things entails a negative definition of a movable thing: it is **a thing which is neither immovable property nor a part thereof**.¹⁶ Additionally, it is a material object which is isolated from among other things in such a way that it can independently be the subject of legal transactions. The category of movable monuments also includes a class of things excluded from legal transactions: *res extra commercium*.¹⁷

With the above in mind, *de lege lata* we can propose a definition of a movable monument: **movable monument is a movable object, its part or a group of movable objects, not forming component parts of immovable property**, made by man or connected with human activity, bearing testimony to a past era or an event, the preservation of which lies in the interest of society due to its historical, artistic or scientific value.

A movable thing, including a movable monument, can be regarded as an appurtenance for immovable property as per the provisions of the Civil Code (see below).

It is very rare for a monument to be a uniform artefact comprised of one element (e.g. a glass). A painting is a thing but it comprises a frame and canvas, just like other movable and immovable monuments, which consist of at least several elements.¹⁸ Elements making up a thing and combined to create a single object as intended by its creator are in legal language referred to as component parts of a thing. According to art. 47 §2 CC, a component part of a thing is anything which cannot be detached therefrom without damaging or substantially altering the whole thing or without damaging or substantially altering the detached object. This does

¹⁵ See W.J. KATNER, "Rozdział XVII. Przedmioty stosunku cywilnoprawnego," in *Prawo cywilne – część ogólna*, vol. 1 of *System Prawa Prywatnego*, ed. M. Safjan (Warsaw: Wydawnictwo C.H. Beck, 2012), 1307ff.

¹⁶ S. GRZYBOWSKI, "Rozdział XI. Przedmioty stosunków prawnych," in *Część ogólna*, vol. 1 of *System Prawa Cywilnego*, ed. S. Grzybowski (Wrocław–Warsaw: Zakład Narodowy im. Ossolińskich, 1985), 414.

¹⁷ For a detailed analysis, see I. GREDKA and P. GWOŹDZIEWICZ-MATAN, "Obrót zabytkami. Analiza prawnoporównawcza na podstawie prawa włoskiego, francuskiego, niemieckiego i angielskiego," in *Ochrona zabytków ruchomych w wybranych obcych systemach prawnych*, a report prepared as part of *Report on the state of legal protection and trends in respect of legal protection of movable monuments in Poland* as part of the National Programme for the Protection and Care of Monuments for 2014–2017 commissioned by the National Institute for Museums and Public Collections, ed. P. Stec (Opole 2015), 74–77.

¹⁸ The law of the EU uses the notion of an integral part of a cultural object – see point 2 of Appendix 1 for Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods, Official Journal of the EU, L 39/01, addressing elements which form an integral part of monuments. See also O. JAKUBOWSKI, "Wywóz i przywóz zabytków ruchomych," in *Raport dotyczący stanu ochrony prawnej oraz kierunków zmian w zakresie prawnej ochrony zabytków ruchomych w Polsce*, 237.

not imply that the component parts are to be inseparably combined, for example wheels on a car are its component part but they can be easily removed. They are, however, fastened firmly because the proper operation of a car depends on its having wheels – in accordance with its socio-economic purpose. Each component part can be separated, for example a roof or a door frame can be dismantled. It still remains the property of the same owner but after the detachment it acquires the status of a separate movable thing. In the area of monument conservation, the consequences of the division between the main thing and its component parts are vital for the selection of provisions relating to movable or immovable monuments because the provisions of law sometimes apply to every kind of monument and at times they will apply to a specific group of monuments (movable or immovable ones).

Provisions of the law on the protection of monuments contain a definition of monument created for the purposes of this particular act, yet in the system of law they exert no impact on the interpretation of provisions contained in other normative acts, especially those determining the scope of application of legal norms governing transactions involving monuments – the notion of monument is used by the Civil Code with respect to the acquisition of ownership of a movable thing,¹⁹ by the law on real property management²⁰ with respect to transactions involving real property entered in the register of monuments²¹ and by other laws (such as the act on found property,²² act on spatial planning and development,²³ and construction law²⁴), which do not contain their own definition of monument. The interpretation of the notion “monument” in a system of law is constructed on the basis of definitions included in the act on the protection and care of monuments.²⁵

¹⁹ The acquisition of the ownership of a found movable thing which is a monument or an archival material is regulated by art. 187 §2 CC and 189 CC. For acquisitive prescription of a monument which is a movable object entered into the National Register of Lost Cultural Property, see art. 174 §2 CC. The provision of art. 169 §3 CC prevents *bona fide* acquisition of movables entered into the national Register of Lost Cultural Property.

²⁰ Act of 21 August 1997 on the management of real property, Journal of Laws of 2015, item 1774 as amended [hereafter cited as MRP].

²¹ The provision of art. 34 para. 4 MRP lays down that the sale, exchange, donation, or handover of **real property entered into the register of monuments** for perpetual usufruct, constituting the property of the State Treasury or a unit of local government, requires the consent of the provincial inspector of monuments.

²² Act of 20 February 2015 on found property, Journal of Laws, item 397.

²³ Act of 27 March 2003 on spatial planning and development, Journal of Laws of 2016, item 778 as amended.

²⁴ Construction Law Act of 7 July 1994, Journal of Laws of 2016, item 290 as amended.

²⁵ For taxes on goods and services, the legislator uses narrower terms: collectors’ items, works of art, and or antiques – see art. 74 para. 1 point 18 and art. 106e para. 3 of the act of 11 March 2004 on the tax on goods and services, Journal of Laws of 2016, item 710 as amended.

It is important to determine the application areas of the definition of a movable monument, which in practice create difficulty. The provisions defining a monument and contained in PCM are applied mainly within three domains:

1) administrative proceedings concerning the entry of things into a register (list, records, inventory, etc.), to which the owner of the monument is a party (for monument records or museum inventory no proceedings are instituted within the meaning of the Code of Administrative Procedure because this is a factual act; however, the case law of administrative courts confirms that the entry into monument records is actionable before an administrative court²⁶);

2) in other administrative proceedings, to which the owner or possessor of a monument is a party (regardless whether or not it has been entered into the register), concerning the rights or obligations of these entities, the right of ownership or another legal title to the monument is established (e.g. who is the owner of the fresco or mosaic, altar or a roadside shrine which are to be protected);

3) in matters related to the assessment of the validity of legal acts concerning operations involving the things entered into the register of monuments, for example the sale of an immovable monument, the sale of a movable monument, transformation of perpetual usufruct into ownership, in matters related to the granting of discounts or subsidies, dispossession, appropriation, finding a movable thing or a treasure.

The cases enumerated above demonstrate that apart from defining a monument for the purposes of administrative proceedings (the so-called register proceedings) it is necessary to take into account the fact that defining provisions will be applied also for the determination of the owner of a particular monument (holder or other person who has a title arising from property law or a title arising from an obligation) and for the provision of various discounts with respect to legal acts and tax matters. A decision to make an entry into the register of monuments is connected with setting up records since it gives rise to a new legal status of a thing in the scope outlined in this decision and produces an effect with respect to each owner of the thing (legal successors) even if he was not a party to the administrative proceedings. Nevertheless, the right of ownership always applies to the whole and only one thing. Therefore,

²⁶ Pursuant to art. 3 §2 point 4 of the act of 30 August 2002 on proceedings before administrative courts, Journal of Laws of 2016, item 718 as amended, the said scope of control of administrative courts covers decisions concerning complaints about: other than the activities or acts specified in points 1–3 with respect to public administration and concerning the rights or obligations arising under provisions of law, excluding acts or measures undertaken as part of the administrative procedure defined in the Code of Administrative Procedure, proceedings defined in sections IV, V and VI of the Tax Ordinance act of 29 August 1997. See also the judgement of the Supreme Administrative Court dated September 28, 2016, file ref. no. II OSK3174/14, accessed April 12, 2017, www.orzeczenia.nsa.gov.pl.

if it is theoretically possible to define a monument as, for example, a part or an assembly of immovable items on committing it to the register, the determination whether the provisions related to, for example, the right of pre-emptive purchase, discounts or exports, is not obvious to the authorities and courts enforcing the law in the case when merely a part of a thing is regarded to be of historical value or when, for instance, only one chair from a whole collection of chairs entered in the register is being exported.

3. A MONUMENT AS PART OF A THING

The right of ownership always applies to an entire thing. Administrative proceedings concerning issues of the scope of conservation supervision typically involve the owners (co-owners) of the whole thing. However, an entry often involves only a part of a thing (for instance, a building treated as part of land property is entered in the register but the whole land property or a different part of the property is the subject of legal operations²⁷). Under such circumstances, two alternatives are available: either we always recognise an entire thing as a monument, even if only its component part has a historical value (for example, only the top of a table is historical but the register entry covers the entire piece). Another possibility is to leave the definition interpreting a monument as a whole, part or collection of things which have properties of a monument, while the provisions concerning administrative proceedings other than registration cases or provisions of civil and criminal law should state expressly that the object of ownership, legal transactions or a crime is a thing which is a monument or a thing whose at least one component part has been entered in the register of monuments. Given this reasoning, it would be desirable to formulate the provisions in a way that, for example, obligations concerning the care of monuments will rest on the owner of a monument or a thing whose one component part at least is a monument/has been entered in the register of monuments.

Also, the provisions of the act on the management of real property governing legal operations involving land or building property or its division would have to be adjusted. They use the phrase “real property entered into the register of monuments” but in practice in 90 per cent of cases what gets registered is only the

²⁷ In the opinion of the administrative court, the wording “immovable property entered in the register of monuments” denotes real property within which there is an immovable monument entered in the register of monument (cf. the resolution adopted by a panel of seven justices of the Supreme Administrative Court on October 19, 2015, file ref. no. II OPS 3/15, ONSA and WSA no. 2/2016, item 17). See also detailed notes concerning a monument as the object of property rights: M. DRELA, *Własność zabytków* (Warsaw: Wydawnictwo C.H. Beck, 2003), 35–41, 53–64.

building, rather than the plot or the residential premises.²⁸ Typical legal dependencies between the land property and a building located therein are expressed by art. 47 §1 CC, supporting the principle *supercicies solo cedit*. This applies in particular to buildings and other structures joined with the land to become a component part of the real property, as a result of which they do not acquire the status of a distinct self-contained thing and cannot be independently the object of legal operations without detachment.²⁹

Under the civil law, in the realm of property law, there is a principle saying that a component part always has the same status as the main thing, but this principle, originating in the general provisions of the Civil Code, does not apply to legal relations arising from obligations (one can rent a fragment of a thing, for example a wall of the building). Administrative proceedings can also cover parts of things, for example proceedings for a permission to repair part of a building. The statutory definition of a monument, contained in the act on the protection and care of monuments, implies that only part of immovable property can constitute a monument but in such a case it will be deemed an immovable monument. Accordingly, the legislator assumes that one thing can have a twofold status: that of a thing entered in the register in part and that of a thing not entered in the register. The question, then, arises: what is the purpose of such a regulation? What social need does that cater for? Who will benefit and who will lose on such a partial entry in the register of monuments? Does this facilitate the application of law for administrative authorities and courts? The further part of our study is intended to contemplate these questions.

Some things can be entered in the register of monuments and thus have the status of “a monument entered in the register,” in isolation from the main thing which no longer has a historical value of its own. Problems arise with provisions related to monument protection that are applied for parts separated from historical buildings, for example roof tiles, rain gutters, figures, pedestals, altars, which were

²⁸ In the case law of the Supreme Court it is assumed that the notion of an immovable monument (an immovable part entered in the register of monuments) encompasses the registered building as well as the land in which it is embedded within the outline of the outer walls of the building. The entry in the register of monuments entails a restriction of the right of ownership, but the restriction covers also the land on which the building is located because as long as the building exists the land cannot be used in any other way, while pursuant to art. 47 §1 CC a component part cannot form a separate object of ownership and other rights *in rem*; see the judgement of the Supreme Court dated July 6, 2016, file ref. no. IV CSK 685/15 and the grounds for the judgement of the Supreme Court dated April 20, 1995, file ref. no. I CKN 37/95, OSNC 1995, no. 9, item 133; argument 1 of the judgement dated January 31, 2002, file ref. no. IV CKN 660/00 (unpublished).

²⁹ See the resolution of the Supreme Court dated April 21, 2005, file ref. no. III CZP 9/05, accessed April 12, 2017, www.sn.pl.

not enumerated by the decision (or the grounds thereof) on the entry in the register of immovable monuments despite being component parts of an immovable monument before the detachment. *De lege lata* and avoiding a complicated interpretation (which would require the knowledge of provisions of civil law and administrative law), it is hard to answer unequivocally to the question whether a detached pedestal is a monument entered in the register and whether there are norms of law whose area of application includes the requirement that such a thing be entered in the register of monuments. On the face of it, a positive answer to the question can hardly be defended since the pedestal was not originally accounted for in the register.

One could wonder whether the system of monuments protection should not have the principle saying that an entire thing together with its all component parts has a uniform “monument” status when entered in the register of monuments. If we endorse this principle, an entry in the register would account for the thing in its entirety with all component parts. This would undoubtedly simplify the application of provisions related to legal operations involving monuments,³⁰ expropriation, temporary seizure, land use and construction law, but occasionally this would restrict an owner in situations involving conservation supervision used for an “ordinary” thing which is not a vehicle of historical, artistic or academic values, which monuments are expected to possess. Since, *de lege lata*, the owner of ordinary property (i.e. one having no character of a monument) may have his rights restricted and if this property is registered as area surrounding the monument, the same justification can be applied to the restriction of interests of an owner of a thing with only its part having greater value, the entire thing being entered in the register. It is important to take into account the circumstances that an entry in the register of monuments is made not to provide information or material for research into the historical substance of the thing but to apply legal provisions restricting the right of ownership which always pertains to the entire thing, while the provisions of administrative law regarding monument protection are applied mainly at the interface between the owner and the administrative authority.

³⁰ In their case law, administrative courts are forced to make this assumption in a situation when a historical building has been entered in the register but the object of the transformation regarding ownership is the right to perpetual usufruct of an “ordinary” land property; additionally, the provisions make an allowance for discounted fees for the transformation if the subject of the transformation is property recorded in the register of monuments. See art. 4 point 10 of Act of 29 July 2005 on the transformation of the right to perpetual usufruct into the property ownership right, Journal of Laws of 2012, item 83; judgement of the Provincial Administrative Court in Wrocław dated June 14, 2016, file ref. no. II SA/Wr 253/16, and the resolution adopted by a panel of seven justices of the Supreme Administrative Court on October 19, 2015, file ref. no. II OPS 3/15; ONSA and WSA no. 2/2016, item 17, accessed April 14, 2017, www.orzeczenia.nsa.gov.pl.

Assuming the relevance of such a conception, *de lege ferenda* there is a possibility of amending the law in such a way that the register of monuments will encompass a thing in its entirety and it will be sufficient for merely the component part of the thing to have the character of a monument. Theoretically, it is also possible to develop such a model of protection that movable objects which are functionally relevant (proper) to the immovable monument will be accounted for by one entry.

Protection of monuments is unique in that monuments are frequently those objects which combine the characteristics of movable and immovable monuments, for example foundries, mills and religious buildings equipped with movable objects which are not permanently attached (cemented, bolted or attached permanently in some other way). It is only recently that in conservator's practice the elements of characteristic interior design are mentioned in statements of grounds for administrative decisions. Earlier, it was customary to establish protection of the fixed elements of interior equipment by entering them in the register of movable monuments.

4. MOVABLE OBJECTS AS APPURTENANCES OF AN IMMOVABLE MONUMENT

Under Polish civil law, appurtenances are movable objects needed to make use of another thing (the principal thing) in accordance with its purpose if they have an actual connection with it corresponding to that purpose (art. 51 §1 CC). An appurtenance does not lose its character by being temporarily disconnected from the principal thing (art. 51 §3 CC). The regulation of the Polish Civil Code was developed under the influence of the French Napoleonic Code, which at the time was in force in the Kingdom of Poland. In France, this code (with some amendments) is still in force today and has relevance for the application of provisions related to movable and immovable monuments, and especially for their classification as movable monuments or as the so-called immovable property by purpose (i.e. movable things constituting the equipment of immovable property, which is necessary to make use of the latter as designed). Art. 524 of *le Code civile* provides that if the owner intended the movable things to serve or enable the use of a particular immovable property, although they are not physically connected, they become "immovable property by purpose"³¹ (this applies, for example, to machines intended for farm

³¹ The provision of art. 524 *Code civile* lays down as follows: "Les objets que le propriétaire d'un fonds y a placés pour le service et l'exploitation de ce fonds sont immeubles par destination. Les animaux que le propriétaire d'un fonds y a placés aux mêmes fins sont soumis au régime des immeubles

work, hives located in a meadow, farmed animals living on a farm, that is things that are functionally movable or purposefully connected with the immovable property). The category of immovable property by purpose encompasses two groups of movable things: component parts (physically connected with the immovable property) or appurtenances (movable objects functionally connected as the owner intended).³²

With respect to monuments, *Code du patrimoine* provides in art. L 621–9 that movable things which are functionally connected with an immovable monument accounted for in the register (classified) and which are intended to be permanently connected within the meaning of art. 524 and 525 of the French Civil Code, constitute part of the immovable property. It is forbidden to remove them from the immovable property without the consent of competent authorities. Only after they have been detached (by permission of a monument protection authority) can they become re-classified as a movable monument (see art. 622-1 *Code du patrimoine*³³). This implies that even physical removal of a movable thing from the area of an immovable monument does not annihilate its status of a thing classified as an immovable monument.

5. A DE LEGE FERENDA PROPOSAL

We may propose a legislative change consisting in adding a similar regulation to the Polish law. It can be expressed in the Polish legal language as a postulate to build provisions governing the entry in a register of immovable monuments along the following lines: **under the law, the entry shall also encompass historical objects which are physically connected with a monument entered in the register (component parts) and historical movable objects which constitute appurtenances of this monument, even if they were not mentioned in the decision to make the entry.**

Appurtenances in the above sense are historical objects which are necessary for the use of a monument in accordance with its purpose and social and cultural

par destination. Ainsi, sont immeubles par destination, quand ils ont été placés par le propriétaire pour le service et l'exploitation du fonds: Les ustensiles aratoires; Les semences données aux fermiers ou métayers; Les ruches à miel; Les pressoirs, chaudières, alambics, cuves et tonnes; Les ustensiles nécessaires à l'exploitation des forges, papeteries et autres usines; Les pailles et engrais. Sont aussi immeubles par destination tous effets mobiliers que le propriétaire a attachés au fonds à perpétuelle demeure.”

³² In this respect, the owner's intention is essential rather than the fact that the object remains within the immovable property, see F. JAMOT et al., *La protection des immeubles au titre des Monuments historiques*, 2003, page 18, accessed April 20, 2017, www.culture.gouv.fr.

³³ Accessed April 20, 2017, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGI-TEXT000006074236>.

function. Movable things which are disconnected from an immovable monument or removed outside its area without the consent of the provincial inspector of monuments remain accounted for in the register of immovable monuments. If in doubt whether the detached object constitutes a component part or an appurtenance of an immovable monument, a decision is made in favour of the component part.

6. ENTRY INTO THE REGISTER OF MONUMENTS AS A METHOD OF PROTECTING INTANGIBLE CULTURAL HERITAGE

Intangible cultural heritage enjoys legal protection, the protection *de lege lata* is regulated chiefly by the provisions of international law. On October 17, 2003, UNESCO developed and adopted the Convention for the Safeguarding of the Intangible Cultural Heritage.³⁴ In this case, the protected asset is folklore conceived as creativity of a cultural community, based on tradition, expressed by a group or individuals and recognised as a reflection of the cultural and social identity of a nation or a group. The document enumerates the following manifestations of folklore: language, literature, music, dance, games, myths, rituals and customs, handicraft, architecture and other arts.³⁵ The very definition of intangible cultural heritage is contained in the Convention, which provides that it denotes practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognise as part of their cultural heritage.³⁶

The assurance of the survival or protection of folklore or, in more broad terms, the intangible cultural heritage, in some cases may require the safeguarding of the formal connection between specific movable things (movable monuments) with a particular space occupied by an immovable monument, that is simply with the place where particular rituals or customs are traditionally practised using these movable monuments (such as instruments). At times, customs or other forms of

³⁴ Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, October 17, 2003, Records of the General Conference 32nd Session, Paris, September 29 to October 17, 2003, volume 1 entitled *Resolutions*. Paris: UNESCO, 2004, 53–62.

³⁵ The definition of folklore is provided by Recommendation on the Safeguarding of Traditional Culture and Folklore, November 15, 1989, Records of the General Conference 25th Session, Paris, October 17 to November 16, 1989, volume I entitled *Resolutions*, 238–43. The Polish translation can be found in A. PRZYBOROWSKA, “Międzynarodowa ochrona niematerialnego dziedzictwa kulturalnego.” *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 3 (2005): 6.

³⁶ *Ibid.*, 10.

human cultural activity take place in a traditionally organised manner using fixed or movable material elements in a specific location (fixed elements are component parts while appurtenances can be movable elements). In such a case, it is possible to employ the form of monument protection represented by the entry in the register of immovable monuments along with folklore elements in the form of movable monuments treated as appurtenances connected with a particular immovable property not only functionally and culturally but also legally. Under civil law, a thing constitutes an appurtenance if it is owned by the property's owner. The entry of an immovable monument along with its movable appurtenances in the register of immovable monuments could constitute a way of protecting folklore (intangible cultural heritage) by associating movable objects with a concrete location, used for the manifestation of particular cultural behaviours. This form of protection would formally and permanently connect the space of an immovable monument with the registered movable elements treated as appurtenances of this immovable property. An amendment taking into account the proposals *de lege ferenda* stated in item 5 above would provide such an opportunity.

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HISTORICAL COMPONENT PARTS
AND MOVABLE APPURTENANCES OF MONUMENTS
THE OBJECT OF AN ENTRY IN THE REGISTER OF MONUMENTS –
NOTES *DE LEGE LATA* AND *DE LEGE FERENDA*

Summary

This article seeks to analyse the provisions of the Polish Act on the protection and care of monuments related to movable monuments in the context of the object of entry in the register of monuments under the currently applicable law, taking into consideration the provisions of the Polish Civil Code related to movable things. The Author presents a discussion of the status of a movable object under civil law as a self-contained thing, a component part or appurtenance of another thing in order to show the difference between a movable monument and a component part of an immovable monument. Currently, this distinction is particularly problematic in practice regarding the registration of sacred art monuments, constituting the equipment or decorations of churches. The practice of entering wall decorations and other flat surfaces of buildings in the register of movable monuments is not consistent with the law. Instead, these should be captured as permanent equipment of immovable monuments (which applies mainly to churches) in one entry – as component parts or appurtenances attached to

the immovable monument. The remarks formulated by the Author may serve as the basis for further legislative work with respect to proposed content of legal provisions of the act on the protection and care of monuments. The final part concerns the way of protecting folklore (intangible cultural heritage) by entering movable assets in the register of monuments along with an immovable monument as movable things conceived as appurtenances of a particular place.

Key words: equipment of churches; movable monument; component part of an immovable monument; appurtenance; collective entry in the register of monuments.

Translated by Tomasz Palkowski



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