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# TWO PERSPECTIVES ON THE ACT ON MUSEUMS

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**Adam Barbasiewicz, *Ustawa o muzeach. Komentarz* [Act on Museums. Commentary], *Ustawy w praktyce* [Acts in Practice] Series, C.H. Beck, Warszawa 2021, 266 pp.; Ziemowit Cieślík, Iwona Gredka-Ligarska, Paulina Gwoździewicz-Matan, Irena Lipowicz, Andrzej Matan, Kamil Zeidler, *Ustawa o muzeach. Komentarz* [Act on Museums. Commentary], Wolters Kluwer, Warszawa 2021, 520 pp**

Until not long ago only one commentary addressing the issues of museum-related legal regulations was available in the publishing market: P. Antoniak, *Ustawa o muzeach. Komentarz* [Act on Museums. Commentary], Wolters Kluwer, Warszawa 2012. It was substantially complemented with the monograph by K. Zalasńska, *Muzea publiczne. Studium administracyjnoprawne* [Public Museums. Administrative Law Study], LexisNexis, Warszawa 2013 which contained orderly listed literature related to museums from the perspective of their functioning as of the publication date. Despite a debate on the need to prepare a new act, conducted analyses, and de lege ferenda claims raised in literature, the system of cultural heritage protection in Poland has not been given a new act. The demand for change in the current Act was also voiced at the First Congress of Museum Curators. The analyses of subsequent amendments to the Act on Museums permit to judge that the legislator is not as yet ready with a new bill allowing to initiate the legislative process, trying only to fragmentarily solve problems or deal with the questions imposed from the international level.

And it may be a result of the awareness that the Act on Museums of 21 November 1996 will remain in force for several years to come and only be subject to amendments that simultaneously works on two commentaries were undertaken. And so in 2021, two new publications dealing with museums enriched the market of commentaries: A. Barbasiewicz, *Ustawa o muzeach. Komentarz* [Act on Museums. Commentary] and Z. Cieślík, I. Gredka-Ligarska, P. Gwoździewicz-Matan, I. Lipowicz, A. Matan, K. Zeidler, *Ustawa o muzeach. Komentarz* [Act on Museums. Commentary].

In both cases the fact that this effort was undertaken has to be highly appreciated. It can be judged that the published commentaries are needed for the entities that apply that Act, since they sum up the development of museum law or present its latest amendments resulting either from the domestic amendments to legal regulations, international trends, or from the implementation of EU directives. The majority of the above-enumerated Authors have been dealing with the questions of broadly understood cultural heritage protection for many years, which is certainly an advantage of each publication. Since only the observation of the museum sector and participation in it as a professional plenipotentiary or consultant guarantee providing a valuable product allowing at least on the initial level the assessment of the legal situation of a museum. Contribution of the experts in administrative law to the joint publication causes that the intricacies of administrative law and administrative procedures are approximated to the reader in an accessible manner, often accompanied by additional polemics with other representatives of the doctrine. And actually, this is exactly the role of commentaries: to explain and amass all that has been said on the topic so that the reader not only can choose his/her own view, but also refer to other so-far presented viewpoints.

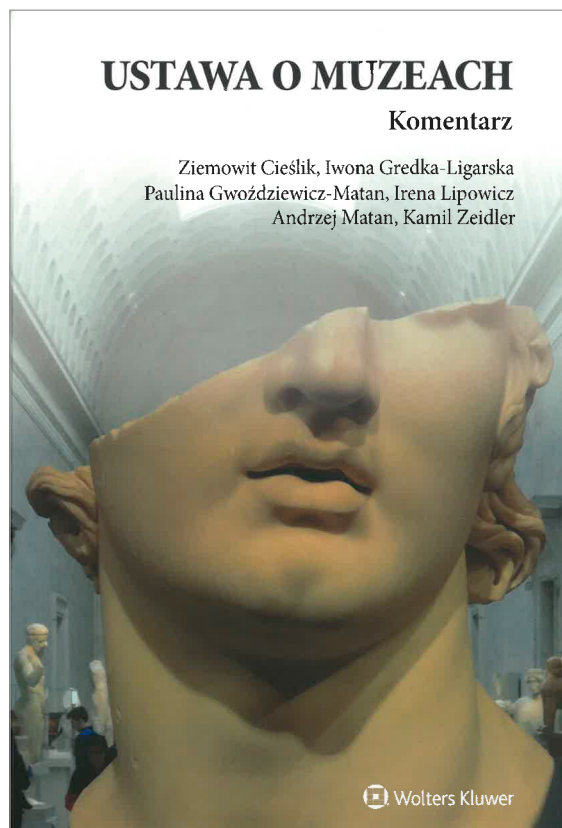
Each of the reviewed commentaries presents a different attitude to the topic. This showing not only the multitude of possible approaches to museum-related questions, but also that the commentary as a legal writing genre is not subject to rigid rules, and leaves their authors much freedom to manifest their creativity.

The commentary written by A. Barbasiewicz is a brief professional introduction addressed, first of all, to the readers only being initiated into museum-related topics. Being concise and clear, it will provide an ideal departure point for a lawyer-practitioner who needs support in applying the law. Additionally, its form is friendly enough to non-lawyers who, owing to their managerial functions, have to abide by the museum-related regulations. It can thus be regarded as a classical example of a 'brief practical commentary'.

The other commentary represents another approach, characteristic of commentaries written by scholars for practitioners. Hence, we can find in it the analysis of the regulations in force, pointing to selected problems which emerge in practice, or a selection of basic jurisprudence. Such-constructed commentary is addressed, first of all, to the lawyers applying the law who need a more advanced tool to support them in solving problems which emerge when applying the law. The Authors of this commentary also undertake an attempt at the analysis of the commented regulations, which constitutes an added value if seen from the perspective of legal sciences. However, like the majority of legal commentaries, this study is not and cannot be an exhaustive analysis of the Act on Museums. The praxis of applying the law continuously proves that there always crop up problems which go beyond what commentators can foresee. Since life usually gets ahead of both the legislator and learned commentators.

In his commentary, Adam Barbasiewicz emphasizes that the frequent interpretation of the provisions of the Act on Museums adopted in praxis is not based on the linguistic-analysis interpretation, but relates to the values or the whole body of law. It was precisely problems with the interpretation of the Act, the division into museums financed with public resources and those financed with other means, and also ascertaining the Act's regulations related to the latter that often inspired demands to launch works on a new act on museums. Already at this point let us point to the fact that the provisions of the current Act and the very regulations of administrative proceedings are a tool which serve, first of all, to pursue the public interest in the form of maintaining the integrity of museum collections and preserving them in such a way so as to pass them to the future generations in an unchanged state. However, without their thorough knowledge it is hard to solve practical problems that are encountered, if only to mention a few: those related to private items registered in the inventory of museum exhibits, erroneously treated as a part of the collection owned by the museum, and thus subsequently, by the State Treasury.

What positively strikes in the Wolters Kluwer joint publication is the clear scheme of the analysis of respective provisions. The Authors try to keep a homogenous template of explanations, which greatly facilitates the usage of the text. At the same time, they are not prisoners to their scheme, since whenever a part does not fit, or no material for commentary is available, the section simply does not appear. The Authors have also succeeded in keeping their work practical: the whole is not overpacked with erudite literature references, while the theoretical analysis appears only when it is not 'a game for the game's sake', but is of relevance to the praxis of applying the law. Regrettably, the Authors have not always justly judged what should appear in the text, and



what should not. Therefore, at some points the reader may feel unsatisfied. On the other hand, however, one must not forget that it is for authors to judge what they consider important, and their judgement may differ from that of the reader. Furthermore, every book should not exceed a definite volume, unable to encompass everything.

What we may find missing, for example, is even a brief mention of museum founded by ecclesial institutions and religious organizations or university museums. As for the first, there is quite a vast legal certainty, which, particularly in view of the special status of ecclesial collections, was really asking for a brief commentary. Similarly underdefined is the status of university museums, of which the majority feature the word 'museum' in their names, however, are not museums. Possibly this question could be addressed in the future editions of the commentary.

The example of excessive moderation in theoretical analysis can be seen in the remarks tackling the question of boards of trustees in registered museums. The commentator treats the issue very gently, actually oblivious to the existing literature on trusteeship. Meanwhile, an important question arises with respect to its character: whether we have to do here merely with a technical term, or whether it means the creation of a new institution, namely public trusteeship. The fact that the legislator applied a separate name 'board of trustees' instead of the 'museum council' may suggest the latter. When allocating tasks or competences in other cases known in public law there occurs no change in the entity name which is assigned them as a 'trustee'.

In turn, it is admirable how the commentator attempts at giving reasonable meaning to Art. 24 of the Act on Museums

related to removing a museum exhibit from its inventory. This provision does not rank among the most excellent legislation pieces to say the least, and its application causes substantial difficulties which cannot be eliminated with a legal interpretation. Some of those challenges are also visible in the commentary. They are particularly acute in relation to the items being a property of another entity but entered into the museum inventory. The commentators point here to the examples of events causing the removing from the inventory such as a material error (can we speak of a material error in the case of an event which is not a declaration of will?) or the fact of an acquisitive prescription of a museum exhibit by a third party. Instead, the commentators do not mention at all the protection of the owner of e.g., a museum deposit which is entered into the inventory. Meanwhile, the latter is often the source of contentions. Additionally, a more detailed exegesis would be required with respect to the decision on the obligation to return a museum exhibit to the territory of a UE member state. The commentators leave aside this UE Directive on the return of cultural goods and the prerequisites for such a return, whereas they enumerate in detail the circumstances allowing to consider a Polish cultural good as unlawfully removed from the territory of Poland. The commented provision does not refer to such a situation.

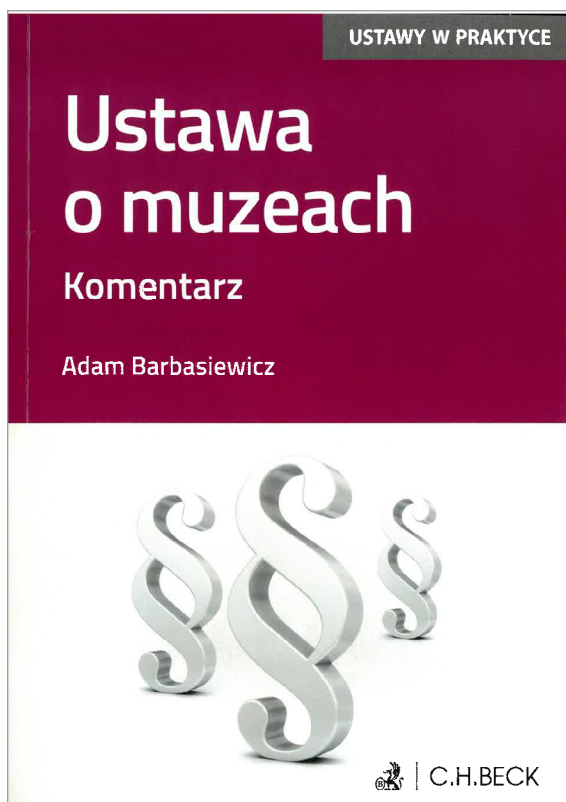
What is of major relevance to the contemporary art market is the discussion of Art. 34 of the Act: on museum ethics and activities undertaken by museum curators such as issuing expert opinions on items and their valuation, which may cause a conflict of interest with the museum employing the curators. Furthermore, the confidential character of information disclosed to museum employees in the workplace is justly emphasized. Owing to a relatively small number of

experts of narrowly defined expertise it may happen that prior to purchasing certain cultural goods in order to attach it to the application for a grant in the respective Minister's programme the museum may exclusively ask for such opinion from an employee of another museum (competition?) of a similar profile or an individual who boasts much weaker skills and more limited expertise. On the other hand, it is worth recalling that gallery or auction house staff, when talking to their customers, often resort to the names of the individuals they cooperate with and the museum the latter are employed at. This practice is questionable in the light of the analysed provision if the museum curator is really engaged in such a cooperation. Regrettably, this piece of information is not often verified by the purchaser, still it boosts the transaction's aura.

The commentary by Adam Barbasiewicz is concise and delivers what the Author himself promises: minimal volume with maximal content, obviously within the scope that a not excessively voluminous book allows for a complicated matter. In the judgement of the reviewers, it provides good introductory guidance to a legal advisor or lawyer just becoming acquainted with museum-related issues, as well as to a museum employee promoted to a managerial position. The commentary's advantage is also found in a clear and comprehensible language, free from legal jargon. Of particular interest are practical observations related to the range within which provisions concerning public procurement affect the process of the acquisition of museum exhibits. What is more, the Author addresses copyright issues, sale of work copies without the copyright, and a permissible model of proceeding in the praxis of the work's display at an exhibition. What lawyers practitioners will find extremely useful in their praxis of creating documents for the museum are the templates of formal documents (museum's charter, private museum's regulations) or their own projects (contracts of: sale, donation, deposit) commented by the Author. It is, however, to the publication's evident disadvantage that the Author does not elaborate on numerous essential issues which crop up in the museum praxis, e.g., removal of an item from the inventory of museum exhibits. Leaving certain issues unaddressed is all the more noticeable, since the literature on the subject is not extensive, while its list is not included in the publication. Unquestionably, the commentary with the included list of available publications, released since the last one by Patrycja Antoniak, would be all the more valuable to the participants of the cultural sector, allowing them to independently verify the sources.

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To sum up, let us repeat that two publications complementing one another and worthy of attention have been released: a brief practical commentary constituting a sort of 'emergency first aid kit' and a more extensive text containing more extensive analyses of the provisions of the Act on Museums. Regardless of the fact that each is targeted at a slightly different public, both include content of interest to practitioners. However, at moments one is left with the impression that the Authors do not share all their reflections and experience with the readers, which might leave the latter looking for expert guidance with



a certain degree of dissatisfaction. On the other hand, such an approach is in a way justifiable: as we know from our own experience, each cultural institution faces its unique problems, and it is impossible to casuistically present them all, not to mention solving them. What is more, practical problems often stem not merely from legal issues, but are strictly connected with the process of managing the museum and with the adopted strategy of the institution's development. Nevertheless, both publications are a must:

if not to read straight away, then to acquire them for the library of lawyers active in the cultural sector and individuals managing museums. Irrespective of them, however, let us bear in mind that when in doubt, museums can consult the National Institute for Museums and Public Collections (NIMOZ) which is the cultural institution constituting the competence centre updated on the newest practices and regulatory trends.

**Abstract:** In the paper the analysis of two newly published commentaries (2021) on the Act on Museums is conducted: the first commentary by A. Barbasiewicz, a lawyer specializing in cultural heritage, and the other by a team of scholars: Z. Cieślak, I. Gredka-Ligarska, P. Gwoździewicz-Matan, I. Lipowicz, A. Matan, K. Zeidler specializing in administrative proceedings and legal protection of historic monuments. Both publications represent various perspectives

on the same issue, thus complementing one another. The difference in the approach makes them both useful to experienced practitioners on the one hand and those who happen to confront these topics for the first time on the other. Importantly, both have been written in a clear language comprehensible to non-lawyers. Their high-rating cannot be diminished by the few critical remarks formulated in the paper.

**Keywords:** commentary on an act of law, museums, heritage, historic monuments, administration.

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