

Anna Magdalena Kosińska

THE ROLE OF THE CATHOLIC CHURCH
IN FACILITATING IMPLEMENTATION
OF CONSTITUTIONAL GUARANTEES OF CULTURAL
RIGHTS DURING THE COVID-19 PANDEMIC

INTRODUCTION

Cultural rights are generally classified as second generation rights in human rights doctrine and consist of the right of access to cultural assets and the right to participate in cultural life [Gawin, Markiewicz, and Nogal, et al. 2016, 29].¹ They enable individuals to enjoy various cultural activities such as visiting museums, operas, theatres, libraries or cinemas. In principle, the State is responsible for ensuring access to cultural assets.

Since March 2020, when the state of pandemic was announced in Poland, access to cultural assets was severely restricted.² In response, cul-

DR. HABIL. ANNA MAGDALENA KOSIŃSKA, UNIVERSITY PROFESSOR – Faculty of Law and Administration, University of Szczecin; correspondence address: ul. Narutowicza 17A, 70-240 Szczecin, Poland; e-mail: anna.kosinska1@usz.edu.pl; <https://orcid.org/0000-0002-0915-874X>

¹ See also Wiessner 2013, 119-24.

² The basis for declaring the state of epidemics in Poland was the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans, Journal of Laws No. 234, item 1570, as amended. Pursuant to Article 46(2) “If an epidemic threat or epidemic occurs on the territory of more than one voivodeship, the state of epidemic threat or epidemic state shall be declared and cancelled, by means of a regulation, by the minister in charge of health in agreement with the minister in charge of public administration, upon the motion of the Chief Sanitary Inspector.” Such regulation was issued on 20 March 2020, see Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic state on the territory of the Republic of Poland, Journal of

tural life largely shifted to the Internet, and cultural consumption became less direct and more digitalized. Cultural institutions, such as museums, undertook efforts to conduct activities online by making digital collections available on their websites, organising virtual walks or lectures available through remote working tools.³

It seems, however, that in the context of human need to commune with beauty, aesthetic reflection in mediated reception remains incomplete and unfulfilling.⁴ If we use a classic definition of aesthetics as “the science of looking at the world,” it becomes clear that mediated cultural reception is insufficient for harmonious human development [Zeidler 2018, 21].⁵ John Paul II, dedicating part of his philosophical works precisely to the philosophy of culture, pointed out that “The aim of culture is integral, thus most multi-dimensional, development of man as a person, and therefore his material, spiritual, cognitive, emotional, moral side in the individual and social dimension and in the temporal and supernatural perspective” [Dąbkiewicz 2019, 285].

Although the authors of the report “Kultura od Nowa” define the Internet as “a natural environment for promoting culture,”⁶ cultural life cannot certainly exist exclusively in the virtual world.⁷ Moreover, given the previous vibrancy of cultural life and the development of creative industries at the European level, the COVID-19 pandemic triggered a crisis in the cultural and creative sectors.⁸ As J. Panciuchin pointed out in her contribution to

Laws No. 491. In addition, the Law of 2 March 2020 on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and emergencies caused by them, Journal of Laws 2020, item 1842, was adopted.

³ An example of such activities was the Royal Castle in Warsaw making its collections available as part of the #zamekonline action – more about the initiatives taken by Polish museums as part of the pandemic on the website: <https://rynekisztuka.pl/2020/04/07/polskie-instytucje-kultury-pandemia-koronawirus/> [accessed: 02.08.2021].

⁴ Aesthetics is defined as the science of beauty and the science of art. W. Tatarkiewicz pointed out that the basic concept of aesthetics is not beauty, but “the aesthetic attitude and experience of beauty [...]” see Tatarkiewicz 1988, 13 after Zeidler 2018, 23.

⁵ The definition quoted is that of Charles Lemcke.

⁶ See *Raport: Kultura od nowa. Badania – trendy – praktyka*, Instytut Kultury Miejskiej, Gdańsk 2016, p. 80.

⁷ As P. Schollenberger stresses, “In the case of art media, however, the question of transparency of the medium, traditionally functioning on the principle of *medius terminus* between the premise and the conclusion, becomes complicated” [Schollenberger 2011, 135].

⁸ *Culture shock: COVID-19 and the cultural and creative sectors*, <https://www.oecd.org/coronavirus/policy-responses/culture-shock-covid-19-and-the-cultural-and-creative-sectors-08da9e0e/> [accessed: 02.08.2021].

Culture in Times of Plague, “Doing something simultaneously and doing it together are not quite the same thing” [Panciuchin 2021].⁹

According to the research thesis presented in this article, the Catholic Church plays a special role in providing direct access to national cultural assets. Thus, the Catholic Church facilitates the realization of the right of access to cultural assets, a right that has been limited in the era of the COVID-19 pandemic.

The article uses methods typical of legal sciences such as dogmatic-legal method necessary for the analysis of the provisions of the Constitution and other acts of national law as well as the hermeneutic method [Barrankiewicz 2010, 117].

1. THE NATURE OF LEGAL GUARANTEES OF CULTURAL RIGHTS IN THE CONSTITUTION OF THE REPUBLIC OF POLAND

Cultural rights are realized in Poland on the basis of provisions of the Constitution of the Republic of Poland, provisions of international agreements binding upon it and provisions of specific laws. The Constitution of the Republic of Poland in Chapter II entitled “Freedoms, rights and duties of a human being and citizen” regulates the cultural rights only in Article 73, which guarantees everyone, among others, the freedom of artistic creativity and the freedom to use cultural assets¹⁰. Thus, *in fact*, we are dealing in the Constitution with a guarantee not of a right, but of cultural freedom, which doctrinally should be classified as so-called first generation rights. As A. Frankiewicz-Bodynek further stresses “Freedom of use of cultural assets is not a basis for making claims for free direct access to them” [Frankiewicz 2013, 71].¹¹

⁹ The researcher refers to a 1935 speech by R. Arnheim in a text entitled *The Perspectives of Television*, published in the Italian journal “Intercine.”

¹⁰ The Constitution of the Republic of Poland of 2 April 1997 passed by the National Assembly on 2 April 1997, approved by the Nation in a constitutional referendum on 25 May 1997, signed by the President of the Republic of Poland on 16 July 1997, Journal of Laws No 78, item 483. See also Kosińska 2014, 209.

¹¹ See also Jabłoński 2002, 560-61.

The so-called second-generation cultural rights – the right of access to cultural assets and the right to participate in cultural life¹² – constituting legal grounds for individual claims against the state in case of failure to fulfil these guarantees, are not included in Chapter II of the Constitution. Instead, the legislator decided to place them in Chapter I “Rzeczypospolita,” in the category of the so-called general principles. In accordance with Article 5 of the Constitution, the Republic of Poland “shall protect the national heritage,” while pursuant to Article 6(1) “the Republic of Poland shall create conditions for the dissemination of and equal access to cultural assets which are a source of the identity of the Polish nation, its continuance and development.” Thus, in the legal order of the Republic of Poland, cultural rights assume the character of programmatic norms [ibid., 59],¹³ which means that the state can only come close to their realization and “due to the constantly changing reality, their realization raises each time anew the question of the degree of their realization” [Complak 2003, 54].¹⁴

The analysis of the provision of Article 6 of the Constitution reveals that the entity obliged to provide access to cultural assets is not *explicitly* the state, but the Republic of Poland, that is, the organizational structure of citizens and their organizations [Frankiewicz 2013, 61]. Applying a broader interpretation of that concept, it may be assumed that religious associations are also subject to the guarantee in Article 6.

In turn, the application of the purposive and systemic interpretation of the provisions of Articles 5 and 6 of the Constitution allows for the interpretation of the right of the nation to persist in its heritage (which should be classified as a third generation right or solidarity right) [Kosińska 2014, 191] and the right to cultural identity [ibid., 197].

When interpreting Article 6 of the Constitution, attention should also be paid to its systemic connection with the principle of equality¹⁵ and sub-

¹² There is an interesting term in doctrine for the collective approach to these rights, “The Right to Culture” [Młynarska-Sobaczewska 2013, 29].

¹³ The doctrine advocates adopting clearer nomenclature and replacing the term “programmatic norms” with “provisions (regulations) on state objectives” [Complak 2003, 52-53].

¹⁴ See also Osiatyński 2011, 301.

¹⁵ The principle of equality is expressed in Article 32(1) of the Constitution of the Republic of Poland: “All are equal before the law. Everyone has the right to equal

subsidiarity. The principle of subsidiarity is not expressed in the body of the Constitution, but only in its Preamble.¹⁶ Thus, the legislature decided that the scope of application of the principle of subsidiarity would be defined by case law and doctrine [Dobek 2008, 155].¹⁷ According to the doctrinal definition, the principle of subsidiarity “means an order to shape the legal relations between the state and civil society actors and society itself in such a way that the actors of the lowest possible level perform tasks which are in the public interest” [Granat 2010, 66]. Thus, the entities that have the obligation to create access to cultural assets are not only public authorities, but also private institutions created by citizens, if they are in possession of cultural assets [Frankiewicz 2013, 62].

For full implementation of the provisions of the Constitution in Article 6, the principle of the common good expressed in Article 82 of the Constitution is also relevant [Kosińska 2014, 184]. The doctrine also emphasises the link between the principle of common good and the principle of subsidiarity [Łączkowski 2003, 39]. Thus, it is beyond doubt that the guarantee of the right to culture should involve not only state authorities, but also local government units, the third sector and private entities.

The obligation of the state authorities and religious associations to cooperate in caring for cultural assets, and consequently ensure access to them, follows indirectly from Article 53 of the Constitution, which guarantees freedom of conscience and religion. There is no doubt that religion and religious artefacts are components of culture¹⁸ – a standpoint confirmed also by the provision of Article 53(2) of the Constitution which guarantees “[...] the possession of temples and other places of worship” to religious associations. In this light, the passage in the Preamble of the Constitution, expressing gratitude “for a culture rooted in the Nation’s

treatment by public authorities.” Under Article 6, the Republic of Poland creates conditions for equal access to cultural assets [Frankiewicz 2019, 305].

¹⁶ According to it: “[...] we establish the Constitution of the Republic of Poland as the fundamental rights of the state based on respect for freedom and justice, cooperation between authorities, social dialogue and on the principle of subsidiarity strengthening the powers of citizens and their communities.”

¹⁷ See also Izdebski 2001, 89.

¹⁸ It is worth quoting the so-called enumerative definition of culture by F. Znaniecki, who considers that the term culture encompasses, among other things, religion, language, literature, art, customs, mores, laws, philosophy, and science [Znaniecki 1971, 22].

Christian heritage and all-human values” also acquires special significance [Frankiewicz-Bodynek 2019, 66].

2. THE CATHOLIC CHURCH AS A DEPOSITORY OF CULTURAL PROPERTY

Article 6 of the Constitution guarantees access to cultural property, but the verbal interpretation of this provision makes it clear that this access applies only to cultural assets that are the source of the Polish nation’s identity, its continuance and development [Frankiewicz 2013, 69].

In the doctrine of Polish law, a definition from the 1972 World Heritage Convention is used to define the term “heritage.”¹⁹ According to Article 1, cultural heritage shall be considered as: 1) monuments: works of architecture, works of monumental sculpture and painting, elements and structures of archaeological interest, inscriptions, caves and groupings of such elements, which are of outstanding universal value from the point of view of history, art or science; 2) complexes: separate or connected buildings which, because of their architecture; 3) uniformity or integration into the landscape are of outstanding universal value from the point of view of history, art or science; 4) monumental sites: works of man or joint works of man and nature, as well as zones, and archaeological sites that are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.²⁰

National heritage is an axiomatically narrower concept than the concept of cultural heritage, because the catalogue of its designations includes tangible and intangible assets, which are the result of the nation’s creativity.²¹ K. Zeidler points out that the concept of national heritage is extremely broad, linked to the history of a nation [Zeidler 2017a, 19].

¹⁹ Convention Concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972, Journal of Laws of 1976, No. 32, item 190.

²⁰ For more on this, see Frankiewicz 2018, 205. The author distinguishes in the catalogue of cultural rights and freedoms the “freedom of cultural heritage,” which, in addition to the characteristics of a typical human and civil liberty, defines the objectives of state activity. See also Zeidler 2017b, 106.

²¹ The basis for understanding national culture in the social sciences was developed by A. Kłoskowska. As A. Szpociński notes, “The core of national culture is the cultural canon. The canon should be understood as a set of events, characters and cultural

Based on such an understanding of the concept of national heritage as lasting products of national culture, there can be no doubt that the Catholic Church played a special role in the construction of Poland's national culture and its heritage. Through its baptism in 966, Poland entered permanently into the sphere of influence of Western Christianity. Thus, for centuries the Church acted as a patron of culture, which predestined the dynamic development of sacred art [Kosińska 2014, 58]. The special, if not leading, role of the CC in the development of Polish culture is proved by the UNESCO World Heritage List, which includes Kalwaria Zebrzydowska (Mannerist architectural and landscape complex and pilgrimage park), wooden churches of southern Poland, and the wooden churches of the Polish Catholic Church: Małopolska Binarowa, Blizne, Dębno, Haczów, Lipnica Murowana, Sękowa, as well as the old town complexes of Kraków and Toruń, where there are numerous churches²².

The Catholic Church owns a vast number of monuments that make up part of the national cultural heritage. The concept of a monument and the obligations of monument owners are regulated in the Act on the protection and care of monuments.²³ According to its Article 3(1) “an immovable or movable thing, a part or group thereof, being a work of man or connected with his activity and being a testimony of a past epoch or event, the preservation of which is in the public interest because of its historical, artistic or scientific value.” However, according to Article 5 of the Act, the care of the monument, which is exercised by its owner, consists, among others, in ensuring the conditions for “using the monument in a way that ensures permanent preservation of its value” and popularizing and disseminating knowledge about the monument and its importance for history and culture. Polish law does not distinguish the category of a sacred monument, which is considered in doctrine as a legal deficit – it is postulated that these issues should be regulated in the form of a Concordat-related law [Bijak 2019, 265]. As an aside, it is also worth noting that sacred monuments belong to the group of best maintained monuments [ibid., 267].

products, about which a member of a given community should know something” [Szpociński 2011, 75].

²² See <https://www.unesco.pl/kultura/dziedzictwo-kulturowe/swiatowe-dziedzictwo/polskie-objekty/> [accessed: 02.08.2021].

²³ Act of 23 July 2003 on the protection and care of historical monuments, Journal of Laws of 2021, item 710.

It also seems worth noting in the context of these considerations that the Catholic Church is in possession of numerous cultural assets that for various reasons cannot be considered monuments, but communing with them may constitute active participation in cultural life and thus the CC plays the role of facilitating access to them.²⁴

Based on the provisions of the Concordat, the Catholic Church exercises the rights of the owner of monuments under Polish law.²⁵ Article 24 of the Concordat guarantees the Catholic Church “the right to construct, extend and maintain sacred and ecclesiastical buildings and cemeteries” in accordance with the provisions of Polish law. Key to the role of the Catholic Church in the care of national cultural heritage is Article 25 of the Concordat. According to it: 1) In each diocese, a commission appointed by the diocesan bishop will cooperate with the competent state authorities to protect sacred and ecclesiastical cultural property of national importance and archival documents of historical and artistic value. 2) Competent state authorities and the Polish Episcopal Conference will work out the rules of making cultural property owned or controlled by the Church available.

²⁴ It is worth quoting here the definition of cultural property from the Convention for the Protection of Cultural Property in the Event of Armed Conflict together with its Implementing Regulations and Protocol for the Protection of Cultural Property in the Event of Armed Conflict, Journal of Laws of 1957, No. 46, item 212. According to its Article 1: For the purposes of this Convention, cultural objects are regarded as cultural property, whatever their origin and whoever owns them: (a) movable or immovable assets which are of great importance to the cultural heritage of a nation, such as architectural, artistic or historical monuments, whether religious or secular; archaeological sites; building complexes having historical or artistic importance as such; works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections and major collections of books, archives or reproductions of the above assets; (b) buildings the principal practical purpose of which is to contain or exhibit movable cultural assets as defined in (a), for example museums, large libraries, archives depots as well as shelters intended to contain movable cultural assets as defined in (a) in case of armed conflict; (c) centres containing a significant number of the cultural items referred to in points (a) and (b), hereinafter referred to as “historic centres” [Młynarska-Sobaczewska 2013, 30].

²⁵ Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, item 318. According to Article 23 of the Concordat: “Church legal persons may, in accordance with the provisions of Polish law, acquire, own, use and dispose of immovable and movable property and acquire and dispose of property rights.”

The principles of cooperation between the state authorities and the Catholic Church in the field of care are set out in the Act on the Relation of the State to the Catholic Church in the Republic of Poland.²⁶ According to it, the Republic of Poland guarantees the Church the right to conduct extensive cultural activities, including in the form of media.²⁷ According to Article 50 of the Act, church legal entities have the right to establish and maintain church archives and museums [Leszczyński 2006a, 103-18]. Whereas according to Article 51 of the Act “State, local government and church institutions cooperate in the protection, conservation, making available and dissemination of monuments of church architecture and sacred art and their documentation, museums, archives and libraries owned by the church, as well as works of culture and art with religious motives, which are an important part of the Polish cultural heritage.” This article therefore provides the basis for the Catholic Church’s support of the state’s implementation of the constitutional guarantee of access to cultural assets. As A. Frankiewicz-Bodynek notes, the state and churches and religious associations should jointly take care of the protection of sacral monuments, movable and immovable, and the basis for these activities also derives from the Article 25(3). Constitution, which states that the relations of the state and churches are shaped on the principles of cooperation for the common good [Frankiewicz-Bodynek 2019, 67].

Sacred monuments have a special legal position due to their inclusion under the regime of both Polish public law and canon law and church administrative law [Bijak 2019, 259]. Since historic times, the Catholic Church has shown great interest in caring for monuments of sacred art [Czernik 2016, 16]. This interest did not diminish after the Second Vatican Council – the Constitution on the Sacred Liturgy *Sacrosanctum Concilium* of the Second Vatican Council confirms the special role of church art and the need to care for it.²⁸ The 1983 Code of Canon Law refers to the care of sacred art in can. 1220 § 2. According to it: “For the protection of sacred

²⁶ Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland, Journal of Laws of 2019, item 1347.

²⁷ Article 46 of the law guarantees the right to publish newspapers and run publishing houses, while Article 49 guarantees the right to establish and run cinemas, theatres and record companies.

²⁸ *Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio de Sacra liturgia Sacrosanctum Concilium* (04.12.1963), AAS 56 (1964), p. 97-134, Chapter VII Ecclesiastical Arts and Liturgical Equipment [Czernik 2016, 18].

assets and valuables, proper care should be shown for conservation and appropriate security measures should be taken.”²⁹ In addition, the Pontifical Commission for Ecclesiastical Heritage was active in the Vatican until 2012, now incorporated into the Pontifical Council for Culture.³⁰

The documents adopted by the Polish Episcopal Conference [Leszczyński 2008, 79-88] and the legislation of the particular churches [Czernik 2016, 22] are also relevant to the protection of sacred cultural property. A special role is also played by the Council for Culture and the Protection of the Cultural Heritage of the Polish Episcopal Conference.³¹

The institutional church actively participates in providing access to national cultural assets which are its property, finding in these activities also an evangelizing mission and a form of dialogue with representatives of other denominations [Śrutwa 2005, 66].

The realization of the guarantee of Article 6 of the Constitution without the active role of the Catholic Church seems, in the light of the considerations presented above, impossible, especially since the temple constitutes “a place for exhibiting works of sacred art” [Zieliński 2015, 75-88].

3. ACCESS TO CULTURAL ASSETS DURING A PANDEMIC – THE SPECIAL ROLE OF THE CATHOLIC CHURCH

On March 20, 2020, a regulation was issued introducing an epidemic state on the territory of Poland. At the same time, Article 25 of the Law of March 2, 2020 on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them introduced amendments to the Law on prevention and eradication of infectious diseases in humans. Among other things, Articles 46a and 46b were added to this law, which made it possible to establish by regulation an area at risk of epidemics and to introduce specific

²⁹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317.

³⁰ See <http://www.cultura.va/content/cultura/it.html> [accessed: 02.08.2021]. On the activities of these entities, see Leszczyński 2006, 17-35; Moś 2017, 175-86.

³¹ See <https://episkopat.pl/rady-3/#1455604225972-2376de52-ae99> [accessed: 02.08.2021]. See also “Biuletyn Kościelnych Dóbr Kultury” 1 (2005), p. 200.

restrictions.³² Already on March 30, 2020, a regulation was issued on the establishment of certain restrictions, orders and prohibitions in connection with the outbreak of an epidemic condition – according to its para. 8 a temporary restriction on creative activities related to all forms of culture and entertainment was established³³ as well as the closure of cinemas (para. 8(1)(e)). Moreover, the regulation temporarily limits the activities of libraries, archives and museums, as well as the exercise of worship in public places. While museums were closed completely to the public, even in the early days of the pandemic, when restrictions on civil liberties were most severe, there was the possibility of services – the Regulation established the possibility of 50 people attending a ceremony as early as April 12, 2020 (para. 9(3)(a)). Subsequent regulations issued after the first wave of the pandemic introduced specific regulations for loosening restrictions on cultural life. At the same time, the loosening of restrictions benefited religious associations, which gained the right to conduct religious worship more widely and in compliance with the sanitary regime.³⁴ To date (as of 01.08.2021), on the basis of Articles 46a and 46b of the Law on Prevention and Control of Infections and Infectious Diseases in Humans, 75 executive acts have been issued regulating the functioning of social life during a pandemic. Currently, based on the current regulation of 6 May 2021 on the establishment of certain restrictions, orders and prohibitions in connection with the outbreak of an epidemic,³⁵ it is possible to conduct cultural activities under the rules set out in the regulation with a sanitary regime. The situation is similar with regard to religious worship – for the 2021 holiday period, services may be held in temples with social distance (para. 26(10a) and (10b) of the Regulation).

³² Article 25 of the Law of 2 March 2020 on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them, Journal of Laws item 1842.

³³ Para. 8(1)(c) of the Regulation of the Council of Ministers of 31 March 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic state, Journal of Laws item 566.

³⁴ See, for example, para. 15(8) of the Regulation of the Council of Ministers of 29 May 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic state, Journal of Laws item 964.

³⁵ Regulation of the Council of Ministers of 6 May 2021 on establishing certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic, Journal of Laws item 861.

It leaves no doubt that the three pandemic waves to date have significantly reduced the possibility of realizing constitutional guarantees of access to cultural assets and participation in cultural life. A special role in meeting the cultural needs of Polish citizens was played by the Catholic Church, through the sacred cultural assets made available in churches, with which the faithful could have direct contact. Apart from the possibility of admiring works of sacral art such as altar sculpture, paintings, frescoes or stained glass windows, attention should also be paid to the role of sacral architecture in the cultural landscape of Poland. In the era when cultural institutions were closed, the possibility of communing with historic architectural stock, if only in the open air, was also a form of satisfying the need for contact with high culture and enabled direct, and not only indirect, contact with the national heritage. In the stages of the hard lock down of cultural institutions, religious art played a special role in meeting cultural needs, although directly in the political and social discourse this dimension of the functioning of religious associations was overlooked, in my opinion wrongly, focusing only on the issue of enabling religious worship. In a situation as extraordinary as the state of the epidemic, however, guaranteeing the realization of religious freedom in an external form also made it possible for crowds of members of religious associations to experience high culture.

CONCLUSION

The constitutional and statutory provisions analysed in this study allow us to confirm the thesis about the special role of the Catholic Church in the implementation of the constitutional principle of access to cultural heritage. A key role in the adoption of this statement is played by the systemic interpretation and analysis of Article 6 of the Constitution in conjunction with the principles of subsidiarity and the common good. Adopting a broader interpretation of the notion of the Republic as a community of citizens and their organizations makes it possible to indicate the duty of care and dissemination of cultural property as a duty common to all entities in possession of national cultural assets.

The analysis of the provisions of specific acts – the Act on Care for Monuments and the Concordat as well as the provisions regulating the state-

-Church relations shows that the Catholic Church has certain obligations concerning the care and making available the sacred cultural assets. The regulations in force on the territory of the Republic of Poland regulating the access to church assets are coherent and thus enable the citizens to have full access to this particular group of national cultural assets which are in the possession of the Catholic Church.

It seems that in the discourse on the realization of the cultural rights of citizens, which are essentially framed only as constitutional norms, the role of the Catholic Church is insufficiently emphasized and deserves special articulation. The Catholic Church largely facilitates access to the nation's cultural assets, mostly free of charge. Without its active involvement in the care of monuments and their availability in church temples and museums, the realization of the constitutional access to cultural assets would be incomplete. This became particularly evident in the COVID 19 pandemic, when direct, institutional access to cultural assets was impossible.

REFERENCES

- Barankiewicz, Tomasz. 2010. "Współczesne metody badania prawa." *Studia Prawnicze KUL* 1 (41):115-31.
- Bijak, Paweł. 2019. "Zabytki sakralne w systemie prawnym Polski – uwagi de lege ferenda." *Cywilizacja i Polityka* 17, no. 17:256-70.
- Complak, Krystian. 2003. "Konstytucyjne postanowienia programowe czy normy o celach państwa?" In *Sześć lat Konstytucji Rzeczypospolitej Polskiej, Doświadczenia i inspiracje*, ed. Leszek Garlicki, and Andrzej Szmyt, 46-61. Warszawa: Wydawnictwo Sejmowe.
- Czernik, Zbigniew 2016. "Działania Kościoła Rzymskokatolickiego w Polsce w zakresie ochrony zabytków." *Ochrona Dziedzictwa Kulturowego* no. 1:15-30.
- Daszkiewicz, Wojciech. 2019. *Byt. Człowiek. Kultura. Studium z filozofii kultury*. Lublin: Polskie Towarzystwo Tomasza z Akwinu.
- Dobek, Agnieszka 2008. "Zasada pomocniczości w orzecznictwie Trybunału Konstytucyjnego." *Studia Erasmiana Wratislaviensia* issue 3:155-69.
- Frankiewicz, Anna. 2013. "Konstytucyjna regulacja dostępu do dóbr kultury i wolności korzystania z kultury." *Przegląd Prawa Konstytucyjnego* 3:57-78.
- Frankiewicz, Anna. 2018. "O należyтым pojmowaniu dziedzictwa narodowego i jego aksjologicznych podstawach." In *Dookoła Wojtek...: księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, ed. Janusz Balicki, and Mariusz Jabłoński, 199-210. Wrocław: Uniwersytet Wrocławski.

- Frankiewicz-Bodynek, Anna. 2019. *Konstytucyjna regulacja dziedzictwa narodowego oraz dóbr kultury*. Toruń: Wydawnictwo Adam Marszałek.
- Gawin, Magdalena, Barbara Markiewicz, Agnieszka Nogal, et al. 2016. *Prawa człowieka i obywatela w zglobalizowanym świecie*. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego.
- Granat, Mirosław. 2010. *Prawo konstytucyjne w pytaniach i odpowiedziach*. Warszawa: LexisNexis.
- Izdebski, Hubert. 2001. *Samorząd terytorialny. Podstawy ustroju i działalności*. Warszawa: LexisNexis.
- Jabłoński, Mariusz. 2002. "Wolność z art. 73 Konstytucji RP." In *Prawa i wolności obywatelskie w Konstytucji RP*, ed. Bogusław Banaszak, and Artur Preisner, 560-61. Warszawa: Wydawnictwo C.H. Beck.
- Kosińska, Anna. 2014. *Kulturalne prawa człowieka. Regulacje normatywne i ich realizacja*. Lublin: Wydawnictwo KUL.
- Leszczyński, Mariusz. 2006a. "Muzea kościelne wg aktualnego prawodawstwa Kościoła Katolickiego." *Archiwa, Biblioteki i Muzea Kościelne* vol. 85, 103-18.
- Leszczyński, Mariusz. 2006b. "Troska Papieskiej Komisji ds. Kościelnych Dóbr Kultury o zachowanie dziedzictwa kulturowego Kościoła." *Archiwa, Biblioteki i Muzea Kościelne* vol. 86, 17-35.
- Leszczyński, Mariusz. 2008. "Ochrona zabytków sztuki sakralnej w świetle aktualnego prawa Kościoła Katolickiego." *Muzealnictwo* n. 49:79-88.
- Łączkowski, Wojciech. 2003. "Ekonomiczne i socjalne prawa człowieka a dobro wspólne." In *Godność człowieka a prawa ekonomiczne i socjalne. Księga pamiątkowa wydana w piętnastą rocznicę ustanowienia Rzecznika Praw Obywatelskich*, 37-45. Warszawa: Biuro Rzecznika Praw Obywatelskich.
- Młynarska-Sobaczewska, Anna. 2013. "Prawo do kultury w katalogu praw człowieka." *Przegląd Prawa Konstytucyjnego* n. 1:27-55.
- Moś, Andrzej. 2017. "Działalność Papieskiej Komisji ds. Kościelnych Dóbr Kultury." *Studia Elckie* 19, no. 2:175-86.
- Osiatyński, Wiktor. 2011. *Prawa człowieka i ich granice*. Translated by Sergiusz Kowalski. Kraków: Wydawnictwo Znak.
- Panciuchin, Joanna. 2021. "Kultura w czasach zarazy." <https://uni.wroc.pl/2021-kultura-w-czasach-zarazy/> [accessed: 02.08.2021].
- Schollenberger, Piotr. 2011. "Jednostkowość estetyczna i media sztuki." In *Konteksty sztuki. Konteksty estetyki*. Vol. 3: *Medium a doświadczenie*, ed. Aleksandra Drzał-Serocka, and Mateusz Skrzeczkowski, 133-46. Łódź: Oficyna Wydawnictwo.
- Szpociński, Andrzej. 2011. "Antoniny Kłoskowskiej koncepcja kultury narodowej jako źródło inspiracji." *Kultura i Społeczeństwo* 55, no. 2-3:73-83.
- Śrutwa, Jan. 2005. "Znaczenie zabytków w realizacji misji Kościoła." In *Konferencja Krajowa „Potrzeby Konserwatorskie Obiektów Sakralnych na przykładzie makroregionu łódzkiego – stan, zagrożenia i możliwości przeciwdziałania” Łódź, 9-10 grudnia 2005 r.*, ed. Jan Perkowski, and Bogusław Więcek, 63-68. Konstantynów Łódzki: Wydawnictwo Bernard Cichosz.

- Tatarkiewicz, Władysław. 1988. *Historia estetyki*. Vol. 1. Warszawa: Państwowe Wydawnictwa Naukowe.
- Wiessner, Siegfried. 2013. "Culture and the Rights of Indigenous People." In *The Cultural Dimension of Human Rights*, ed. Ana Filipa Vrdoljak, 117-58. Oxford: Oxford University Press.
- Zeidler, Kamil. 2017a. "Pojęcie dziedzictwa narodowego w Konstytucji RP i jego ochrona prawna." In Kamil Zeidler, *Zabytki. Prawo i praktyka*, 17-28. Gdańsk–Warszawa: Wydawnictwo Uniwersytetu Gdańskiego.
- Zeidler, Kamil. 2017b. "Prawa człowieka a normatywne podstawy ochrony dziedzictwa kultury." In Kamil Zeidler, *Zabytki. Prawo i praktyka*, 106-120. Gdańsk–Warszawa: Wydawnictwo Uniwersytetu Gdańskiego.
- Zeidler, Kamil. 2018. *Estetyka prawa*. Gdańsk–Warszawa: Wolters Kluwer Polska.
- Zieliński, Marek. 2015. „Świątynia jako miejsce ekspozycji dzieł sztuki sakralnej na przykładzie kościoła poddominikańskiego pw. św. Piotra i Pawła w Chełmnie.” In *Funkcje muzeum współcześnie: wyzwania i interpretacja oferty muzealnej*, ed. Janusz Hochleitnera, and Wiesława Połom-Jakubowicz, 75-88. Malbork: Muzeum Zamkowe.
- Znaniecki, Florian. 1971. *Nauki o kulturze. Narodziny i rozwój*. Translated by Jerzy Szacki. Warszawa: Państwowe Wydawnictwo Naukowe.

The Role of the Catholic Church in Facilitating Implementation of Constitutional Guarantees of Cultural Rights during the COVID-19 Pandemic

Abstract

According to the research thesis presented in this article, the Catholic Church plays a special role in providing direct access to national cultural assets. The article analyses the provisions of the Constitution of the Republic of Poland guaranteeing cultural rights in the light of other provisions of the Constitution, including the principle of subsidiarity and the common good, as well as guarantees granted to religious associations. Moreover, the study analyses the existing provisions of specific acts, Concordat and church law, in order to verify the thesis on the role of the Catholic Church as a depository of national cultural assets. In the era of the COVID-19 pandemic and the closure of state-run cultural institutions, the Catholic Church allowed direct access to the sacred cultural property owned by the Church, thus facilitating the realization of the cultural rights of citizens of the Republic of Poland.

Keywords: cultural rights; national cultural heritage; right to culture; COVID-19 pandemic; sacral art

**Rola Kościoła katolickiego w ułatwianiu realizacji
konstytucyjnych gwarancji praw kulturowych
podczas pandemii COVID-19**

Abstrakt

Zgodnie z tezą badawczą stawianą w niniejszym artykule, Kościół katolicki pełni szczególną rolę w zapewnianiu bezpośredniego dostępu do dóbr kultury narodowej. Artykuł analizuje przepisy Konstytucji RP gwarantujące prawa kulturalne w świetle innych postanowień Konstytucji, w tym zasady pomocniczości i dobra wspólnego, jak również gwarancji przyznanych związkom wyznaniowym. Ponadto w opracowaniu zanalizowano obowiązujące przepisy ustaw szczegółowych, Konkordatu i prawa kościelnego, celem weryfikacji tezy o roli Kościoła katolickiego jako depozytariusza dóbr kultury narodowej. W dobie pandemii COVID-19 i zamknięcia instytucji kultury prowadzonych przez państwo, Kościół katolicki umożliwiał bezpośredni dostęp do będących jego własnością dóbr kultury sakralnej, facilitując tym samym realizację praw kulturalnych obywateli Rzeczypospolitej.

Słowa kluczowe: prawa kulturalne; narodowe dziedzictwo kulturalne; prawo do kultury; pandemia COVID-19; sztuka sakralna

Informacje o Autorze: DR HAB. ANNA MAGDALENA KOSIŃSKA, PROF. USz – Wydział Prawa i Administracji, Uniwersytet Szczeciński; adres do korespondencji: ul. Narutowicza 17A, 70-240 Szczecin, Polska; e-mail: anna.kosinska1@usz.edu.pl; <https://orcid.org/0000-0002-0915-874X>