

Maria KARZ-KACZMAREK¹
Assistant Professor
Department of Administrative Law and Administrative Science
Faculty of Law and Administration
University of Lodz
mkaczmarek@wpia.uni.lodz.pl

PUBLIC FORMS OF DISSEMINATION AND PROTECTION OF MUSICAL INHERITAGE OF CULTURE

I. Cultural issues in legal regulations – general information

Issues related to culture are taken into consideration both at the level of national, international and European Union law. It is worth to emphase that, in accordance with the introduction to the EU Treaty, the initiative to create the European Union (EU) was inspired by, among others, the cultural inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law². In turn, the Treaty on the Functioning of the European Union³ under title *XIII Culture* in Article 167 proclaims that the EU shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore. European Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. According to those provision of the Treaty on the Functioning of the EU, action shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples,
- conservation and safeguarding of cultural heritage of European significance,
- non-commercial cultural exchanges,
- artistic and literary creation, including in the audiovisual sector.

It should be emphasized, that in the process of constitutionalisation of EU law, which aims at adopting the “Constitution for Europe” there are references to EU symbols such as: anthem, flag and motto. Not ratified by all UE Member States, Treaty establishing a Constitution for Europe⁴ in

¹ ORCID No:0000-0002-4786-4872.

² Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012.13–390.

³ Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. 47–390.

⁴ The Treaty establishing a Constitution for Europe was adopted by the European Council on 18th June 2004 and signed in Rome on 29th October 2004. OJ C 310/1, 16.12.2004. Also look at: Projekt Traktatu ustanawiającego

Article I–8 “Symbols of the Union” states, that anthem of the Union comes from “Ode to Joy” from the 9th Symphony of Ludwig van Beethoven. In turn, in the ratified Treaty of Lisbon of 13th December 2007⁵, provisions on the common European anthem are contained in Declaration No. 52 on the symbols of the EU. In this Declaration, countries such as: Belgium, Bulgaria, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Luxembourg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and Slovakia declared that, the anthem “Ode to Joy” from the 9th Symphony by Ludwig van Beethoven, is for them symbol that expresses the sense of community of EU citizens and their relationship with the Union.

What is more, EU as well as the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe. Broadly understood cultural issues are taken in diverse EU legal acts⁶ and various types of international conventions. To the basic international legal acts – in this respect belong

- include, among others:
- European Cultural Convention drawn up in Paris on 19th December 1954⁷;
- UNESCO Convention on the Protection of Intangible Cultural Heritage drawn up in Paris on 17th October 2003⁸;
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, drawn up in Paris on 20th October 2005.⁹

The concept of the term “culture” does not have a legal definition. This term derives from Latin (*cultura*) and was originally referred to farming or animal husbandry. The term was supposed to indicate transformation of the natural state of nature itself into a more useful condition for man. The term *cultura* for identification of intangible phenomena was used for the first time by Cicero in his work of *Disputationes Tusculanae*. The thinker defined term *cultura animi* (cultivation of the mind) as a nurturing and perfecting higher idea. In modern meaning this concept was used in 1688 by *Samuel Pufendorf* in his work *De iure naturae et gentium*. The term *cultura* and *cultura animi* used by him concerned all inventions introduced by man, eg. social institutions, language, morality. Generalizing, one can assume, after *Jan Pruszyński*, that “*culture is both the whole of spiritual, intellectual and material achievements created by the effort of individuals and human communities, preserved and perpetuated, as well as the attitude to its elements*”¹⁰. The basic construction element of the terms: ‘cultural heritage’, ‘national, European and world cultural heritage’ is the concept of culture. It should be noted, that these concepts are interrelated in such a

Konstytucję dla Europy (nieratyfikowany). <http://www.europarl.europa.eu/about-parliament/pl/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe> (10.10.2018).

⁵ Journal of Laws of 2009/203, item no 1569.

⁶ Regulation of the European Parliament and Council (EU) No 1295/2013 of 11th December 2013 on “The Creative Europe (2014–2020) program” OJ L 347, 20.12.2013. 221–237; Decision No. 445/2014/EU of the European Parliament and Council of 16th April 2014 on the Union action for European Capitals of Culture for 2020–2033. OJ L 132, 3.5.2014.1–12.

⁷ Journal of Laws of 1990/8, item no 44.

⁸ Journal of Laws of 2011/172, item no 1018.

⁹ Journal of Laws of 2007/215, item no 1585.

¹⁰ PRUSZYŃSKI, Jan: *Dziedzictwo kultury Polski – jego straty i ochrona prawna*, V. 1, Kantor Wydawniczy Zakamycze, Kraków 2000. 400.

way, that the Polish cultural heritage contributes to the common European heritage, which in turn is a part of the world's cultural heritage. The concept of heritage, as well as the concept of culture, is a very broad concept with an indeterminate semantic scope. It can be stated, that the concept of heritage consists of all material and spiritual achievements of a given nation. It means all goods created or accepted as their own by a given nation. The heritage of national culture is an important element in shaping the national identity. The *Constitution of the Republic of Poland* (Constitution)¹¹ refers to cultural values and the public duty to take care of national heritage. According to the Constitution, national heritage (national cultural heritage) and cultural goods, which are the source of national identity, are subject to special legal protection and should be disseminated on special terms. According to the introduction of the Constitution the culture of the Polish Nation is rooted in the Christian legacy and human values. Poland has pledged to pass on to future generations all that is valuable for over a thousand years of Polish achievements. This public-law obligation regarding cultural goods, which are the source of the Polish Nation's identity, its duration and development, refers to citizens living both in the country and abroad. The basis for activities aimed at safeguarding national heritage indicated in the Constitution of the Republic of Poland, as well as creating conditions for dissemination and equal access to cultural goods, is to ensure safety and appropriate state of preservation of historical relics. In the opinion of Paweł Sarnecki, "*the relevant undertakings should be considered as primary goals and with the highest significance, exceeding in general terms even the introduction to the Constitution.*"¹²

The provision of Article 5 of the Constitution pointing to the requirement to "protect national heritage" is a program-based provision, that requires all public authorities to participate in the indicated activities, by means of all their competences. This provision of the Constitution, due to its generality, appoints only a nationwide responsibility of public authorities. The obligation to "protect national heritage" is understood in literature as a requirement to protect all material and spiritual factors in the history of the Polish state and society, testifying to its identity, an equal position among other nations, as well as a source of further development. National heritage consists of elements of history, from which Polish society can be proud, but also those elements that are not cherished if they can contribute to social education. The legacy of previous generations is now becoming a common element, not only for the Polish Nation, but for an increasingly integrated European and international community. Guarding of this heritage, in the meaning of 'preservation, security', allows for joint participation in civilizational and cultural achievements.¹³ The activities of public authorities aiming to preserve valuable achievements of the past must be varied, so that they meet the needs of contemporary recipients of culture, and also take into account economic conditions existing at a given moment.

It should not raise any doubt, that music is an important element of intangible national heritage. To the national, European and world heritage resources belongs primarily an official anthem of individual countries. Musical compositions that are an official anthems (hymns)

¹¹ Act of 2nd April 1997 the Constitution of the Republic of Poland, Journal of Laws of 1997/78, item no 483.

¹² SARNECKI, Paweł: Komentarz do art. 5 Konstytucji RP. In: Garlicki, Leszek, Zubik, Marek (eds.): *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Tom I, Wydawnictwo Sejmowe, Warszawa 2016. 230.

¹³ SARNECKI, 2016. 230–235.

are subject to special legal protection.¹⁴ According to the Polish Code of Misdemeanours (Petty Offenses), the violation of the authority of the national anthem is punishable by detention from 5 to 30 days or a fine from 20 up to 5,000 PLN.¹⁵ Cultural values are also other musical works, that are inextricably associated with specific states or historical events. For instance, Cantata of the IX symphony of Ludwig van Beethoven *Ode to joy*, which is the anthem of United Europe, both the Council of Europe and the European Union,¹⁶ undoubtedly forms part of the European cultural heritage. It can even be stated, that this work is currently associated primarily with the EU as an international organization, not with the composer and the country of his origin. Certain cultural heritage assets, including musical works, can not be easily and unambiguously assigned to one nation.¹⁷ These works, due to their complex origin or universal value, are part of the European and world heritage. The Council of Europe makes recordings of various interpretations and versions of the European Anthem. These recordings are “*Rhapsody on the theme of the European Anthem*” by French composer Christoph Guyard. This “Rhapsody” has copyrights since registering at Sacem (France). To satisfy every European’s musical taste, the Council of Europe provides also other versions of the hymn, e.g. Hip-hop, Techno, Roma and Pipe Organ¹⁸ version. All of these versions are available to radio, television and other media and the general public. The service is free but as these different works are protected their use and/or public broadcasting is subject to the payment of performing rights.¹⁹

Their unambiguous assignment to the national heritage of a given nation is problematic, like in the case of Fryderyk Chopin’s heritage. This composer has a complex identity. He came from a family of Polish-French origin, was born and lived in his youth in part of Poland under Russian occupation, but in his adult life lived and died in France. Music legacy of this artist is an important element of Polish national heritage, but also an element of European heritage. Chopin’s legacy was – and still is – the link between Polish culture and European culture. Development and dissemination of culture, including musical culture, belongs both to the tasks of government administration bodies and to the tasks of local government units. In the literature on the subject, it was noted, that the division of these competences into individual bodies and units results primarily from the

¹⁴ According to Article 28.4 the Polish Constitution the Polish anthem “*Dąbrowski’s Mazurka*” is protected by law. In turn, Act of 31st January 1980 on the coat-of-arms, colors and anthem of the Republic of Poland and state seals provides that the Polish national anthem shall be performed or reproduced in a way that ensures their due respect. Journal of Laws of 2018, item no 441.

¹⁵ Act of 30th May 1971. Journal of Laws of 2018, items no 618, 911, 2077.

¹⁶ The Parliamentary Assembly of the Council of Europe in 1971 proposed the acceptance the *Ode to joy* as the anthem of Europe. This idea was accepted by the Committee of Ministers of the Council of Europe in January 1972. For the first time, the European anthem was officially performed in 1972 on Europe Day. In 1986, this piece of music was also adopted by the European Community and later by the EU as its anthem. Currently, the Council of Europe and the EU have a common anthem and a European flag. *Hymn europejski*, <https://www.coe.int/pl/web/about-us/the-european-anthem>; Hymn europejski, https://europa.eu/european-union/about-eu/symbols/anthem_pl (10.11.2018)

¹⁷ ZEIDLER, Kamil: Pojęcie “dziedzictwa narodowego” w Konstytucji RP i jego prawna ochrona. In: *Zabytki. Prawo i praktyka*, Wydawnictwo Uniwersytetu Gdańskiego, Wolters Kluwer, Gdańsk Warszawa 2017. 19.

¹⁸ Pipe Organ of the Béla Bartók National Concert Hall, Palace of Arts – Budapest, Hungary; entirely virtualised by Inspired Acoustics. Hymn Europejski. <https://www.coe.int/pl/web/about-us/the-european-anthem> (20.11.2018).

¹⁹ *The European anthem*, <https://www.coe.int/pl/web/about-us/the-european-anthem> (23.11.2018).

character and systemic role of these bodies, as well as from detailed provisions specifying their tasks.²⁰

II. Institutional form of dissemination and protection of musical heritage in Poland

II.1. Celebration of heritage of outstanding artists. General remarks

In Poland at the level of government administration functions the department of culture and protection of national heritage. Pursuant to the Act of 4th September 1997 on government administration departments,²¹ such unit covers issues of development and protection of material and intangible national heritage, as well as cultural activities. Mentioned Act does not directly point to protection of musical heritage, but this public task can be derived by way of interpreting the general provisions of applicable laws and the Constitution. Public activities in the field of music in Poland are taken, as a rule, on the basis of general statutory authorization to conduct cultural activities. Under the current legal status, this authorization is included in Act of October 25, 1991 on the organization and conduct of cultural activities.²²

According to mentioned Act Ministers, heads of central offices and self-government units organize cultural activities by creating (state or self-government) cultural institutions for whom conducting such activity is the basic statutory aim. State institutions whose activity is focused on the sphere of music are: Institute of Music and Dance, Polskie Wydawnictwo Muzyczne (Polish Music Publishers) and National Center for Culture. These institutions are organisationally and financially subjected to the Minister of Culture. Their tasks concern the dissemination of culture, maintaining national and state traditions, promoting Polish national heritage and publishing activity. Furthermore, under the 1991 Act, the public's task is to patronage over cultural activities. This patronage includes also care and support of musical activity. Important public form of dissemination and protection of musical heritage are programs of Minister of Culture and National Heritage. They are implemented on the basis of Minister of Culture and National Heritage's regulation of 27th September 2017 on detailed conditions for obtaining funding for the implementation of tasks in the field of culture, the procedure for submitting applications and transferring funds from the Culture Promotion Fund.²³ In 2019 in Poland, in the sphere of music, are implemented two programs: *Muzyka* (Music) and *Muzyczny ślad* (Music Track). The strategic goal of the programs is to raise the level of musical culture and supporting valuable phenomena in Polish and world music culture. The programs are also to support the cultivation and protection of the centuries-long heritage of Polish musical culture. In general, financial support from the state concerns non-commercial activities or tasks that combine high substantive value with commercial potential. Support from the minister must fall within the permissible public aid limits.

²⁰ WYTRĄZEK, Wojciech: *Działalność artystyczna w sferze muzyki w ujęciu prawa publicznego*, Katolicki Uniwersytet Lubelski, Lublin 2013. 189.

²¹ Journal of Laws of 2018, item no 762.

²² Journal of Laws of 2017, item no 867.

²³ Journal of Laws of 2017, item 1808.

With respect to musical heritage of eminent Polish creators, the law provides a specific kind of protection and dissemination. Form of it is the appointment by Sejm and Senat the chosen artist as the patron of a given year. During such a year, public administration authorities pay special attention to organizing cultural events concerning chosen artist. This applies to organizations, both at home and abroad, concerts, festivals, lectures, as well as publishing and popularizing activities. The Polish Sejm²⁴ and Senat²⁵ establishment, among other, the 2019 as a Moniuszko Year. Stanisław Moniuszko (1819–1872) was the founder of the Polish national opera. He composed patriotic music to encourage Poles in difficult times when Poland was under partition. He composed the “Home Songbook” covering over 200 songs. The term “home” had a deeper meaning, to avoid Russian censorship, in a veiled way, it emphasized the national character of the songs contained in the song. The composer’s genius consisted in the ability to combine Polish folklore with elements of the European opera (Italian, French and German). Due to the 200th anniversary of his birth, the public administration authorities decided to take action to bring close the composer life and rich work. Public actions also draw Poles’ attention to patriotic attitudes among artists and the need to create art that draws inspiration from Polish culture. The institutional expression of these activities was the appointment in 2017 the Plenipotentiary of the Minister of Culture and National Heritage for the organization of the celebration of the 200th anniversary of the birth of Stanisław Moniuszko.²⁶ In connection with the establishment the 2019 as a Moniuszko Year, a special pool of funds for publications dedicated to Stanisław Moniuszko has been separated in ministerial grant program *Muzyczny ślad*.

II.2. Legal regulations regarding exclusively protection of Chopin’s heritage

Actions of public authorities in the field of music as an element of national heritage concern primarily protected legacy of Fryderyk Chopin and folk music as an important factor enabling the preservation of national and local identity. Considering the artistic value and significance of Fryderyk Chopin’s work for the Polish Nation, it should be undeniably stated, that the composer’s legacy is an important element of the Polish cultural heritage. Due to this, it is worth paying attention to the institutional forms of protection and cultivation by the public authority of the legacy of Chopin. An analysis of Polish legislation indicates, that activities of public authorities regarding Fryderyk Chopin’s legacy are undertaken both on the basis of general statutory authorizations and a specific authorization contained in Act of 03th February 2001 on the protection of Fryderyk Chopin’s heritage.²⁷ The music of Fryderyk Chopin, created in times particularly difficult for the Polish Nation, has already shaped national identity in the artist’s assumptions.²⁸ The composer’s output, its undeniable

²⁴ Monitor Polski 2018, item 731.

²⁵ Monitor Polski 2018, item 34.

²⁶ Ordinance of Minister of Culture and National Heritage of 31st October 2017 (Journal of the Minister of Culture and National Heritage 2017, item no 72).

²⁷ Journal of Laws of 2001/16, item no 168.

²⁸ At the time, when Fryderyk Chopin composed, Poland was under partitions. The patriotic motifs are visible, for example, in the Etude in C minor, Op. 10 No. 12, called “*the Revolutionary Etude*” (that piece of music was inspired by the failed Polish National Uprising from 1831). CHOPIN, Fryderyk: Etude in C minor, Op.

artistic and patriotic value, were appreciated in Polish territory relatively soon after the artist's death. The value of this music perfectly reflects the words of friend of Chopin, Robert Schumann, who stated, that "if a powerful self-serving monarch from the north knew, how dangerous the enemy threatens him in Chopin's works, in simple melodies of his mazurkas, he would forbid this music. Chopin's works are cannons hidden in flowers."²⁹ Drawing from the sources of native culture made the music of this genius artist very quickly and permanently settled in the hearts of Poles. Certainly, the commemoration of his outstanding activity was hampered by political situation at the time. In the nineteenth and early twentieth centuries the partitioning authorities were not interested in spreading the artist's output – a Pole of choice, which in his music reflected patriotism, the tragic fate of his Nation, and a longing for Polish culture, including folk music. Initially, the Warsaw Musical Society was involved in commemorating the person and Chopin's work. An important achievement of the Society was founding a memorial plaque to memory of Chopin. This plaque was placed in the church of Saint Cross in Warsaw, that is the resting place of the urn with the composer's heart.³⁰ In addition, the Warsaw Music Society led to unveiling of the first monument of Fryderyk Chopin on Polish territories.³¹ The monument stood in Żelazowa Wola, the place of the artist's birth. The indicated Society also contributed to giving the composer's name for one of the newly-established streets of Warsaw. As part of the Society, on the initiative of a Polish ethnographer, musicologist, linguist and folklorist Jan Karłowicz, in May 1899 a separate section was established, whose task was to disseminate Chopin's works and collect memorabilia after him. An important achievement of the Warsaw Music Society was the inauguration in 1927 the *International Fryderyk Chopin Piano Competition* [IFCPC] in Warsaw.³² The indicated Competition has become a permanent part of the cultural calendar not only for Poles, but for music lovers from all over the world. Organized regularly every 5 years,³³ the IFCPC is the oldest monographic music competition in the world. The participation itself is treated prestigiously and often shapes the fate of young pianists. IFCPC is an institutional way of disseminating the music of his patron. It can even be said, that the Competition itself is an instrumental value and is an important element of Polish culture and national identity. It serves the realization of basic value, which is the cultivation and providing access to the heritage of Chopin's creativity, which is a recognizable fragment of the culture and identity of the Polish Nation almost

10 (*the Revolutionary*) No. 12, Wydawnictwo Muzyczne. Poznań, 1948; HOESICK, Ferdynad: *Chopin. Życie i twórczość*, vol 3. Księgarnia F. Hoesick, G. Gebethner, Warszawa – Kraków, 1911. 268–270.

²⁹ EINSTEIN, Alfred: *Music in the Romantic Era*. W. W. Norton & Company, Inc., New York 1947. 230. Polish translation: JAROCIŃSCY, Michalina i Stefan, *Muzyka w epoce romantyzmu*. Polskie Wydawnictwo Muzyczne, Kraków, 1983. 231.

³⁰ The ceremonial unveiling of the memorative plaque took place on 5th March 1880. *Historia Warszawskiego Towarzystwa Muzycznego*, <http://www.wtm.org.pl/historiaw.htm> (20.11.2018); *Najważniejsze daty w historii kościoła Św. Krzyża w Warszawie*, <http://www.swkrzyz.pl/index.php/historia/najwazniejsze-daty> (10.10.2018).

³¹ Unveiling of the first monument of Fryderyk Chopin on Polish territories in Żelazowa Wola took place in 1894. *Pomnik Fryderyka Chopina z 1894 r.*; <http://www.wtm.org.pl/historiaw.htm>. (20.11.2018). The history of the construction of the monument in Warsaw covers the years 1901–1926. SIEMIŃSKA, Halina: *Historia budowy pomnika Fryderyka Chopina w Warszawie*. Komitet Budowy Pomnika Fr. Chopina, Warszawa, 1929. 3.

³² *Historia Warszawskiego Towarzystwa Muzycznego*, <http://www.wtm.org.pl/historiaw.htm> (20.11.2018).

³³ For obvious reasons, the International Fryderyk Chopin Piano Competition in Warsaw did not take place during the Second World War. *Międzynarodowy Konkurs Pianistyczny im. Fryderyka Chopina*, <http://pl.chopin.nifc.pl/institute/chopincompetition/info>. (30.09.2018)

throughout the world. The ever-present phenomenon of this event proves, that chopinaria not only have significant aesthetic value, but are manifestation of a universal and timeless good.³⁴ It should be remembered, that during the Second World War, the performing of Fryderyk Chopin's music was punished by imprisonment in the German Nazi concentration camp.³⁵ Removing from the public message and social awareness of Poles the works and information about the great Countryman indicates, that the German Nazi invaders noticed "*cannons hidden in flowers*". During summer of 1940, the material expression of Chopin's memory, his monument in Warsaw, was also destroyed.³⁶ Echoes of this bestial act have been preserved in Polish literature. Expression of indignation was even given to those, who do not professionally engage in literature. An example is, among others, a poem by *Ludwik Straszewicz*, later a long-time professor at the University of Lodz (Poland), who was an eyewitness of the events of that time.³⁷ Severe punishments, including a direct threat to life and health, did not manage to erase Chopin's cultural heritage from the universal memory of Poles. German occupiers, therefore, undertook a different form of "struggle" with his legacy. Namely, they wanted to falsify the truth about Artist's origin. The information about the supposedly German origin and German cultural affiliation of the composer was disseminated. In this way, the Nazis wanted to undermine the patriotic value of Chopin's music.³⁸ In the other hand the propaganda action consisted in handing over to Polish hands, at the instigation of the chaplain of the German army, pastor Schulz, the urn with Chopin's heart in order to protect it from destruction during the Warsaw Uprising (1944). The urn was handed over to the Polish bishop Szlagowski on 4th September 1944 and was kept in Milanówek, which was documented in the German film chronicles.³⁹ This action, however, paradoxically contributed to the preservation of important mementoes of Polish culture. Occupation authorities did not manage to remove from the Poles' awareness the values of Fryderyk Chopin's music. Winner of the 2nd International Fryderyk Chopin Competition in Warsaw in 1932 stated, that during the occupation

"the first thing that was forbidden was playing Chopin. (...) The Germans did not even realize, how much they contributed to his ennoblement. (...) After the

³⁴ KARCZ-KACZMAREK, Maria: Dziedzictwo Fryderyka Chopina jako wartość w prawie administracyjnym. In.: Zimmermann, Jan (ed.): *Aksjologia prawa administracyjnego*. V. 2 Wolters Kluwer, Warszawa, 2017. 763–779.

³⁵ BUDREWICZ, Olgierd: *Polska dla początkujących*, Wydawnictwo Naukowe PWN, Warszawa 1976. 54.

³⁶ Łazienki bez Chopina? Niemcy nie mieli problemu z wysadzeniem pomnika, <https://www.polskieradio.pl/39/156/Artykul/854658,Łazienki-bez-Chopina-Niemcy-nie-mieli-problemu-z-wysadzeniem-pomnika> (15.11.2018).

³⁷ Poem: *Pomnik Szopena*. In: STRASZEWICZ, Ludwik: *1940–1944. Szkopskie lata*, Wydawnictwo L. Straszewicz Wrocław, 1946. 61.

³⁸ During World War II, the occupation authorities prohibited the performance of Chopin's works and began to disseminate the thesis about the German origin of the Artist, because Chopin's family came from the duchy of Lorraine located on the Franco-German border. In 1943, in Kraków, Hans Frank opened an exhibition dedicated to Chopin, collection included items related to the artist, such as: Chopin's posthumous mask, Chopin's piano brand Pleyel, correspondence and the library of Chopin's teacher Józef Elsner. WRÓŃSKI, Paweł: *Fortepian Schoppinga*, http://wyborcza.pl/duzyformat/1,127290,7867801,Fortepian_Schoppinga.html; MAJEWSKI, Jerzy: *Pomnik Fryderyka Chopina w Warszawie. Od 59 lat ponownie zdobi Łazienki Królewskie*, <http://warszawa.wyborcza.pl/warszawa/1,34862,20055585,pomnik-fryderyka-chopina-od-59-lat-ponownie-zdobi-lazienki.html> (03.11.2018).

³⁹ BILICA, Krzysztof: „Ktokolwiek by wiedział...”, *Ruch Muzyczny*, 2008/17–18. 53.

war, people reminding themselves of these concerts, they said, you know, thanks to your music I managed to survive the occupation."⁴⁰

Examples from history show the deep roots of Fryderyk Chopin's work in national identity and its significance for the duration and development of the Polish Nation.

In the Polish legal system, idea of commemorating the person and work of Fryderyk Chopin appears systematically on the occasion of the artist's birthday or death anniversary. One of the first forms of honoring and at the same time using the artist's image, was introducing, pursuant to the circulation of postage stamps with the image of Fryderyk Chopin. The indicated postage stamps were introduced by the ordinance of the Minister of Post and Telegraph from February 28, 1927.⁴¹ The artist's image was also used by the National Bank of Poland, which issued coins⁴² and banknotes⁴³ commemorating the artist's birthday or death, as well as the next International Fryderyk Chopin Piano Competition in Warsaw.⁴⁴

II.2.1. Statutory scope of protection of Fryderyk Chopin's heritage

At present-day, detailed rules concerning forms of protection and tasks of public authorities in the discussed area are regulated by law. This underlines the importance of indicated problem. Pursuant to the Act of 3rd February 2001, the works of Fryderyk Chopin and related subjects are under a special legal protection. The indicated elements of material and immaterial culture were considered to be nationwide by virtue of this Act. Also, the birthplace of Fryderyk Chopin, a manor house in Żelazowa Wola along with the historic park surrounding it, according to Article 2 of the mentioned Act, are considered to be the good of national culture. The use by the legislator two separate definitions, namely the "nationwide good" and the "good of national culture" seems unjustified. These concepts have in practice the same meaning. Therefore, this legal state introduces interpretation doubts. In the literature on the subject, it was indicated, that enough term would be: "national good", although this term on the basis of indicated *act* "is difficult to consider as momentous (...) perhaps it was supposed to fulfill only a function."⁴⁵ The use of term 'national good' should emphasize the importance, that legislator grants to the person and work of the artist.

⁴⁰ BILICA, 2008. 53.

⁴¹ Journal of Laws of 1937/24, item no 191.

⁴² Ordinance of the President of the National Bank of Poland of 4.08.1999 regarding the determination of samples, alloy, sample, weight and volume of issue of nominal value of 2 zlotys, 10 zlotys and 200 zlotys and the date of putting them into circulation. Monitor Polski 1999/28, item no 431. This ordinance on the occasion of the 150th anniversary of Chopin's death, introduced jubilee coins with the artist's image on the market.

⁴³ Ordinance of the President of the National Bank of Poland from 16th February 2010 regarding the design and size of issue of a banknote with a nominal value of PLN 20. This banknote was introduced on the occasion of the 200th anniversary Fryderyk Chopin's birth. Monitor Polski 2010/9, item no 81.

⁴⁴ Ordinance of the President of the National Bank of Poland of 21st September 1995 regarding the determination of the sample, sample and weight of the nominal coin of PLN 200 and the date of its entry into circulation. Monitor Polski 1995/49, item no 557.

⁴⁵ MAZURKIEWICZ, Jacek: *Non omnis moriar. Ochrona dóbr osobistych zmarłego w prawie polskim*, Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2010. 719.

The legislator's intentions regarding the special legal protection of Chopin's legacy were clearly expressed in the draft of Act on the Protection of Chopin's Heritage of 1999.⁴⁶ Initially, the Act began with an introduction, that constituted the role of Fryderyk Chopin's music for the preservation and development of Polish cultural identity, but also stressed the universal values of this music. The draft introduction to the Act stressed, that special obligations exist on the Nation and the Polish State. In the indicated project, all objects related to Chopin were defined as the '*inalienable good of the Polish Nation*', which meant, that they could not be sold outside of Poland. Finally adopted in 2001 Act does not have a preamble, that would be clearly disclose the normatization of this legal act. The legal doctrine indicates, that the preface (preamble, arenga) preceding the basic part of the act is "*somewhat ex definitione predestined to expose the axiological basis of the act.*"⁴⁷ The applicable Act does not contain a preamble, which would be clearly specify motivations (*ratio legis*) to adopt it. Nevertheless, analysis of the provisions allows to formulate an assessment as to the attitude of legislature to the values protected by this legal act. This assessment is indicated by the terms "national good" and "nationwide good" used in relation to the object of its protection. In the current legal status, protection and custody over Fryderyk Chopin's heritage is *expressis verbis* a public task. However, the mentioned Act does not contain a definition of the legal concept of 'heritage'. Taking into account the provisions of article 1 and article 3, it can be stated, that the heritage of Fryderyk Chopin and, at the same time, the national good, are subject to special legal protection to his works and objects related to him, the place of birth of the artist together with the historic park surrounding it, as well as his name and image. The minister competent for culture and protection of national heritage is in charge of listed heritage.

The concept of 'custody' in Poland is not only a statutory⁴⁸ concept, but also a constitutional⁴⁹ one. In dictionary terms, custody is related to care for someone or something.⁵⁰ On the other hand, according to administrative law⁵¹, care is given to the positive functions of public administration focused on direct or indirect satisfaction of public needs. In the present case, public need justifying the existence of custody provided by the minister competent for culture and protection of national heritage is the need for protection indicated in Article 1 of the Act on the protection of Fryderyk Chopin's heritage of nationwide goods. According to Stanisław Dusznik, the concept of care, 'custody' in public law was taken from the terminology of private law, in which its meaning was established by Roman law (*tutela, cura, curatela*) and developed in modern law. In the opinion of these author, indicated in

⁴⁶ Official Project no 1414, Sejm of the Republic of Poland for the 3rd Term. [http://orka.sejm.gov.pl/Rejestrdsn/f/wgdruku/1414/\\$file/1414.pdf](http://orka.sejm.gov.pl/Rejestrdsn/f/wgdruku/1414/$file/1414.pdf) (10.12.2018)

⁴⁷ Boć, Jan – LISOWSKI, Piotr: *Normatywizacja wartości w prawie administracyjnym*. In: Zimmermann, Jan (ed.): *Wartości w prawie administracyjnym*, Wolters Kluwer Polska, Warszawa 2015. 27.

⁴⁸ The term 'custody' is used, among others: in the Act of 9th June 2011 on supporting families and the foster care system. *Jurnal of Laws of 2016*, item no 575, Act of 2nd December 2009 on Medical Chambers. *Jurnal of Laws of 2018*, item no 168.

⁴⁹ The provision of Article 17.1 of the Constitution of the Republic of Poland determines the custody held by professional self-governments over professions in which the public repose confidence.

⁵⁰ SZYMCAK, Maciej (ed.): *Słownik języka polskiego*, Vol. II, Państwowe Wydawnictwo Naukowe, Warszawa 1978. 648.

⁵¹ KASZNICA, Stanisław: *Polskie Prawo Administracyjne. Pojęcia i instytucje zasadnicze*. Księgarnia Akademicka, Poznań, 1947.152–153.

public law, the care was associated mainly with the police state, in which “*the state – the carer overwhelmed [the municipality] with its watchful care until it was deprived of all independence*”.⁵² Indicated negative connotations contributed to the slow elimination of custody from terminology and legislation. The restoration of custody (care) concept can be observed in the latest legislation. This phenomenon seems to be justified, the use of the term ‘custody’ is intended to strengthen the emphasis on “*duty of care, supervision over given matters*”. *Entrusting public administrations with the duty to exercise custody contributes to the fact, that supervision is not only a “mechanical function deprived of the expression of life.”*⁵³

The 2001 Act gave – on principles regarding to protection of personal interests – protection for surname and image of Fryderyk Chopin. The minister competent for the matters of culture and protection of national heritage is the entity entitled to claim protection of the indicated personal rights. Principles of *personal interest’s protection*, as well as property and non-proprietary claims in the event of their violation, are regulated by the Civil Code.⁵⁴ Legal protection also applies to trademarks registered and used on the day of entry into force of the Act using the surname or image of Fryderyk Chopin. It is worth noting, that the wording of Article 1 point 3 of the said Act indicates, that the pursuit of claims does not concern only illegal activities. The basis for starting the minister’s custody may be legal action, but “disgraceful”, in other words, not counting with dignity of the legacy of Fryderyk Chopin as a nationwide good. At the same time, it should be emphasized, that the term ‘disgraceful’ used in the provision leaves the minister a certain scope of freedom of interpretation and discretion as to the scope and basis for pursuing claims related to the protection of Fryderyk Chopin’s heritage. For actions, that could be “disgraceful” to the kind of culture indicated in the Act, should be considered actions taken to ridicule the artist’s activity or use his achievements in an unworthy or socially unacceptable manner. The indicated statutory provision should be assessed positively, as it

⁵² DUSZNIAK, Stanisław: Terminologia z zakresu czynności nadzorczych i kontrolnych. *Gazeta Administracji* 1948/1–2. 51–64.

⁵³ DUSZNIAK, 1948. 63.

⁵⁴ The Civil Code of 23rd February 1964 (Journal of Law of 2018, item no 1025) regulates the protection of personal interests, mainly, in Articles 23–24 and Article 448. According to Article 23 of Civil Code The personal interests of a human being, in particular health, freedom, dignity, freedom of conscience, surname or pseudonym, image, privacy of correspondence, inviolability of home, and scientific, artistic, inventive or improvement achievements are protected by civil law, independently of protection under other regulations. Article 24 of Civil Code indicates means of protection. Paragraph 1 provides that any person whose personal interests are threatened by another person’s actions may demand that the actions be ceased unless they are not unlawful. In the case of infringement, he may also demand that the person committing the infringement perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. On the terms provided for in this Code, he may also demand monetary recompense or that an appropriate amount of money be paid to a specific public cause. Paragraph 2 provides that if, as a result of infringement of a personal interest, financial damage is caused, the aggrieved party may demand that the damage be remedied in accordance with general principles. Paragraph 3 provides that the above provisions do not prejudice any rights provided by other regulations, in particular by copyright law and the law on inventions. In turn, Article 448 of Code Civil concerns infringement of personal interests. According to this provision in the event of infringement of one’s personal interests the court may award to the person whose interests have been infringed an appropriate amount as monetary recompense for the harm suffered or may, at his demand, award an appropriate amount of money to be paid for a social cause chosen by him, irrespective of other means necessary to remove the effects of the infringement.

emphasizes importance of the legacy of the artist in question, not only as an artistic value, but also as a public-law value. The Act on the protection of the Fryderyk Chopin heritage obliges the minister competent for culture and national heritage protection not only to take care of the goods related to the artist's person, but also to protect his heritage. Both the statutory term "custody over heritage" and the "protection of heritage" is an undefined and vague concept. An exemplary list of activities comprising the protection of Fryderyk Chopin's heritage is contained in Article 3 of mentioned 2001 Act. Pursuant to the aforementioned provision, this protection includes, in particular, the cultivation of knowledge and memory about Fryderyk Chopin, as well as conducting research and cooperation in developing knowledge about his work and person. In addition, protective measures are based on popularizing the works of this outstanding artist, in particular by undertaking or co-financing issues of recordings, music and other publications, organizing or co-financing concerts, undertaking or financial support of competitions or other initiatives aimed at presenting works and popularizing knowledge about Fryderyk Chopin. Protection over Fryderyk Chopin's heritage means also cooperation in supporting and developing the performance of his work in Poland and abroad. Pursuant to legal regulation, the protection of heritage also consists in acquiring, collecting, securing and making available objects and places related to his life and work, as well as taking actions aimed at preserving the integrity of Fryderyk Chopin's works.

According to Act on the protection of the Fryderyk Chopin heritage, this activity includes also private legal forms of protection of personal interests (rights), such as the artist's surname and image. This protection, in contrast to the protection provided for in Article 81 and 83 of the Copyright Law,⁵⁵ is indefinite. In the literature,⁵⁶ it has been pointed out, that the lack of a statutory indication of other personal rights does not imply exclusion from legal protection. All Chopin's personal interests are subject to protection pursuant to Polish Civil Code. The issue of *post mortem* protection of the person's right was widely considered in the German legal doctrine, in which numerous reasons of philosophical and legal nature were referred to justifying its existence.⁵⁷ Granting of posthumous protection to personal rights related to the person of Fryderyk Chopin indicates, that the Polish legislator recognized their significant value, also on the legal grounds. The minister competent for culture and protection of national heritage is entitled to claim protection of these assets, and the amounts awarded for damages or compensation for their violation are transferred to the National Fryderyk Chopin Institute. It seems, that protection of *post mortem*, shaped on the basis of the Polish Act on the protection of the Fryderyk Chopin heritage, is part of the German concept of this kind of protection, according to which, protection of person's general right after the subject's death is a general obligation of the state⁵⁸.

The pursuit of state honoring of the value of music and the person of Fryderyk Chopin was particularly evident in 2010, at the occasion of the 200th anniversary of his birth. Preparations for public celebrations of the artist's birthday anniversary were started

⁵⁵ Act of 4th April 1994 on copyright and related rights, provides, in principle, protection within 20 years from the death of a person whose personal rights are protected. Journal of Laws of 2018, item no 1191.

⁵⁶ MAZURKIEWICZ, 2010. 723–724.

⁵⁷ SIĘNCZYŁO-CHLABICZ, Joanna – BANASIUK, Joanna: *Cywilnoprawna ochrona wizerunku osób powszechnie znanych w dobie komercjalizacji dóbr osobistych*, Wolters Kluwer Polska, Warszawa, 2014. 176.

⁵⁸ Moor about concepts of protection of personal interests (rights of personalities) in German law look at: SIĘNCZYŁO-CHLABICZ–BANASIUK 2014. 176–184.

earlier, among others through appointment in January 2008 of a special Plenipotentiary (Representative)⁵⁹ of the Minister of Culture and National Heritage for the indicated events and establishment of the *Celebration Committee of the 200th Anniversary of the Birth of Fryderyk Chopin*.⁶⁰ Pursuant to § 3 of the Regulation No. 4/2008 of the Minister of Culture and National Heritage, tasks of the members of this Committee were, first, to promote the person and work of Fryderyk Chopin on the international arena, then, to initiate and implement projects related to the 200th anniversary of Fryderyk Chopin's birth. The year of 2010, by virtue of resolution of the Sejm⁶¹ of the Republic of Poland of 9th May 2008,⁶² was established as the ^{Year of Fryderyk Chopin}. The resolution indicated conviction of special significance of the artistic achievements of the Patron for national as well as world cultural heritage. In addition, the Polish Sejm emphasized the value of Chopin's music, including his ability to draw patterns from Polish folk music, to shape Polish culture and national identity. The bicentenary of the birth of this outstanding figure was also honored by the Senate⁶³ of the Republic of Poland, and on this occasion issued a resolution on the establishment of 2010 as the Year of Fryderyk Chopin.⁶⁴ The Senate of the Republic of Poland, like the Polish Sejm, emphasized importance and significance of Fryderyk Chopin's activities for national and global culture. In the Senate resolution, Chopin's creativity, contributing to the development of world pianism, was given universal value. The Fryderyk Chopin Institute actively participated in commemoration of the 200th anniversary of birth of its patron.⁶⁵ At present, indicated cultural establishment is the fundamental institutional expression of state's custody of this heritage of Fryderyk Chopin. Act from 2001 stipulates, that the minister may, in the scope indicated by him, commission the Institute to perform duties related to protection of Chopin's heritage. Indicated statutory solution has some legislative awkwardness. It suggests, that the minister responsible for culture and protection of national heritage is the basic entity appointed to protect this heritage. However, taking into account the absolute wording of Article 5 of the mentioned Act, as well as the rationale of establishment of the Chopin Institute, taking into account also its practical activities, it should be stated, that the Chopin Institute is an administrative entity, whose activity is focused on protection of its patron's heritage. The minister competent for culture and protection of national heritage, as the organizer of this Institute, may affect its functioning only within the scope provided for

⁵⁹ Regulation No. 4 of the Minister of Culture and National Heritage of 21st January 2008 on the establishment and tasks of the Plenipotentiary of the Minister of Culture and National Heritage for the celebration of the 200th anniversary of Fryderyk Chopin's birth, Official Journal of the Minister of Culture and National Heritage 2008/1, item no 4.

⁶⁰ Regulation No. 3 of the Minister of Culture and National Heritage from 21st January 2008 regarding the establishment of the Celebration Committee of the 200th Anniversary of the Birth of Fryderyk Chopin, Official Journal of the Minister of Culture and National Heritage 2008/1, item no 3.

⁶¹ Sejm is the lower house of Polish Parliament.

⁶² Polish Monitor 2008/39, item no 343.

⁶³ Senate is the upper house of Polish Parliament.

⁶⁴ Polish Monitor 2008/66, item no 866.

⁶⁵ An important element of this celebration was an International Scientific Congress "Chopin 1810–2010 Ideas – Interpretations – Impacts". It is worth to noting that for the centenary of Chopin's birth in 1910, Chopin's Congress was organized in Lviv, where *Ignacy Jan Paderewski* gave a lively and patriotic speech. The next Congresses took place in 1960 and 1999. After II ww. despite of the enormity of the war losses in 1949, that is in the centenary of the artist's death, in Warsaw took place the Internacional Chopin Competition. <http://pl.chopin.nifc.pl/institute/congress/info> (10.12.2018).

in Act of 25th October 1991 on organizing and conducting cultural activities,⁶⁶ provisions of which apply to matters not regulated in Act on Protection of Fryderyk Chopin's heritage.

II.2.2. Institutional forms of protection of Fryderyk Chopin heritage

Created on the basis of the indicated Act from 2001, the *Fryderyk Chopin Institute* (FCI) is a state cultural institution within the meaning of the Act on organizing and conducting cultural activity. It operates on the basis of a statute granted by the minister competent for culture and protection of national heritage; currently Act of 16 February 2017.⁶⁷ The FCI has legal personality, and its organs are: Director of the Institute, which manages its activities and represents it outside and Program Board of the Institute. The Program Board is an advisory and opinion-forming body, and it consists of 13 members appointed for a period of 5 years by the minister competent for culture and protection of national heritage at the request of the Institute Director. The members of the Program Board are representatives of cultural circles associated with Fryderyk Chopin's music, including a representative of the Minister. It is worth noting, that the current Institute's statute of 2017 provides for complete discretion of the Institute Director as to requesting the appointment of specific persons for the members of the Program Board. However, the repealed statute of 2013 provided, that the obligatory members of the Program Board were: the Director of the National Library, the Director of the National Museum in Warsaw and the Chairman of the Fryderyk Chopin Society. The Institute manages, independently or through other contracted persons, real estate and other things related to Fryderyk Chopin, owned by the State Treasury or owned by state organizational units. In addition, the Institute cooperates to protect the heritage of Fryderyk Chopin with state and local government units, as well as organizations and natural persons. The Institute's activity focuses mainly on cultivation and protection of the heritage of Fryderyk Chopin, a figure symbolizing the achievement of Polish and European culture in the world.

The given by the Minister of Culture and National Heritage statute of Chopin's Institute indicates, how its tasks are to be carried out. According to this regulation, protection of the patron's legacy is carried out by undertaking several popularizing and artistic activities, among which the most important is organizing international and national Chopin festivals and competitions, in particular the *International Fryderyk Chopin Piano Competition* in Warsaw.

It is worth noting, that organizing the IFPC until recently remained the domain of private organizations.⁶⁸ Nevertheless, in the following years private entities began to cooperate with public entities. In the current legal status, organization and conduct of the IFPC has become a public task. This fact testifies not only to the prestige of this competition, but above all, to the legislator's recognition of its public-law value for popularizing Chopin's works in

⁶⁶ Journal of Laws of 2018, item no.1983.

⁶⁷ Official Journal of the Minister of Culture and National Heritage 2017/6.

⁶⁸ The organizer of the first three editions of the Fryderyk Chopin's International Piano Competition. was the College of Music at the Warsaw Music Society. After World War II, the Ministry of Culture and Art was the client and coordinator of the preparatory work. In the years 1960–2005, the main organizer of the competition was Towarzystwo im. Fryderyk Chopin in Warsaw. In 2010, being the Fryderyk Chopin Year, the Competition was organized for the first time by the Fryderyk Chopin Institute. More about history of the Competition on: <http://culture.pl/pl/artykul/miedzynarodowy-konkurs-pianistyczny-im-fryderyka-chopina> (20.12.2018).

Poland and abroad. The Institute also performs statutory tasks by ensuring the permanent presence of Fryderyk Chopin's music and its cultural context in the cultural life of the country. The form of ensuring the indicated presence is making the most prominent concert creations available to the Polish and international audience through annual organization of the "Chopin and his Europe" festival. The indicated initiative deserves a special distinction, as it contributes to the international context of Chopin's art and contemporary references to his music. In addition, due to open and partly free access to some concerts, the festival really contributes to dissemination and cultivation of the memory of this great artist.

The Institute carries out its statutory tasks also through diversified publishing activities, promotion of scholarly Chopin topics and promotion of cultural activities, in particular music.⁶⁹ Also, helping young musicians to develop their international concert activity is the implementation of the Institute's tasks. The implementation of a universal education program is particularly important from the point of view of public interest, of which young people, who often gain their first experiences in the sphere of music are important recipients. The Fryderyk Chopin Institute also provides institutional protection for his heritage by operating, as its organizational units, the Fryderyk Chopin Museum located in the Ostrogski Castle in Warsaw and the Library, which collection is partly a national library resource.⁷⁰ While appreciating the importance of the Institute's current activity, it should be noted, that there is a continuous and real need to expand the Institute's activities throughout the country. It would be reasonable to increase the number of initiatives undertaken in the field, outside the capital, which would be in line with the mission of the national institution. Chopin events dedicated to small local communities and diverse social associations functioning within them would certainly be consistent with intention of the legislator striving to awaken the universal aesthetic sensitivity to Chopin's music. Works and objects related to Fryderyk Chopin were considered valuable enough to look after them for the good of public interest for special state care and concern for their proper behavior, as well as for establishing private protection for them on principles regarding the protection of personal interests. In this light, some legal doubts are raised by the question of the correctness of recording the pianist's name. The 2001 Act stipulates, that the name of Fryderyk Chopin is protected on the basis of personal rights. It seems, that this provision obliges to write the surname in the original form 'Chopin'. Meanwhile, the artist's name is written in the polonized form 'Szopen', even in the public sphere, for example on street names. This action seems not only to have no legal basis,⁷¹ but also to violate the Artist's personal rights and personal interests.

The composer's heritage, as well as an objects and places associated with it, fully deserves to be included in law imponderables category.⁷² This music is a recognizable

⁶⁹ Statute of the National Fryderyk Chopin Institute states about publishing activity in the field of record, music, book and multimedia publications, guaranteeing the recording and making available of the work of Fryderyk Chopin and its most outstanding performances. This Institute per form also scientific, popularizing and educational activities.

⁷⁰ KARCZ-KACZMAREK, Maria – KACZMAREK, Iwona: Narodowy zasób biblioteczny jako dobro chronione w prawie administracyjnym. In: Duniewska, Zofia (ed.): *Dobra chronione w prawie administracyjnym*. Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 2014. 239–251.

⁷¹ Act of 7th October 1999 on the Polish language provides for exceptions to the obligation to use the Polish language, *inter alia* with reference to own names. Journal of Law 2018, item 931.

⁷² In the literature are expressed views that a special legal protection shall be granting not only to Chopin's heritage but also to heritages of others great Poles. ZAIDLER, 2017. 24. More about the concept of „imponderabilia

element of the Polish culture and identity of the Polish Nation in the world. Performing Chopin's music is related to its dissemination, spreading its value and information about Polish sources of this music. According to public law, the performance of Chopin's music can be the background for obtaining state orders and decorations for merits in popularizing Polish culture.⁷³ Fact is, that Chopin's legacy should be recognized not only as national but universal and timeless value, permanently inscribed in European and world culture. Therefore, it is necessary to fully approve the institutional custody indicated in administrative law, as well as private law protection measures. Approved shall be also the legal means aimed at dissemination and cultivation of the discussed heritage.

III. Selected foreign examples of protection of musical cultural heritage

Current example of institutional protection, form of public-private cooperation and custody over musical heritage is operating in Laulasmaa, Estonia, the *Arvo Pärt Centre*. Arvo Pärt Centre was opened to visitors on 17th October 2018. Arvo Pärt's work is an important and recognizable element of the culture not only for Estonia but for the culture of Europe. The Arvo Pärt Centre is an open-access meeting place for musicians, musicologists, research fellows, schools and everyone interested in the music of the composer and its genesis. The idea of establishing the Arvo Pärt Centre in Estonia has become from the composer's family and their initiative this project. The entire start-up capital was provided by the family in the form of the venue, the transportation of archival material from Germany to Estonia and the covering of everyday expenses. The Arvo Pärt Center is an institutional forum for cooperation between public entities and private entities. The center receives state subsidies from the Republic of Estonia and from private Estonia's and abroad organizations and private donors.⁷⁴

In turn, an institutional form of concern of preservation and dissemination of folk music goods is, eg. *the Kodály Method*. In 2016 UNESCO included the Kodály Method to the Register of good practices in the field of protection of the intangible cultural heritage of humanity. It is aimed at protecting, disseminating, transferring and documenting traditional folk music in Hungary and abroad. The main assumption is to incorporate music into the education system (learning to sing and choral singing) and to promote traditional musical heritage by public institutions, including the Kodály Institute, Hungarian Institute of Musicology and the International Kodály Association. The indicated method is also used to document folk music with the participation of its depositaries, public teams and cultural

of law" look at: DOBOSZ, Piotr: Imponderabilia publiczne w obrębie wartości prawa administracyjnego. In: Zimmermann, Jan (ed.): *Wartości w prawie administracyjnym*. Wolters Kluwer Polska, Warszawa, 2015. 44–57.

⁷³ On November 5th, 2018 Georgijs Osokins (an outstanding pianist-schopinist of the young generation, finalist of the 17th International Chopin Competition) received the Cross of Merit (Silver grade) awarded by the President of the Republic of Poland. The award was presented by the Ambassador of Poland in Latvia. Decision of President of the Republic of Poland of 5th September 2018 on giving orders and decorations. Monitor Polski 2018, item 1129.

⁷⁴ Arvo Pärt is a world-famous contemporary composer, who creative output has significantly changed the way we understand the nature of music. In 1976, he created a unique musical language called *tintinnabuli*, that has reached a vast audience of various listeners and that has defined his work right up to today. [https://www.arvopart.ee/en/arvo-part/\(10.01.2019\)](https://www.arvopart.ee/en/arvo-part/(10.01.2019)).

institutions. A special role is played by the Hungarian Institute of Musicology, which has 15,000 hours of folk music recordings and 200,000 melodies from over a thousand settlements in its collection. The Kodály Method has important practical implications for the protection of musical cultural heritage. It is recommended by UNESCO and the authorization of, among others, by including it in academic curricula in over 60 countries. The Kodály Method contributes to the protection and dissemination of folk music, but also encourages artists to inspire by it in their own works.⁷⁵

In turn, in Latvia, in state-strategic documents, it was noticed that music is an important element of the state's development. About importance of the development of musical culture, mobility and exchange of artists and ensuring the protection of musical national heritage provides among other The Cultural Policy Guidelines 2014–2020 “Creative Latvia”.⁷⁶ It is a medium-term policy planning document, which determines the State cultural policy objectives and priorities for the time period up to 2020 and promotes the achievement of the objectives brought forward in State long-term and medium-term policy planning documents. According to this Guidelines culture of Latvia becomes more integral part of Europe and the world – both by participating in international networks and establishing relationship with countries, also among individual organisations and bodies. In mentioned document is said that culture, concurrently with economic growth, social inclusion and balanced environmental development, is recognised as the fourth pillar of sustainable development. The role of the state is, e.g. implementation and ensure effectiveness of the programme which has enriched the culture of Latvia with new excellent pieces of music and development of music education. Therefore, one of the strategic goals is to establish materially and technically well equipped, modern cultural education competence centres which provide basis for the preparation of excellence in art and music.⁷⁷

IV. General conclusion

Granting distinguishing legal protection to specific type of musical works (or works of a specific artists) indicates, that the state recognizes artistic values as an important element of national, European and world intangible cultural heritage. The axiological justification of indicated legal regulations are universal values,⁷⁸ which play an important role for development and preservation of the identity of man and entire communities. The beauty and art, that music brings with it, do not recognize any boundaries and divisions. That is why music is an excellent platform to get to know and even get familiar with other people

⁷⁵ *Polski Komitet ds Unesco: Wegry*. http://www.unesco.pl/no_cache/kultura/dziedzictwo-kulturowe/dziedzictwo-niematerialne/listy-dziedzictwa-niematerialnego/europa-i-ameryka-polnocna/wegry/?print=1 (10.10.2018).

⁷⁶ Cultural Policy Guidelines 2014–2020 “Creative Latvia” Order No. 401, 29th July 2014 of of Latvia’s Cabinet, https://www.km.gov.lv/uploads/ckeditor/files/KM_dokumenti/CULTURAL_POLICY_GUIDELINES_2014-2020_CREATIVE_LATVIA.pdf (20.12.2018).

⁷⁷ Cultural Policy Guidelines 2014–2020 “Creative Latvia”, https://www.km.gov.lv/uploads/ckeditor/files/KM_dokumenti/CULTURAL_POLICY_GUIDELINES_2014-2020_CREATIVE_LATVIA.pdf (20.12.2018).

⁷⁸ ZIMMERMANN, Jan: *Aksjomaty prawa administracyjnego*. Wolters Kluwer, Warszawa 2013. 74 75; DUNIEWSKA, Zofia: Prawo administracyjne – wprowadzenie. In: *System prawa administracyjnego*, V. 1, Hauser, Roman Niewiadomski, Zbigniew Wróbel, Andrzej (eds.): *Prawo administracyjne materialne*. CH Beck, Warszawa 2010. 106–107.

and their culture. *Georgijs Osokins*, finalist of the 17th International Chopin Competition, called the attention to this cognitive aspect. In opinion of this pianist, to understand the music of the composer, you need to get to know his/her country, people, even folklore.⁷⁹ An example of this is the project “*Heritage of Fryderyk Chopin – integration of cultures of the Visegrad countries*”, which assumes the promotion of Fryderyk Chopin’s works as part of cooperation between artists and music institutions from the Czech Republic, Poland, Hungary and Slovakia. This initiative should lead to building a common cultural space in reference to Chopin’s musical legacy, which was and is an important part of the cultural heritage of Europe. The project is financed from the Visegrad Fund.⁸⁰ Music is a universal, common and egalitarian value. This kind of artistic activity is an important element of national, European and world intangible cultural heritage. At the same time, the fate of individual nations and states is often reflected in music, and certain musical works are invariably associated with historical events. At present, contemporary states note the important civilization role of musical creativity. Due to this, on national, EU and international law level, there are diverse provision aimed for protecting, disseminating, transferring and development of the musical goods. Law provides special protection, in particular to the national anthems and traditional folk music, because this works is recognizable element of national identity. In Poland also works and objects related to the brilliant composer with Polish roots Fryderyk Chopin are under public custody. Pursuant to Act of 3rd February 2001, works and related with Artist subjects are all-national goods, which are subject of a particular legal protection. According to the afore-mentioned Act, the state Fryderyk Chopin’s Institute shall supervise its patron’s heritage both in the public and private (civil) sphere. The broadly defined state concern for the legacy of outstanding artists justifies its legal and cultural value, as well as the reasons of public interest. It is a national good, that is the source of the Polish Nation’s identity, its duration and development. Public care for the preservation and development of the indicated imponderables is also part of implementation of the Polish State’s obligations as set out in the preamble of the Polish Constitution regarding the transfer to future generations of all that is valuable from more than a thousand years of experience and maintaining community with compatriots scattered throughout the world.

References

Act of 04th April 1994 on copyright and related rights (Journal of Laws of 2018, item no 1191).

Act of 23rd February 1964 The Civil Code (Journal of Law of 2018, item no 1025).

Act of 25th October 1991 on the organization and conduct of cultural activities (Journal of Laws of 2017, item no 867).

⁷⁹ Interview with Georgijs Osokins. *Polish LaVie Warsaw Magazine*, 19.11.2018, <http://www.laviemag.pl/muzyka-jest-moja-kochanka/> (10.10.2018).

⁸⁰ *Dziedzictwo Fryderyka Chopina*. <http://www.nfm.wroclaw.pl/projekty/dziedzictwochopina/dziedzictwo-fryderyka-chopina/> (10.10.2018).

- Act of 2nd April 1997 the Constitution of the Republic of Poland (Journal of Laws of 1997/78, item no 483).
- Act of 2nd December 2009 on Medical Chambers (Journal of Laws of 2018, item no 168).
- Act of 30th May 1971 Code of Misdemeanours (Journal of Laws of 2018, items no 618, 911, 2077).
- Act of 31th January 1980 on the coat- of -arms, colors and anthem of the Republic of Poland and state seals (Journal of Laws of 2018, item no 441).
- Act of 3rd February 2001 on the protection of the Fryderyk Chopin heritage (Journal of Laws of 2001/16, item no 168).
- Act of 7th October 1999 on the Polish language (Journal of Law 2018, item 931).
- Act of 9th June 2011 on supporting families and the foster care system (Journal of Laws of 2016, item no 575).
- BILICA, Krzysztof: „Ktokolwiek by wiedział...”, *Ruch Muzyczny*, 2008/17–18. 50–55.
- Boć, Jan – LISOWSKI, Piotr: Normatywizacja wartości w prawie administracyjnym. In: *Wartości w prawie administracyjnym*, (ed.) Zimmermann, Jan, Wolters Kluwer Polska, Warszawa 2015. 19–43.
- BUDREWICZ, Olgierd: *Polska dla początkujących*, Wydawnictwo Naukowe PWN, Warszawa 1976.
- Consolidated Version of The Treaty on European Union drawn up in Maastricht on 7th February 1992 (Official Journal of the European Union C 326/13 of 26.10.2012).
- Consolidated Version of the Treaty on the Functioning of the European Union drawn up in Rome on 25th March 1957, Official Journal C 326 of 26.10.2012 P. 0001–0390.
- Cultural Policy Guidelines 2014–2020 “Creative Latvia” Order No. 401, 29th July 2014 of of Latvia’s Cabinet. https://www.km.gov.lv/uploads/ckeditor/files/KM_dokumentu/CULTURAL_POLICY_GUIDELINES_2014-2020_CREATIVE_LATVIA.pdf (20.12.2018).
- Cultural Policy Guidelines 2014–2020 “Creative Latvia”, https://www.km.gov.lv/uploads/ckeditor/files/KM_dokumentu/CULTURAL_POLICY_GUIDELINES_2014-2020_CREATIVE_LATVIA.pdf (20.12.2018).
- Cultural Policy Guidelines 2014–2020 “Creative Latvia” Latvia’s Cabinet Order No. 401, 29th July 2014, <https://www.km.gov.lv> (20.12.2018).
- Decision of President of the Republic of Poland of 5th September 2018 on giving orders and decorations (*Monitor Polski* 2018, item 1129).
- Decision of the European Parliament and Council of 16th April 2014 No 445/2014 / EU on the Union action for European Capitals of Culture for 2020–2033 (Official Journal of the European Union L 132 of 03.05.2014, 1).
- DOBOSZ, Piotr: Imponderabilia publiczne w obrębie wartości prawa administracyjnego. In: *Wartości w prawie administracyjnym*, (ed.) Zimmermann, Jan, Wolters Kluwer Polska, Warszawa 2015. 44–68.

- DUNIEWSKA, Zofia: Prawo administracyjne – wprowadzenie. In: *System prawa administracyjnego*, V. 1, Prawo administracyjne materialne, (eds.) Hauser, Roman – Niewiadomski, Zbigniew – Wróbel, Andrzej, CH Beck, Warszawa 2010.61–192.
- DUSZNIAK, Stanisław: Terminologia z zakresu czynności nadzorczych i kontrolnych, „*Gazeta Administracji*” 1948/1–2. 51–64.
- Dziedzictwo Fryderyka Chopina*. <http://www.nfm.wroclaw.pl/projekty/dziedzictwochopina/dziedzictwo-fryderyka-chopina/> (10.10.2018).
- EINSTEIN, Alfred: *Music in the Romantic Era*, W. W. Norton & Company, Inc., New York 1947.
- European Cultural Convention drawn up in Paris on 19th December 1954 (Journal of Laws of 1990/8, item no 44).
- Historia Warszawskiego Towarzystwa Muzycznego. <http://www.wtm.org.pl/historiaw.htm> (20.11.2018).
- HOESICK, Ferdynad: *Chopin. Życie i twórczość*, vol 3. Księgarnia F. Hoesick, G. Gebethner, Warszawa–Kraków, 1911.
- Hymn Europejski. <https://www.coe.int/pl/web/about-us/the-european-anthem> (20.11.2018).
- Interview with Georgijs Osokins. *Polish LaVie Warsaw Magazine*, 19.11.2018, <http://www.laviemag.pl/muzyka-jest-moja-kochanka/> (10.10.2018).
- JAROCIŃSCY, Michalina i Stefan: *Muzyka w epoce romantyzmu*, Polskie Wydawnictwo Muzyczne, Kraków 1983.
- KARCZ-KACZMAREK, Maria – KACZMAREK, Iwona: Narodowy zasób biblioteczny jako dobro chronione w prawie administracyjnym. In: *Dobra chronione w prawie administracyjnym*, (ed.) Duniewska, Zofia, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2014. 239–250.
- KARCZ-KACZMAREK, Maria: Dziedzictwo Fryderyka Chopina jako wartość w prawie administracyjnym. In: *Aksjologia prawa administracyjnego*. V. 2 (ed.) Zimmermann, Jan, Wolters Kluwer, Warszawa 2017. 763–779.
- KASZNICA, Stanisław: *Polskie Prawo Administracyjne. Pojęcia i instytucje zasadnicze*, Księgarnia Akademicka, Poznań 1947.
- Łazienki bez Chopina? Niemcy nie mieli problemu z wysadzeniem pomnika. <https://www.polskieradio.pl/39/156/Artykul/854658,Lazienki-bez-Chopina-Niemcy-nie-mieli-problemu-z-wysadzeniem-pomnika> (15.11.2018).
- MAZURKIEWICZ, Jacek: *Non omnis moriar. Ochrona dóbr osobistych zmarłego w prawie polskim*, Prawnicza i Ekonomiczna Biblioteka Cyfrowa, Wrocław 2010.
- Najważniejsze daty w historii kościoła Sw. Krzyża w Warszawie. <http://www.swkrzyz.pl/index.php/historia/najwazniejsze-daty> (10.10.2018).
- Projekt Traktatu ustanawiającego Konstytucję dla Europy (nieratyfikowany) <http://www.europarl.europa.eu/about-parliament/pl/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>(20.11.2018).

- PRUSZYŃSKI, Jan: *Dziedzictwo kultury Polski – jego straty i ochrona prawna*, V. 1, Kantor Wydawniczy Zakamycze, Kraków 2000.
- Regulation No. 3 of the Minister of Culture and National Heritage from 21st of January 2008 regarding the establishment of the Celebration Committee of the 200th Anniversary of the Birth of Fryderyk Chopin (Official Journal of the Minister of Culture and National Heritage 2008/1, item no 3).
- Regulation No. 4 of the Minister of Culture and National Heritage of 21st of January 2008 on the establishment and tasks of the Plenipotentiary of the Minister of Culture and National Heritage for the celebration of the 200th anniversary of Fryderyk Chopin's birth (Official Journal of the Minister of Culture and National Heritage 2008/1, item no 4).
- Regulation of the European Parliament and Council (EU) No 1295/2013 of 11th December 2013 on "The Creative Europe (2014–2020) Program" (Official Journal of the European Union L 347 of 20.12.2013, p. 221 with amendments)
- SARNECKI, Paweł: Komentarz do art. 5 Konstytucji RP. In: Garlicki, Leszek – Zubik, Marek (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Tom I, Wydawnictwo Sejmowe. Warszawa 2016. 230–236.
- SIEMIŃSKA, Halina: *Historia budowy pomnika Fryderyka Chopina w Warszawie*. Komitet Budowy Pomnika Fr. Chopina, Warszawa, 1929.
- SIĘNCZYŁO-CHLABICZ, Joanna – BANASIUŁ, Joanna: *Cywilnoprawna ochrona wizerunku osób powszechnie znanych w dobie komercjalizacji dóbr osobistych*, Wolters Kluwer Polska, Warszawa 2014.
- SZYMCZAK, Maciej (ed.): *Słownik języka polskiego*, Vol. II, Państwowe Wydawnictwo Naukowe, Warszawa 1978.
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions drawn up in Paris on 20th October 2005 (Journal of Laws of 2007/215, item no 1585).
- UNESCO Convention on the Protection of Intangible Cultural Heritage drawn up in Paris on 17th October 2003 (Journal of Laws of 2011/172, item no 1018)
- WYTRĄŻEK, Wojciech: *Działalność artystyczna w sferze muzyki w ujęciu prawa publicznego*, Katolicki Uniwersytet Lubelski, Lublin 2013.
- ZEIDLER, Kamil: *Zabytki. Prawo i praktyka*, Wydawnictwo Uniwersytetu Gdańskiego, Wolters Kluwer, Gdańsk – Warszawa 2017.
- ZIMMERMANN, Jan: *Aksjomaty prawa administracyjnego*, Lex a Wolters Kluwer business, Warszawa 2013.