

NATIONAL HERITAGE IN THE POLISH CONSTITUTIONAL ORDER

JACEK SOBCZAK *

DOI: 10.26399/iusnovum.v13.2.2019.20/j.sobczak

In the traditional meaning, “heritage” is movable property or immovable property inherited, or inheritance, legacy and succession.¹ In more modern dictionaries of the Polish language, it is also defined as “culture, science, art, etc. left by former generations”, i.e. cultural heritage.² In Latin, “heritage” is called *patrimonium*, i.e. first of all inherited property, legacy from the father, family estate, property³ or patrimony⁴. In constitutional law, the concept of “heritage” is not so unambiguous. In the Preamble to the Constitution,⁵ heritage is associated with nation, on the one hand, and culture, on the other hand. It refers to “culture rooted in the Christian heritage of the Nation and in the universal values”. Further indications of the Preamble are ambiguous and the possible interpretation is that “culture rooted in the Christian heritage of the Nation” should be bequeathed to future generations but also that the obligation to bequeath to all generations does not concern “culture rooted in the Christian heritage of the Nation” but “all that is valuable from our over one thousand years’ heritage”. It seems that there is another difficulty concerning cultural heritage referred to in Article 6 para. 2 of the Constitution. Cultural heritage is undoubtedly part of the national heritage. However, a question is raised whether the term “national heritage” equals “cultural heritage”. It is hard to agree with an opinion that the national heritage is only the heritage that is part of culture rooted in the Christian system of values, although it seems that many publicists tend

* Prof., PhD hab., Head of the Department of Intellectual Property Protection Law, Faculty of Law, SWPS University of Social Sciences and Humanities in Warsaw; e-mail: jmwsozczak@gmail.com; ORCID: 0000-0002-2231-8824

¹ M. Szymczak (ed.), *Słownik języka polskiego*, Vol. 1, Warsaw 1988, p. 498.

² S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Vol. 1, Warsaw 2003, p. 761.

³ J. Sondel (ed.), *Słownik łacińsko-polski dla prawników i historyków*, Kraków 2006, p. 718.

⁴ K. Kumaniecki (ed.), *Słownik łacińsko-polski*, Warsaw 1968, p. 354.

⁵ The Constitution of the Republic of Poland of 2 April 1997, Journal of laws [Dz.U.] No. 78, item 483, revised [Dz.U.] of 2001, No. 28, item 319.

to support this stand. Some of them go even further and believe that it does not concern the Christian heritage but only the Catholic one.⁶ In the circumstances of the Republic of Poland, the heritage of the Nation also includes, both in material and non-material terms, the heritage of the Jewish, Tatar and Karaim culture developed in the Polish lands, which undoubtedly does not belong to the Christian tradition. Obviously, it is on the fringe of heritage but should not be ignored.

In accordance with Article 5 of the Constitution, “the national heritage” is a constitutional value that must be safeguarded.⁷ From the legal point of view, “the national heritage” means “factors of material and spiritual nature that occurred in the history of the Polish state and society giving evidence of its identity and equal position among other nations, and constituting leaven for further development”.⁸ However, there is a problem whether this obligation to safeguard the national heritage laid down in Article 5 of the Constitution means safeguarding “the heritage of the Nation” in the meaning of the Preamble or “the national heritage”, and next, what the scope of that obligation is.

In the doctrine as well as case law, it is indicated that the lack of a legal definition of “national heritage” does not allow the recognition of Article 5 of the Constitution as the basis of legal obligations imposed on relevant bodies, institutions and citizens. However, it does not deprive the constitutional declaration of the value as a guideline for state bodies on acting within the scope of their competence concerning

⁶ G. Horst, *Co oznacza “dziedzictwo chrześcijańskie”?*, [in:] *Europa dla Chrystusa!*, http://www.europe4christ.net/fileadmin/media/pdf/polish/List_do_Europy_5.pdf (accessed on 8/09/2018, 12.22); J.M. Jackowski, *Chrześcijańskie dziedzictwo narodu*, *Niedziela Ogólnopolska* No. 16, 2016, p. 38; M. Przeworski, *Kościół katolicki w Polsce dziś*, <http://dziedzictwo.ekai.pl/text.show?id=4501> (accessed on 8/09/2018, 12.27); *Kultura wyrazem człowieczeństwa i tożsamości narodów*, <http://civitaschristiana.pl/kultura-wyrazem-czowieczestwa-i-tosamocinardow/> (accessed on 8/09/2018, 12.29); O. Szczypiński, *Chrześcijaństwo jako źródło kultury europejskiej w myśli Josepha Ratzingera*, https://depot.ceon.pl/bitstream/handle/123456789/5421/chrzescijanstwo_jako_zrodlo_kultury.pdf?sequence=1 (accessed on 8/09/2018, 12.33); S. Mulvey, *Wartości europejskie – zjednoczeni różnorodności?*, http://www.bbc.co.uk/polish/040114_europe_values.shtml (accessed on 8/09/2018, 12.36); Rev. N. Brzózy, *Chrześcijaństwo, Kościół, demokracja*, <https://idmjp2.pl/index.php/pl/wydarzenia/prelekcje/1157-wyklad-otwarty-chrzescijanstwo-kosciol-demokracja> (accessed on 8/09/2018, 12.42); Ł. Cieślak, *Chrześcijaństwo – religia państwa i Kościoła*, <http://www.bibliotekacyfrowa.pl/Content/21965/015.pdf> (accessed on 8/09/2018, 13.05); J. Sosnowski, *Respekt dla wartości*, *Gazeta Wyborcza* No. 15, 1993; Rev. W. Piwowarski, *Wartości podstawowe*, *Ład* No. 2, 1993; Rev. W. Nasta, *Co to są wartości chrześcijańskie*, *Polityka* No. 48, 1992; Rev. J. Salij, *Co to są wartości chrześcijańskie*, *Polityka* No. 48, 1992; Rev. M. Krapiec, *Teokracja*, *Gazeta Wyborcza* No. 215, 1993. For more on the issue also see Rev. A. Zwoliński, *Wprowadzenie do rozważań o narodzie*, Kraków 2005, p. 56 ff.

⁷ It is emphasised in the judicature that the constitutional legislator treated the term “safeguard” and “ensure” used as the substitute for the former in a broad way, covering all forms of the state’s activities. It is also reminded that the types of instruments with which the state’s tasks can be implemented depend on the nature of the tasks and restrictions on public authorities’ activities resulting from other provisions of the Constitution. Compare justification for the Constitutional Tribunal judgments: of 8 October 2007, K 20/07 OTK-A 2007, No. 9, item 102; of 25 May 2016, Kp 2/15, OTK-A 2016, item 23.

⁸ See P. Sarnecki, *Uwagi do art. 5 Konstytucji*, [in:] L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 1, 2nd revised edn, Warsaw 2016, p. 234

heritage *sensu largo*.⁹ In the judicature, attention is drawn to the fact that, although the phrases “the national heritage” and “the national cultural heritage” do not have legal definitions at the constitutional level, the linguistic context in which “heritage” is used in the Preamble and Article 5 of the Constitution makes it possible to assume that the constitutional legislator referred to the idea of generational solidarity and continuity of cultural and state system tradition of the Republic of Poland.¹⁰

There is an opinion in literature that by safeguarding the national heritage we pay back “our debt of gratitude” to former generations for their struggle for independence and the culture they created, which is referred to in the Preamble to the Constitution. At the same time, it is highlighted that the fulfilment of this obligation means not only preserving this national heritage in an unimpaired state but also bequeathing it.¹¹ In order to solve the issue concerning the content of the national heritage, P. Sarnecki presents an opinion that “the national heritage does not only mean the historical events that Polish society may be proud of but also those that are rightly condemned if they can serve as an element of social education”.¹²

Against this background, an issue concerning the perception of the nation arises; it is spelled with the capital letter “N” in the Preamble to the Constitution but with “n” in Articles 5 and 6 para. 2. According to L. Garlicki, the concept of the nation is philosophical and social, not ethnic, in nature, and the Polish nation in the constitutional meaning cannot be identified with the entirety of people having Polish nationality with the exclusion of citizens of different nationality; however, in the light of Article 27 and Article 35 paras. 1 and 2 of the Constitution, national and ethnic minorities have the right to maintain their identity. He indicates at the same time that, on the one hand, the decisions of the citizens who have electoral rights constitute the source of authority, but on the other hand, Article 6 para. 2 of the Constitution refers to “Poles living abroad”, which goes beyond the traditional criterion for citizenship. In this situation, L. Garlicki states that the development of a precise definition of the nation is neither possible nor necessary because suffrage is a decisive criterion.¹³

According to Z. Witkowski, the term “nation” used in the Constitution has a political and not ethnic meaning. A political definition of the nation, according to him, is both a permanent element of the Polish tradition and an element integrating all people who have the citizenship of the Republic of Poland and feel responsible for its good. He emphasises that the nation is a legal community composed of all

⁹ Justification for the Constitutional Tribunal judgment of 8 October 2007, K 20/07; J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, Vol. 2, Kraków 2001, p. 514.

¹⁰ Justification for the Constitutional Tribunal judgment of 25 May 2016, Kp 2/15. It should be highlighted that the legislator indicated the criteria for the entry into Lista Skarbów Dziedzictwa (Register of Heritage Treasures) in Article 1(6) of the Act of 10 July 2015 on amending the Act on the protection of antiquities and taking care of them and the Act on museums in the part adding Article 14a para. 2 to the Act of 23 July 2003 on the protection of antiquities and taking care of them, consolidated text, Journal of Laws [Dz.U.] of 2014, item 1446.

¹¹ M. Florczak-Wątor, *Uwagi do art. 5 Konstytucji*, [in:] M. Safjan, L. Bosek (eds), *Konstytucja RP*, Vol. 1: Komentarz. Art. 1–86, Warsaw 2016, p. 289.

¹² P. Sarnecki, *Uwagi do art. 5 Konstytucji...*, p. 234.

¹³ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2016, p. 70.

citizens and highlights that the concept of the nation used without a preceding adjective is rather general and imprecise. Such an approach is purposeful. He indicates that the legislator uses the term “nation” with reference to “the community of all citizens” (Article 1 of the Constitution). The Preamble emphasises “We, the Polish Nation – all citizens of the Republic”, but further on, Article 6 para. 2 of the Constitution refers to “Poles living abroad”.¹⁴

P. Sarnecki notices that the Constitution cannot provide a definition of the nation because it is not a legal term, thus neither a constitutional one, but a political or social-political one, and its content should be determined by means of an analysis and interpretation of legal provisions. He emphasises that the nation living in its own state “is a certain community united by numerous ties developed throughout its history and political emotions (patriotism) also united by common history”. Then he concludes that a political concept of the nation used in constitutions differs from the concept of the nation used in ethnography or ethnology, where mainly a community is essential.¹⁵ B. Banaszak draws attention to the fact that an opinion referring to the French doctrine of constitutional law became popular. According to it, the nation is a political community encompassing all citizens regardless of their ethnic origin. In his opinion, the Constitution treats the nation within the political meaning as a community directly deciding about its rights. He approves of the opinion that the nation is not treated in the Constitution as an ethnic category, although some doubts can be raised in the light of the phrases used in the Preamble.¹⁶ M. Gulczyński agrees with the opinion that the concept of the nation used in the Constitution is not equal to its ethnic meaning.¹⁷

K. Działocha, analysing the opinions presented in the doctrine, points out that in general there are no controversies concerning the statement that the constitutional concept of the nation does not refer to the ethnic sphere but means a broader community. He also concludes that the phrases in the Preamble referring to “the Polish Nation” as “all citizens” of the Republic of Poland cannot be recognised as a definition of legal nature.¹⁸ W. Orłowski’s opinion seems to be interesting as he notices that the Constitution in its Preamble as well as in its further articles refers to the nation in its ethnic and political meaning; however, the nation in the political meaning is the basic concept.¹⁹

¹⁴ Z. Witkowski, [in:] Z. Witkowski, A. Bień-Kacała (eds), *Prawo konstytucyjne*, Toruń 2015, p. 82.

¹⁵ P. Sarnecki, [in:] *Prawo konstytucyjne RP*, 7th edn, Warsaw 2008, pp. 177–178.

¹⁶ B. Banaszak, *Prawo konstytucyjne*, 7th edn, Warsaw 2015, p. 221; *idem*, *Konstytucja Rzeczypospolitej Polskiej*, 2nd edn, Warsaw 2012, p. 63.

¹⁷ M. Gulczyński, *Zasada zwierzchnictwa narodu*, [in:] W. Sokolewicz (ed.), *Zasady podstawowe polskiej Konstytucji*, Warsaw 1998, p. 110.

¹⁸ K. Działocha, *Uwagi do art. 4 Konstytucji*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 5, Warsaw 2007, p. 9. The author did not repeat the statement in the second edition of this commentary.

¹⁹ W. Orłowski, [in:] W. Skrzydło, S. Grabowska, R. Grabowski, *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warsaw 2009, p. 249 ff. It is reminded in literature that when the Constitution was being developed, the opposition demanded that the Polish Nation be indicated in the Preamble and opposed the use of a phrase “We, Polish citizens”. Also Rev. Professor J. Krukowski, the representative of the Polish Bishops’ Conference Secretary, was for

The constitutional concept of the Polish Nation cannot be identified only with people having Polish nationality. The Constitutional Tribunal unambiguously expressed this stand in its rulings.²⁰

It also unambiguously results from the content of Article 4 of the Constitution. Thus, the concept of “the nation”, which is used in the Constitution, means a broader community and not only a cultural or ethnic one.²¹ However, the content of Article 6 of the Constitution seems to negate this thesis because it stipulates equal access to the products of culture “which are the source of the Nation’s identity, continuity and development”. There are no doubts that the products of culture that are the source of identity of Armenians, Tatars, Karaims, Germans and Jews who are Polish citizens are different from the products of culture which are the sources of the identity of the Polish Nation as an ethnic nation. Approving of the broad interpretation of the content of Article 6 para. 1 of the Constitution, one can state that the Republic of Poland creates conditions for popularising and equal access to the products of

the introduction of a phrase referring directly to the Polish Nation, indicating the possibility of speaking about the nation in the political sense. Compare M. Piechowiak, *Uwagi do preambuły*, [in:] M. Safjan, L. Bosek (eds), *Konstytucja RP...*, Vol. 1, p. 134.

²⁰ The Tribunal stated that in order to establish the belonging to the Polish Nation in the meaning of the Preamble, no factors other than citizenship are significant, even such as nationality, race or denomination, and the essence of belonging to the Polish Nation in this meaning is the sense of state expressed by the possession of Polish citizenship. In a further part, it was emphasised that the legislator “treats the Polish nation spelled with an ‘n’ letter as a community that is not only ethnic (in the meaning of ‘the community of blood’, which would be irrelevant to migration and mixture of various nationalities in the multinational First and Second Polish Republics, as a result of wars and foreign armies’ marches across Poland) but also cultural”. Compare the justification for the Constitutional Tribunal judgments of 25 May 2016, Kp 2/15 and of 21 September 2015, K 28/13. In the judgment Kp 2/15, it was stated that the constitutional legislator assumed that the Polish Nation is a community within which there is a multigenerational relationship expressed in universal values connected with a set of systematised principles and directives indicating how to achieve those values and what methods should be abandoned when pursuing them. Interpreting the content of the Preamble, the Constitutional Tribunal stated that it fully approves of the opinion that the Constitution uses the concept of the nation in the political sense and not the ethnic one, and in the meaning of the constitutional norms, which were the basis for the formulation of the Preamble, the concept of the nation refers to a community composed by the citizens of the Republic of Poland (judgment of the Constitutional Tribunal of 31 May 2004, K 15/04, OTK-A 2004, No. 5, item 47). A similar standpoint is expressed in the judgment of the Constitutional Tribunal of 12 January 2005 (K 24/04, OTK-A 2005, No. 1, item 3), in which it is stated that the nation should be interpreted as the entirety of citizens, not just in the ethnic sense (para. 9 of the considerations presented by the Tribunal in the justification).

²¹ L. Garlicki, *Polskie prawo konstytucyjne...*, Warsaw 2006, p. 55; Z. Witkowski, *Prawo konstytucyjne*, Toruń 2009, pp. 62–66. As K. Działocha notices, the fact that using the phrase that can be found in the Preamble, compared with that used in the articles, especially in the references concerning individuals’ rights, the legislator refers to the term “citizen” supports the statement that the legislator makes use of a legal concept of the “nation”. See K. Działocha, *Uwagi do art. 4. Konstytucji...*, p. 9.

culture which are sources of identity not only for the citizens who are of the Polish nationality but also for those citizens²² who belong to national minorities.²³

It is worth mentioning that in line with the Preamble, citizens who currently form the Polish Nation are “bound in community with our compatriots dispersed throughout the world”. This phrase must raise legal doubts. Its simple interpretation makes us state that it concerns people of Polish nationality living abroad. But it would negate an established conclusion that the concept of “the Polish Nation” used in the Constitution does not refer to the ethnic nation but is legally significant and it

²² Citizenship constitutes a legal institution based in constitutional, international and administrative law strongly connected not only with the state but also society and having its psychological and sociological dimension. It is emphasised in literature that citizenship is a permanent or relatively permanent, in terms of time and space, legal tie binding an individual (a natural person) with the state. See J. Jagielski, *Obywatelstwo polskie: zagadnienia podstawowe*, Warsaw 1998, pp. 16–17; Z. Sokolewicz, *Obywatelstwo a narodowość. Uwagi w związku z ustanowieniem obywatelstwa Unii Europejskiej*, *Studia Europejskie* No. 1, 1997, pp. 13–35; J. Trzcziński, *Obywatelstwo w Europie. Z dziejów idei i instytucji*, Warsaw 2006, in particular pp. 181–236; *idem*, *Obywatelstwo w Europie. Idea i jej wyraz formalny w perspektywie historycznej*, *Studia Europejskie* No. 2, 2002, pp. 45–67; M. Wyrzykowski, *Obywatel i biurokracja*, [in:] A. Rzepliński (ed.), *Prawa człowieka w społeczeństwie obywatelskim*, Warsaw 1993, p. 52; M. Magoska, *Obywatel w procesie zmian*, Kraków 2001, p. 38 ff; E. Smoktunowicz, *Status administracyjno-prawny obywatela*, [in:] *System prawa administracyjnego*, Vol. 4, Wrocław 1980, p. 7 ff; E. Smoktunowicz (ed.), *Wielka encyklopedia prawa*, Białystok–Warsaw 2000, p. 541. In sociological thought, mainly under the influence of T.H. Marshall, it is emphasised that citizenship shapes a public-legal status of a natural person, the scope of their rights and obligations. See T.H. Marshall, *Class, Citizenship and Social Development*, London 1963, *passim*. According to T.H. Marshall, there are three dimensions of citizenship: civil, political and social ones. Citizenship in the civil meaning is civil rights, in general citizens’ liberties, typical of and prescribed to all natural persons belonging to a particular society understood as a great social group creating the state, claimable before a court and not subject to an arbitrary refusal by the state or any other entities. The social dimension of citizenship means social guarantees, the right to an appropriate standard of living, healthcare, educational opportunities, using social security means and cultural heritage. In the doctrine, it is concluded that the scope of the concept of “citizenship” is constantly extending as a result of society modernisation and structural differentiation, which causes the development of new institutions and transformation of old simple social structures into complex ones. See T. Parsons, *The System of Modern Societies*, New York 1971, p. 23. Also see T. Parsons, R. Holton, B.S. Turner, *Parsons and Modernity*, London 1986, p. 17. According to J. Habermas, there are two visions of citizenship. He draws the first one from liberal tradition of John Locke’s natural law, where a citizen’s belonging is based on determined legal regulations, freedoms and liberties that should be ensured by the authorities, and private life is a value that the state should protect. He associated the second one with classical tradition and Aristotle’s thought. According to this conception, a citizen is a subject shaping the political will of the community and his belonging to the state is based on collective development of the community in the ethical and cultural sphere. In this case, a political community creates a new quality that determines an individual through the possibility of participating in collective self-determination. J. Habermas, *Obywatelstwo a tożsamość narodowa: rozważania nad przyszłością Europy*, Warsaw 1993, pp. 12–16. On this occasion, J. Habermas refers to the ideas of Ch. Taylor, who noticed that being a citizen of the liberal model consists in the protection of the rights of individuals and equal treatment as well as possession of real influence on decision-taking. In the classical (Aristotle’s) model, participation in management alone is the essence of freedom. See Ch. Taylor, *The Liberal-Communitarian Debate*, [in:] N.L. Rosenblum (ed.), *Liberalism and the Moral Life*, Cambridge 1989, p. 178 ff.

²³ For this issue, see M. Banaś, A. Krzywonos, *Prawo do obywatelstwa*, [in:] B. Banaszak, A. Preisner, *Prawa i wolności obywatelskie w Konstytucji RP*, Warsaw 2002, pp. 157–208; S. Konopacki, *Obywatelstwo europejskie w kontekście członkostwa Polski w Unii Europejskiej*, Łódź 2005, pp. 67–116.

should be interpreted as Polish citizens who may belong to various nations.²⁴ It seems that the term “compatriots” used in the Preamble to the Constitution does not match the term “nation”. Compatriots are only citizens of Polish nationality. The feeling of being bound in community with compatriots “dispersed throughout the world” constitutes another axiological basis of the Constitution. It is worth mentioning that the Polish Basic Law declares the need for cooperation with all countries for the good of the Human Family but does not transfer this onto a particular ground and does not notice the need for and possibility of cooperation between individuals, or at least such cooperation is not one of the constitutional values.

Article 6 para. 1 of the Constitution, which guarantees equal access to the products of culture that are the source of the Polish Nation’s identity, continuity and development, results in another problem. At the same time, Article 6 para. 2 lays down that the Republic of Poland should assist Poles living abroad in maintaining their links with the national cultural heritage. In the light of the above-presented statements, there are no doubts that, firstly, the products of culture are the source of the Polish Nation’s identity and, secondly, that the products of culture are part of national heritage because cultural heritage is part of national heritage. However, a doubt arises in connection with Article 35 of the Constitution in conjunction with Article 6 para. 2 of the Constitution. It concerns the question whether the content of Article 6 para. 2 of the Constitution refers to Poles in the ethnic or political meaning. In other words, whether a man who used to be a Polish citizen but is a member of a national minority, e.g. Tatars, Karaims, Armenians or a descendant of such a citizen, who feels like a Pole but already has another citizenship yet wants to maintain ties with Poland, may expect that the Republic of Poland will assist him in maintaining the links with the national cultural heritage as well as the area which is part of the cultural heritage of the national or ethnic minority. In other words, the question is whether the national cultural heritage is the Polish Nation’s

²⁴ It is not possible here to try to summarise the whole, rich and multi-dimensional discussion concerning the issue of national identity, which was carried out within the framework of a few disciplines. I devoted my attention to this issue and referred to abundant literature in *Kryzys polskiej tożsamości narodowej, narodziny tożsamości europejskiej – antynomie, dylematy, miraż*, [in:] L. Dyczewski, D. Wadowski (eds), *Tożsamość polska w odmiennych kontekstach*, Lublin 2009, pp. 227–260. It is not possible to repeat those comments or even summarise them here. Also see J. Sobczak, *Mniejszości narodowe i wyznaniowe w polskim porządku prawnym*, [in:] J. Sobczak, A.W. Mikołajczak, B. Hordecki (eds), *Zderzenie czy dialog państw narodowych w Europie*, Poznań 2008, pp. 9–43; *idem*, *Wokół problemu definicji mniejszości narodowych*, *Środkowoeuropejskie Studia Polityczne* No. 1, 2003, pp. 25–62; *idem*, *Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym*, [in:] M. Musiał-Karg (ed.), *Europa XXI wieku. Perspektywy i uwarunkowania integracji europejskiej*, Poznań 2007, pp. 167–201; *idem*, *Kryzys polskiej tożsamości narodowej, narodziny tożsamości europejskiej – antynomie, dylematy, miraż*, [in:] M. Janowski, J. Jonczek, L. Ślepówroński (eds), *Quo vadis Europa? Kulturowe oblicza Europy*, Vol. 1, Szczecin 2008, pp. 23–51; compare, W. Konarski, *Naród, mniejszość, nacjonalizm, religia – przyczynek do dyskursu o pojęciach i powiązaniach między nimi*, [in:] A. Hołub (ed.), *Narody XXI wieku*, Olsztyn 2007, pp. 17–51; M. Jasińska, *Podstawowe prawa i wolności mniejszości narodowych w systemie Rady Europy*, *Politologia i Stosunki Międzynarodowe* No. 2, 2007, pp. 156–168. It is necessary to emphasise that many researchers, inter alia, J. Habermas, believe that political democracy does not require identification with identity determined historically or culturally, although he admits that a national state led to a relationship between ethnicity and democracy, but it was done in a specific historical period.

heritage in the ethnic meaning or the heritage including all products of culture of those ethnic or national minorities that used to live in the First Polish Republic, the Second Polish Republic and on Polish lands after World War II.

The issue is indirectly connected with ambiguity of the term “culture”. The concept is highly ambiguous in the Polish legal system. There is no legal definition of it, although numerous normative acts, starting with the Constitution, use it.²⁵ In literature, attention is drawn to the fact that definitions of culture are usually based on a list of elements of culture, on the emphasis of the necessity of learning culture as a mechanism of acquiring it and influencing personality, on the indication of its social origin (the fact that it is an effect of social cohabitation of people), on the enhancement of social inheritance and tradition as a way of creation and continuance of culture and, finally, on the statement that a given culture is “something uniting in the given society”.²⁶ In the doctrine, there are many conceptions of interpreting culture and its links with social life. Most of them are thoroughly described in cultural anthropology textbooks.²⁷

The use of the term “culture” in legal language and the language of law is connected with the issues of “using the products of culture” and “access to the products of culture”. The former term bans public authorities from creating limitations of access to the products of culture. This freedom is broad in nature, thus it can enter into conflict with other liberties and rights confirmed in legal acts of international law and guaranteed in constitutions, including property rights. “Access to the products of culture” is usually treated as a freedom, which would be an argument for rationing access to the products of culture; on the other hand, in practice, normative acts quite often limit that access, which is caused by the intention to maintain the products of culture in an unimpaired state. International legal acts, including the EU law, impose an obligation on member states to enact legal provisions preventing limitation of access to the products of culture. While the use of the products of culture is a freedom and is a subjective right in nature, it should lead to a possibility of formulating a complaint, including a constitutional one, in case of limitation of this access.²⁸

²⁵ For this issue, see A. Kłosowska, *Kultura masowa*, Warsaw 1980, pp. 9–93. Also see A. Kroeber, C. Kluckhohn, *Culture. A Critical Review on Concepts and Definitions*, Papers of Peabody Museum of American Archaeology and Ethnology No. 47(1), 1952; G. Banaszak, J. Kmita, *Spółeczno-regulacyjna koncepcja kultury*, Warsaw 1994; S. Bednarek, *Pojmowanie kultury i jej historii we współczesnych syntezach dziejów kultury polskiej*, Wrocław 1995; S. Czarnowski, *Kultura*, [in:] *Dziela*, Vol. 1, Warsaw 1968; A. Kłosowska, *Socjologia kultury*, Warsaw 1981; A. Kroeber, *Istota kultury*, Warsaw 1973; B. Malinowski, *Naukowa teoria kultury*, [in:] *Szkice z teorii kultury*, Warsaw 1958; F. Znaniecki, *Nauki o kulturze*, Warsaw 1971; G. Simmel, *O istocie kultury*, [in:] *Filozofia kultury. Wybór esejów*, Kraków 2007, pp. 15–22.

²⁶ A.L. Kroeber, C. Kluckhohn, *Culture. A Critical Review...*, p. 3 ff, <https://ia801409.us.archive.org/19/items/papersofpeabodymvol47no1peab/papersofpeabodymvol47no1peab.pdf> (accessed on 8/09/2018, 15.05). Also see A.L. Kroeber, *Istota kultury*, Warsaw 2002, pp. 151–174 and 195–213.

²⁷ The most common conceptions include: evolutionism, new-evolutionism, Marxism, Frankfurt School approach, Durkheim School conception, historicism, diffusionism, functionalism and systemic thinking, structuralism, psycho-culturalism, cognitive science and post-modernism. See M. Golka, *Socjologia kultury*, Warsaw 2007, p. 23 ff.

²⁸ See M. Królikowski, K. Szczucki, [in:] M. Sajjan, L. Bosek (eds), *Konstytucja RP...*, Vol. 1, p. 1688; J. Sobczak, *Wolność korzystania z dóbr kultury – standardy europejskie i konstytucyjna*

It is believed in the doctrine that the freedom of using the products of culture is mainly vertical in nature, thus it results in obligations imposed on public authority bodies. However, it does not have a “horizontal effect” because the application of the freedom of access to the products of culture that remain in private possession might collide with property rights or privacy of domestic life.²⁹ We should agree with M. Piechowiak’s opinion that the legislator did not mean culture in the descriptive sense but culture based on a particular axiological foundation contained in the Christian heritage of the nation and universal values.³⁰ In this situation it is worth considering whether “culture” as used in the Preamble is only a value or also a legal principle.³¹

rzeczywistość polska, [in:] T. Gardocka, J. Sobczak (eds), *Prawna ochrona dóbr kultury*, Toruń 2009, pp. 7–26; M. Gołda-Sobczak, *Wolność korzystania z dóbr kultury i wolność badań naukowych*, *Media i Medioznawstwo* No. 1(13/IV), 2014, pp. 9–38; J. Sobczak, M. Gołda-Sobczak, *Свобода использования культурных ценностей в европейском правовом порядке. Международные стандарты*, [in:] Т.А. Курас (ed.), *Правовая политика современной России: реалии и перспективы. Материалы международной научно-практической конференции*, Irkutsk 2014, pp. 122–137.

²⁹ See L. Garlicki, M. Derlatka, [in:] L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 2, 2nd edn, Warsaw 2016, p. 800. Also see M. Jabłoński, *Wolności z art. 73 Konstytucji RP*, [in:] B. Banaszak, A. Preisner (eds), *Prawa i wolności obywatelskie w Konstytucji RP*, Warsaw 2002, p. 561; A. Frankiewicz, *Wolność w sferze sztuki i nauki według Konstytucji Polskiej Rzeczypospolitej Ludowej z 1952 r. oraz Konstytucji Rzeczypospolitej Polskiej z 1997 r.*, [in:] M. Sadowski, P. Szymaniec (eds), *Prawa człowieka – idea, instytucje, krytyka*, *Studia Erasmiana Wratislaviensia* No. 4, 2010, p. 236; *idem*, *Konstytucyjna regulacja dostępu do dóbr kultury i wolności korzystania z dóbr kultury*, *Przegląd Prawa Konstytucyjnego* No. 3, 2013, p. 63.

³⁰ M. Piechowiak, [in:] M. Safjan, M. Bosak (eds), *Konstytucja RP...*, Vol. 1, p. 140.

³¹ There may be doubts whether culture in the meaning of the Preamble may be treated as a constitutional principle or understood as a value. In the Constitutional Tribunal judgments, some kinds of states, phenomena, events, relationships or conduct are often described as values. This is how the freedom to express opinions as the freedom of speech is treated. See the judgment of the Constitutional Tribunal of 7 June 1994, K 17/93, OTK 1994, part I, item 11, p. 90. In the justification it is stated: “Freedom to express opinion, as a form of freedom of speech, is a constitutional value protected under Article 83 of the constitutional provisions; however, it is not absolute in nature”. By the way, it is worth mentioning that there is a statement: “Restrictions are admissible in situations clearly expressed in other constitutional provisions or when it is necessary to mutually harmonise the freedom of speech with other constitutional principles, norms and values”. In this situation, the Constitutional Tribunal clearly, at least in this judgment, does not identify constitutional values with principles and norms. It should be noticed that the freedom of conscience and religion is also included in the justification as a constitutional value. In the theory of the state and law, there were conceptions of the principles of law developed that may be applied in all fields of law. It is indicated that principles may be expressed in the descriptive or directive form. Sometimes, it is said that statements given a status of principles in jurisprudence are in the form of descriptions, directives or assessment. See M. Kordela, *Zasady prawa. Studium teoretyczno-prawne*, Poznań 2012, pp. 23–30. For the issue of the relationship between principles and values, see S. Wronkowska, M. Zieliński, Z. Ziemiński, *Zasady prawa. Zagadnienia podstawowe*, Warsaw 1974, *passim*. At the same time, attention is drawn to the fact that in the process of law application, it is not enough to simply refer to a particular principle but it is necessary to recover its content thoroughly and provide basis for its application. M. Kordela, *Zasady prawa...*, p. 23 ff. In the Polish doctrine, following the solutions adopted in the Anglo-Saxon literature, it is indicated that the most characteristic types of legal sentences are created by norms determining obligations including two supplementing classes: rules and principles. M. Atienza, J. Ruiz Manero, *A Theory of Legal Sentences*, Dordrecas 1998, p. ix; cited after M. Kordela, *Zasady prawa...*, pp. 36–37.

The lack of a legal definition of “culture” causes that it can be in practice interpreted as cultural heritage or understood as the concept of “the products of culture as the source of the nation’s identity”, or possibly the national cultural heritage. It is assumed in literature that the national heritage, and putting it more precisely the cultural heritage, encompasses not only material elements of former generations’ attainment³² but also a set of thoughts or feelings. It is assumed that the products of culture, i.e. cultural heritage, constitute the evidence of culture.³³ This heritage also includes scientific attainment, and effects of creative work.³⁴ We are accustomed to distinguishing material and non-material aspects of cultural heritage. Attention is also drawn to difficulties in classifying a particular product of culture as the cultural heritage of a particular nation.³⁵ Making an attempt to formulate a definition of cultural heritage, J. Pruszyński states that it is “a resource of movable and immovable objects together with spiritual values connected with them, historical and moral phenomena, believed to be worth legal protection for the good of society and its development as well as bequeathing to next generations due to understandable and accepted historical, patriotic, religious, scientific and artistic values that are significant for the identity and continuity of the development of political, social and cultural provision of proofs of truths and commemoration of historical events, preservation of the sense of beauty and civilizational community”.³⁶

It is raised in literature that the content of Article 6 of the Constitution is one of the most detailed principles of the state policy. The term “principles” should be interpreted as provisions imposing obligations on public authorities and their bodies, which are however not connected with those entities’ particular rights. Undoubtedly, culture in the meaning of Article 6 of the Constitution, i.e. as “the source of the Polish Nation’s identity”, is one of the elements of the national heritage in the meaning of Article 5 of the Constitution. The issue of identity occurs when an individual faces a broader possibility of choice. It concerns many spheres of life, education, occupation, participation in social and political associations, and functioning in a social group. Questions about national identity and the issue of the choice of language and religion seem to be especially important.

The question of national identity is one of those issues in which a few scientific disciplines are interested. On the one hand, it is the subject matter of sociological research,

³² J. Pruszyński, *Dziedzictwo kultury w świetle Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, [in:] J. Wawrzyniak, M. Kruk, J. Trzczyński (eds), *Konstytucja i władza we współczesnym świecie. Doktryna, prawo, praktyka. Prace dedykowane Profesorowi Wojciechowi Sokolewiczowi na siedemdziesięciolecie urodzin*, Warsaw 2002, p. 130 ff.

³³ J. Pruszyński, *Dziedzictwo kultury. Teorie. Dylematy restytucji*, *Przegląd Wschodni* Vol. 8, 2002, p. 360; K. Zeidler, *Pojęcie “dziedzictwa narodowego” w Konstytucji RP i jego prawna ochrona*, *Gdańskie Studia Prawnicze* Vol. 12, 2004, pp. 343–344.

³⁴ T. Kotarbiński, *Sprawność i błąd*, Warsaw 1970, p. 94.

³⁵ A. Gerecka-Żołyńska, *W kwestii definicji dobra kultury i dzieła sztuki*, *Prokuratura i Prawo* No. 9, 1999, p. 104.

³⁶ J. Pruszyński, *Dziedzictwo kultury Polski...*, Vol. 1, p. 125. It should be noted that, according to J. Pruszyński, the protection of the national heritage in the precise meaning is unfeasible and the protection of “cultural heritage” in the general meaning is doubtful. On the other hand, the only protection that is justified and feasible is the protection of products defined in terms of types, genres or single items.

and on the other hand, it constitutes the object of analysis for historians, historians of law and ideas, political scientists, experts in culture, psychologists and ethnologists. As a result, various research methods typical of particular disciplines have been used in the course of exploration of the content, prospects and features of national identity. The phenomenon has undoubtedly broadened and enriched the area of research. However, it has led to misunderstandings that make the assessment of national identity more difficult. The issue of a conceptual framework proves to be important.

While it seems that since the late 1980s the concept of “social awareness” or “historical awareness” has dominated scientific considerations, since the early 1990s, with the explosion of sociological research observed in Poland, in particular that into the concept of “the nation”, the term “national identity” has more and more often appeared in publications. Most scientists seem to be of the opinion that the terms “national awareness” and “national identity” are synonymous.³⁷

Article 35 of the Constitution guarantees national and ethnic minorities the right to establish their own educational and cultural institutions, institutions designed to protect religious identity as well as to participate in the resolution of matters connected with their cultural identity (Article 35 para. 2).³⁸ It is worth noticing that the Constitution,

³⁷ Compare H. Kubiak, *Świadomość i tożsamość narodowa. Swobodny wybór czy wymuszone zobowiązanie?*, [in:] K. Doktor, W. Kwaśniewicz, A. Kwilecki (eds), *Socjologia: Teoria i działanie. Księga pamiątkowa ku czci Władysława Markiewicza*, Warsaw 1997, pp. 265–284; reprint, H. Kubiak, *U progu ery postwestfalskiej*, Kraków 2007, p. 214. There are many treatises in literature devoted to the analysis of the definition of identity only, including inter alia: Z. Boksański, *Tożsamość, integracja, grupa. Tożsamość jednostki w perspektywie socjologicznej*, Łódź 1989; T. Paleczny, *Typy tożsamości kulturowej a procesy globalizacji*, [in:] K. Gorlach, M. Niezgoda, Z. Serega (eds), *Władza, naród, tożsamość*, Kraków 2004; P. Schlesinger, *On National Identity: Some Conceptions and Misconceptions Criticized*, Social Science Information Vol. 26, 1997. Refraining from a dispute whether this type of assumption is right, it is necessary to conclude that both quoted concepts are not clear enough and were interpreted and explained in different ways. “Identity” in general terms means “being the same”, “sameness” or “awareness of oneself, one’s features and distinctiveness”. Finally, it means: “personal facts, features and data that make it possible to distinguish, recognise and identify a person”. With respect to society, “identity” means “awareness of common features and the sense of unity”; cf. S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Vol. 4, Warsaw 2003, p. 96. In the dictionary definitions, the concept of identity is clearly defined with the use of the term “awareness” and the expressions are treated as equal. “Awareness” in colloquial speech means “knowledge of something”, “realising something”, “being conscious of something”. It also means “ideas, opinions, beliefs and aims shared by a group of people”. As far as the synonymous meaning of the two terms is concerned, it must also be noticed that the former (i.e. identity) seems to emphasise a certain state of “passiveness”, “inevitability”. On the other hand, awareness is characterised by a certain emotional content. The content of the term seems to focus on the conviction that awareness results from a certain process, that it is an effect of striving to recognise one’s belonging and does not result from accidental identification. However, the issue of the presented differences in meaning has not drawn much attention in literature. It must be admitted that their perception is to a great extent subjective and intuitive in nature.

³⁸ The regulation laid down in Article 35 is not strongly rooted in the Polish constitutional tradition, although it is stated in literature that “the issues of the protection of minorities’ rights were subject to regulation in the March Constitution with respect to both an individual dimension (Article 109 para. 1 and Article 110), and a collective one (Article 109 para. 2)”, because neither case law nor literature has developed based on them. In the period of the Polish People’s Republic, there were no (apart from a general ban on discrimination) special constitutional regulations concerning minorities’ rights. Propagating a thesis of political and moral unity of the Polish nation, the authorities tried to minimise the possibility of cultivating

due to its nature, does not define (because it could not define) the concepts of “national minority” and “ethnic minority”. However, the adoption of the above-mentioned distinction was a decisive factor that influenced the shape of successive regulations. It is worth remembering that distinguishing national minorities from ethnic minorities is not universal in nature in international law and both terms are recognised as synonyms. In accordance with the Constitution, however, they are not equivalent, which is confirmed by the course of work on its content and the fact that the legislator uses only the term “national minority” in some situations.³⁹ The Constitution clearly distinguishes an objective element, i.e. actual existence of both national and ethnic minorities, from a subjective one, which lets a citizen make a free choice whether he wishes to reveal his belonging or he wants to be treated as a member of a minority.

It is worth noticing that the subjective scope of freedom referred to in Article 35 of the Constitution is limited to Polish citizens and leaves foreign stateless persons outside the area of its application, even if they stay in Poland permanently. Article 35 of the Constitution is applicable only to persons who “belong to national and ethnic minorities”, thus those who are really connected with a particular minority.

The Constitution clearly distinguishes an objective element, i.e. actual existence of both national and ethnic minorities, from a subjective one, which lets a citizen make a free choice whether he wishes to reveal his belonging or wants to be treated as a member of a minority. It is worth mentioning that values referred to in Article 35 para. 1 of the Constitution were expressed in a negative form, which means that public authorities should refrain from interfering into particular spheres. The rights stipulated in Article 35 para. 2 of the Constitution are determined in a positive form, which imposes obligations on public authorities to create conditions making it possible to exercise those rights.⁴⁰ There is also a guarantee that national and ethnic

tradition and demonstrating diversity by national minorities. L. Garlicki, *Komentarz do art. 35 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, Warsaw 2003, pp. 4–5; also see *Prawne aspekty mniejszości narodowych w Polsce*, Materiały i Dokumenty No. 52, Biuro Studiów i Ekspertyz, Warsaw 1993; M. Kallas, *Prace parlamentarne nad uregulowaniem statusu mniejszości w Polsce (1989–1995)*, Przegląd Sejmowy No. 3, 1995, pp. 63–78; also compare Z. Galicki, *Zapisy konstytucyjne dotyczące mniejszości narodowych i etnicznych – praktyka polska*, Materiały i Dokumenty No. 52, Biuro Studiów i Ekspertyz, Kancelaria Sejmu, Warsaw 1993. For the issue of the Polish state policy towards national minorities, see S. Pawlak, *Ochrona mniejszości narodowych w Europie*, Warsaw 2001, pp. 130–134. The issue of minorities was thoroughly analysed by the standing Committee for National and Ethnic Minorities established in the course of discussions in the Sejm of the 10th term. It was the first such body in the work of the Sejm. Such committees were also established during successive terms. It is worth noticing that none of the constitutional bills included a definition of the concept of national, ethnic or linguistic minorities.

³⁹ Compare Article 134 of Electoral Law determining elections to the Sejm and the Senate of the Republic of Poland, Journal of Laws [Dz.U.] of 2001, No. 46, item 499, as amended in 2001, No. 74, item 786, in accordance with which, only electoral committees established by voters associated in registered national minorities’ organisations may be subject to exemption from the five per cent electoral threshold that entitles their lists to participate in the process of granting seats. See S. Gebethner, *Wybory do Sejmu i do Senatu. Komentarz do ustawy z dnia 12 kwietnia 2001 r. – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej*, Warsaw 2001, pp. 2004–2004.

⁴⁰ It is raised in literature that Article 35 guarantees minorities the rights that are institutional (the right to establish their own educational and cultural institutions, and institutions designed to protect religious identity, i.e. the right to their own schools, cultural facilities and religious

minorities have the right to establish their own educational and cultural institutions, institutions designed to protect religious identity as well as to participate in the resolution of matters connected with their cultural identity (Article 35 para. 2 of the Constitution). The legislator included the issue of national and ethnic minorities' culture in Article 35 of the Constitution in a dynamic way, emphasising not only freedom to preserve their culture but also to develop it.⁴¹

The issue of national heritage is not excessively explored in legal and constitutional considerations. Undoubtedly, it results from the fact that it is not possible, as it seems, to work out subjective rights from the content of Articles 5 and 6 of the Constitution, and the issues from this area occur mainly in connection with disputes of administrative nature, concerning the protection of the products of culture.⁴² In literature, the issue of ownership of material cultural heritage is sometimes also contested and there are proposals to adopt the theory of common ownership, which should result in the principle of free access to the values of cultural heritage. It is emphasised that cultural heritage should constitute public property so that everybody could have equal access to the spiritual values that this heritage contains.⁴³

On the one hand, the latter opinion seems to be inspired by socialist conceptions of the ownership of the works of art in the extreme, Soviet interpretation. At the same time, it is absolutely utopian in the present social and economic circumstances. On the other hand, as far as "spiritual values" are concerned, they should be recognised as being in conflict with the concept of copyright not only protected by respective statute but also by legal acts of international law.

Finally, it is worth reminding that if the protection of cultural heritage is looked at in a broader way, e.g. from the point of view of the European Union, it is protected by various EU normative acts at present, although the member states' cultural policy remains within their domain and the EU may only encourage those states to cooperate and supplement their activities.⁴⁴ There is no doubt that the national heritage is one of the elements shaping national identity, and the freedom to use the products of culture also safeguards it.

missions, but not the right to establish their own political, administrative or economic institutions) and procedural (the right to participate in the resolution of matters connected with their identity). This results not only in the possibility but also the necessity of establishing organisations by minorities.

⁴¹ See P. Czarny, [in:] M. Safjan, L. Bosek (eds), *Konstytucja RP...*, Vol. 1, p. 808.

⁴² A. Frankiewicz draws attention to this, *Znaczenie prawne regulacji dziedzictwa narodowego i dóbr kultury w rozdziale I Konstytucji RP*, Acta Universitatis Wratislaviensis No. 3440, Przegład Prawa i Administracji LXXXVIII, Wrocław 2012, p. 9 ff.

⁴³ Z. Kobyliński, *Czym jest, komu jest potrzebne i do kogo należy dziedzictwo kulturowe?*, Mazowsze. Studia Regionalne No. 7, 2011, pp. 21–47.

⁴⁴ W. Sobczak considered the issues in *Ochrona dziedzictwa kultury w systemie prawnym Unii Europejskiej*, Środkowoeuropejskie Studia Polityczne No. 3, 2009, pp. 105–123. For more on this issue, compare also K. Kowalski, *O istocie dziedzictwa europejskiego. Rozważania*, Kraków 2013, p. 15 ff.

BIBLIOGRAPHY

- Atienza M., Ruiz Manero J., *A Theory of Legal Sentences*, Dordrecas 1998.
- Banaszak B., *Konstytucja Rzeczypospolitej Polskiej*, 2nd edn, Warsaw 2012.
- Banaszak B., *Prawo konstytucyjne*, 7th edn, Warsaw 2015.
- Banaszak G., Kmita J., *Spoleczno-regulacyjna koncepcja kultury*, Warsaw 1994.
- Banaś M., Krzywonos A., *Prawo do obywatelstwa*, [in:] B. Banaszak, A. Preisner, *Prawa i wolności obywatelskie w Konstytucji RP*, Warsaw 2002.
- Bednarek S., *Pojmowanie kultury i jej historii we współczesnych syntezach dziejów kultury polskiej*, Wrocław 1995.
- Boksański Z., *Tożsamość, integracja, grupa. Tożsamość jednostki w perspektywie socjologicznej*, Łódź 1989.
- Brzózny Rev. N., *Chrześcijaństwo, Kościół, demokracja*, <https://idmjp2.pl/index.php/pl/wydarzenia/prelekcje/1157-wykklad-otwarty-chrzescijanstwo-kosciol-demokracja> (accessed on 8/09/2018, 12.42).
- Cieślak Ł., *Chrześcijaństwo – religia państwa i Kościoła*, <http://www.bibliotekacyfrowa.pl/Content/21965/015.pdf> (accessed on 8/09/2018, 13.05).
- Czarnowski S., *Kultura*, [in:] *Dzieła*, Vol. 1, Warsaw 1968.
- Dubisz S. (ed.), *Uniwersalny słownik języka polskiego*, Vol. 1 and 4, Warsaw 2003.
- Działocha K., *Uwagi do art. 4 Konstytucji*, [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 5, Warsaw 2007.
- Florczak-Wątor M., *Uwagi do art. 5 Konstytucji*, [in:] M. Safjan, L. Bosek (eds), *Konstytucja RP*, Vol. 1: *Komentarz. Art. 1–86*, Warsaw 2016.
- Frankiewicz A., *Wolność w sferze sztuki i nauki według Konstytucji Polskiej Rzeczypospolitej Ludowej z 1952 r. oraz Konstytucji Rzeczypospolitej Polskiej z 1997 r.*, [in:] M. Sadowski, P. Szymaniec (eds), *Prawa człowieka – idea, instytucje, krytyka*, *Studia Erasmiana Wratislaviensia* No. 4, 2010.
- Frankiewicz A., *Konstytucyjna regulacja dostępu do dóbr kultury i wolności korzystania z dóbr kultury*, *Przegląd Prawa Konstytucyjnego* No. 3, 2013.
- Galicki Z., *Zapisy konstytucyjne dotyczące mniejszości narodowych i etnicznych – praktyka polska*, *Materiały i Dokumenty* No. 52, Biuro Studiów i Ekspertyz, Kancelaria Sejmu, Warsaw 1993.
- Garlicki L., *Komentarz do art. 35 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 3, Warsaw 2003.
- Garlicki L., *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2016.
- Garlicki L., Derlatka M., [in:] L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 2, 2nd edn, Warsaw 2016.
- Gebethner S., *Wybory do Sejmu i do Senatu. Komentarz do ustawy z dnia 12 kwietnia 2001 r. – Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej*, Warsaw 2001.
- Gerecka-Żołyńska A., *W kwestii definicji dobra kultury i dzieła sztuki*, *Prokuratura i Prawo* No. 9, 1999.
- Golka M., *Socjologia kultury*, Warsaw 2007.
- Gołda-Sobczak M., *Wolność korzystania z dóbr kultury i wolność badań naukowych*, *Media i Medioznawstwo* No. 1(13/IV), 2014.
- Gulczyński M., *Zasada zwierzchnictwa narodu*, [in:] W. Sokolewicz (ed.), *Zasady podstawowe polskiej Konstytucji*, Warsaw 1998.
- Habermas J., *Obywatelstwo a tożsamość narodowa: rozważania nad przyszłością Europy*, Warsaw 1993.

- Holton R., Turner B.S., Parsons T., *Parsons and Modernity*, London 1986.
- Horst G., Co oznacza "dziedzictwo chrześcijańskie"?, [in:] *Europa dla Chrystusa!*, http://www.europe4christ.net/fileadmin/media/pdf/polish/List_do_Europy_5.pdf (accessed on 8/09/2018, 12.22).
- Jabłoński M., *Wolności z art. 73 Konstytucji RP*, [in:] B. Banaszak, A. Preisner (eds), *Prawa i wolności obywatelskie w Konstytucji RP*, Warsaw 2002.
- Jackowski J.M., *Chrześcijańskie dziedzictwo narodu*, *Niedziela Ogólnopolska* No. 16, 2016.
- Jagielski J., *Obywatelstwo polskie: zagadnienia podstawowe*, Warsaw 1998.
- Jasińska M., *Podstawowe prawa i wolności mniejszości narodowych w systemie Rady Europy*, *Politologia i Stosunki Międzynarodowe* No. 2, 2007.
- Kallas M., *Prace parlamentarne nad uregulowaniem statusu mniejszości w Polsce (1989–1995)*, *Przełom Sejmowy* No. 3, 1995.
- Kłoskowska A., *Kultura masowa*, Warsaw 1980.
- Kłoskowska A., *Socjologia kultury*, Warsaw 1981.
- Kobyliński Z., *Czym jest, komu jest potrzebne i do kogo należy dziedzictwo kulturowe?*, *Mazowsze. Studia Regionalne* No. 7, 2011.
- Konarski W., *Naród, mniejszość, nacjonalizm, religia – przyczynek do dyskursu o pojęciach i powiązaniach między nimi*, [in:] A. Hołub (ed.), *Narody XXI wieku*, Olsztyn 2007.
- Konopacki S., *Obywatelstwo europejskie w kontekście członkostwa Polski w Unii Europejskiej*, Łódź 2005.
- Kordela M., *Zasady prawa. Studium teoretyczno-prawne*, Poznań 2012.
- Kotarbiński T., *Sprawność i błąd*, Warsaw 1970.
- Kowalski K., *O istocie dziedzictwa europejskiego. Rozważania*, Kraków 2013.
- Krąpiec Rev. M., *Teokracja*, *Gazeta Wyborcza* No. 215, 1993.
- Kroeber A., *Istota kultury*, Warsaw 1973.
- Kroeber A., Kluckhohn C., *Culture. A Critical Review on Concepts and Definitions*, *Papers of Peabody Museum of American Archaeology and Ethnology* No. 47(1), 1952, <https://ia801409.us.archive.org/19/items/papersofpeabodymvol47no1peab/papersofpeabody-mvol47no1peab.pdf> (accessed on 8/09/2018, 15.05).
- Kubiak H., *Świadomość i tożsamość narodowa. Swobodny wybór czy wymuszone zobowiązanie?*, [in:] K. Doktor, W. Kwaśniewicz, A. Kwilecki (eds), *Socjologia: Teoria i działanie. Księga pamiątkowa ku czci Władysława Markiewicza*, Warsaw 1997.
- Kubiak H., *U progu ery postwestfalskiej*, Kraków 2007.
- Kultura wyrazem człowieczeństwa i tożsamości narodów*, <http://civitaschristiana.pl/kultura-wyrazem-czowieczestwa-i-tosamoci-narodow/> (accessed on 8/09/2018, 12.29).
- Kumaniecki K. (ed.), *Słownik łacińsko-polski*, Warsaw 1968.
- Magoska M., *Obywatel w procesie zmian*, Kraków 2001.
- Malinowski B., *Naukowa teoria kultury*, [in:] *Szkice z teorii kultury*, Warsaw 1958.
- Marshall T.H., *Class, Citizenship and Social Development*, London 1963.
- Mulvey S., *Wartości europejskie – zjednoczeni w różnorodności?*, http://www.bbc.co.uk/polish/040114_europe_values.shtml (accessed on 8/09/2018, 12.36).
- Nasta Rev. W., *Co to są wartości chrześcijańskie*, *Polityka* No. 48, 1992.
- Orłowski W., [in:] W. Skrzydło, S. Grabowska, R. Grabowski, *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warsaw 2009.
- Palczyński T., *Typy tożsamości kulturowej a procesy globalizacji*, [in:] K. Gorlach, M. Niezgoda, Z. Seręga (eds), *Władza, naród, tożsamość*, Kraków 2004.
- Parsons T., *The System of Modern Societies*, New York 1971.
- Pawlak S., *Ochrona mniejszości narodowych w Europie*, Warsaw 2001.

- Piechowiak M., *Uwagi do preambuły*, [in:] M. Safjan, L. Bosek (eds), *Konstytucja RP. Komentarz*, Vol. 1, Warsaw 2016.
- Piwowski Rev. W., *Wartości podstawowe*, Ład No. 2, 1993.
- Prawne aspekty mniejszości narodowych w Polsce*, Materiały i Dokumenty No. 52, Biuro Studiów i Ekspertyz, Warsaw 1993.
- Pruszyński J., *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, Vol. 1 and 2, Kraków 2001.
- Pruszyński J., *Dziedzictwo kultury w świetle Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, [in:] J. Wawrzyniak, M. Kruk, J. Trzcziński (eds), *Konstytucja i władza we współczesnym świecie. Doktryna, prawo, praktyka. Prace dedykowane Profesorowi Wojciechowi Sokolewiczowi na siedemdziesięciolecie urodzin*, Warsaw 2002.
- Pruszyński J., *Dziedzictwo kultury. Teorie. Dylematy restytucji*, Przegląd Wschodni Vol. 8, 2002.
- Przeciszewski M., *Kościół katolicki w Polsce dziś*, <http://dziedzictwo.ekai.pl/text.show?id=4501> (accessed on 8/09/2018, 12.27).
- Safjan M., Bosek L., *Konstytucja RP. Komentarz*, Vol. 1, Warsaw 2016.
- Salij Rev. J., *Co to są wartości chrześcijańskie*, Polityka No. 48, 1992.
- Sarnecki P., [in:] *Prawo konstytucyjne RP*, 7th edn, Warsaw 2008.
- Sarnecki P., *Uwagi do art. 5 Konstytucji*, [in:] L. Garlicki, M. Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Vol. 1, 2nd revised edn, Warsaw 2016.
- Schlesinger P., *On National Identity: Some Conceptions and Misconceptions Criticized*, Social Science Information Vol. 26, 1997.
- Simmel G., *O istocie kultury*, [in:] *Filozofia kultury. Wybór esejów*, Kraków 2007.
- Smoktunowicz E., *Status administracyjno-prawny obywatela*, [in:] *System prawa administracyjnego*, Vol. 4, Wrocław 1980.
- Smoktunowicz E. (ed.), *Wielka encyklopedia prawa*, Białystok-Warsaw 2000.
- Sobczak J., *Wokół problemu definicji mniejszości narodowych*, *Środkowoeuropejskie Studia Polityczne* No. 1, 2003.
- Sobczak J., *Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym*, [in:] M. Musiał-Karg (ed.), *Europa XXI wieku. Perspektywy i uwarunkowania integracji europejskiej*, Poznań 2007.
- Sobczak J., *Kryzys polskiej tożsamości narodowej, narodziny tożsamości europejskiej – antynomie, dylematy, miraż*, [in:] M. Janowski, J. Jonczek, L. Ślepowroński (eds), *Quo vadis Europa? Kulturowe oblicza Europy*, Vol. 1, Szczecin 2008.
- Sobczak J., *Mniejszości narodowe i wyznaniowe w polskim porządku prawnym*, [in:] J. Sobczak, A.W. Mikołajczak, B. Hordecki (eds), *Zderzenie czy dialog państw narodowych w Europie*, Poznań 2008.
- Sobczak J., *Kryzys polskiej tożsamości narodowej, narodziny tożsamości europejskiej – antynomie, dylematy, miraż*, [in:] L. Dyczewski, D. Wadowski (eds), *Tożsamość polska w odmiennych kontekstach*, Lublin 2009.
- Sobczak J., *Wolność korzystania z dóbr kultury – standardy europejskie i konstytucyjna rzeczywistość polska*, [in:] T. Gardocka, J. Sobczak (eds), *Prawna ochrona dóbr kultury*, Toruń 2009.
- Sobczak J., Gołda-Sobczak M., *Свобода использования культурных ценностей в европейском правовом порядке. Международные стандарты*, [in:] Т.А. Курас (ed.), *Правовая политика современной России: реалии и перспективы. Материалы международной научно-практической конференции*, Irkutsk 2014.
- Sobczak W., *Ochrona dziedzictwa kultury w systemie prawnym Unii Europejskiej*, *Środkowoeuropejskie Studia Polityczne* No. 3, 2009.
- Sokolewicz Z., *Obywatelstwo a narodowość. Uwagi w związku z ustanowieniem obywatelstwa Unii Europejskiej*, *Studia Europejskie* No. 1, 1997.
- Sondel J. (ed.), *Słownik łacińsko-polski dla prawników i historyków*, Kraków 2006.

- Sosnowski J., *Respekt dla wartości*, Gazeta Wyborcza No. 15, 1993.
- Szczypiński O., *Chrześcijaństwo jako źródło kultury europejskiej w myśli Josepha Ratzingera*, https://depot.ceon.pl/bitstream/handle/123456789/5421/chrzescijanstwo_jako_zrodlo_kultury.pdf?sequence=1 (accessed on 8/09/2018, 12.33).
- Szymczak M. (ed.), *Słownik języka polskiego*, Vol. 1, Warsaw 1988.
- Taylor Ch., *The Liberal-Communitarian Debate*, [in:] N.L. Rosenblum (ed.), *Liberalism and the Moral Life*, Cambridge 1989.
- Trzciniński J., *Obywatelstwo w Europie. Idea i jej wyraz formalny w perspektywie historycznej*, Studia Europejskie No. 2, 2002.
- Trzciniński J., *Obywatelstwo w Europie. Z dziejów idei i instytucji*, Warsaw 2006.
- Witkowski Z., *Prawo konstytucyjne*, Toruń 2009.
- Witkowski Z., [in:] Z. Witkowski, A. Bień-Kacała (eds), *Prawo konstytucyjne*, Toruń 2015.
- Wronkowska S., Zieliński M., Ziemiński Z., *Zasady prawa. Zagadnienia podstawowe*, Warsaw 1974.
- Wyrzykowski M., *Obywatel i biurokracja*, [in:] A. Rzepliński (ed.), *Prawa człowieka w społeczeństwie obywatelskim*, Warsaw 1993.
- Zeidler K., *Pojęcie "dziedzictwa narodowego" w Konstytucji RP i jego prawna ochrona*, Gdańskie Studia Prawnicze Vol. 12, 2004.
- Znaniecki F., *Nauki o kulturze*, Warsaw 1971.
- Zwoliński Rev. A., *Wprowadzenie do rozważań o narodzie*, Kraków 2005.

Legal regulations

- Constitution of the Republic of Poland of 2 April 1997, Journal of laws [Dz.U.] No. 78, item 483, revised [Dz.U.] of 2001, No. 28, item 319.
- Act of 12 April 2001: Electoral Law determining elections to the Sejm and the Senate of the Republic of Poland, Journal of Laws [Dz.U.] of 2001, No. 46, item 499, as amended in 2001, No. 74, item 786.
- Act of 23 July 2003 on the protection of antiquities and taking care of them, consolidated text, Journal of Laws [Dz.U.] of 2014, item 1446.
- Act of 10 July 2015 on amending the Act on the protection of antiquities and taking care of them and the Act on museums, Journal of Laws [Dz.U.] of 2016, item 1330.

Constitutional Tribunal case law

- Judgment of 7 June 1994, K 17/93, OTK 1994, part I, item 11.
- Judgment of 31 May 2004, K 15/04, OTK-A 2004, No. 5, item 47.
- Judgment of 12 January 2005, K 24/04, OTK-A 2005, No. 1, item 3.
- Justification for the judgment of 8 October 2007, K 20/07 OTK-A 2007, No. 9, item 102.
- Justification for the judgment of 21 September 2015, K 28/13, OTK ZU 8A/2015, item 120.
- Justification for the judgment of 25 May 2016, Kp 2/15, OTK-A 2016, item 23.

NATIONAL HERITAGE IN THE POLISH CONSTITUTIONAL ORDER

Summary

In accordance with Article 5 of the Constitution, the Republic of Poland safeguards the national heritage, which is a constitutional value, in the same way as it safeguards independence. The national heritage can be understood as culture rooted in the Christian heritage of the Nation,

as it is laid down in the Preamble, or cultural heritage referred to in Article 6 para. 2 of the Constitution. This latter concept seems to be an integral part of the national heritage. The national heritage cannot, as it has been proved, be perceived as the heritage of the Polish ethnic nation, although the term "nation" used in the Constitution can be interpreted in various ways. In practice, the status of national minorities' cultural heritage and whether it is part of the Polish national heritage also constitute a problem.

Keywords: national heritage, cultural heritage, nation, national minority, culture, national identity

DZIEDZICTWO NARODOWE W POLSKIM PORZĄDKU KONSTITUCYJNYM

Streszczenie

Dziedzictwa narodowego, będącego wartością konstytucyjną, strzeże podobnie jak niepodległości Rzeczpospolita Polska, zgodnie z art. 5 Konstytucji. Może być ono pojmowane jako kultura zakorzeniona w chrześcijańskim dziedzictwie narodu, tak jak to ujmuje preambuła, lub jako dziedzictwo kulturalne, o którym mowa w art. 6 ust. 2 Konstytucji. To ostatnie wydaje się być integralną częścią dziedzictwa narodowego. Dziedzictwo narodowe nie może być, jak dowiedziono, ujmowane jako dziedzictwo polskiego narodu etnicznego, aczkolwiek używane w Konstytucji pojęcie „naród” bywa różnie interpretowane. W praktyce problemem jest także status dziedzictwa kulturowego mniejszości narodowych i to, czy wchodzi ono w skład polskiego dziedzictwa narodowego.

Słowa kluczowe: dziedzictwo narodowe, dziedzictwo kulturowe, naród, mniejszość narodowa, kultura, tożsamość narodowa

PATRIMONIO NACIONAL EN EL ORDEN JURÍDICO CONSTITUCIONAL

Resumen

El patrimonio nacional es un valor constitucional, lo protege, tal como la independencia de la República de Polonia, el art. 5 de la Constitución. Puede entenderse como cultura con raíces en el patrimonio nacional cristiano, tal como lo denomina el preámbulo, o bien como patrimonio cultural, al que se refiere el art. 6 ap. 2 de la Constitución. Este último parece formar parte integral del patrimonio nacional. El patrimonio nacional no puede entenderse, tal como se demuestra, como patrimonio de la nación polaca étnica, aunque el término "la nación" utilizado en la Constitución puede interpretarse de varias formas. En la práctica, el estatus del patrimonio cultural de minorías y su inclusión en el patrimonio nacional polaco nacionales causa problemas.

Palabras claves: patrimonio nacional, patrimonio cultural, nación, minoría nacional, cultura, identidad nacional

НАЦИОНАЛЬНОЕ НАСЛЕДИЕ В ПОЛЬСКОМ КОНСТИТУЦИОННОМ ПОРЯДКЕ

Резюме

Национальное наследие, представляющее собой конституционную ценность, в той же мере, как и национальная независимость, охраняется Республикой Польша – в соответствии со ст. 5 Конституции. Оно может пониматься, как культура, укоренившаяся в христианском наследии нации, что содержится в преамбуле, или культурном наследии, упоминаемом в ст. 6 п. 2 Конституции. Последнее представляется неотъемлемой частью национального наследия. Национальное наследие не может интерпретироваться, как это можно бы было резюмировать, в категории наследия польской этнической нации, хотя используемый в Конституции термин «нация» может толковаться различным образом. На практике проблема заключается также в статусе культурного наследия национальных меньшинств и в том, является ли он частью польского национального наследия.

Ключевые слова: национальное наследие, культурное наследие, народ, национальное меньшинство, культура, национальная идентичность

DAS NATIONALERBE IM POLNISCHEN GRUNDGESETZSYSTEM

Zusammenfassung

Das Nationalerbe als Grundgesetzwert wird von der Republik Polen gemäß Art. 5 des Grundgesetzes (GG) bewahrt, ähnlich wie die Unabhängigkeit es wird. Es kann als verwurzelte Kultur im christlichen Nationalerbe entgegengenommen werden, so, wie es die Präambel oder das Kulturerbe bestimmt, wovon die Rede im Art. 6 Abschn. 2 des GG ist, welches einen integralen Bestandteil des Nationalerben zu bilden scheint. Das Nationalerbe kann nicht nachweislich als Erbe des polnischen ethnischen Volkes aufgefasst werden, obwohl laut GG der Begriff „Volk“ verschiedentlich interpretiert wird. Ein anderes praktisches Problem ist auch der Status des Kulturerben von Volksminderheiten und die Tatsache, ob es als ein Teil des polnischen Nationalerben zählt.

Schlüsselwörter: Nationalerbe, Kulturerbe, Volk, Volksminderheit, Kultur, Volksidentität

LE PATRIMOINE NATIONAL DANS L'ORDRE CONSTITUTIONNEL POLONAIS

Résumé

Le patrimoine national étant une valeur constitutionnelle, tout comme l'indépendance, est gardé par la République de Pologne, conformément à l'article 5 de la Constitution. Il peut être compris comme une culture enracinée dans l'héritage chrétien de la nation, tel qu'il est inclus dans le préambule ou l'héritage culturel mentionné à l'article 6 paragraphe 2 de la Constitution. Ce dernier semble faire partie intégrante du patrimoine national. Le patrimoine national ne peut être, comme il a été exposé, présenté comme un patrimoine de la nation ethnique polonaise, bien que le terme «nation» utilisé dans la Constitution soit interprété

différemment. En pratique, le problème concerne également le statut du patrimoine culturel des minorités nationales et son appartenance ou non au patrimoine national polonais.

Mots-clés: patrimoine national, patrimoine culturel, nation, minorité nationale, culture, identité nationale

PATRIMONIO NAZIONALE NELL'ORDINE COSTITUZIONALE POLACCO

Sintesi

Il patrimonio nazionale, che è un valore costituzionale, viene custodito in modo analogo all'indipendenza dalla Repubblica di Polonia, conformemente all'articolo 5 della Costituzione. Esso può essere inteso come una cultura radicata nel patrimonio cristiano della nazione, così come è presentato nel preambolo, o come il patrimonio culturale di cui all'articolo 6. paragrafo 2 della Costituzione. Quest'ultimo sembra essere parte integrante del patrimonio nazionale. Il patrimonio nazionale non può, come è stato ricavato, essere considerato come patrimonio della nazione etnica polacca, anche se il termine "nazione" usato nella Costituzione può essere interpretato in modo diverso. In pratica, anche lo status del patrimonio culturale delle minoranze nazionali e la sua appartenenza o meno al patrimonio nazionale polacco è un problema.

Parole chiave: patrimonio nazionale, patrimonio culturale, nazione, minoranza nazionale, cultura, identità nazionale

Cytuj jako:

Sobczak J., *National heritage in the Polish constitutional order [Dziedzictwo narodowe w polskim porządku konstytucyjnym]*, „Ius Novum” 2019 (Vol. 13) nr 2, s. 146–165. DOI: 10.26399/iusnovum.v13.2.2019.20/j.sobczak

Sobczak, J. (2019) 'National heritage in the Polish constitutional order'. *Ius Novum* (Vol. 13) 2, 146–165. DOI: 10.26399/iusnovum.v13.2.2019.20/j.sobczak