

# ORDER TO CARRY OUT WORKS OR CONSTRUCTION WORKS ON AN IMMOVABLE MONUMENT

ALEKSANDER MAZIARZ\*

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## ABSTRACT

The state's guardianship over immovable monuments entered in the register of monuments is reflected in the possibility of issuing a decision under Article 49(1) of the Act on the Protection of Monuments and the Care of Monuments. This decision allows conservation authorities to order conservation work or construction work where there is a threat of destruction of or significant damage to a monument. Although it is assumed that such a decision may be issued regardless of the state of preservation of the monument, and therefore also in respect of destroyed monuments, discrepancies have arisen in the case law regarding the application of this provision, particularly in situations where the poor technical condition of the monument was caused by the owner's neglect and the inaction of the conservation authority. This study analyses Article 49 of the Act, focusing on its protective function and its application in conservation practice. It aims to identify the circumstances in which conservation authorities may order conservation work or construction work, define the scope of obligations imposed on owners of immovable monuments, and assess divergences in administrative court case law, particularly regarding significantly deteriorated immovable monuments.

Keywords: immovable monument, conservation supervision, order to carry out restoration work or construction work

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\* LLD hab., Professor of ALK, Kozminski University in Warsaw (Poland), e-mail: amaziarz@kozminski.edu.pl, ORCID: 0000-0002-0482-5400



## INTRODUCTION

Immovable monuments are subject to special protection by the state. This is manifested in the imposition on the owners of historic buildings of an obligation to maintain them in the best possible condition and to prevent their destruction or loss of historic value. Yet, these obligations are not always properly fulfilled, as many monuments are in poor technical condition. For this reason, in Article 49 of the Act on the Protection of Monuments and the Care of Monuments, the legislator<sup>1</sup> provided for the possibility for the conservation authorities to issue a decision ordering the carrying out of conservation works or construction works in the event of a threat of destruction of or significant damage to the monument. Thus, it may be said that the legislator has introduced a provision aimed at securing, or even saving, historic buildings from destruction in the event of the owner's passivity. However, as this provision cannot impose an obligation to reconstruct or renovate such an object, it cannot serve as a means of improving the condition of a historic building.<sup>2</sup> Still it may order the carrying out of such works as will at least preserve the existing *status quo* of the monument and secure the possibility of restoring its state of splendour in the future.

While the purpose of Article 49 of the Act, which is to protect a monument against its destruction or significant damage, undoubtedly gives effect to the principle of monument protection and does not raise any doubts, the application of this provision in practice already gives rise to discrepancies. In the case law, one can encounter the view that this provision applies even in a situation where the monument is destroyed and is not even suitable for reconstruction,<sup>3</sup> as well as views that limit the application of this provision by excluding from its scope those situations in which there have been many years of negligence on the part of the owner of the monument, as well as on the part of the conservation authorities.<sup>4</sup>

The aim of the article is to analyse Article 49 of the Act in the context of its protective function and the practice of its application by conservation authorities. In particular, the aim is to determine in which situations it is permissible to issue a decision ordering conservation or construction works, as well as to determine the limits and scope of the obligations that may be imposed on the owner of an immovable monument on the basis of this provision. The article also aims to assess the discrepancies in the case law of the administrative courts, especially with regard to the possibility of applying Article 49 of the Act to significantly destroyed immovable monuments, and to indicate the criteria that conservation authorities should follow in the event of a possible waiver of the issuing of an injunctive decision.

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<sup>1</sup> The Act of 23 July 2003 on the Protection of Monuments and the Care of Monuments (consolidated text, Journal of Laws of 2024, item 1292, as amended), hereinafter referred to as 'the Act'.

<sup>2</sup> J. Sługocki, *Opieka nad zabytkiem nieruchomym. Problemy administracyjnoprawne*, Warszawa, 2017, pp. 79 et seq.

<sup>3</sup> Judgment of the Supreme Administrative Court of 16 May 2023, II OSK 1662/20, LEX No. 3588799.

<sup>4</sup> Judgment of the Supreme Administrative Court of 21 June 2023, II OSK 2273/20, LEX No. 3588385.

The article employs the formal-dogmatic method, which was used to analyse Article 49 of the Act and its place in the legal system, taking into account the principles of monument protection and legal constructs appropriate to the administrative forms of action of conservation authorities. An analysis of the case law of the administrative courts was also carried out, which made it possible to identify and assess interpretative discrepancies concerning the scope and limits of the application of Article 49 of the Act, as well as to determine the interpretation adopted in the practice of applying the law.

## LEGAL FORM OF THE ORDER TO CARRY OUT WORKS OR CONSTRUCTION WORKS

An order to carry out restoration or construction works takes the form of an administrative decision. This decision is discretionary, which means that the conservation authority cannot make an arbitrary decision, not only without conducting evidentiary proceedings, but also without referring to all the circumstances that may have an impact on the case.<sup>5</sup> It is worth emphasising that discretionary decisions require consideration of all the facts of the case and the choice of a decision within the limits set by the applicable provisions of law and the general principles of administrative proceedings. Discretionary decisions are subject to judicial review in terms of the presence of features of arbitrariness, which occurs when an authority omits evidence relevant to the decision or assesses that material contrary to logic or common experience.<sup>6</sup> A decision issued on the basis of Article 49(1) of the Act constitutes a severe interference with a given entity's right of ownership. It may result in the addressee being burdened with the obligation to carry out advanced and financially burdensome conservation or construction works. For this reason, such a decision should be justified in detail.<sup>7</sup>

In Article 49(1) of the Act, the legislator indicated that the conservation authority is to specify in the decision the time limit for carrying out conservation works or construction works. By specifying that an element of the decision in question is the indication of the time limit for the completion of the works, the legislator makes the setting of that time limit a duty of the authority. This is also necessary in light of the possibility of substitute performance of the ordered works.<sup>8</sup> It should be noted that execution of the decision in question does not exempt the addressee from the obligation to obtain a building permit or to give notice, in cases specified by the provisions of construction law.<sup>9</sup>

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<sup>5</sup> Judgment of the Provincial Administrative Court in Warsaw of 24 October 2012, II SA/Wa 1210/12, LEX No. 1241554.

<sup>6</sup> Judgment of the Provincial Administrative Court in Warsaw of 20 September 2017, VII SA/Wa 2451/16, LEX No. 2380130.

<sup>7</sup> Judgment of the Provincial Administrative Court in Warsaw of 11 January 2024, VII SA/Wa 1877/23, LEX No. 3735567.

<sup>8</sup> M. Cherka, P. Antoniak, F.M. Elżanowski, K.A. Wąsowski, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Warszawa, 2010, commentary to Article 49.

<sup>9</sup> K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Warszawa, 2007, pp. 176 et seq.

The legislator did not specify in this provision the period for carrying out the ordered works. Such a solution is correct, as the time limit should depend on the scope of the obligations imposed. In addition, the performance of some obligations may be associated with the need to obtain a building permit or to submit a notification, which should be taken into account when setting that time limit. On the other hand, that time limit cannot be excessively extended, as this could lead to a lack of effectiveness in counteracting the threat to a given monument.<sup>10</sup> Nor may such a time limit, for objective reasons, render the imposed obligations impossible to perform,<sup>11</sup> e.g. by ordering technically complex works to be carried out within a relatively short period of time or by ordering works to be carried out during the winter period when, due to the technological process, they cannot be carried out at that time. It is also possible to specify different time limits for the ordered works. Some of the ordered works may be urgent in nature, and therefore their implementation should take place relatively quickly. An example may be obligations related to roof repair before the winter period, in order to protect the building from precipitation causing dampness in the walls or ceilings. Other works that are not of such an urgent nature may be carried out at a later date.

In conclusion, it should be stated that, when setting a time limit for the performance of obligations, the authority must strike a balance between technological considerations related to the carrying out of restoration or construction works and the urgent need to protect the historic building. Hence, it is justified to state that the time limit set should allow for the actual implementation of the ordered works. However, the exceptional nature of the application of Article 49(1) of the Act leads to the conclusion that, in setting that time limit, the ordered works should not be postponed if their performance within a specific, relatively short period of time is objectively possible. The conservation authority should also consider which of the ordered works should be carried out urgently, precisely because of the immediate threat of destruction of or significant damage to the monument.

## GROUNDS FOR ISSUING AN ORDER TO CARRY OUT WORKS OR CONSTRUCTION WORKS

Article 49(1) of the Act indicates that the prerequisite for issuing a decision ordering conservation or construction works is a threat of destruction of or significant damage to the monument. It is worth noting that such orders may be issued both following periodic inspections into the state of preservation of immovable monuments entered in the register of monuments and on an *ad hoc* basis, when the conservation authority receives information that an immovable monument is in poor technical condition, for example as a result of fire or flooding affecting a historic building.

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<sup>10</sup> Judgment of the Provincial Administrative Court in Warsaw of 20 June 2023, VII SA/Wa 2674/22, LEX No. 3580696.

<sup>11</sup> Judgment of the Provincial Administrative Court in Warsaw of 18 July 2012, I SA/Wa 2352/11, LEX No. 1270933.

This provision applies to all monuments entered in the register of monuments, regardless of their state of preservation. Consequently, an order to carry out conservation works or construction works may also be issued in relation to a monument that has already been destroyed. Moreover, Article 49(1) of the Act also applies where the destruction of the monument is highly advanced. In the case law, one can encounter the view that 'the general emergency technical condition of the tenement house',<sup>12</sup> even where a historic building is not suitable for reconstruction, since this may lead to its destruction, cannot constitute a prerequisite for the conservation authority to refrain from applying this provision.<sup>13</sup> In such a case, the Act is intended to prevent further devastation of the monument and the irreversible loss of its scientific, artistic or historical values.<sup>14</sup> Therefore, the provision in question covers any monument entered in the register of monuments, irrespective of its state of preservation. Only the conduct of proceedings and a finding that the building has lost the characteristics of a monument, resulting in its deletion from the register of monuments, excludes the application of Article 49(1) of the Act.<sup>15</sup> At the same time, this means that, in proceedings for the issuing of a decision on the basis of Article 49(1) of the Act, the legitimacy of the inclusion of the object in the register of monuments cannot be questioned, as a different procedure is provided for that purpose.

It is worth emphasising, however, that a view has become established in the case law that such an order cannot be issued in relation to monuments that have already been destroyed, where that state of affairs results from many years of negligence on the part of both the owner of the monument and the conservation authorities.<sup>16</sup> It follows from this view that Article 49(1) of the Act applies in cases of genuine supervision over monuments by the conservation authorities and cannot serve as a remedy for the inactivity of such an authority lasting for many years. The entry of an immovable monument in the register of monuments is associated with an obligation on the part of the conservation authorities to exercise conservation supervision. These authorities are vested with various legal instruments aimed at the protection of monuments, such as the institution of post-inspection recommendations under Article 40(1) of the Act. Accordingly, it may be stated that this view implies that the legislator introduced a negative prerequisite for the application of Article 49(1) of the Act, specifically in relation to destroyed monuments, namely the lack of prior action by the conservation authorities aimed at counteracting the poor condition of the monument. However, such a position is unjustified. It does not follow from the wording of Article 49(1) of the Act that it may be applied only where other instruments available to the conservation authorities have proved

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<sup>12</sup> Judgment of the Provincial Administrative Court in Warsaw of 26 April 2024, VII SA/Wa 189/24, LEX No. 3765058.

<sup>13</sup> Judgment of the Provincial Administrative Court in Warsaw of 24 May 2023, VIII SA/Wa 853/22, LEX No. 3767335.

<sup>14</sup> Judgment of the Supreme Administrative Court of 15 November 2023, II OSK 1458/22, LEX No. 3707465.

<sup>15</sup> Judgment of the Supreme Administrative Court of 10 November 2022, II OSK 1723/21, LEX No. 3434311.

<sup>16</sup> Judgment of the Supreme Administrative Court of 21 June 2023, II OSK 2273/20, LEX No. 3588385.

ineffective. Nor is this provision the most severe measure threatening the owner of the monument in the event of his or her passivity in the face of action already taken by the conservation authorities. Its application depends solely on the threat of destruction of or significant damage to the monument. Thus, it cannot be inferred from this provision that many years of negligence on the part of the owner and the conservation authorities constitute a negative prerequisite for issuing a decision ordering the carrying out of specific works. In essence, this would undermine the purpose of the Act, namely the protection of monuments. Conservation authorities are obliged to protect monuments entered in the register of monuments, regardless of their state of preservation. Since the purpose of Article 49(1) of the Act is in a sense to safeguard a monument, such protection should be afforded even despite many years of passivity resulting in the deterioration of the monument's condition. Thus, no justification for a lack of action in the field of monument protection can be derived from the provisions of the Act on the ground of the inaction of the owner of the monument or the conservation authorities.

A decision ordering conservation or construction works may be issued regardless of whether the carrying out of such works is cost-effective or even technically justified.<sup>17</sup> The need to incur high financial outlays, or the technical complexity and duration of the works, are not reasons that may justify waiving the issuance of the decision in question. It follows that, the prerequisite for issuing this decision cannot be the financial situation of its addressee which does not allow him to implement it.<sup>18</sup> Preserving the historic value of historic buildings is the legislator's priority, which may often entail considerable difficulties in carrying out such works.

The main prerequisite for issuing a decision ordering conservation or construction works is their necessity in order to remove the state of threat of destruction or significant damage to the monument. At this point, it is worth considering what the legislator meant by the word 'necessity'. It appears possible to issue a decision under Article 49(1) of the Act in situations where the condition of the historic building has been neglected and the only way to protect it is to impose appropriate obligations by the conservation authority. Therefore, it should be considered that this provision should be applied as a measure of last resort, when other instruments provided for by the Act have proved ineffective. However, the decision in question cannot be issued solely on the basis of the conservation authority's recognition of such a need,<sup>19</sup> without establishing that these works are in fact 'necessary' to remove the state of threat of destruction or significant damage to the monument. In the case law, one may even encounter the view that the obligations imposed on the basis of the provision in question are aimed at saving the endangered object.<sup>20</sup> Consequently,

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<sup>17</sup> Judgment of the Supreme Administrative Court of 9 January 2024, II OSK 694/21, LEX No. 3692266.

<sup>18</sup> W. Lis, 'Wykonanie zastępcze jako środek ochrony bezpieczeństwa obywateli i zabytków nieruchomości przed zniszczeniem', *Santander Art and Culture Law Review*, 2024, Vol. 10, No. 1, p. 72.

<sup>19</sup> R. Gołat, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Kraków, 2004, commentary to Article 49.

<sup>20</sup> Judgment of the Provincial Administrative Court in Warsaw of 11 January 2019, VII SA/Wa 1108/18, LEX No. 3074457.

this provision applies in the absence of such actions as would at least protect the historic building from destruction.

The wording of Article 49(1) of the Act, and in particular the phrase 'due to the threat' used therein, indicates that the condition of the historic building must point to a real threat of destruction or significant damage to that monument. Of course, this threat must be established by the conservation authority during the evidentiary proceedings and cannot be merely hypothetical. This means that the poor technical condition of a historic building must in fact create such a threat.

## SCOPE OF WORKS OR CONSTRUCTION WORKS THAT MAY BE ORDERED

Article 49(1) of the Act specifies that the order may include the carrying out of restoration works and construction works. The term 'construction works' should be understood in accordance with the provisions of construction law as including construction, as well as works consisting in the reconstruction, assembly, renovation or demolition of a building structure.<sup>21</sup> Conservation works should be understood as activities aimed at exposing the artistic and aesthetic values of the monument, including, if necessary, the supplementation or restoration of parts of it, and the documentation of these activities.<sup>22</sup> The use of these terms by the legislator means that the intensity of the ordered works has not been limited, although they must fall within the scope specified by the above-mentioned legal definitions.<sup>23</sup> It follows that the conservation authority may not, on the basis of Article 49(1) of the Act on the Protection of Monuments and the Care of Monuments, order conservation studies or expert opinions to be carried out.<sup>24</sup> Thus, these may be works of relatively low intensity, as well as works interfering with the substance of the monument, for example the renovation or reconstruction of a historic building. The intensity of the works ordered by the conservation authority will depend only on the state of preservation of the building and, therefore, on what works should be carried out in order to prevent the destruction of or significant damage to the historic building. Hence, it should be stated that the conservation authority may order only the carrying out of works or construction works that are necessary to eliminate the above-mentioned threats.<sup>25</sup> However, the scope of the obligations imposed cannot in fact be aimed at reconstructing the monument.<sup>26</sup>

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<sup>21</sup> Article 3(7) of the Act of 7 July 1994, Construction Law (consolidated text, Journal of Laws of 2024, item 725, as amended).

<sup>22</sup> Article 3(7) of the Act.

<sup>23</sup> M. Cherka, P. Antoniak, F.M. Elżanowski, K.A. Wąsowski, *Ustawa o ochronie zabytków...*, op. cit., Article 49.

<sup>24</sup> D.R. Kijowski, A. Miruć, A. Budnik (eds), *Racjonalny ustawodawca. Racjonalna administracja: Pamięci Profesora Eugeniusza Smoktunowicza*, Białystok, 2016, p. 236.

<sup>25</sup> Judgment of the Provincial Administrative Court in Warsaw of 25 January 2019, VII SA/Wa 1147/18, LEX No. 3074470.

<sup>26</sup> Judgment of the Provincial Administrative Court in Warsaw of 11 January 2024, VII SA/Wa 1877/23, LEX No. 3735567.

An order under Article 49(1) of the Act cannot in fact lead to the restoration of a historic building in whole or in part.<sup>27</sup> The protection of monuments effected by this provision may thus consist in ordering at least the maintenance of the *status quo* of the technical condition of the building at the time of its entry in the register of monuments, if there is a danger of destruction or significant damage to the historic object. If, after being entered in the register, the condition of the building has been improved, that is to say, conservation or restoration works have been carried out on it, then, of course, orders under Article 49(1) of the Act will be aimed at preventing the deterioration of that condition for example through damage to or destruction of the monument. It cannot be ruled out that the monument was entered in the register in a poor technical condition. If that condition causes a danger of destruction or significant damage to the object, it is irrelevant that orders under Article 49(1) of the Act will lead not only to an improvement in that condition, but also to an improvement in its technical condition as compared with that existing before its entry in the register. The purpose of the Act is to protect monuments and not to allow their condition to deteriorate, regardless of when the monument was entered in the register of monuments.

It should also be added that the ordered conservation or construction works may not only lead in a sense to the restoration of certain elements of the historic building, but may also lead to their modification. Thus, it is possible, for example, to order the reinforcement of the foundations or of the roof structure. It is also possible that a given element of the object will have to be completely restored precisely in order to protect that object from destruction or significant damage. What is more, a complete restoration of the roof structure, for example, may entail the need to replace the existing roofing if it is damaged as well. It may also turn out that the reapplication of the same covering is no longer permissible, as would be the case where the roof is covered with asbestos-containing products.<sup>28</sup> In such a case, the ordered works will require the use of roofing of the kind that was historically used.<sup>29</sup>

An order to carry out works under Article 49(1) of the Act may not be imposed without prior determination of the current technical condition of the historic building. This means that it is the duty of the conservation authority to conduct evidentiary proceedings and determine the technical condition of the historic building and which of its values may be endangered. The evidence collected may consist not only of the findings made during the inspection referred to in Article 38 of the Act, but also of all kinds of opinions and expert reports concerning the immovable monument, even if they were prepared for the purposes of other proceedings. These findings may be compared, for example, with the registration card of the monument and, on that basis, it may be determined whether the above-mentioned threat exists. Hence, there must be a relationship between the condition of the monument, as determined by the

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<sup>27</sup> Judgment of the Provincial Administrative Court in Warsaw of 11 March 2020, VII SA/Wa 2403/19, LEX No. 3072267.

<sup>28</sup> A. Ginter, A. Michalak, *Ochrona zabytków. Komentarz*, 2nd ed., Warszawa, 2024, commentary to Article 49.

<sup>29</sup> Judgment of the Supreme Administrative Court of 10 November 2022, II OSK 1723/21, LEX No. 3434311.

conservation authority and indicating a threat of its destruction or significant damage, and the ordered works or construction works that are to eliminate such a condition. This means that the order to carry out works or construction works may cover only such works or construction works as are necessary to eliminate the risks identified by the authority.<sup>30</sup> It should be stated that this provision is, in a sense, 'protective' in nature, as its purpose is to remove the identified technical problems threatening the destruction of or damage to the historic building, so that it may be possible to renovate or rebuild it in the future. This provision therefore protects the *status quo* of the technical condition of the monument against the risk of its deterioration, and the scope of the obligations imposed may also be defined as works or construction works that are intended to 'save' the historic building from destruction.

In Article 6 of the Act, the legislator indicated that immovable monuments are subject to protection and care, regardless of their state of preservation. On that basis, the principal rule of the Act is the protection of monuments against destruction, which means that issues related to technical difficulties or the significant financial outlay required for the ordered works or construction works are not taken into account when applying Article 49(1) of the Act. In the case law, one may encounter the view that orders under Article 49(1) of the Act may be issued even if the historic building is not suitable for reconstruction.<sup>31</sup> Such an interpretation appears to be correct, as this provision cannot serve to undermine the value of a given immovable monument and thus to question the legitimacy of its entry in the register of monuments. Consequently, the impossibility of reconstructing a monument may constitute a basis for deleting it from the register of monuments, though, in proceedings conducted under Article 13 of the Act, it cannot exclude the possibility of issuing orders referred to in Article 49(1) of the Act. It follows that as long as the building remains in the register of monuments, the conservation authorities are obliged to prevent its destruction. Even if there is no technical possibility of repairing a given historic building, it is the duty of the conservation authorities to protect the historic substance against complete destruction.<sup>32</sup> After all, it cannot be ruled out that a properly secured immovable monument, despite its destruction and the lack of technical possibilities for reconstruction, may be rebuilt in the future, when new techniques and methods for the reconstruction of such objects emerge.

It should be noted that the decision referred to in Article 49(1) of the Act concerns works or construction works on a monument. This means that these obligations may include both carrying out works or construction works on the historic building itself, for example replacing the roof sheathing or strengthening the ceilings, and carrying out construction works in its surroundings, if there is a threat in those surroundings to such a building. Accordingly, this decision may include such works as securing a slope sliding towards the historic building or rebuilding the drainage

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<sup>30</sup> Judgment of the Provincial Administrative Court in Warsaw of 6 December 2018, VII SA/Wa 1101/18, LEX No. 2627222.

<sup>31</sup> Judgment of the Supreme Administrative Court of 16 May 2023, II OSK 1662/20, LEX No. 3588799.

<sup>32</sup> Judgment of the Provincial Administrative Court in Warsaw of 25 May 2023, VII SA/Wa 439/23, LEX No. 3602321.

system in order to protect the building from flooding by groundwater. In addition, installations connected to it may pose a threat to a historic building. Thus, the restoration of the sewage<sup>33</sup> or energy system could be covered by such a decision.

The application of Article 49(1) of the Act is irrespective of whether the owner or user of the object has caused the deterioration of its technical condition. The purpose of this provision is to protect a historic building, not to impose a sanction for having caused that deterioration. Such sanctions are provided for by other provisions of the Act, for example Article 108, which defines the prohibited act of destroying or damaging a monument, the primary protected interest being the preservation of the monument in an undeteriorated condition.<sup>34</sup>

## ADDRESSEES OF THE ORDER TO CARRY OUT WORKS OR CONSTRUCTION WORKS

In Article 49(1) of the Act, the legislator has defined very broadly the circle of addressees to whom a decision ordering conservation or construction works may be directed. Accordingly, the addressees of such a decision are not limited solely to the owner or perpetual usufructuary of an immovable monument entered in the register, but rather encompass a relatively broad category, including natural persons or organisational units holding a legal title to use the monument arising from the right of ownership, perpetual usufruct, permanent management, a limited right *in rem*, or a contractual relationship.

The broad category of potential addressees of the decision in question, as formulated by the legislator, indicates that the owner or perpetual usufructuary of a monument will not always be regarded as the entity responsible for fulfilling obligations imposed under Article 49(1) of the Act. The legislator's intention was therefore to impose obligations on those entities which actually use historic buildings and hold an appropriate legal title to do so. The case law of the administrative courts indicates that obligations arising from this provision may not be imposed on a person who has a legal title to a monument where they do not have the right to use it. In the court's view, when determining the addressee, it is necessary first to establish which entity is using the monument and then whether that entity has one of the above-mentioned legal titles in respect of the monument.<sup>35</sup> On the other hand, it is emphasised that the conservation authority is not obliged to investigate the existence of agreements on the basis of which the legal title to use the historic building was transferred. This provision cannot be interpreted in such a way as to

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<sup>33</sup> Judgment of the Provincial Administrative Court in Warsaw of 21 November 2007, I SA/Wa 881/07, LEX No. 463729.

<sup>34</sup> M. Kulik, A. Szczekala, 'Odpowiedzialność karna za przestępstwo zniszczenia lub uszkodzenia zabytku', in: Gardocka T. (ed.), *Prawne aspekty ochrony zabytków*, Toruń, 2010, p. 12; B. Gadecki, 'Kontrowersje wokół odpowiedzialności za zniszczenie lub uszkodzenie dobra o szczególnym znaczeniu dla kultury', *Ius Novum*, 2013, No. 4, p. 20.

<sup>35</sup> Judgment of the Supreme Administrative Court of 9 May 2012, II OSK 245/11; <http://orzeczenia.nsa.gov.pl> (accessed: 30 April 2026).

indicate an order of entities on which the conservation authority should successively impose an order to carry out works.<sup>36</sup> Since the purpose of Article 49(1) of the Act is to safeguard a monument, the owner is, in principle, the entity obliged to take such action.<sup>37</sup> To assume that the conservation authority may impose the obligation to carry out works only on the entity to which the monument has been entrusted for use could lead to a situation in which it is, in practice, impossible to carry out such works, in the event of the deliberate conclusion and termination of contracts with successive entities authorised to use the object. In such a situation, the owner of the monument could even evade conservation obligations by 'substituting', as potential addressees of a decision under Article 49(1) of the Act on the Protection of Monuments and the Care of Monuments, ever different entities holding an appropriate legal title. In the practice of applying Article 49(1) of the Act, it has been assumed that an order to carry out works may be addressed both to the owner of a monument and to another entity where that entity is entitled to a legal title to use the monument.<sup>38</sup> Therefore, the possibility of concurrent addressees to whom an order to carry out works may be addressed has been accepted.

Housing associations may also be among the possible addressees of a decision issued pursuant to Article 49(1) of the Act, if the obligations imposed relate to the common property.<sup>39</sup> In accordance with Article 3(1) of the Act on Ownership of Premises,<sup>40</sup> in the event of the separation of ownership of premises, the premises owner is entitled to a share in the common property as a right connected with the premises ownership. This means that the housing association is obliged to maintain the historic building in an undeteriorated condition and may therefore be the addressee of obligations arising under the provisions of the Act.<sup>41</sup>

A practical problem may arise in determining the addressees of the decision where the object is co-owned in fractional parts. Although, in such a situation, the decision in question should be addressed to all co-owners, in practice it may be impossible to identify all the co-owners of a given object. The same will apply if, for example, it is impossible to establish the place of residence of one of the co-owners. In such cases, it is justified to address the decision to at least one of the co-owners of the object, which will enable the actual implementation of the ordered works or construction works.

In conclusion, it should be noted that, since the case law has accepted that Article 49(1) of the Act should be interpreted in a manner that ensures the rapid

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<sup>36</sup> Judgment of the Provincial Administrative Court in Warsaw of 13 March 2015, VII SA/Wa 2155/14, LEX No. 1817456.

<sup>37</sup> Judgment of the Provincial Administrative Court in Warsaw of 5 April 2018, VII SA/Wa 1439/17, LEX No. 2494932.

<sup>38</sup> *Ibidem*.

<sup>39</sup> Judgment of the Provincial Administrative Court in Warsaw of 26 November 2021, VII SA/Wa 2071/21, LEX No. 3275427.

<sup>40</sup> Act of 24 June 1994 on Ownership of Premises (consolidated text: Journal of Laws of 2021, item 1048).

<sup>41</sup> Judgment of the Provincial Administrative Court in Warsaw of 22 January 2014, VII SA/Wa 476/13; judgment of the Provincial Administrative Court in Warsaw of 21 September 2016, VII SA/Wa 2474/15.

and effective protection of the value of the monument,<sup>42</sup> the determination of the addressee of the decision in question should likewise make it possible to achieve that objective. For that reason, the order to carry out works should be addressed primarily to the entity that will be capable of complying with it. In many cases, this will be the owner or perpetual usufructuary of the historic building, in particular where the authority encounters difficulties in determining which entity has been granted the legal title to use the building.

### SUBSTITUTE ENFORCEMENT OF A DECISION ORDERING THE EXECUTION OF WORKS OR CONSTRUCTION WORKS

Substitute enforcement of a decision issued pursuant to Article 49(1) of the Act may take place in two situations. First, where the addressee of such a decision remains passive and fails to commence the ordered works, and, secondly, where those works are not carried out within the time limit indicated in the decision. The occurrence of either of the above situations will be associated with the initiation of administrative enforcement proceedings and, consequently, with the possibility of applying an enforcement measure in the form of substitute enforcement regulated in Section III of Chapter 3 of the Act on Enforcement Proceedings in Administration.<sup>43</sup> It is worth noting that Article 49(1) of the Act does not require the obliged party to be provided with a statement of the costs of substitute performance, including a demand to pay a specified amount within a specified period in order to cover the costs of substitute performance of the obligations imposed. The costs of substitute performance are determined in separate administrative proceedings.<sup>44</sup>

Once substitute performance has been completed, it will be possible to initiate proceedings to determine and secure the State Treasury's receivables. According to Article 49(3) of the Act, in the case of substitute performance of conservation works or construction works on an immovable monument, the voivodeship conservator of monuments issues a decision specifying the amount of the State Treasury's receivables in respect of the substitute performance of those works or construction works, their scope, and the due date of that receivable. Pursuant to Article 49(4) of the Act, that receivable is subject to security by means of a compulsory mortgage on the property, at the request of the voivodeship conservator of monuments, based on the above-mentioned decision. If the property does not have a land and mortgage register, the security may be effected by submitting an application and the decision to the collection of documents. A certain oversight on the part of the legislator is the failure to specify in these provisions the addressee of such a decision. Thus, it appears that the decision determining the amount of the State Treasury's receivables in respect of

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<sup>42</sup> Judgment of the Provincial Administrative Court in Warsaw of 29 January 2021, VII SA/Wa 1169/20, LEX No. 3156931.

<sup>43</sup> Act of 17 June 1966 on Enforcement Proceedings in Administration (consolidated text, Journal of Laws of 2026, item 268, as amended).

<sup>44</sup> Judgment of the Provincial Administrative Court in Warsaw of 12 November 2021, VII SA/Wa 930/21, LEX No. 3309548.

substitute enforcement should be directed to the addressee of the decision issued on the basis of Article 49(1) of the Act. A further oversight on the part of the legislator is the failure to indicate in these provisions that this decision should specify the due date of that receivable.<sup>45</sup>

Furthermore, Article 49(6) of the Act, provides for the possibility of remission, in whole or in part, or payment by instalments of the State Treasury's receivables arising from substitute performance. This competence is vested in the voivode who, in consultation with the General Conservator of Monuments, may issue a decision to that effect. At the same time, this provision is also discretionary, as the legislator made such a decision conditional on a finding that the receivable is irrecoverable or that its recovery would cause significant harm to the debtor's financial situation.

## SUMMARY

The protection of monuments is one of the most important tasks of the state in the field of preserving cultural heritage. In order to make this a reality, conservation authorities should be equipped with appropriate legal instruments enabling them to exert authoritative influence over the owners of monuments in situations where these objects are in poor technical condition. One such instrument is undoubtedly a decision ordering the carrying out of works or construction works issued on the basis of Article 49(1) of the Act.

When assessing the scope of the obligations that may be imposed by the conservation authorities, it should be pointed out that they may lead only to saving the monument from destruction or significant damage. Therefore, this provision constitutes, in a sense, a form of protection of the current condition of the monument, which may include only such works as will protect the object from destruction or significant damage. It seems, however, that this provision should cover not only the restoration and construction works indicated therein, but also works of relatively low intensity, for example drying ceilings, securing window openings or obtaining expert opinions. The position according to which such obligations cannot be imposed in relation to a destroyed monument, where that state of affairs is the result of the inaction both of its owner and of the conservation authorities' failure to exercise proper supervision, is completely unjustified. In Article 49(1) of the Act, the legislator did not introduce any negative prerequisites for the application of this provision. Long-term inaction on the part of public administration bodies cannot be a reason to waive the protection of historic buildings. Since the purpose of the Act on the Protection of Monuments and the Care of Monuments is to protect monuments, that task should be carried out in respect of every historic object, including monuments entered in the register of monuments.

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<sup>45</sup> *Ibidem*.

## BIBLIOGRAPHY

- Cherka M., Antoniak P., Elżanowski F.M., Wąsowski K.A., *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Warszawa, 2010.
- Gadecki B., 'Kontrowersje wokół odpowiedzialności za zniszczenie lub uszkodzenie dobra o szczególnym znaczeniu dla kultury', *Ius Novum*, 2013, Vol. 7, No. 4.
- Gardocka T. (ed.), *Prawne aspekty ochrony zabytków*, Toruń, 2010.
- Ginter A., Michalak A., *Ochrona zabytków. Komentarz*, 2nd ed., Warszawa, 2024.
- Golat R., *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Kraków, 2004.
- Kijowski D.R., Miruć A., Budnik A. (eds), *Racjonalny ustawodawca. Racjonalna administracja: Pamięci Profesora Eugeniusza Smoktunowicza*, Białystok, 2016.
- Kulik M., Szczekala A., 'Odpowiedzialność karna za przestępstwo zniszczenia lub uszkodzenia zabytku', in: Gardocka T. (ed.), *Prawne aspekty ochrony zabytków*, Toruń, 2010.
- Lis W., 'Wykonanie zastępcze jako środek ochrony bezpieczeństwa obywateli i zabytków nieruchomości przed zniszczeniem', *Santander Art and Culture Law Review*, 2024, Vol. 10, No. 1.
- Sługocki J., *Opieka nad zabytkiem nieruchomym. Problemy administracyjnoprawne*, Warszawa, 2017.
- Zeidler K., *Prawo ochrony dziedzictwa kultury*, Warszawa, 2007.

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