
Wytyczne i instrukcje Generalnego Konserwatora Zabytków jako nowe narzędzia polityki konserwatorskiej

Keywords: conservation policy, conservation guidelines, monument protection policy

Słowa kluczowe: polityka konserwatorska, wytyczne konserwatorskie, polityka ochrony zabytków

Introduction

Conservation bodies, due to the tasks they perform, constitute an important part of the Polish public administration system. Their operations are executive in nature, which means that the essence of their activities lies in construing and implementation and of the provisions laid out mainly in the Act of July 23, 2003, on the Protection and Preservation of Historical Monuments (hereinafter: the APCHM). Thus the competences of the conservation bodies became part of the definition of monument protection provided for in Article 4 of the APCHM which specifies the objectives of the public administration in this field. At the same time, most decisions of the Voivodeship Conservator of Monuments are based on the rule of administrative discretion, as well as regulations containing numerous under-defined notions. This stems from the very construction of the provisions of the APCHM and is, beyond question, an intended maneuver of the legislator. What is more, the discretionary power of conservators is to serve not the conservatorship itself, but the monuments, for the benefit of which they are to act effectively. The subject of this article is to present the guidelines and instructions of the General Conservator of Historical Monuments, issued on the basis of the APPHM, in accordance with its wording specified in the Act of June 22, 2017, on the Amendment the Act on the Protection and Preservation of Historical Monuments and some other acts, hereinafter referred to as the 2017 amendment.

Legal and institutional position of the General Conservator of Historical Monuments

In order to analyze the competences of the General Conservator of Historical Monuments, a brief overview of how Polish conservation administration is organized is required first. Due to its position in the political system, they are considered part of the government (centralized) administration. At the local level, the conservation authority is the Voivodeship Conservators of Monuments, who are counted among the integrated services acting under the authority of the respective Voivodeship (i.e. provincial governor). At the central level, there is the Minister in charge of culture and national heritage protection, on behalf of whom the General Conservator of Historical Monuments performs its tasks and responsibilities. The legislator decided on dual subordination of the local conservation bodies: with respect to financial and organizational matters, the Voivodeship...
Administrative supervision is an integral part of the management of Monument Conservation and is defined as the right of the General Conservator of Historical Monuments to ensure the observance of legal acts and orders, to prevent illegal acts, and to control the use of historic monuments. The General Conservator supervises the performance of administrative duties by subordinate authorities, including the Voivodeship Conservators of Monuments. The General Conservator also issues guidelines and instructions to Voivodeship Conservators, who are directly supervised by the General Conservator.

Legal nature of guidelines and instructions of the General Conservator of Historical Monuments

The General Conservator’s instructions and guidelines are internal acts, which means that they are binding only on the authorities subordinate to the office. However, this does not mean that they are binding exclusively on the Voivodeship Conservators of Monuments and the heads of the delegations of the Voivodeship Conservators of Monuments acting on their behalf. These documents are also addressed to all the units and entities which are commissioned tasks within the scope of Voivodeship Conservators of Monuments on the basis of art. 96 of the APPHM. This means that the instructions and guidelines of the General Conservator of Historical Monuments are binding also for the local government related conservators.

Apart from the direct binding force, there is also an indirect possibility to influence organizations operating outside public administration. In practice, instructions and guidelines may, through the activities of conservation bodies, influence owners, designers or contractors involved in historical monuments: when treated as a premise for assessing the permissibility of certain works or activities on a monument, which is assessed every time in the course of proceedings for granting a permit under art. 36 par. 1 of the APPHM. It must be noted that when assessing the admissibility of activities covered by the application for a permit, the Voivodeship Conservator of Monuments is obliged in each case to meet the objectives of monument protection as set out in Article 4 of the APPHM, including primarily the prevention of threats that may cause damage to the value of monuments. Compliance with the guidelines and instructions cannot consist only in referring to them—the objectives of the enforcement decision must be precisely defined, i.e., operationalized, and therefore referred to a specific factual state. Bearing in mind that the binding guidelines and instructions of the General Conservator of Historical Monuments affect the interpretation and construal of the under-defined notions used, and consequently have an impact on the duties of the administrators of monuments. In this respect, therefore, one can speak of indirect binding by guidelines and instructions.

The General Conservator of Historical Monuments may enforce guidelines and instructions by applying both substantive (revoking or amending the decision—art. 47a of the Act) and personal (a motion for dismissal of the Voivodeship Conservator of Monuments) supervision measures. The guidelines and instructions of the General Conservator of Historical Monuments affect the quality of documentation, evaluation, and conservation efforts and the usage of historic monuments, by unifying the approach of the conservator’s to selected issues, which may otherwise differ significantly from one another. Therefore, they make it possible to pursue a responsible, coherent conservation policy, which
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ment, correspond to the needs and emerging problems
out the tasks which, in a rapidly changing environ-
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However, as they become a part of policy-making acts,
both conservation theory and conservation practice. A
doctrinal documents formulate paradigms relating to
level (GKZ, NID). It should therefore be assumed that
(UNESCO, ICOMOS, ICCROM), or at the national
framework of a given conservation policy is the sys-
tice.
Conservators must be consistent with the policy de-
er, the conservation policy carried out by Voivodeship
of Monuments within their local jurisdiction. Howev-
and at the local level by the Voivodeship Conservator
conservation bodies to specific resources and problems
praxeological directives, directing the attention of the
principles of conservation work and research, as well as
tactical management referring to activities carried out to
termined by the General Conservator.
Therefore, conservation policy is a model of stra-
tic management referring to activities carried out to
historical monuments and it includes a set of accept-
ed principles of conservation practice, including the
principles of conservation work and research, as well as
praxeological directives, directing the attention of the
conservation bodies to specific resources and problems
with the indication of principles regulating the prac-
tice. The source of the principles adopted within the
framework of a given conservation policy is the sys-
tem of assumptions which normalize the conservation
practice, formulated earlier in the so-called doctrinal
documents developed by international organizations
(UNESCO, ICOMOS, ICCROM), or at the national
level (GKZ, NID). It should therefore be assumed that
doctrinal documents formulate paradigms relating to
both conservation theory and conservation practice. A
vast majority of doctrinal documents are non-binding.
However, as they become a part of policy-making acts,
they also become binding on entities hierarchically
subordinated to the entity issuing the act.
A conservation policy, understood in this way, sets
out the tasks which, in a rapidly changing environ-
ment, correspond to the needs and emerging problems
of contemporary conservation, the implementation of
which should be in the wider public interest. A conserv-
ation policy can be set forth in the acts related to this
policy, which includes the guidelines and instructions
of the General Conservator of Historical Monuments.
A conservation policy is an element of the broad-
er monument conservation policy, which is defined by
Z. Gwardzińska as “the activity of public authorities
aimed at protecting and caring for monuments or exert-
ing a dominant influence on power by groups of citizens.”
The monument conservation policy is therefore a wid-
er concept: on top of the pursuance of the historical
monuments conservation objectives—effected by issu-
ing conservation bodies’ decisions (conservation poli-
cy)—it also refers to other tools, such as those related
to the financing of works on historical monuments,
social and educational activities, as well as management
efforts.
One act of monument protection policy is, undis-
boubtedly, the National Program for the Protection
and Preservation of Historical Monuments, referred to
in art. 84–86 of the APPHM. It defines, in particular,
the objectives and directions of activities and tasks in
the field of monument protection and preservation, the
conditions and methods of financing the planned activi-
ties, as well as the schedule of their implementation.
The monument protection policy is one of the poli-
cies for the protection of cultural heritage. It should
be noted that the policy of cultural heritage protec-
tion is oriented at the needs and ideas of the contem-
porary user, covering both the issues of tangible and
intangible heritage, while the monuments protec-
tion is based policy on the system of historic values.
The heritage assets are governed by restrictive con-
servation practices defined by the conservation policy.
All the above policies fall into the broadest catego-
ry of cultural policy (Figure 1). It is assumed that the
cultural policy of each country is derived from its poli-
tical system and concerns that part of the social
policy of the state which relates to artistic creation,
the promotion of diversity, the availability of cultural
products, and the protection and preservation of
cultural heritage. The publication Kultura i rozwój,
which seeks to define this concept, specifies cultural
policy to be “the influence of superior (decision-mak-
ing) authorities on the course of things in culture,”
indicating at the same time that it is “purposeful, system-
atic interference in the sphere of culture [...] carried out
to achieve four basic objectives: to preserve the cultural
identity of the nation; to ensure equal access to culture;
to promote creativity and high quality of cultural assets
and services; to diversify the cultural offer in such a way
that each social group can find something for itself.”
Its also important to stress that the main objective of cul-
tural policy should be to help the formation of a civic society.
Thus, cultural policy has an indirect effect on cultural
reality and consists rather in shaping conditions con-
ductive to the realization of the assumed cultural values,
“such conditions in which the development of the de-
sired cultural values would be natural.”
Catalogue of guidelines and instructions issued between 2018 and 2021

The guidelines and instructions of the General Conservator of Historical Monuments, referred to in Article 90.3 of the APPHM, set out the basic principles which should be followed by the Voivodeship Conservators of Monuments in their activities. However, not all of them will refer to conservation policy sensu stricto. The guidelines and instructions issued between 2018 and 2021 on the basis of Article 90.3 of the APPHM can be divided into four groups. The first group includes documents containing interpretations of selected provisions within the competence of the Voivodeship Conservator of Monuments, which are binding for monument protection authorities. Such guidelines include:

1) Guidance dated January 19, 2018, on the application of the regulations relating to the removal of trees and shrubs from listed properties;
2) Recommendations of December 7, 2018, on the protection of historic small towns;
3) Guidance dated June 13, 2019, on the procedure for issuing permits for the search for monuments, including archaeological monuments, on properties owned by various entities.

Another group of guidelines and instructions relates to optimizing the work of the conservation administration and to increasing efficiency of interaction with other bodies:

1) Guidelines of September 21, 2018, on the actions of the Voivodeship Conservators of Monuments taken in relation to the legal protection of monuments;
2) Guidelines of October 1, 2018, on the actions taken by the Voivodeship Conservators of Monuments in the procedure of issuing permission for permanent export of monuments abroad;
3) Guidelines of November 19, 2018, on how to conduct monitoring of historical monuments and/or world heritage sites carried out by the Voivodeship Conservators of Monuments;
4) Guidelines of December 17, 2018, on cooperation with the General Directorate of National Roads and Motorways when issuing decisions on permission to conduct archaeological research carried out during the construction of national roads and motorways;
5) Guidance dated December 3, 2019, on the conduct of the Voivodeship Conservators of Monuments in relation to the activities of the US government agency Defense POW/MIA Accounting Agency in our country.

In this respect, the guidelines and instructions can be seen as part of the policy for the protection of monuments due to the fact that they focus on cooperation with other authorities and institutions for the implementation of the objectives of monument protection referred to in Article 4 of the APPHM.

The third group of documents are guidelines and instructions relating to conservation principles:

1) Guidance and recommendations dated October 4, 2019, on the application of the fundamental conservation principles for historic buildings;
2) Guidelines of March 22, 2019, on the protection of monuments of technology;
3) Guidance dated August 2, 2019, on standards of conservation practice for the development of market spaces.

In this respect, the guidelines and instructions constitute a catalogue of principles which the Voivodeship Conservator of Monuments should follow in their administrative judgements. Therefore, they constitute a tool of conservation policy carried out by the General Conservator of Historical Monuments. They indicate, in particular, the standards of works, determine the acceptable methods and techniques, as well as issues related to the manner of use, i.e., giving the monuments a new function.

The fourth group of documents are guidelines and
instructions aimed at improving the quality of research, conservation design and work on monuments:

1) Guidance of March 6, 2019, on:
   - producing a base map for preparing study and project documentation in the field of conservation and restoration of parks, gardens and other forms of designed greenery entered in the register of historical monuments;
   - recommendations for the inventory of vegetation in parks, gardens and other forms of designed greenery, entered in the register of historic monuments;
   - recommendations for the development of a tree stand management projects in parks, gardens and other forms of planned greenery, which are listed in the register of historical monuments;
   - recommendations for dealing with damage caused by natural disasters to parks, gardens and other forms of designed greenery entered in the register of historical monuments;
   - recommendations for dealing with damage caused by natural disasters to parks, gardens and other forms of designed greenery entered in the register of historical monuments;
   - recommendations for the protection of trees and shrubs in the area of construction works in parks, gardens and other forms of designed greenery, entered in the register of historic monuments;
   - recommendations for the protection of trees and shrubs in the area of construction works in parks, gardens and other forms of designed greenery entered in the register of historical monuments;
   - recommendations for the inventory of vegetation in parks, gardens and other forms of designed greenery entered in the register of historical monuments;

2) Recommendations of July 23, 2020, on how to deal with intrusive investigations on land.

3) Guidance of January 8, 2020, on setting standards for the conduct of archeological research pt. 1 Intrusive investigations on land.

4) Guidance of January 8, 2020, on setting standards for the conduct of archeological research pt. 2 Intrusive investigations on land.

5) Guidance of February 28, 2020, on the protection of heritage in the process of energy improvement of historic buildings.

The principles and standards formulated in this respect are to serve the improvement of the quality of works and research on historical monuments. It should be assumed that the guiding principles of the conservation practice, i.e., technical protection of selected groups of historic monuments, is a manifestation of a conscious conservation policy.

The guidelines and instructions of the General Conservator of Historical Monuments issued after 2018–2021 are crucial to limiting discretionary powers. The introduction of numerous under-defined concepts, general clauses, as well as the institution of administrative discretion into the provisions of the APPHM fosters the so-called discretionary conservatory power. The aforementioned guidelines and instructions, acts in conservation policy, contribute to the achievement of a greater uniformity of administrative decisions in the field of monument conservation, which in turn contributes to the increase of legal certainty.

The internal nature of the guidelines and instructions means that they are not directly binding on entities which are not subordinate to the General Conservator of Historical Monuments. This does not mean, however, that they are not important for the remaining addressees of the historic monuments protection regulations. This applies in particular to guidelines and instructions which concern the principles of conservation protection or contain standards and rules which should be taken into account at the stage of planning works and design documentation. In all these cases they constitute a set of guidelines which the Voivodeship Conservator of Monuments is obliged to take into account when applying the law, e.g., when issuing a permit under Article 36 of the APPHM. This particularly relates to the assessment of the admissibility from the conservator’s standpoint of a given program of conservation works or a construction project. As a result, they are also indirectly binding on entities outside the monument conservation authorities, as they determine the substantive limits of the decision in an individual case.

The guidelines and instructions of the General Conservator of Historical Monuments issued in 2018–2021 were a response to the current problems of the conservation bodies. Regarding the directions of conservation policy, the documents indicated focused on the assets that are most endangered, or that pose the greatest challenge to the system of monument protection today (greenery, technical monuments, wooden architecture, works of defensive construction). The guidelines and instructions issued so far constitute a heterogeneous group of documents. Only some of them can be seen as acts in conservation policy. In other cases, they are a source of standards for the implementation of the conservation policy, as well as documents which may be included in the more broadly defined policy for the protection of historic monuments. For example, documents aiming to optimize the activities of the conservation bodies and their cooperation with other entities, which then serves the implementation of the wider policy of historic monument protection.

The introduction, by the 2017 amendment, of the possibility of issuing binding guidelines and instructions addressed to local conservation authorities was an important element of the systemic changes. Together with the other changes referred to in the introduction, it significantly strengthened the position of the General Conservator of Historical Monuments. It was particularly important to strengthen its coordinating function, which leads, inter alia, to limiting the free action of public administration bodies, which has a significant impact on the legal situation of an individual. Undisputedly, a unified and publicly available interpretation of law, as well as conservation rules, strengthens the position of the conservation bodies.
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Kowalska Ewelina, Własność zabytku a dyskrepcyjna władza konserwatorska, Gdańsk 2018.


Zalenie do wykonywania mapy zasadniczej na potrzeby
T. Sienkiewicz aptly points out that the "planned slack in decision-making" is important at the stage of making decisions in monuments conservation as it allows for the flexibility of law and consequently choosing the most appropriate solution. T. Sienkiewicz, Pozwolenie w ochronie zabytków, Lublin 2013, p. 280.


Unaddressed by some authors were the statutory requirements concerning education and qualifications of the person holding the function of the General Conservator of Monuments. Ensuring the professional standard represented by such a specialized central body would undoubtedly foster its position as a substantive supervision body, although the actual strengthening of the conservation authorities should rather be seen in the separation of the General Conservator of Monuments as an independent central authority and in the performance of its tasks and competence in its own name and on its own account, and not, as it is currently the case, in the name and on behalf of the minister competent for culture and national heritage.

At present, the Voivodeship Conservator of Monuments is appointed by the Voivode at the request of the General Conservator of Historical Monuments who nominates a candidate for the position. The Voivodeship Conservator is dismissed by the Voivode upon receiving a motion of the General Conservator of Historical Monuments or with their approval. The change in the mode of appointment of the Voivodeship Conservator of Monuments is particularly significant, as it grants exclusive competencies with respect to the candidate’s indication to the General Conservator of Historical Monuments.


Legal acts / Akty prawne


same time indicating areas of conflict and the need for further cooperation and analysis.

Currently, the guidelines of the General Conservator of Monuments concerning the standards for design issues in the field of historical greenery, protection of historic works of defensive construction, protection of wooden architecture, photovoltaics on monuments and historic areas, making monuments accessible to people with special needs, problems of monument protection in connection with climate change are being developed.

Wytyczne w zakresie stosowania przepisów dotyczących usuwania drzew i krzewów z nieruchomości wpisanych do rejestru zabytków, "Kurier Konserwatorski" 2020, No. 19, p. 9–11.


Zalecenia w zakresie ochrony historycznych małych miast, "Kurier Konserwatorski" 2020, No. 19, p. 32–33.


Wytyczne w zakresie działań wojewódzkich konserwatorów zabytków podejmowanych w związku z przepisami ochroną zabytków, "Kurier Konserwatorski" 2020, No. 19, p. 19–22.


Wytyczne dotyczące współpracy z Generalną Dyrekcją Dróg Kra- jowych i Autostrad przy wypedawaniu decyzji o pozwoleniu na po- wodzenie działań archeologicznych, realizowanych w trakcie buduo- wy dróg krajowych i autostrad, "Kurier Konserwatorski" 2020, No. 19, p. 34–38.

Wytyczne w zakresie postępowania wojewódzkich konserwatorów zabytków w związku z działalnością na terenie całego kraju ame- rykańskiej agencji rządowej Defense POW/MIA Accounting Agen- cy, "Kurier Konserwatorski" 2020, No. 19, p. 79–81.


Wytyczne w zakresie standardów postępowania konserwatorskiego w zakresie zagospodarowania przestrzeni rynkowych, "Kurier Konserwatorski" 2020, No. 19, p. 78.

Zalecenia do wykonywania mapy zasobniczej na potrzeby opracowy- wania dokumentacji statalno-projekcyjnych w zakresie konserwacji i restauracji parków, ogrodów i innych form zaprojektowanej zieleni, wpisanych do rejestru zabytków; Zalecenia dla inwentaryzacji zabytek - zabytek roślinny w parkach, ogrodach i innych formach zaprojektowanej zieleni, wpisanych do rejestru zabytków; zalecenia dla postępowania w sytuacji zaistnienia szkód spowodowanych klęskami żywiołowymi na terenie parków, ogrodów i innych formach zaprojektowanej zieleni, wpisanych do rejestru zabytków, "Kurier Konserwatorski" 2020, No. 195, p. 39–70.

Zalecenia w zakresie sposobu postępowania w przypadku inwesty- cji o charakterze rekonstrukcji, rewaloryzacji, skarżeniu na stanowi- skach archeologicznych, "Kurier Konserwatorski" 2020, No. 19, p. 82–85.


Abstract

The Act of June 22, 2017, on the Amendment the Act on the Protection and Preservation of Historical Monu- ments and Certain Other Acts (Dz.U. 2017, item 1595) equipped the General Conservator of Historical Monu- ments with new competences, i.e., the right to issue legally binding guidelines and instructions. They serve as conservation policy tools as well as a form of building standards of conservation practice. This article defines the concept of conservation policy, its sources and the way it is created. Also discussed are the tools for implement- ing this policy, as well as its relationship to broader monument preservation policy and cultural policy. The article discusses the guidelines and instructions issued by the General Conservator of Monuments in 2018–2021, while defining their legal nature as forms of administrative action and their significance for the functioning of the system of monument protection in Poland.

Streszczenie