
Paweł Dzienis¹

Functioning of prohibitions and restrictions regarding the manner of the use of real estate protecting the cultural landscape on the example of the Wilanów Cultural Park – 2nd empirical part

DOI: 10.5604/01.3001.0014.7464

Summary

The second part of the article on the juridical dimension of the Wilanów Cultural Park confirms the justification of the existence of this spatial form of the protection of historical monuments. It completes the dogmatic analysis from the first part. Also in the case of this part, the key issues are restrictions of the ownership right and the necessity to balance them by civil law. The author applied an empirical method in the form of a survey of questions directed by way of access to public information to institutions that encountered problems mentioned in the title within the premises of the Wilanów Cultural Park. The presentation of the results of research leads to the conclusion that assets protected by law being in the collision – the protection of historical monuments and the ownership right to real estate located within the Park, with taking into account dynamically developing Miasteczko Wilanów – were appropriately balanced. The structure of the ownership analysis of land completes the conviction on the adequacy of protection instruments applied. The observation of lack of claims allows the author to formulate the conclusion on the priority prospective, not corrective impact on the cultural landscape and real estate creating it of the resolution establishing the Wilanów Cultural Park.

Key words: regulations regarding the protection of historical monuments, ownership right, cultural park, manner of the use of real estate, special areas, compensation, prohibitions and restrictions regarding ownership, empirical research of law, liability of the public authority

¹ Doctor of law, judge and vice president of the District Court in Białystok, delegated to issue decisions in the Regional Court in Białystok, lecturer at the National School of Judiciary and Public Prosecution, author and reviewer of publications on civil law.
ORCID 0000-0002-8243-7147.

1. Preliminary remarks

The Wilanów Cultural Park constitutes a perfect example for conducting a test of the functioning of this statutory institution². In the first part of considerations regarding the juridical nature of the Wilanów Cultural Park, the correctness of the thesis that it fulfils statutory requirements was proved³. It was confirmed in terms of the need to establish it as well as in terms of the translation of the catalogue of prohibitions and restrictions into a resolution. The analysis of the legal status at the level of acts, local laws, doctrine and judicature led to proving it. The first part also presented the essence of compensation claims aimed at redressing restrictions in the manner of the use of real estate. This part contains the analysis of the legal institution presented in the title with the use of empirical method.

The analysis of the case law of courts carried out in the first part presented some practical image, but it should be completed from another perspective. This part presents the results of empirical research concerning the Wilanów Cultural Park, undertaken in connection with the 8th anniversary of its existence in the legal area⁴. Empirical research carried out in April 2020 was aimed at the determination how in practice the park restrictions and prohibitions included in the Wilanów resolution establishing this Park function in practice⁵, and mainly the determination whether the necessity to fulfil claims concerning the purchase of real estate and payment of compensations occurred. The research was focused on the civil law dimension of this form of the protection of historical monuments. It was also accompanied by the conviction that the scientific analysis of this research will contribute to better protection of the valuable cultural landscape of Wilanów by the formulation of theses ensuring the effective functioning of the Wilanów Cultural Park.

The research consisted in addressing questions to six institutions dealing with issues of cultural parks, in particular to these institutions within whose

² The basic source of law of the statutory rank regulating the institution of the cultural park is the Act of 23 July 2003 on the protection and guardianship of monuments (consolidated text: Journal of Laws of 2020, item 282; hereinafter referred to as: the 'Act on the protection and guardianship of monuments'). The axiological assumptions of the cultural park are presented in: A. Małkowska, *Cultural Park as the Form of Value Protection* [in:] J. Zimmermann, *Axiology of Administrative Law. Volume II*, Warsaw 2017, LEX/el.

³ P. Dzienis, *Functioning of Prohibitions and Restrictions regarding the Manner of the Use of Real Estate Protecting the Cultural Landscape on the Example of the Wilanów Cultural Park - part 1*, 'Nieruchomości@' 2020, no. 3, p. 45.

⁴ On 8 May 2020 eight years have passed since the entry into force of the resolution establishing the Wilanów Cultural Park.

⁵ Resolution no. XXXIV/819/2012 of the Council of the Capital City of Warsaw of 29 March 2012, Official Journal of the Mazovia Province of 2012, item 3566 (hereinafter referred to as: the 'Wilanów Resolution').

scope of competences the Wilanów Cultural Park falls. Respondents included self-government offices, administration authorities dealing with the protection of historical monuments and common courts. The list of questions was sent by e-mail on the basis of regulations included in Article 2(1) of the Act of 6 September 2001 on access to public information⁶. Seven institutions submitted eight responses. One of the responses was the submission in accordance with competences, and two were from the district court. The conclusions from the survey are also completed by observations of events from 2016-2018 connected with the functioning of the Park.

2. Course of empirical research

In the first place, questions were addressed to the Mayor of Wilanów District, within which the Wilanów Cultural Park functions and is generally located. They were submitted by the District Office of Wilanów – the Department of Architecture and Construction for Wilanów District according to the jurisdiction to the Capital City Office of the Conservator of Monuments of the Warsaw City Council. The questions concerned: borders of the Park, manner of its management in the institutional dimension, examples of violations of prohibitions and restrictions concerning the use of real estate established in the Wilanów Resolution and – primarily – claims for the purchase of real estate and compensation claims, taking into account this aspect from the subjective perspective (developers), the objective perspective (kinds of prohibitions and restrictions) and the manner of their implementation (legal action). In order to fully understand the results of the analysis, it is worth quoting here 10 questions *in extenso*. The importance of this list is also reflected in the fact that these questions constituted at the same time the basis for the formulation of modified lists for the remaining respondents.

1. Were the borders of the Wilanów Cultural Park established in resolution no. XXXIV/819/2012 of the Council of the Capital City of Warsaw of 29 March 2012 on the establishment of cultural park under the name of the – Wilanów Cultural Park' (Official Journal of the Mazovia Province of 2012, item 3566) changed?
2. Was the organisational unit liable for the management of the Park, provided for in Article 16(4) of the Act on the protection and guardianship of monuments, created?

⁶ Journal of Laws of 2019, item 1429 (hereinafter referred to as: the 'Act on access to public information').

3. Were any cases of violations of prohibitions and restrictions resulting from Article 2 of the above mentioned resolution detected in the period of the Park functioning? If yes, which prohibitions and restrictions did they concern?
4. Was the Commune obliged in connection with the establishment of the Wilanów Cultural Park to purchase real estate or to pay compensations on the basis of Article 17(2) of the Act on the protection and guardianship of monuments in connection with the prohibition or restriction regarding the manner of the use of real estate within the Park?
5. If the response to question 3 is affirmative – how many cases were there?
6. For what amount did the Commune pay the compensation under Article 17(2) of the Act on the protection and guardianship of monuments in the period until the response?
7. Did entities that submitted claims include entrepreneurs being developers? If yes, how many?
8. In the case of legitimate claims for the payment of compensations, how many of them concerned the prohibition on conducting business activities under Article 2(1)(2) of the above mentioned resolution?
9. In the case of legitimate claims for the payment of compensations, how many of them concerned the restriction under Article 2(1)(3) of the above mentioned resolution, i.e. the admissibility to place boards, inscriptions, advertisements and other signs at communication routes?
10. How many of such cases regarding the purchase of real estate or the payment of compensations were ended by decisions of common courts?

The Capital City Office of the Conservator of Monuments – Conservation Opinion Department provided the following responses to such formulated questions⁷.

1. The borders of the Wilanów Cultural Park established in resolution no. XXXIV/819/2012 of the Council of the Capital City of Warsaw of 29 March 2012 were not changed.
2. The unit for the management of the Wilanów Cultural Park was not established. Tasks resulting from the Act on the protection and guardianship of monuments, concerning the protected area, are preformed by employees of the Capital City Office of the Conservator of Monuments.

⁷ Public information no. CRWIP/2624/20.

3. In the period of the Park functioning, within the premises of Wilanów District no cases of violations of prohibitions and restrictions resulting from Article 2 of the above mentioned resolution were detected.
4. After the establishment of the Wilanów Cultural Park, no requests for the payment of compensation or the purchase of real estate resulting from Article 17(2) of the Act on the protection and guardianship of monuments were submitted.

The Capital City Office of the Conservator of Monuments is the organisational unit within the Capital City of Warsaw. Due to the characteristic system of Warsaw⁸, it has the city-wide status of an office common for all districts. The scope of tasks of the Capital City Office of the Conservator of Monuments covers in particular: ensuring conditions for promotion and dissemination of knowledge of historical monuments constituting the property of the Capital City of Warsaw and their importance for history and culture, conducting matters connected with the establishment of cultural parks as well as supervision over these parks.

Questions were directed also to institutions dealing with the protection of historical monuments in the scope broader than the local one – questions concerning the practical dimension of the functioning of the Wilanów Cultural Park were sent to the Ministry of Culture and National Heritage – the Monuments Preservation Department and the National Institute of Cultural Heritage. In both these cases questions concerning cultural parks were general and it was underlined that responses are to be used for the analysis of the functioning of the Wilanów Cultural Park. The entity liable for question preparation formulated eight questions, which similarly as in the case of questions directed to the authorities of Wilanów District were focused on cases of violations of prohibitions and restrictions resulting from Article 17(1) of the Act on the protection and guardianship of monuments (one question) and claims for the purchase of real estate or compensations in the objective, quantitative, subjective and procedural dimensions (seven questions). The same sets of questions were directed to both of the above mentioned institutions.

The response submitted by the Ministry of Culture and National Heritage emphasised the self-government dimension of the cultural park institution. It was underlined that the establishment of cultural parks and the guardianship

⁸ Compare the Act of 15 March 2002 on the system of the Capital City of Warsaw (consolidated text: Journal of Laws of 2018, item 1817).

over them fall within the remit of self-government authorities, and the applicable provisions of law do not grant the Minister of Culture and National Heritage the possibility to participate in the process of the establishment of cultural parks. Therefore, it was explained that the Ministry as the authority not competent in the above issues does not have information in the scope of the survey.

From the response submitted by the National Institute of Cultural Heritage – the Department of Expert Studies and Analysis of Monuments, it results that the National Institute of Cultural Heritage does not have detailed information about the functioning of individual parks because cultural parks as a form of monument protection belongs to the exclusive competence of local government authorities. It should be clarified here that the National Institute of Cultural Heritage with its registered office in Warsaw is a state cultural institution established by the Minister of Culture and National Heritage⁹. The Institute initiates and undertakes actions for sustainable protection of cultural heritage in Poland in order to preserve it for future generations¹⁰. The list of cultural parks located in Poland can be found on its website¹¹, however it is not an official register.

As it was explained in the response, the National Institute of Cultural Heritage is not even informed about the establishment of this form of protection in the given area unless the conservation administration authority, i.e. provincial conservator of monuments, while issuing the opinion on the scope of the area protection which is to be covered by the cultural park included in the commune or city council's draft resolution, submits to it a request for the opinion. Therefore, the inspection of compliance with rules, prohibitions, orders and restrictions introduced in the area in connection with the establishment of the cultural park and laid down in the park protection plan adopted by the commune council lies within the power of the authorities of local government which should inspect the compliance with the local law. Furthermore, the National Institute of Cultural Heritage indicated that the inspection authority is also the provincial conservator of monuments if within the cultural park there are objects and areas entered into the register of monuments. This response was the impulse for submitting questions also to the Masovian Provincial Conservator of Monuments

⁹ www.nid.pl/pl/O_NID/V.

¹⁰ Detailed rules for the functioning and tasks of the National Institute of Cultural Heritage are regulated by the Ordinance of the Minister of Culture and National Heritage on granting a new statute to the National Institute of Cultural Heritage of 30 January 2020 (Official Journal of the Minister of Culture and National Heritage of 2020, item 5).

¹¹ www.nid.pl/pl/Informacje_ogolne/Zabytki_w_Polsce/Parki_kulturowe/Zestawienie_parkow/miejsce.php?-ID=3710&sphrase_id=70642 [access: 07/04/2019].

in Warsaw. Insofar as the presentation of the Wilanów Cultural Park in a broader perspective by the submission of questions to the Ministry of Culture and National Heritage and the National Institute of Cultural Heritage was not effective, it was implemented – as mentioned below – within another project constituting the basis for separate scientific work.

Nine questions formulated at the similar level of details as those submitted to the Mayor of Wilanów District were directed to the Masovian Provincial Conservator of Monuments, with the exclusion of the question concerning the change in the borders of the Wilanów Cultural Park and the establishment of an institution for the Park management. The entity preparing the questions added one question concerning the number of violations of prohibitions and restrictions which ended with a punishment for the offence under Article 112(1) and (2) of the Act on the protection and guardianship of monuments. It results from the response submitted by the Manager of the Department of Historic Green Space Arrangements that the Masovian Provincial Conservator of Monuments does not have information in the scope indicated in these nine questions. It was justified by the fact that the Wilanów Cultural Park functions on the basis of the resolution of the Council of the Capital City of Warsaw and the monitoring of compliance with orders and prohibitions resulting from the resolution as well as the issues of compensations and claims for the purchase of real estate fall within the remit of this city. Hence it was underlined that these are not competences of the Masovian Provincial Conservator of Monuments. In the scope of the compensation dimension of key importance in the examined issue, questions were also directed to common courts having jurisdiction over the Wilanów Cultural Park, i.e. the District Court for Warszawa-Mokotów in Warsaw and the Regional Court in Warsaw. In this case, the purpose of these questions was to determine two issues: the use of court proceedings by injured parties and the possible scale of claims. Questions were directed to these courts because in cases of claims under Article 17(2) of the Act on the protection and guardianship of monuments common courts are competent for their examination. This results from Article 131(2) of the Act of 27 April 2001 on the Environmental Protection Law¹², according to which a party dissatisfied with the compensation granted by the head of the district may – within 30 days from the day of delivery thereto of the decision of the appropriate head of the district – bring an action

¹² Consolidated text: Journal of Laws of 2019, item 1396, as amended (hereinafter referred to as: the 'Environmental Protection Law').

to a common court. Court proceedings may be initiated also in the case of the competent body's failure to issue a decision within 3 months from the date of submitting the demand by the injured party.

The timeframe of questions directed to courts covered 2012–2020, which was aimed at taking into account the entire period of the functioning of the Wilanów Cultural Park. The questions were as follows:

1. Were any proceedings pending in this Court against the Commune – the Capital City of Warsaw – for the purchase of real estate or payment of compensation under Article 17(2) of the Act on the protection and guardianship of monuments in connection with the functioning of the Wilanów Cultural Park in 2012–2020?
2. If the response to question 1 is affirmative – how many cases concerning the purchase and payment of compensations were there and were they acknowledged by the Court?

Moreover, in the set of questions directed to the Regional Court in Warsaw it was indicated that it concerns cases examined by this Court at the first instance. It was done intentionally in order to obtain a comprehensive picture of the scale of court proceedings connected with the material aspect of the functioning of the Wilanów Cultural Park. In the case of a generally formulated question, it would be possible to obtain a result containing cases for the same claim examined by the district court and then by the court of appeal. However, the issue of the appeal proceedings was not the object of this research.

Two responses were received from the District Court for Warszawa-Mokotów in Warsaw. The first of them was submitted by the II Civil Department of this Court having the territorial competence for civil disputes from Wilanów District. It results from this response that in 2012–2020 in the II Civil Department of this Court no proceedings were pending against the Commune – the Capital City of Warsaw – for the purchase of real estate or payment of compensation. The second response was submitted by the Vice-President of this Court and it also results from it that in civil departments of this Court no cases for the purchase of real estate or payment of compensation in connection with the functioning of the Wilanów Cultural Park were registered¹³.

¹³ The response of 16 April 2020, Adm.0143-87/20.

3. Conclusions from the research

Responses submitted by the Capital City and courts ensure the greatest contribution. It results from them that in connection with the functioning of the Park owners of real estate located within its area did not submit to the City any compensation claims or requests for purchase and did not initiate any court proceedings. The city did not decide to establish an institution for the Park management. Nevertheless, in the case of the cultural landscape so important for the national heritage and the complexity of issues connected primarily with dynamically developing Miasteczko Wilanów¹⁴ the City should seriously consider the use of this statutory possibility. The response about lack of violations of prohibitions and restrictions established in the Wilanów Resolution is surprising in the context of information from other sources about cases of such violations. It is proved by the analysis of the case law carried out by the author in the first part of the article and events observed within Miasteczko Wilanów. It is, for example, the placement of an illuminated advertisement at the entry to Miasteczko Wilanów at Al. Rzeczypospolitej just behind the Służewiecki stream¹⁵. Such a situation may result from lack of records of violations or lack of their detection. Especially restrictions and prohibitions connected with the placement of boards and announcements may be easily violated. It is proved by the practice of their functioning in other cultural parks located in large cities. Therefore, the recommendation for the establishment of a unit for the Park management seems to be well founded.

Due to the civil-law profile of the research, the important issues discussed in it are claims for the purchase of real estate and payment of compensations. Compensation claims connected with the functioning of the Wilanów Cultural Park may be brought against the City and they have their legal basis in Article 17(2) of the Act on the protection and guardianship of monuments. The commune whose council has adopted a resolution on the establishment of the cultural park is obliged to pay compensation or buy the real estate out. However, claims brought against persons violating prohibitions and causing damage to legally protected assets in the form of a cultural park by the City cannot be excluded. They will be based on the provisions concerning tort liability. Nevertheless, they were not the object of research due to the thematic scope of the article determined in the title.

¹⁴ The set of housing estates on the Wilanów Fields in the western part of Wilanów District, whose construction started in 2002 on the area of 169 ha on the basis of the plan assuming: view and compositional axes, city squares and dominants developing the historical urban layout called *la patte d'oie* – 'goose's foot' of the palace-park complex of Wilanów Królewski. See literature referred to in the first part of this article.

¹⁵ M. Wojtczuk, *Flickering Advertising Screen at the Entry to Miasteczko Wilanów*, 'Gazeta Wyborcza', 20 July 2016.

Taking into account the results of the empirical research conducted, the reasons for lack of such claims against the commune should be considered. One of the important reasons may be the ownership structure of land on which the Park was established. As indicated in the Protection Plan of the Wilanów Cultural Park¹⁶, private ownership dominates within its area, while in its central part there are considerable dense complexes of land of the State Treasury being in perpetual usufruct of a number of users. They are e.g.: users of areas of currently constructed – Miasteczko Wilanów –, Warsaw Agricultural University managing a considerable area of land located near Morysin as well as the – Aquamex – company managing the area of former complex in Gucin Gaj. The discussed area includes to a small extent public properties covering in larger section e.g. allotment gardens located in the northern part of Wilanów as well as areas near Vogla and Syta streets and Wiertnicza and Stanisława Kostki-Potockiego streets. Also the network of city streets falls within the power of the Commune – the Capital City of Warsaw¹⁷.

As it was previously noted, particularly intense changes occur on the Wilanów Fields in the Foreground of the Wilanów Palace. In this place the State ownership of real estate let for perpetual usufruct dominates. Such ownership qualification determines the manner of the land use. The right of perpetual usufruct as a link between the ownership and limited property rights is a special purpose right¹⁸. Pursuant to Article 239 of the Civil Code, the agreement on letting the land for perpetual usufruct should determine the manner of the use of land by the perpetual usufructuary. The Supreme Court rightly explained that the manner of the use of real estate, as a rule, must create the possibility to fulfil the purpose of letting the real estate for perpetual usufruct¹⁹. The transformation of perpetual usufruct into ownership concerning land developed for residential purposes²⁰ (introduced as of 1 January 2019) does not change it. Two arguments prove the validity of this thesis: the first argument indicates

¹⁶ The Protection Plan of the Wilanów Cultural Park constitutes Appendix no. 1 (descriptive part of the plan) and Appendix no. 2 (graphic part of the plan) to Resolution no. XXXIV/820/2012 of the Council of the Capital City of Warsaw of 29 March 2012 on the approval of the protection plan of the Wilanów Cultural Park; <https://bip.warszawa.pl/NR/exeres/378F7BED-3EE6-498F-8848-F5318FB4165B.frameless.htm> [date of access 08/04/2020].

¹⁷ Page 121 of the Protection Plan of the Wilanów Cultural Park, *op. cit.*

¹⁸ For more information about the purposefulness of the right of perpetual usufruct see K. Bagan-Kurluta [in:] M. Załucki (ed.), *Civil Code, Commentary*, Warsaw 2019, commentary to Article 239, thesis 4, par. no. 4.

¹⁹ Compare the justification of judgement of the Supreme Court of 29 June 2007, file reference I CSK 133/07, *Legalis.D*

²⁰ Compare the Act of 20 July 2018 on the transformation of the right of perpetual usufruct of the land developed for residential purposes into the ownership title to this land, consolidated text: *Journal of Laws of 2020*, item 139, as amended.

that the purpose from the agreement on letting the real estate for perpetual usufruct determined the manner of the use of land, which in this way was formulated. It was not contrary to the Wilanów Resolution, which was adopted later. The second relevant argument has the impact on compensation claims in the form that the Wilanów Resolution prevents the change in the purpose of the manner of use of real estate.

The above observations also lead to the conclusion that the Wilanów Resolution had primarily the prospective effect of shaping the manner of use of real estate. It determined for the future the manner of use of real estate located within the Park. Observing the construction development on the Wilanów Fields, it may be assessed that the resolution was introduced at the right time. Its implementation prevented the commencement of the land development and launch of business activities which would be contrary to the object of protection and violate the cultural landscape. The priority purpose of the Wilanów Resolution was the prospective impact – it allowed the avoidance of claims connected with the existing situation which would require the adjustment, taking into account the protected assets.

In addition to the assumed purposes expressed in the title, the analysed empirical research also allowed the assessment of the efficiency of access to public information and the scope of administrative authorities' competences concerning the functioning of cultural parks. All institutions qualified the questions as access to public information and submitted responses. Questions were sent on 7 April 2020, whereas the letter to the Masovian Provincial Conservator of Monuments on 14 April 2020 after the suggestion included in the response from the National Institute of Cultural Heritage. The Masovian Provincial Conservator of Monuments submitted the response first – it was received on the next day. In most cases responses were submitted within about one week²¹. The Ministry of Culture and National Heritage used the whole 14-day period resulting from Article 14 of the Act on access to public information.²² The Regional Court in Warsaw notified as late as on 6 May 2020 that the time limit had not started to run²³. It should be noted that considerations

²¹ Responses from: The National Institute of Cultural Heritage of 14 April 2020; the District Court for Warszawa-Mokotów in Warsaw – electronic letter of 14 April 2020 with II WC, letter of the Vice-President of 16 April 2020; the City – information about the submission of 15 April 2020, the response of 17 April 2020 was received on 4 May 2020 after the question.

²² Response of 21 April 2020.

²³ The basis for such a position was Article 15 zys(1)(10) of the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and emergencies caused by them (Journal of Laws, item 374, as amended).

concerning the functioning of access to public information constitute, of course, a side plot, and conclusions drawn on the basis of a few data do not allow the formulation of a generalised assessment.

4. Selected conclusions concerning the functioning of the Park

It is worth signalling four cases and undertaking the attempt to determine their juridical dimension, determined for the purposes of this article as: the above mentioned illuminated advertisement, 'beer hut', Thanksgiving Day and the construction of the gallery.

The above mentioned illuminated advertisement appeared in 2016. It was a structure on a car trailer located on the premises owned by the developer of a nearby estate that leased this area to an advertising company²⁴. The impact of the advertisement on the cultural landscape consisted in the fact that it was located at the avenue constituting one of view axes of the Park. Its placement not only violated restrictions resulting from the Wilanów Resolution, but also the local spatial development plan. This plan does not allow the placement of freestanding advertisements within this area. It is only allowed to install advertisements on service buildings provided that the advertisement design is integrated into the building façade and the city issues a positive opinion. The problem consisted in the fact that the discussed illuminated advertisement was not located within the road area. Otherwise, it would be possible to apply measures provided for in relation to rules of the occupation of the road area. The placement within the road area of structures not connected with the road management needs or road traffic needs as well as advertisements requires the road manager's permission issued by means of an administrative decision and is connected with the collection of a fee. In the case of the placement of any structure within the road area without the permission, the road manager imposes, by means of an administrative decision, a financial penalty in the amount of ten times the determined fee²⁵. The analysed case constitutes a clear violation of the Wilanów Resolution.

The case of the 'beer hut' was an advertising happening from April 2017, which was held on the area adjacent to the Ostoja Wilanów housing estate in the Foreground of the Temple of Divine Providence. It was – Kozel – brand Czech village in the form of a wooden hut²⁶. It should be considered as a form

²⁴ M. Wojtczuk, *Flickering Advertising Screen...*, *op. cit.*

²⁵ See Article 40 of the Act of 21 March 1985 on public roads (consolidated text: Journal of Laws of 2020, item 470, as amended).

²⁶ More information about the campaign is presented at www.signs.pl/piwo-kozel-z-nowa-kampania,32323,

of advertisement carried out within the area of the cultural park. It was a temporary advertisement and, at the same time, constituted a manifestation of business activities. While the placement of the advertisement may rise objections, perceived as a form of business activity it is not covered by the prohibition or restriction in connection with the functioning of the Park. Due to the mixed nature of this activity, the functional interpretation of the provisions of the Wilanów Resolution should be applied to its assessment. Moreover, the systematic interpretation also can be applied. The provisions regulating the prohibition and restrictions concerning inscriptions and signs should be interpreted in connection with the provisions of the protection plan and the local spatial development plan. It allows the explanation of differences between legal assessments of the – beer hut – case and the illuminated advertisement case. It also allows the assessment of the element which accompanied the Thanksgiving Day held in Miasteczko Wilanów every year at the beginning of June. It is the 'THANK YOU' inscription made of capital letters at the intersection of al. Rzeczypospolitej and Augusta Hlonda and Franciszka Klimczaka streets. In this case however, it does not have a character of an advertisement or business activity, but undoubtedly it is an element of the cultural identity of this place. And it should be assessed taking into account this context. It does not violate the prohibitions and restrictions of the Park. The diversity of actions observed shows that the Wilanów Cultural Park is an active cultural, social and economic environment. For this reasons, it requires a dynamic approach to the assessment of prohibitions and restrictions applicable within the Park area against the background of constantly new phenomena.

A separate issue is the case of the planned Wilanów Gallery, which is to be constructed at the intersection of Adama Branickiego and Przyczółkowej streets. The dispute concerning its final shape has been ongoing for several years. Different legal problems are connected with the gallery as this facility will have a considerable impact on the protected cultural landscape. However due to the framework of this article and the scope of this issue, this case is limited only to a short note. It requires thorough studies and is very dynamic, having its court and local government level. It is one of the most controversial investments within the area of the Wilanów Cultural Park.

The diversity of the above mentioned examples from the Wilanów area, concerning the compliance with prohibitions and restrictions of the Park, makes it difficult to assess explicitly specific situations raising doubts about the violation

of prohibitions. This is the next argument for establishing an organisational unit that would be liable for the Park management. Such an entity would ensure clear interpretation of the provisions of the Wilanów Resolution.

5. Importance of the European Landscape Convention

Coming closer to the summary of these considerations, it is worth having a look at the discussed issue from the European perspective. As indicated in the Protection Plan of the Wilanów Cultural Park, the Wilanów Resolution constitutes an essential element of the development of new forms of protecting monuments and cultural landscape²⁷. It falls into the entire sequence of legislative and legal actions, which included the adoption of the European Landscape Convention in 2000, its ratification by Poland in 2005 and previous introduction to the new Act on the protection and guardianship of monuments of the innovative institution of a cultural park applicable as of 2003²⁸. It can be certainly stated that the Wilanów Cultural Park is one of key examples of the implementation of the European Landscape Convention in the Polish – not only legal – reality. This Convention was signed in Florence on 20 October 2000 and adopted by member states of the Council of Europe as its signatories²⁹. It is to ensure a new instrument devoted exclusively to the protection, management and planning of all landscapes in Europe.

Special attention should be given to its preamble, which should be analysed in relation to the Wilanów Cultural Park in terms of relevance. This cognitively interesting measure confirms the reasonableness of the above formulated statement. The preamble underlines the purpose which is the care for achievement of permanent and sustainable development based on balanced and harmonious relations between social needs, economic activities and environment. Referring the above to the Wilanów Cultural Park, this statement should be assessed as adequate for realities of this dynamically developing district. We should remember about the essence of the analysed form of monument protection, as a cultural park is not an open-air ethnographic museum, but a contemporary

²⁷ Protection Plan of the Wielkopolski Cultural Park, *op. cit.*

²⁸ For more information about the origin of the institution of a cultural park see J. Tomczak, *Cultural Park in the System of Protection of Monuments in Poland*, 'Quarterly of the National School of Judiciary and Public Prosecution' (Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury) 2019, no 4, pp. 40–41; K. Zalaśńska [in:] K. Zalaśńska, K. Zeidler, *Lecture on the Law of Monument Protection*, LEX/el. 2015, and K. Zalaśńska, *Legal Protection of Immovable Monuments in Poland*, Warsaw 2010, LEX/el 2015.

²⁹ In the name of the Republic of Poland President of the Republic of Poland made the European Landscape Convention available to the public, Journal of Laws of 2006, no. 14, item 98 (hereinafter referred to as: the 'Convention').

place which takes into account a centuries-old tradition being the result of activity of previous generations. Also the Polish case law indicates the collision of assets with the capture of landscape within the national heritage. At this point, it is worth quoting the statement of the Provincial Administrative Court in Kraków included in the judgement of 1 August 2018³⁰: 'The purpose of the resolution on the cultural park is to protect cultural values of a historically determined area as a whole. These important protected values allow the adoption of restrictions in the scope of the use of freedoms and rights in order to realise the common good, i.e. the protection of specific cultural landscape included in the national heritage³¹.'

The preamble of the Convention also underlines the role of a landscape. The signatory states noticed that it contributes to the creation of local cultures and constitutes basic component of the European natural and cultural heritage, contributing to human well-being and consolidation of the European identity. The Wilanów Cultural Park fully confirms this assumption. In the light of the Wilanów Palace – significant in the European and world scale and visited by thousands of tourists – a new local community of Miasteczko Wilanów develops³².

The preamble also draws attention to new events within the examined area of Warsaw, e.g. in the regional and urban planning, which in many cases is sped up by transformations of landscapes. It is also worth underlining that Miasteczko Wilanów was established on the basis of the project called – Masterplan –, prepared according to Guy Perry's vision of Miasteczko, its main designer³³. This is relevant for the protection of the cultural landscape located within the Park. Moreover, it should be noted that the Convention concerning the protection of the World Cultural and Natural Heritage adopted in Paris on 16 November 1972 by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its 17th session³⁴ also regulates the protection of cultural landscapes.

³⁰ File reference II SA/Kr 480/18.

³¹ Legalis no. 1814541.

³² For more information about natural values of the location of Miasteczko Wilanów and standards of green infrastructure design see K. Rędzińska, M. Jędraszko-Macukow, 'Aspern Seestadt' Estate in Vienna and 'Miasteczko Wilanów' in Warsaw in the Light of the Idea of Green Infrastructure, 'Problems of the Landscape Ecology' (Problemy Ekologii Krajobrazu), no. 36/2013, pp. 73–84.

³³ J. Pakuła, *Miasteczko Wilanów – Case Studies. Master's Thesis in the Field of Cultural Studies - Knowledge of Culture*, Institute of Polish Culture, University of Warsaw, Warsaw 2015, pp. 15–20, <https://depot.ceon.pl/bitstream/handle/123456789/9270/J.%20Paku%C5%82a%2C%20Miasteczko%20Wilan%C3%B3w.pdf?-sequence=1&isAllowed=y> [access: 30/05/2020].

³⁴ Journal of Laws of 1976, no. 32, item 190; see more information in K. Piotrowska-Nosek, *Commentary to Article 1, Article 2, Article 3 of the Convention concerning the Protection of the World Cultural and Natural Heritage* [in:] K. Zalańska (ed.), *UNESCO Conventions in the Area of Culture. Commentary*, LEX, 2014.

6. Conclusions

The empirical research conducted allows the formulation of two rudimentary recommendations. The first recommendation concerns the reasonableness of the establishment of an organisational unit for the Park management, with the application of the basis determined in Article 16(4) of the Act on the protection and guardianship of monuments. This is supported by the importance of the protected cultural landscape and the complexity of problems. It is the real art not only to adopt, but also to implement and comply with the provisions of the Wilanów Resolution.

The second recommendation concerns the increase in the verification of the compliance with prohibitions and restrictions concerning the manner of use of real estate established in the Wilanów Resolution. Lack of claims for the purchase of real estate or compensations indicates that the Wilanów Resolution did not correct the manner of use of real estate located within the area of the Wilanów Cultural Park, but it has a prospective dimension. This observation in combination with the analysis of the ownership structure of real estate may be a valuable guidance for other communes that are planning to establish cultural parks. It turns out that it was possible to avoid claims for the purchase of real estate and for compensations. In many case, the fear of costs connected with claims may be an obstacle to the adoption of a resolution on the park establishment. These claims, however, are necessary for ensuring the balance of the collision between the assets protected. The example of the Wilanów Cultural Park shows the way how to avoid or minimise them. It should be noted that within a similar scientific idea the author conducted research on the functioning of all cultural parks in Poland established until May 2020 and, therefore, the functioning of the Wilanów Cultural Park can be analysed in separate work against the background and in the dimension of the issue presented from the perspective of the whole country³⁵.

Carrying out the holistic analysis of the results of both parts of considerations concerning the Wilanów Cultural Park, we hope that due to the functioning of the Park the historic royal Wilanów will be preserved. The new Miasteczko Wilanów quickly developing on the Wilanów Fields benefits from this neighbourhood, which translates into an interesting unique cultural landscape that should be protected. The degree of the implementation of the assumptions

³⁵ P. Dzienis, *Trio of Ownership of Real Estate vs. Institution of a Cultural Park in Poland from the Empirical Perspective*, 'Local Government' (Samorząd Terytorialny) (paper in press).

formulated by the entities that established the Wilanów Cultural Park will be assessed by the Park residents and visitors and history. These opinions may be different and may depend on the adopted perspective, as sometimes it is difficult to reconcile things good for tourists with everyday needs of residents.

Finishing this legal reflection about Wilanów, let us stay with the demonstrated thesis on the purposefulness of the establishment of the cultural park within it, looking at the painting of Canaletto of 1775 - View of Wilanów meadows. Thanks to the landscape immortalised in it we may see how much the landscape of the Wilanów Fields has changed, especially during the first two decades of the 21st century.

Bibliografia / Bibliography

1. K. Bagan-Kurluta [w:] M. Załucki (red.), *Kodeks cywilny, Komentarz*, Warszawa 2019, komentarz do art. 239, teza 4, nb 4.
2. M. Bielecki, *Metody ochrony zabytku przed „kolidującą” zabudową sąsiedzką, „Nieruchomości@”* 2010, nr 10.
3. M. Cherka (red.), P. Antoniak, F.M. Elżanowski, K.A. Wąsowski, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, LEX, 2010.
4. P. Dzienis, *Triada własności nieruchomości a instytucja parku kulturowego w Polsce w ujęciu empirycznym*, „Samorząd Terytorialny” [w druku].
5. P. Dzienis, *Rewindykacja utraconych ruchomości na przykładzie księgozbioru wilanowskiego*, „Palestra” 2018, LXIII, nr 7–8 (729–730).
6. P. Dzienis, *Znaczenie zasad słuszności w odpowiedzialności odszkodowawczej władzy publicznej*, „Białostockie Studia Prawnicze” 2008, nr 3.
7. B. Gadecki, *Ustawa o ochronie zabytków i opiece nad zabytkami. Art. 108–120. Przepisy karne. Komentarz*, Legalis.
8. A. Ginter, A. Michalak, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Warszawa 2016.
9. R. Golał, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Kraków 2004, LEX.
10. Ł. Kamiński, *Odpowiedzialność odszkodowawcza z tytułu administracyjnoprawnego ograniczenia prawa własności nieruchomości w świetle sprawiedliwości i zaufania do władz publicznych* [w:] M. Kasiński, M. Stahl, K. Wlazlak (red.), *Sprawiedliwość i zaufanie do władz publicznych w prawie administracyjnym*, LEX 2015.
11. M. Konecki, *Krajobraz kulturowy, perspektywy badań i ochrona*, „Ochrona Zabytków” 1991, nr 1.
12. J. Pakuła, *Miasteczko Wilanów – studium przypadku. Praca magisterska na kierunku kulturoznawstwo – wiedza o kulturze*, Instytut Kultury Polskiej, Uniwersytet Warszawski, Warszawa 2015, s. 15–20, <https://depot.ceon.pl/bitstream/handle/123456789/9270/J.%20Paku%20C5%82a%2C%20Miasteczko%20Wilan%C3%B3w.pdf?sequence=1&isAllowed=y> [dostęp: 30.05.2020].
13. K. Piotrowska-Nosek, *Komentarz do art. 1, art. 2, art. 3 Konwencji w sprawie ochrony światowego dziedzictwa kulturalnego i naturalnego* [w:] K. Zalasinska (red.), *Konwencje UNESCO w dziedzinie kultury. Komentarz*, LEX, 2014.
14. Plan ochrony Wilanowskiego Parku Kulturowego stanowi załącznik nr 1 (część opisowa planu) oraz załącznik nr 2 (część graficzna planu)

- do uchwały nr XXXIV/820/2012 Rady Miasta Stołecznego Warszawy z 29 marca 2012 r. w sprawie zatwierdzenia planu ochrony Wilanowskiego Parku Kulturowego, <https://bip.warszawa.pl/NR/exeres/378F7BED-3EE-6-498F-8848-F5318FB4165B,frameless.htm> [dostęp: 8.04.2020].
15. K. Ręzińska, M. Jędraszko-Macukow, *Osiedla „Aspern Seestadt” w Wiedniu i „Miasteczko Wilanów” w Warszawie w świetle idei zielonej infrastruktury*, „Problemy Ekologii Krajobrazu” 2013, nr 36.
 16. W. Siemiński, *Zdefiniowane zjawiska partycypacji społecznej w planowaniu przestrzennym i w kształtowaniu przestrzeni*, „Samorząd Terytorialny” 2015, nr 12.
 17. J. Sługocki, *Opieka nad zabytkiem nieruchomym. Problemy administracyjno-prawne*, rozdział VII *Krajobraz kulturowy*, Warszawa 2017.
 18. J. Tomczak, *Park kulturowy w systemie ochrony zabytków w Polsce*, „Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury” 2019, nr 4.
 19. M. Wojtczuk, *Migający ekran reklamowy na wjeździe do Miasteczka Wilanów*, „Gazeta Wyborcza”, 20 lipca 2016 r.
 20. P. Zacharczuk, *Obszary specjalne w polskim materialnym prawie administracyjnym*, Warszawa 2017.
 21. K. Zalańska, K. Zeidler, *Wykład prawa ochrony zabytków*, LEX/el. 2015.
 22. K. Zalańska, *Prawna ochrona zabytków nieruchomych w Polsce*, Warszawa 2010, LEX/el.