

## PROTECTION OF NATURE IN HISTORIC GARDEN COMPLEXES AS DEFINED BY POLISH LAW

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**Abstract.** An important element of the cultural heritage of Poland are the monuments of garden art which should be protected due to their cultural, historic, artistic, natural and scientific values. Their uniqueness is a result not only of architectural and spatial structure but also the natural one in the form of vegetation arrangements. It is thus worth it to analyse binding acts of law and see to what extent they undertake the issue of nature preservation in historic garden sites. The analysis of past and current legal regulations as well as the survey of literature showed a lot of vagueness and ambiguity. First of all, it revealed the lack of precision present in legal documentation and shortages in the preservation of historic parks and gardens, especially of their surroundings and vegetative structure.

**Keywords:** historic parks and gardens, legal acts, vegetation structure, preservation

### INTRODUCTION

Historic parks and gardens are a manifestation of centuries-old achievements as regards garden art and the tradition of land development. As it is noted by A. Zachariasz, they represent “the uniqueness of culture recorded in time and place.” They have the exceptional historic, cultural, artistic, natural and scientific value which often is unique on a global scale [Zachariasz 2008,

150–61; Idem 2011, 4]. It is this extraordinary potential of historic garden sites that led to recognising them as monuments of cultural heritage which require particular protection [Furmanik 2016, 259–60]. It needs to be explained, however, that the notions of cultural heritage and monument may not be treated interchangeably as they are defined with different criteria. Including a building in the cultural heritage is decided about by a subjective opinion of a social group rather than its objective value. Another terminological difficulty with regard to the protection of monuments, historic gardens including, is caused by the fact that in the act of 15 February 1962 on the protection of cultural heritage and museums<sup>1</sup> the notion of monument was replaced with the term cultural heritage of much a wider conceptual range [Maćik 2017, 329–30]. In the currently binding act on the protection and preservation of monuments dated 23 July 2003 the term monument was reintroduced again. Whereas the very notion of cultural heritage was clarified in the act on the restitution of cultural heritage dated 25 May 2017.<sup>2</sup> It is also included in the Article 6 and 73 of the Constitution of the Republic of Poland dated 2 April 1997.<sup>3</sup>

Undoubtedly, the preserved historic gardens are covered by all the conceptual ranges mentioned above. Their exceptional value as monuments important for the development of cultural heritage is proved first of all by unique composition and planned spatial structure [Chrabelski and Ciołek 1949, 18]. As underlined by A. Mitkowska, the present situation of preservation of such monuments in Poland is mainly influenced by binding legal regulations as well as protective activities of conservation services. The problem however is the appropriate evaluation of historic values of garden art resources, which influences conservation activities both in the past and today. Moreover, the preservation of historic gardens depends on observing fundamental conservation assumptions recorded in guideline documents [Mitkowska 2015, 5–8]. This fundamental document which manifests the concern for preserving historic garden structures in their best condition is the Charter on the Preservation of

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<sup>1</sup> Journal of Laws No.10, item 48. National Heritage and Culture Protection Act, Chapter 1, Article 2: Cultural heritage, in the understanding of this act, is any item movable or immovable, historic or modern, that has a meaning to heritage and cultural development due to its historic, scientific or artistic value.

<sup>2</sup> Journal of Laws item 1086. Chapter 1, Article 2: cultural heritage – a monument in the understanding of Article 3(1) of 23 July 2003, the Old Monuments Law, a movable item not being a part of a monument, and their components and parts the preservation of which lies in public interest due to their artistic, historic or scientific value, or due to their maining to cultural heritage and development.

<sup>3</sup> Journal of Laws No. 48, item 483 as amended. Chapter 1, Article 6: The Republic of Poland shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development. Chapter 2, Article 73: The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.

Historic Gardens commonly referred to as the Florence Charter. This document, which was passed on 21 May 1981 by the International board ICOMOS-IFLA and the International Board for Historic Gardens is a supplement of the Venice Charter, i.e. International Charter for the Conservation and Restoration of Monuments and Sites. The Florence Charter covers comprehensively the problems of the preservation of historic gardens defining precisely what a historic garden is, what elements it comprises and provides for four activities aimed at its preservation: maintenance, restoration and reconstruction [Zachariasz 2008, 150–61].

The reputation of historic gardens as a manifestation of cultural heritage is confirmed by the very fact that the UNESCO List of World Heritage includes 77 independent garden complexes designated as outstanding works of garden art [Furmanik 2016, 260].

Poland joined UNESCO just one year after this organisation was created in 1945 but our country had earlier started activities aimed at the preservation of cultural heritage. The authorities of a young state that was coming back to life recognised the necessity of taking care of its heritage, especially after the devastation caused by World War II. Thus, the preservation of the substance of national heritage became an indispensable step in order to retain national identity and its cultural achievements [Maćik 2017, 327–28]. In relation to this, as early as on 31 October 1918 the Decree of the Regency Council was signed, the first legal act which defined the scope of “protection to be undertaken with regard to the monuments of art and culture.” The document points out that “All and any monuments of art and culture which stay within the borders of the Polish State, recorded in the register of national heritage are subject to protection by law. [...] they can be subject to particular means of protection of Polish state authorities as well as international treaties [...]”<sup>4</sup> The act also delegated the protection of monuments to conservators of historic objects. What is significant, that act at the same time specified that to the group of immovable monuments also belong “[...] decorative gardens, old cemetery and roadside alleys; aged and impressive trees that surround castles, churches, shrines, figures, cemeteries, etc.”<sup>5</sup> In addition to this, the later Directive of the President of the Republic of Poland dated 6 March 1928 concerning the preservation of monuments pointed to the necessity of the preservation of decorative gardens, cemetery and roadside alleys, aged and impressive trees.<sup>6</sup> As stressed by J. Sługocki a special novelty in the directive was the change of authority responsible for the preservation of monuments. It was no longer

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<sup>4</sup> Decree of the Regency Council of 31 October 1918 on the protection of monuments of culture and art, Journal of Laws No. 16, item 36.

<sup>5</sup> Ibid.

<sup>6</sup> Ordinance of the President of the Republic of Poland of 6 March 1928 on the protection of monuments, Journal of Laws No. 29, item 265.

a conservator's duty but "conservation authorities" that were supposed to declare the historic value of a building on the basis of a ruling. What is important in the matter of gardens, the ruling regarding immovable monuments was also supposed to define the boundaries of a building as well as the range of its surroundings which in the definition of the directive was also subject to protection [Sługocki 2020b, 253].

In the post-war period in Poland historic sites, including garden complexes were subject to legal protection under the act of law dated 15 February 1962 about the protection of cultural heritage and museums. D. Sikora notes that although that document mentioned "parks and decorative gardens, cemeteries" as well as "rare specimens of live or dead natural formation, if they are not included in the regulations about nature preservation" they are basically not protected in any way [Sikora 2016, 115]. I. Wildner–Nurek explains that it was the result of social unawareness and class prejudice. Parks and gardens, and especially the residential ones were perceived in a negative way as the remnants of pre-war social structure and were associated with the gentry seats. The monuments of Polish garden art as undervalued elements of national heritage were being devastated similarly to palaces and manor houses [Wildner–Nurek 2007, 95]. As late as in 1974, general conservator of the time Prof. A. Majewski appealed to province conservators in a circular letter to include in their protection garden sites and cemeteries. Whereas in 1975 Polish Ministry of Culture and Art commenced activities aimed at creating a national register of such monuments [Sikora 2016, 115]. What is important, the inventory method that was worked out then for historic garden sites took into consideration not only their historic, composition or spatial values but also the natural ones. A component of the description of an existing park, garden or orchard was a general inventory of vegetation together with information about natural features of historic value. It is also worth mentioning that the responsibility for historic substance of such sites was borne by both province conservators of monuments and province conservators of nature, although they were driven by different criteria of preservation. Naturalists valued park tree stand as an important element of the natural environment, whereas monument conservators as a proof of preserved spatial structure composition [Wildner–Nurek 2007, 97–98].

The aim of the present dissertation is presenting issues related to the preservation of historic parks and gardens, particularly to protecting their historic natural substance, carrying out an analysis of currently binding legal regulations that pertain to the preservation of historic parks and gardens as well as a survey of literature on the subject. It has allowed to point to the most significant problems associated with the protection and preservation of natural and landscape elements present in the historic resources of garden art in Poland.

## 1. CURRENT LEGAL STANDING

Currently garden art complexes of historic value are subject to legal protection as provided for in the act on monument protection and preservation dated 23 July 2003. Besides this, their protection is also provided for in the act on spatial planning land development of 27 March 2003 as well as in the act on conservation of nature dated 16 April 2004.

Following Article 3(1) of act on monument protection and preservation dated 23 July 2003<sup>7</sup> a monument is an immovable or movable object, their part or unit(s) that are a product of human activity or are related to human activity and which are the proof of a bygone era or event whose preservation lies in the interest of national welfare due to its historic, artistic or scientific value. The content of Article 3(15) MPP defines the surroundings as the area around or next to a monument which is described and included in the decision about entering the monument in a register of monuments in order to protect the scenic values of the monument as well as to protect it against the influence of any external factors. The act expressly includes in the group of immovable monuments parks, gardens and other forms of designed green areas (Article 6(1)(1)(g)), and declares that they are subject to protection regardless of their current condition (Article 6(1)(1) MPP).

Monuments become subject to protection as a result of being recorded in the register of monuments, the List of National Heritage Treasures, declared as a historic site, park of culture, as a result of declaring protection in a local land development plan or in a decision about a location of an investment of public use, decision on spatial development conditions, decision about building a road, railway or public airport (Article 7 MPP).

The issues of monument protection as interpreted by current home and international law have been the subject of researchers' interest that represent various scientific disciplines. An analysis of legal acts pertaining to historic sites preservation and the evaluation of these documents from the point of view of a lawyer has been presented, *inter alia*, by J. Brudnicki. He has been critical about the differentiation present in the act of law between the protection of monuments and preservation of them. He noticed that the concept of preservation of monuments is differently understood by public authorities and differently by the site's holder. Besides, these notions are broad and ambiguous, hence difficult in interpretation. The author has also pointed to the problem of uneven involvement of the state in the process of preservation of national heritage which results in relocating the responsibility to the sites' owners and limiting the state's role to supervisory activities only. In his deliberation the author does not refer to any specific examples or garden art

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<sup>7</sup> Journal of Laws of 2021, item 710 as amended [hereinafter: MPP].

monuments [Brudnicki 2014, 49–53]. Other doubts as to the interpretation of the act of law about the protection of monuments and preservation of them are mentioned by S. Kowalska. The author draws our attention, *inter alia*, to the ambiguities, within the binding act of law, in requirements which have to be met by a building or site to be qualified as a monument. Although it is true that in Article 3(1) MPP the legislator clearly specifies that a monument is an immovable or movable object which is characterised by historic, artistic or scientific value but does not provide precise criteria for such evaluation or does not attribute a decisive feature to any of these values. Besides this, the legislator introduces the possibility of using other, not mentioned values as a basis to recognise an object as a monument, which makes this regulation even more ambiguous. Unclear is also the section in which it is declared that qualifying an object as a monument is carried out on the basis of “national welfare” as the legislator does not specify the criteria or principles to be applied in order to recognise the interest of national welfare [Kowalska 2007, 100]. The evaluation of binding legal regulations with regard to preservation of monuments as referred to previous acts of law has also been carried out by J. Sługocki. He also notices the problem of terminology as regards the notions “protection” and “preservation” which are present in the binding act of law. What is important from the perspective of preservation of historic garden compositions, the author points to the flawed method of legal protection of the surroundings of an immovable object that has been written in the act of law. The author stresses that although the act of law about monument protection and preservation introduces the concept of a monument’s surroundings and orders to take it into consideration when entering a monument in a register, in practice the requirement is rarely enforced which leads to marginalising the surroundings of a monument [Sługocki 2020b, 254]. It is also confirmed by D. Sikora who proves that not considering the surroundings of historic garden and park complexes in registers is one of the causes of their degradation in Poland [Sikora 2014, 268–69].

Spatial protection of historic garden complexes was taken into account in the binding act of law about the protection and preservation of monuments. In accordance with Article 20 MPP plans and changes to the spatial development plan of a province as well as to a local spatial development plan are subject to approval of the province conservator of monuments as regards land development and land use. It is a significant regulation as it allows to preserve the values of historic green areas. In the study of determinants and tendencies in spatial development as well as in local spatial development plans the protection covers both the immovable historic objects together with their surroundings that have been recorded in the register and the immovable historic objects that are recorded in the parish register of monuments (Article 19(1)(1–2) MPP). Until parish registers were created, in the study of determinants and tendencies

in spatial development of a parish council and in its spatial development plan the elements that are taken into consideration are immovable objects that have been recorded the register, plans of preservation of cultural parks as well as other immovable monuments pointed at by province conservator of monuments (Article 145 MPP). Also, in documents related to investors' activities (such as a decision about a location of an investment of public use, decision about spatial development conditions, decision about building a road, railway or a public airport) the protection of immovable monuments and their surroundings is taken into account (Article 19(1a) MPP). Yet, one should notice that if a monument gets damaged, it may be crossed off the register (Article 13(1) MPP). J. Sługocki points out that crossing a monument off the register takes place when, as a result of damage, the object lost its historic, artistic or scientific value or when it is dictated by new scientific research which challenges previous decision about the entry [Sługocki 2020b, 252–53]. However, a question arises what can be treated as damage of a historic garden or park? On the other hand, can the presence of a tree stand be the only proof of park origin of an object without preserved spatial or road structure?

Another legal aspect, which considers the preservation of cultural heritage and monuments in the context of spatial development plans, is the act on spatial development dated 27 March 2003<sup>8</sup> (Article 1(2)(4) SD). As it has been written above, the condition of cultural heritage and monuments is one of the elements that the study of determinants and tendencies in spatial development of a parish should take into account (Article 10(1)(4) SD). This document defines, *inter alia*, areas and principles of cultural heritage and monuments preservation as well as of achievements of contemporary culture (Article 10(2)(4) SD), and all decisions that regard these issues require an opinion of a competent province conservator (Article 11(5c) SD). Regulations contained in the study, although they are not any local law (Article 9(5) SD), have to be consistent with the decisions of a local spatial development plan which defines the principles of protection of cultural heritage and monuments including cultural landscapes and achievements of contemporary culture (Article 15(1)(4) SD). What is interesting, the above-cited act of law does not mention the obligation of establishing conservator's protection zones for immovable monuments in the study of determinants and tendencies in spatial development of a parish or the local spatial development plan although the act of law about monument protection and preservation provides for such possibility in Article 19(3) SD. In none of the above-mentioned acts of law, nor in the currently binding regulations there is no definition as to the types of conservator's protection zones or details about how they should be established.<sup>9</sup> Despite the lack

<sup>8</sup> Journal of Laws of 2021, item 741 as amended [hereinafter: SD].

<sup>9</sup> Decree of the Minister of Infrastructure of 28 April 2004 on the study of land use conditions and directions, Journal of Laws No. 118, item 1233; decree of the Minister of Infrastructure of

of precise legal regulations with this respect, the National Heritage Board of Poland postulates the justifiability or even necessity of establishing conservator's protection zones as a suitable form of immovable monuments protection, historic park complexes included. Establishing the conservator's protection zones should take place in the study of determinants and tendencies in spatial development of parishes as based on the study of cultural landscape of a parish. In conservator's motions to local development plans the zones should be provided with details, i.e. should include principles of protection such as orders and prohibitions obligatory in a particular zone [Welc–Jędrzejewska, Kulesza–Szerniewicz, Makowska, et al. 2009, 16–17]. K. Ogrodnik adds that it is thanks to the possibility of establishing conservator's protection zones the local spatial development plans become independent legal forms of monument protection, especially for objects that have not been recorded in the register of monuments and are not a part of a cultural park [Ogrodnik 2013, 20].

Cited above J. Sługocki points to yet another legal problem regarding the protection and preservation of monuments, that is the imprecise legal situation of local programmes of monument preservation. In accordance with the binding act of law about the protection and preservation of monuments as well as the decision of the Province Administrative Court in Gdańsk dated 17 July 2019 the authorities of provinces, counties and parishes are supposed to prepare programmes of monument preservation. In accordance with the Supreme Chamber of Audit report of 2014 although it was made an obligatory requirement only half of the parishes launched them. Besides this, although this document is mentioned in the act of law as a legal obligation of local self-government institutions by administrative courts' verdicts it is not an act of local law because "it may not constitute an independent basis for court adjudication with reference to bodies from outside the public administration of monuments." It is a strategic document which helps to define the scope of activities in the sphere of monument protection. It also has influence on the spatial development of parishes and counties as the regulations included in the programme should be taken into consideration in the study of determinants and tendencies in spatial development as well as in local spatial development plans. The author also notices problems of local programmes of monument preservation with regard to the term preservation and legislator's imprecision about it. Following the act of law the preservation is provided by an owner of a historic object, not by local self-government bodies which are supposed to provide preservation, i.e. intervention that has source in their authority. Another problem of local programmes of monument preservation is exceeding their entitlements beyond the statutory term historic site often using the concept of "protection of cultural heritage." This way the programmes include

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26 August 2003 on the required scope of the project of local project of the study of land use conditions and directions, Journal of Laws No. 164, item 1587.

in their scope not only immovable, movable and archaeological objects but also not mentioned in the act of law elements of non-material heritage, and as a result exceed the statutory aims of the programmes [Sługocki 2020a, 49–51].

## 2. PROTECTION OF HISTORIC GARDEN COMPLEXES IN PRACTICE

Following Article 25(1) MPP allocating a historic object recorded in the register to functional purposes requires the conservator's documentation, plan of preservation works and a programme of allocation of an immovable object together with its surroundings. What is more important, under Article 36(1) (1) MPP running preservation or restoration works at an object recorded in the register, including removing a tree or bush from the site or its part that is a park, garden or other form of designed greenery, requires the permission of a province conservator of monuments. However, under Article 36(1)(11) MPP such permission is also required when undertaking other activities which might lead to a substantial injury or changing the looks of a historic object recorded in the register, with the exclusion of activities consisting in removing trees or bushes from the site or its part that is a park, garden or other form of designed greenery not recorded in the register. Does it mean that trees that appeared during spatial transformations of a historic garden or park but are not included in the map extract of an area protected as a monument may be removed? Should shaping historic garden complexes be carried out through restoring the original form of a garden or should we face the challenges contained in art. 16 of the Florence Charter which suggests that preservation activities one ought to take into consideration the evolution of a garden.<sup>10</sup>

Readers' attention should also be drawn to the fact that following the regulations of the act of law dated 23 July 2003 about the protection and preservation of monuments works related to greenery in sites of historic character may be carried out by persons with suitable qualifications. As we read in Article 37b(1) MPP the preservation and restoration works that are run at monuments which are parks recorded in the register are to be supervised by a person who completed university studies of second cycle or uniform master's degree university studies whose curriculum includes appropriate classes providing necessary knowledge and who, after commencing the second cycle or after crediting sixth term of uniform studies took part in preservation works for a period of at least 9 months or was employed at such works in a museum. Whereas, technical jobs related to managing green areas may be carried out independently by a person with technical high school education and professional

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<sup>10</sup> Historic Gardens IFLA-ICOMOS. The Florence Charter. The website of the National Institute of Cultural Heritage, <https://www.nid.pl/upload/iblock/9b1/9b13bc019894c7975620590ae56f9641.pdf> [accessed: 05.11.2021].

qualifications title or high school vocational education and professional title in professions related to caring for greenery or for a period of at least 9 months or was employed at such works in a museum (Article 37b(3) MPP). It seems that describing the necessary education so broadly does not guarantee providing conscientious preservation of historic vegetation.

### 3. PRESERVATION OF HISTORIC PARKS AND GARDENS – SPATIAL CONTEXT

Following para. 3(1) of Minister of Culture and National Heritage Directive dated 26 May 2011 about running the register of monuments, national, provincial and parish registers of monuments as well as the register of objects of historic value that have been stolen or illegally carried away abroad the register of monuments is run in the form of registers that include:<sup>11</sup> 1) register No.; 2) register entry; 3) object of protection; 4) scope of protection; 5) location of object of protection; 6) No. of land register – for immovable and archaeological objects; 7) No. of cadastre – for immovable and archaeological objects; 8) monument's owner; 9) monument's holder; 10) crossing of a register; 11) comments.

Every monument that has been recorded in the register should also have a detailed information card that in accordance with para 9(1) of the directive should include the following: 1) name; 2) time of creation; 3) place-name; 4) address; 5) administrative allocation; 6) geographic coordinates; 7) former place-names; 8) owner and their address; 9) user and their address; 10) forms of protection; 11) graphic material; 12) its history; 13) description; 14) cubic capacity; 15) usable area; 16) original purpose; 17) current use; 18) physical condition; 19) existing hazards and conservator's demands; 20) archival documentation; 21) comments; 22) information about inspections and changes; 23) bibliography; 24) information card details; 25) iconographic sources and where they are kept; 26) annexes.

Similarly, a monument that has not been recorded in the register has a detailed information card that in accordance with para. 10(1) includes the following: 1) name; 2) time of creation; 3) place-name; 4) address; 5) administrative allocation; 6) geographic coordinates; 7) current use; 8) physical condition; 9) graphic material; 10) existing hazards and conservator's demands; 11) information about inspections and changes; 12) information card details.

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<sup>11</sup> Full and uniform text in accordance with Journal of Laws of 2021, item 56 Minister of Culture, National Heritage and Sport announcement dated 20 November 2020 about announcing uniform text of Minister of Culture and National Heritage Directive about running the register of monuments, national, provincial and parish registers of monuments as well as the register of objects of historic value that have been stolen or illegally carried away abroad.

The directive in detail defines the obligatory pieces of information that are required as documentation of an immovable monument. However, in both cases there is no straightforward indication that a description of vegetation that makes up the park, historic garden or other form of designed green area should be included. J. Sługocki also points to the excessive size of the register of monuments which is regulated by Minister of Culture and National Heritage Directive dated 26 May 2011 about running the register of monuments, national, provincial and parish registers of monuments as well as the register of objects of historic value that have been stolen or illegally carried away abroad. In his opinion the register that is currently in use is massive in character because it includes objects of regional importance, which leads to even greater centralisation of the protection of monuments in Poland [Sługocki 2020b, 253]. Also, architect and conservator M. Gawlicki as well as the cited already J. Brudnicki point to numerous imperfections of the register of monuments as the basic form of the protection of historic objects. In their opinion the appropriate protection of a historic object depends not so much on the very entry in the register but on its factual content. The mistakes most often found in the register include: wrongly defined scope of protection and imprecisely indicated object. Apart from this, a significant oversight is the absence of justification for a decision as well as too vague and laconic information about the object's value [Gawlicki 2008, 63–64; Brudnicki 2011, 41]. As noted by D. Sikora, landscape architect and employee of the National Heritage Board of Poland the same problems refer to historic parks and gardens which have been recorded in the register of monuments, especially before 1990. Among other oversights most often found by the author there are: absence of graphic material with the territorial scope of a historic object and lack of precise description of protected elements that confirm the value of a historic garden or park complex. The author also draws our attention to the need to verify the decisions about entering an object in the register, which especially refers to the objects that were recorded in the seventies and eighties of the 20th century [Sikora 2010, 16]. The acceptable legal means which allows to explain the “ambiguous” and “vague” entries is verification of the decisions issued on the basis of Article 113(2) of the Code of Administrative Procedure dated 14 June 1960<sup>12</sup> [Brudnicki 2011, 43].

The legal problems that refer to monuments of garden art, especially those of manor houses and palaces are noticed by J. Sługocki. He declares that the legal regulations that are currently in use with reference to such monuments are insufficient and do not provide them with suitable protection. The biggest hazards include provincial conservators' authority, received by acts of law, to issue permits to carry out partitioning of an immovable object that has been

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<sup>12</sup> Journal of Laws of 2021, item 735 as amended.

recorded in the register on the basis of surveyor's divisions rather than those referring to ownership. This means that a historic park divided into a number of plots with a surveyor's decision is not treated as a whole. As a result, those particular plots that comprise a single object may come into the hands of various entities leading to the destruction of integrity of historic substance [Sługocki 2014, 229–35]. This serious legal hazard is also perceived by representatives of scholarly circles that deal with the preservation of historic garden complexes who call for working out legal fundamentals aiming at stopping harmful proprietary divisions [Siewniak and Sikora 2010, 37]. As rightly noticed by J. Sługocki, the binding act of law about the protection and preservation of monuments provides for the requirement of receiving a permission from a provincial conservator of monuments to carry out a division of an immovable historic object that has been recorded in the register (Article 36(1) (8) MPP) but it is late by at least 20 years. The results of incorrect proprietary divisions can be seen today in most manor house parks [Sługocki 2014, 228].

Landscape architects B. Fortuna–Antoszkiewicz and J. Łukaszkiwicz noticed another legal problem with regard to gardens and historic parks, namely applying different forms of protection to a single historic object, which is the result of separate legal acts. The two examples are garden complexes in Natolin and in Ursynów where apart from the preservation of their historic substance also their unique natural value is protected, and this is under the act of law about the protection of nature of 16 April 2004. Overlapping of so different forms of protection results in arising numerous conflicts both of authority and of caring for tree stands [Fortuna–Antoszkiewicz and Łukaszkiwicz 2015, 36]. The problem of legal collisions in the protection of natural, historic and cultural values due to the existing differences of national welfare in historic parks has also been noticed by lawyers. K. Gruszecki notes that the currently binding legal regulations hinder carrying out common activities of conservator services and institutions created to protect nature. The author suggests straight out that for the sake of a historic object and its natural value the provincial conservators and regional institutions for the protection of nature should undertake co-operation based on mutual agreements following principles that result from Article 106 Code of Administrative Procedure.<sup>13</sup> The other underlined problem is the conflict of public welfare since in order to preserve its value a historic garden complex requires taking such radical actions like felling trees, which stands in contradiction to the protection of nature [Gruszecki 2010, 51]. According to K. Chrabelski and G. Ciołek the elements of vegetation in a historic garden build up its harmonious structure but do not decide about its exceptional value as an architectonic and spatial complex.

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<sup>13</sup> If a regulation of the law makes a decision conditional on a stand of another organ (opinion or permission or issuing a statement in a different form) then such a decision is to be made after a stand has been adopted.

Although trees and bushes contribute very much to perceiving the tier structure of a garden complex, they should not hamper its reconstruction. On the other hand, some tree specimens in historic parks should be protected due to their natural values rather than the spatial ones because with their size they support a proper build of a garden before young trees grow up [Chrabelski and Ciołek 1949, 15–19]. It is also worth noting that due to the global climate warming trees of considerable sizes play an unusually important role for the environment and for the climate. As a result, correctly defining and preserving the original composition of a historic garden is one of the most important stages in the process of its restoration. It is also worth explaining and remembering that in the meaning of Article 4 of the Florence Charter a historic garden composition is also comprised of ‘groups of vegetation of various types’, thus they constitute a significant element of a monument of garden art which ought to be subject to protection [Stachańczyk 2010, 45].

The above-mentioned survey of literature on the subject of the protection of monuments, gardens and historic parks has many threads and finds a response from various circles. It reveals that both lawyers, conservators, art historians and people who deal with the preservation and restoration of historic garden complexes place greatest emphasis on the protection of garden complexes from the point of view of space and composition. They tend to pay less attention to the preservation of natural substance which is the main material that constitutes a garden or park. The problems that have been named above, such as: lack of suitable protection of the natural substance, lack of precise description how the surroundings of an immovable monument should be defined as well as the conflict of authority when there exist more than one form of legal protection may have great importance for carrying out the preservation activities in historic garden complexes. The problem gets complicated even more by the change of the act of law about the protection of nature which makes it easier to fell trees in a property when it is not related to business activity. Such an area may constitute a direct surroundings of a monument but if it is not included in the register of monuments, it is not the provincial conservator who is entitled to issue a permission for cuttings (Article 83a(1) MPP).

## CONCLUSIONS

The analysis of past and present legal acts about the protection of monuments in Poland unambiguously shows how important such sites are for the development and cultural continuity of the nation. Since the first days of regaining independence in 1918 the authorities of the Republic of Poland were strongly motivated to preserve the cultural and historic heritage in its best condition, to protect it against devastation and to keep it for the future generations by introducing appropriate legal regulations. The objects that were covered by

protection were also monuments of garden art. Yet, it is worth noticing that with time and with the legal changes the scope of protection in this sphere was generalised. Both in the Decree of Regency Council of 1918 and in the President's Directive of 1928 the protection not only covered decorative gardens but also ancient trees and alleys. In the binding act of law of 2003 instead of trees and alleys we find "forms of designed greenery." Another problem is the fact that the protection of historic vegetation which contributes to the structure of historic parks comes from two separate legal acts and is subject to decisions of two different supervisory bodies. Although it ensures a seemingly higher chance of protection of historic substance, at the same time it leads to conflicts of authority and different purposes of protection that result from different public interests. The analysis of existing legal regulations and survey of literature points to imprecise and ambiguous interpretation of current legal acts. It refers, *inter alia*, to a clear distinction between two legal concepts, protection and preservation. Debatable is also the protection of monuments on the level of local self-government as the county and parish programmes of monument protection, although obligatory by law, are not treated as truly protective local acts of law but as auxiliary ones only. There is also not enough precision as regards the protection of surroundings of historic immovable objects, especially as regards the principles of setting up zones of conservator's protection. Another issue is the lack of precise instructions and legal regulations as to legal regulations pertaining to documenting the historic park tree stands. In the Minister of Culture and National Heritage Directive dated 26 May 2011 about running the register of monuments, national, provincial and parish registers of monuments as well as the register of objects of historic value that have been stolen or illegally carried away abroad there are no regulations regarding trees or vegetation around historic objects in general. Under binding legal regulations, persons that prepare documents pertaining to the preservation of monuments focus first of all on the description of spatial structure of parks and adopt a vague approach to their natural substance. There are also doubts as to imposed by law authority requirements to be met by persons supposed to undertake preservation of a historic park object. In spite of all the oversights and legal ambiguities, works over developing the legal system of monument protection in Poland are worth continuing. It is particularly important for the future that legislators take into consideration greater substantive participation of conservators' and scientific circles in the process of monument preservation, the garden art in particular. In the context of on-going changes in the environment greater attention should be paid to the natural values of historic objects although it is not considered in the act of law about the protection and preservation of monuments.

## REFERENCES

- Brudnicki, Jacek. 2011. "Problem wyjaśniania i prostowania treści decyzji o wpisie do rejestru zabytków w kontekście wad i uchybień tkwiących w tym rejestrze." *Kurier Konserwatorski* 10:40–49.
- Brudnicki, Jacek. 2014. "Prawna opieka nad zabytkami – wybrane aspekty." *Ochrona Zabytków* 2:49–72.
- Chrabelski, Kazimierz, and Gerard Ciołek. 1949. "Uwagi o potrzebie i metodzie odbudowy zabytkowych ogrodów." *Ochrona Zabytków* 2/1 (5):15–19.
- Fortuna–Antoszkiewicz, Beata, and Jan Łukaszewicz. 2015. "Konflikty różnych form prawnej ochrony parków zabytkowych." In *Dziedzictwo zagrożone, ogrody historyczne w Polsce*, edited by Katarzyna Hodor, and Katarzyna Łakomy, 25–43. Kraków: Politechnika Krakowska.
- Furmanik, Barbara. 2016. "Historyczne parki i ogrody na Liście światowego dziedzictwa UNESCO." *Ochrona Zabytków* 1:259–301.
- Gawlicki, Marcin. 2008. "Rejestr zabytków w praktyce ochrony konserwatorskiej." *Ochrona Zabytków* 56/2 (241):55–82.
- Gruszecki, Krzysztof. 2010. "Ochrona i Konserwacja parków zabytkowych a prawna ochrona przyrody. Właściwości wojewódzkiego konserwatora zabytków w sprawie zezwoleń na usunięcie drzew i krzewów." *Kurier Konserwatorski* 7:51–56.
- Kowalska, Samanta. 2007. "Prawna ochrona dóbr kultury. Wybrane regulacje oraz proponowane zmiany." *Studia Prawnicze. Rozprawy i materiały* 1:97–111.
- Mąciak, Hubert. 2017. "Ochrona zabytków w Lublinie – historia i teraźniejszość." *Rocznik Lubelski* 43:327–48.
- Mitkowska, Anna. 2015. "Zagrożenia ogrodów zabytkowych wynikające z restrykcyjnych postaw służb konserwatorskich." In *Dziedzictwo zagrożone, ogrody historyczne w Polsce*, edited by Katarzyna Hodor, and Katarzyna Łakomy, 5–23. Kraków: Politechnika Krakowska.
- Ogrodnik, Karolina. 2013. "Ochrona dziedzictwa kulturowego w miejscowym planie zagospodarowania przestrzennego." *Architecturae et Artibus* 2:13–24.
- Siewniak, Marek, and Dorota Sikora. 2010. "Seminarium «Parki zabytkowe- ochrona i konserwacja» – wnioski poseminaryjne." *Kurier Konserwatorski* 8:37–40.
- Sikora, Dorota. 2010. "Parki historyczne w rejestrze zabytków – ustalanie przedmiotu i zakresu ochrony, problemy weryfikacji rejestru, granic ochrony konserwatorskiej." *Kurier Konserwatorski* 7:11–16.
- Sikora, Dorota. 2014. "The state of preservation of historic parks and gardens and the reason for their degradation. Stan zachowania i przyczyny degradacji parków i ogrodów zabytkowych w Polsce." *Czasopismo Techniczne* 5-A:255–70.
- Sikora, Dorota. 2016. "Zarys historii ochrony i konserwacji zabytków sztuki ogrodowej w Polsce." *Ochrona Zabytków* 69 (1):105–42.
- Sługocki, Janusz. 2014. "Problemy prawne ochrony zabytkowych parków dworsko-pałacowych." In *Dobra chronione w prawie administracyjnym*, edited by Zofia Duniewska, 225–37. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.
- Sługocki, Janusz. 2020a. "Charakter prawny i praktyka sporządzania lokalnych programów opieki nad zabytkami." *Forum Prawnicze* 5 (61):41–54.
- Sługocki, Janusz. 2020b. "Uwagi o międzywojennym prawie opieki nad zabytkami a model współczesny." *Acta Universitatis Wratislaviensis* No. 4001: *Prawo* 331:245–60.
- Stachančzyk, Renata. 2010. "Problematyka standardów w postępowaniu i dokumentacji konserwatorskiej na potrzeby rewitalizacji zabytkowych parków i ogrodów." *Kurier Konserwatorski* 7:43–50.

- Welc–Jędrzejewska, Jolanta, Ewa Kulesza–Szerniewicz, Beata Makowska, et al. 2009. “Wnio-  
ski w zakresie ochrony dziedzictwa kulturowego i zabytków do projektów studiów uwa-  
runkowań i kierunków zagospodarowania przestrzennego gmin i projektów miejscowych  
planów zagospodarowania przestrzennego. Propozycja formy i zapisu wniosków. Stan  
prawny na dzień 30 sierpnia 2009.” *Kurier Konserwatorski* 4:5–41.
- Wildner–Nurek, Iwona. 2007. “Z dziejów ewidencjonowania zabytkowych parków i ogrodów  
w Polsce.” *Ochrona Zabytków* 3:87–105.
- Zachariasz, Agata. 2008. “Zabytkowe ogrody – problemy rewaloryzacji, utrzymania i zarzą-  
dzania w świetle zaleceń Karty Florenckiej.” *Prace Komisji Krajobrazu Kulturowego*  
10:150–61.
- Zachariasz, Agata. 2011. “O historii, cytatach z przeszłości i nowoczesnych krajobrazach.  
Nowe w starym i nowe – w ogrodach i parkach historycznych i współczesnych.” *Architek-  
tura Krajobrazu* 4:4–17.