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**CONTRACTS IN MUSEUM OPERATIONS. PUBLIC-LAW ASPECTS**

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**Paulina Gwoździewicz-Matan, *Umowy w działalności muzeów. Zagadnienia publicznoprawne*** [Contracts in Museum Operations. Public-law Aspects]**, (Gdańsk–Sopot: Wydawnictwo Uniwersytetu Gdańskiego, 2022), pp. 135**

In 2022, the Wydawnictwo Uniwersytetu Gdańskiego published *Umowy w działalności muzeów. Zagadnienia publicznoprawne* [Contracts in Museum Operations. Public-law Aspects] by Paulina Gwoździewicz-Matan. It is a supplement to the book *Umowy w działalności muzeów. Prawo cywilne. Prawo autorskie* [Contracts in Museum Operations. Civil Law. Copyright] next to Iwona Gredka-Ligarska and Prof. Wojciech W. Kowalski authored by Paulina Gwoździewicz-Matan released by the same publisher in 2019.

The collection of studies of various aspects of museum-related laws has been systematically growing in the recent years, and this very domain has already been given several comprehensive commentaries. Importantly, however, some studies dedicated to museum-related issues (or more broadly, to legal aspects of heritage preservation) represent a substantially theoretical approach.

In this case the situation is different. A researcher at the Chair of Civil Law and International Private Law at the Faculty of Law and Administration of the University of Silesia, the Author also works as a civil advisor. This combination of an academic and practical approach to the topic is visible in the discussed study, adding to its worth.

Paulina Gwoździewicz-Matan observes in the introduction that *the issues of contracts concluded by museums are not closed exclusively within the sphere of private law regulations* (p. 11), following which she leads the reader through subsequent areas whose regulations have an impact on the content and fulfillment of contracts.

Specificity of public law is such that as a rule it is of imperative character, which implies that it has a binding quality within a given matter even when it has not been specified by the parties in the contract or has been regulated differently. It is all the more important for museum staff dealing with contracts (museum curators and lawyers responsible for the legal aspect of museum operations) to be aware what areas public-law regulations have an impact on.

The Author points to the fact that she does not deal with the whole range of applications of public law to museum operations, but *only with some selected issues connected with the specificity of the operations run by museums focused on amassing and preserving collections* (pp. 12-13).

Chapter 1 describes the legal status of museums resulting from the provisions of the following: Act of 25 October 1991 on Organizing and Running Cultural Activity, Act on Museums of 21 November 1996, Act of 27 August 2009 on Public Finance, as well as various regulations related to business activity.

One remark on this particular point: the Author mentions in her study the case of museums with no legal personality, namely those defined in Art. 6.6 of the Act on Museums which operate as sections of public institutions. They form an interesting, albeit not a heterogenous group composed of several entities including e.g., museums operating within state cultural institutions, such as the Fryderyk Chopin Museum which forms part of The Fryderyk Chopin Institute, or being part of public universities, such as the Museum of the Jagiellonian University. An important section of the discussed public-law regulations shall apply to that kind of museums as it does to museums that are cultural institutions, which, in my opinion, has not been clearly pointed to in the study.

In the chapters to follow Gwoździewicz-Matan analyses the impact of subsequent regulations of public law on the contracts concluded by museums, beginning with the basic act, namely the Act on Museums.

Worth underlying here is a very important practical aspect of the remarks concerning Art. 23 of the Act on Museums (providing the requirement to obtain consent of the minister responsible for culture and national heritage in order to carry out exchange, sale, or donation of museum objects that needs to be granted to state and local government museums) in the context which at first sight may seem surprising, namely of insuring a collection. What is meant here is the Recovered Property Clause often to be found in the General Insurance Conditions, in practice implying that following the pay out of the loss settlement amount the ownership of the insured object passes onto the insurer (in the event of its recovery). Obviously, it is in the interest of museums not to sign insurance contracts including such a Clause.

Further on, in the context of contracts concluded by museums, the Author analyses the Public Procurement Law of 11 September 2019 as well as tax regulations (Act of 15 February 1992 on Corporate Income Tax, Act of 26 July 1991 on Personal Income Tax, Act of 11 March 2004 on Tax on Goods and Services, Act of 9 September 2000 on Tax on Civil-law Activities, and the Act of 28 July 1983 on Tax on Inheritance and Donations). What I find important is the reference to Art.4.1.9c of the Act on Tax on Inheritance and Donations stipulating this tax exemption in the event of inheritance or acquisition through a specific bequest of movable heritage items and collections entered into the register of listed historic pieces, as well as heritage pieces rented to a museum for study or display for a period not shorter than two years. I have a feeling that this regulation is not widely known, and it may clearly encourage physical persons to place deposits with museums.

What leaves the reader slightly unsatisfied is the merely mentioned application of the so-called VAT pre-coefficient applied by museums, namely the proportion of the deduction of VAT calculated on the expenses incurred by museum operations: both VAT taxable and Vat non-taxable. The topic is widely present in the judicature of administrative courts, causing numerous practical problems in museum operations.

What follows in the next chapters is the discussion of the application of the provisions of the Act of 10 May 2018 on the Security of Personal Data and regulations concerning the disclosure of contracts concluded by the museums which are public sector units in the register run by the Minister of Finance (in compliance with Art. 34a of the Act on Public Finance meant to enter into force on 1 January 2024, taking into account the exceptions specified in the Act on Organizing and Running Cultural Activity. It would be recommendable for other editions of the discussed publication to supplement this aspect with pointing to other grounds allowing to refuse to share information in compliance with the stipulations of the Act of 6 September 2001 on Access to Public Information, particularly using judicature.

To conclude, in order to supplement the discussed publication, let me point to one regulation which has not been included in it. I mean here Art. 45 of the Act of 25 May 2017 on the Restitution of National Cultural Property stipulating that legal activities covering the transfer of ownership or the charge of Poland’s national cultural assets belonging to a public collection shall be conducted in writing with authenticated date. It is a regulation of public law which, in this respect, does not have an impact on the contract’s content, but on its format, while at the same time being intricately connected with the trade in cultural assets participated in by museums.

This is not a platform for a longer discourse on the topic [I can suggest consulting my paper ‘Regulations with Respect to Conduct of Civil Law Transactions in the Act on the Restitution of Polish Cultural Objects and their Application to Museums’ Operations’ published in *Muzealnictwo*, 62 (2021)]. Let me emphasize, however, that the interpretation of the Act is challenging (with the concepts of ‘charges’ and ‘public collections’ particularly arising doubts), while sanctions for violating the form resulting from the regulation can be severe (invalidity of the contract).

A valuable complement to the study can be found in a set of contract templates contained in an Annex; they actually translate into the summing up of the conclusions presented in the study, also those resulting from the study *Contracts in Museum Operations. Civil Law. Copyright*. The Annex contains a comprehensive set of contract templates most frequently used by museums settling: sale, donation, deposit, loan of an object for a display, insurance, and performing conservation. Importantly, the presented contracts take into account the copyright aspect, often passed over in museum practice.

As a lawyer dealing on a daily basis with the current handling of museums’ legal operations I am of the opinion that the contract templates prepared by the Author are of high quality.

The range of topics contained in the reviewed study has not as yet been comprehensively discussed in legal literature. Thus the Author’s contribution with a clear and precise vision on the matter is all the more worth appreciation.

The discussed study is a well-prepared publication which should be found in the book collection of every individual dealing with the legal aspects of museum operations.

**Abstract**: In 2022, the Wydawnictwo Uniwersytetu Gdańskiego published *Umowy w działalności muzeów. Zagadnienia publicznoprawne* [Contracts in Museum Operations. Public-law Aspects] by Paulina Gwoździewicz-Matan. It is a supplement to the book by Paulina Gwoździewicz-Matan, Iwona Gredka-Ligarska, and Prof. Wojciech W. Kowalski *Umowy w działalności muzeów. Prawo cywilne. Prawo autorskie* [Contracts in Museum Operations. Civil Law. Copyright]. The study’s Author does not deal with the application of the corpus of public law to museum operations, but with the selected issues related to the specificity of museums’ activity aimed at amassing and protecting collections. The first sections of the study tackle the legal status of museums and the impact of subsequent regulations of public law on the contracts concluded by museums, beginning with the basic act, namely the Act on Museums. Subsequently, the Author proceeds to analysing the Act of 11 September 2019 on Public Procurement Law as well as fiscal regulations in the context of such contracts. In the following chapters, the application of the provisions of the Act on the Security of Personal Data and regulations concerning the disclosure of contracts by the museums which are public sector units are discussed. A valuable complement to the study can be found in a set of contract templates contained in an Annex; they actually translate into the summing up of the conclusions presented in the study and also resulting from the study *Contracts in Museum Operations. Civil Law. Copyright*. The Annex contains the set of contract templates most frequently used by museums. The discussed study should be found in the book collection of every individual dealing with the legal aspects of museum operations.

**Keywords**: public law, public museums, Act on Museums, public procurement, taxes, contracts in museum operations.

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