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## SECURITY IN THE AREA OF CULTURE AS VIEWED BY THE EUROPEAN UNION

The issue of security both in the international (Czaputowicz, 2012) and domestic aspect has become particularly important in the last 15 years. As a matter of fact, identity of the science of security has become a subject of disputes and controversies (Zięba, 2012: 17; Aleksandrowicz, 2014: 20; Koziej, Brzozowski, 2015: 7–19; Balcerowicz, Ziarko, 2007: 40–50). Scientific literature has devoted much attention to various types of security, namely: political (Balcerowicz, 2004: 71; Kitler, 2004: 71), military (Tilly, 2003; Herring, 2007: 130; Słomczyńska, 2007), economic and financial (Włoch, 2009; Książopolski, 2004; Stachowiak, 1994: 189), one related to electric power distribution (Chmielewski, 2009; Kaczmarek, 2010; Mickiewicz, Sokołowska, 2010; Gawłowski, Listowska-Gawłowska, Piecuch, 2010; Promińska, 2012; Nowacki, 2010), IT and information (Kosiński, 2015; Podraza, Potakowski, Wiak, 2013; Liderman, 2012; Liedel, 2005; Bączek, 2005), food, welfare and social (Zawadzki, 2009; Waeber, 1993: 23), humanitarian (Zajadło, 2005; Rudkowski, 2006; Jagusiak, 2015), ecological (Pietraś, 2000; Książopolski, 2009: 173–192; Pietraś, 1996), ethnic (Lizak, 1997: 117) and ideological (Aleksandrowicz, 2015; Zajac, 2009). Relatively little amount of thought, however, has been given to the issue of security in the area of culture (Czaja, 2008; Ziętek, 2011; Ziętek, 2015). Yet, it must be noted that the policy of the European Union in the area of culture (Waluch, 2007), international cultural relations (Ziętek, 2010; Mizioł, 2004), influence of globalisation on cultural security (Michałowska, 1997; Mazurkiewicz, 2001), and legal aspects of cultural security (Przyborowska-Klimczak, 2010) received some attention.

The European Communities, and the Union afterwards, have for a long time failed to give attention to either protection of the European cultural heritage or the issue of cultural policy, thus leaving this field more or less consciously to the system of the Council of Europe. It was only in the Treaty establishing the European Community<sup>1</sup> (Art. 167 of the *Treaty on the Functioning of the European Union*) that, as stated in section 1: “The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.” Cultural policy of the European Communities, and currently the Union, treats culture as an area pertaining to the realm of national sovereignty, striving neither to obtain cultural standardisation nor to introduce a law in this field that would be common to Union states. However, its objective is to initiate activities in bringing member states’ cultures to flourish, while accepting their

<sup>1</sup> Polish text in Dz. U. 2004, No. 90, Item 864/2 as amended.

national and regional diversity. Emphasising common cultural heritage, however, seems to be an undertaking “with room to grow into” considering that differences in this respect between individual regions of Europe are extremely deep. It’s interesting and striking that the Treaty does not intend to define the notion of “culture”, and leaves this matter, as it were, to the doctrine. Against this backdrop though different controversies may arise, given the fact that the notion of culture is not at all evident.

With a lack of discipline in terminology characteristic of Union documents, in some of their texts appear terms concerning the area of culture not defined in practice, such as: common cultural area, European cultural space, common cultural heritage. The problem whether the nature of these terms is synonymous or not seems to be open, although there are many reasons supporting a thesis that these are equivalent terms. Lack of a definition of culture allows one to only understand it in practice as “cultural heritage” or “culture of national minorities” that deserves to be protected, or possibly as “education and science”.<sup>2</sup> The preamble to the constitution of the Republic of Poland of 1997 mentions gratitude to the ancestors “for culture rooted in Christian heritage of the nation and universal human values”. Article 5 emphasises that beside independence and integrity of its territory “the Republic of Poland shall safeguard the national heritage” (Skrzydło, 2002: 17 et seq.; Banaszak, 2009: 6; Komarnicki, Komarnicki, 2008: 215–216). It seems that this term is most properly interpreted as provided for in the Final Act of the General Conference of UNESCO held on 26<sup>th</sup> July–6<sup>th</sup> August 1982 as commonality of spiritual aspects, material, intellectual and emotional aspects. Thus, this term encompasses not only art and literature, but also forms of life, value system, tradition, as well as denominations and religions.

It seems that the term “common heritage” will gradually replace any other designations (Mik, 1999; Doktorowicz, 2005; Sobczak, 2007).<sup>3</sup> A notion of “cultural heritage” are referred to in Art. 151(1) of TEC, and currently Art. 167 of TFEU was further clarified in Decision no. 2228/97 that covered both movable and immovable heritage, hence museums, collections, libraries, archives, including photographic, cinematographic and sound archives, as well as archaeological and architectonic heritage, as well as assemblages, and sites and cultural landscapes.<sup>4</sup>

<sup>2</sup> The preamble to the constitution of the Republic of Poland of 1997 mentions gratitude to the ancestors “for culture rooted in Christian heritage of the nation and universal human values”. Art. 5 emphasises that beside independence and integrity of its territory “the Republic of Poland shall safeguard the national heritage”.

<sup>3</sup> C. Mik rightly stresses that characteristic of the Treaty of Maastricht is a subsidiary philosophy which induces Community institutions, including the European Commission and the Court of Justice, to transfer the bulk of using and controlling observance of Community law to national bodies, and to limit the activity to inspiring, coordinating and ultimately controlling behaviours of states and individuals. Related to this is clearly a problem of shaping the European identity. In a traditional perspective, the essence of social group identity is nonetheless cultural bonds. Yet, culture has not been classified as one of the elements of European identity. This results explicitly from Treaty provisions (Art. 6 [F] § 1 of the Treaty on European Union – hereinafter TEC and Art. 151 of TEC).

<sup>4</sup> It’s worth noting that as provided for in Directive of the Council 93/7/EEC of 15<sup>th</sup> March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (O.J. EU 1993, L 74, Item 74 as amended.), “cultural object” for the purposes of this directive shall mean an object which is classified, before or after its unlawful removal from the territory of a Member State,

In commenting national and regional diversity as referred to in Article 167 of TFEU, legal literature points out that the cultural diversity of Europe is composed of: language, literature, theatre, visual arts, architecture, craft, cinema, and radio and television broadcasts (Siwek, 2009: 11–30). This count, however, seems not to be full as it misses reference to folk art, religious art and dresses, whereas visual art seems to be a too enigmatic and general term as it fails to sufficiently highlight that it encompasses images made using different techniques, stained glasses, bas-reliefs and products of artistic craft. Also, it is stressed that component parts of European diversity are on the one hand related to respective countries or regions, and on the other, they constitute a part of common European cultural heritage. What is not brought out sufficiently though is the relationships of regional culture with particular countries, because after all culture has developed within the confines and borders of European states, and its content was heavily influenced by language, particularly in the field of literature, theatre, cinema, radio and television broadcasts, and religion. The influence of religion on cultural contents in western literature has not been pointed to strongly enough, seemingly by making a wrong assumption about religious unity of the European civilisation, which was shaped around the Judeo-Christian or only Christian principles. Thereby, the difference between Catholicism and Protestantism in all its factions was not duly stressed, thus failing to see the impact of religious structures on the content of cultural messages. Another underestimated fact was that a considerable part of Eastern and Southern Europe remains within Orthodox culture, and what was virtually completely ignored was the influence of Islam, which is so important to Balkan societies, and which is meaningful in the Iberian Peninsula. To such a broader understanding of the term “culture” testifies the Final Act of the General Conference of UNESCO of 1982 referred to above.

Also, it appears that one cannot speak, as does the Treaty on the functioning of the European Union in Art. 167(1), “about the culture of Member States”, but about cultures of Member States. Speaking about the culture of Member States, what’s wrongly assumed is a cultural unity of individual states, whereas in practice there exists great cultural diversity within the states. The Union does not have, and will not be able to work out any time soon, a capability of harmonising provisions concerning the sphere of culture. But in practice it turns out feasible to include the cultural dimension in the Union policy of education, create the information society, support scientific research, particularly in the field of the humanities and social sciences (Wyrozumska, 2004: 907–921; Watson, 1992).

It must be remembered that the founding treaties of the European Communities concentrated on economic issues, thus treating culture as a non-economic area and therefore one remaining outside the scope of interest. Protection of culture recognised as a national value was within the scope left to the competence of Member States. Art. 30 of TEC expressly implies that the provisions of Arts. 28 and 39 do not impede applica-

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among the “national treasures possessing artistic, historic or archaeological value” under national legislation or administrative procedures within the meaning of Article 36 of the Treaty establishing the European Economic Community, or belongs to one of the categories listed in the Annex to said directive, or does not belong to one of these categories, but forms an integral part of public collections listed in the inventories of museums, archives or libraries’ conservation collections.

tion of bans or restrictions of import, export or transit justified among others by “protection of national cultural objects of artistic, historic or archaeological value.” Art. 30 of TEC was not a subject of the European Court of Justice judicature, but literature points out that imposing a complete ban on cultural objects import within the scope covered by the provision of Art. 30 of TEC is inadmissible (Miąsik, 2008: 653–654). The problem of protection of cultural objects in the legal system of the European Union is regulated by the provisions of secondary legislation. Among those, one must indicate in the first place Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State (ibid.: 654).<sup>5</sup> However, that Directive, harmonises neither the principles of protection of cultural objects nor their transactions, only a procedure of cooperation among Member States, and principles of returning cultural objects that left the territory of a Member State in violation of regulations which are valid there. Another thing that’s worth mentioning is Resolution 39/11/92 which concerns export of works of art outside the European Union.<sup>6</sup> This resolution imposes on customs bodies of Member States an obligation to take into account the interests of all the states (see: Niedźwiedź, 2000). A number of other normative acts from the legal area of the European Union concern the issue of protection of cultural heritage.

Despite Art. 151 of TEC, Art. 3(1)(q) of TEC implied that in pursuit of objectives formulated in Art. 2 of TEC, i.e. establishing common market, economic and monetary union, and implementing common policies and activities, a declaration was made to contribute not only to achieving high quality of education and vocational training, but also flowering of Member States. Admittedly, said regulation establishes neither any direct obligations nor Member State entitlement, but, as referred to in Art. 10 of TEC, these states are obliged to “facilitate” the Community’s fulfilling its tasks, and to “abstain” from taking any steps that could endanger implementation of the Treaty’s objectives, and thus to loyal cooperation (Biernad, 1998). With said provision corresponds one of Art. 87(3)(d) of TEC under which aiding to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market, provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

After the *Treaty on the functioning of the European Union* entered into force, Art. 151 was substituted practically with no major amendments – as has been mentioned – by Art. 167 of TFEU, and provision of Art. 3(1) of TEC was substituted by Art. 3–6 TFEU. Art. 6 of TFEU provides that “The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, among others in culture as well as education and vocational training” (Saganek, 2012: 212–213).<sup>7</sup>

<sup>5</sup> The title of this Directive is often translated as “on the return of cultural objects illegally removed from the territory of a Member State”. Here a translation included in Lex Omega was used with reference to Directive 93/7/EEC concerning the Act on Protection of Cultural Objects of 23<sup>rd</sup> July 2003 on protection of cultural objects (compare Council directive 93/7/EEC of 15 March 1993 on the return cultural objects unlawfully removed from the territory of a Member State, O.J. EU 1993, L 74 as amended).

<sup>6</sup> O.J. EU 1992, L 395; 1996, L 267 as amended.

<sup>7</sup> Article 6 of TFEU does not make up a competence regulation, i.e. a basis of entitlement of the European Union to carry on any activities, and its objective is to determine to which type belong the

An issue that the literature has rightly raised is that the cultural activity, or policy actually, of the European Union only encompasses three areas. In the first instance, it includes protection of the European cultural heritage, i.e. taking steps to preserve the European heritage, all that was created in the past. Secondly, taking measures to develop European culture, and thirdly, promotion of European culture (Zeidler, 2007: 292–293).

Despite clear reluctance to address cultural issues in the legal system of Communities, and subsequently by the Union, it soon turned out that it was necessary to build a sense of community among the inhabitants of Europe based on elements of culture and national heritage. This tendency is reflected by the “Declaration on European Identity” enacted in Copenhagen in 1993, which defined the axiological system of the Community states including human rights, democracy and rule of law. This approach was continued by launching Community cultural initiatives: European Capital of Culture and European Month of Culture.

A clear dissociation of the Communities, and presently the Union, from the cultural agenda did not mean that these issues were not raised by Community institutions. They were, however, not so much in institutional terms as in economic ones, where cultural objects would be subject to Community policies referring to free flow of goods, services and people, as well as activities within competition rules. It must be remembered that cultural objects: books, films, pictures, discs, video cassettes, video discs, would become objects of commercial transactions and as commodities they were subject to Community, and afterwards Union, regulations.<sup>8</sup> Over time, the position of the European Court of Justice was changing.<sup>9</sup> Particularly essential seems to be the Court’s position in the case Gouda

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competencies of the European Union on levels mentioned in this article. The literature, however, points out that every activity of the European Union within the scope of Article 6, and so in relation to culture, leads to diminishing of the states’ competencies.

<sup>8</sup> This happened for the first time against the backdrop of the dispute over Italian cultural objects, where the European Court of Justice, rejected an argument that cultural objects may not be considered as goods, while accepting that despite their nature they are goods. More: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości*, (1968), p. 428. During the process, it was raised that the value of cultural objects can be determined in a certain amount of money, but the fact that collectors, dealers and the antiquarian market treat them as commercial objects does mean that this value constitutes their “original value” as opposed to cultural value which is taken into consideration by countries imposing restrictions and transaction limitations. In the light of this, it was remarked that Art. 295 (222) of the *Treaty of Rome* provides that not all cultural objects are subject to free flow of goods, because this does not concern state-owned national treasures. Many years later, the Court applied competition regulations in a case regarding lease of artistic studio by considering it as part of freedom of entrepreneurship and not allowing for the cultural context (the *Case Steinhauser v. city of Biarritz*, 197/84, in: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1985), pp. 18–19).

<sup>9</sup> In the case 60 and 61/84 of *Cinéthèque v. Fédération National des Cinémas Français*, the European Court of Justice deemed that protection of cultural objects may constitute a requirement justifying import limitations, which according to the position of French authorities was supposed to protect the film industry, and thus culture. See: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1985), p. 2605. Also, the Court made reference to national and regional socio-cultural features in considering the problem of admissibility of regulations concerning business hours of retail shops, and on this occasion it indicated that the choice of business hours and rest time may harmonise with national and regional socio-cultural features. The case C-145/88 *Torfaen Borough Council v. B&Q plc*, in: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1989), p. 3851. In considering the

v. Comisariaat voor de Media,<sup>10</sup> where it was stated that cultural policy aiming at ensuring freedom of expression of different Member State entities may constitute a requirement justifying a restriction on free provision of services and limitation of advertising.

Regulation concerning the area of culture included in Art. 167 of TFEU and Art. 107(3)(d) of TFEU including Art. 6 of TFEU implies that in the area of culture general rules provided for in the Treaty are applied regarding clauses of protection (Art. 36 of TFEU), free flow of employees (Art. 36 of TFEU), freedom of entrepreneurship (Art. 107 of TFEU).

Art. 167 of TFEU restricts the activity of the European Union in the sphere of culture solely to supplementary and supporting measures. What's necessary in taking them is respect for national and regional diversity, and emphasising significance of common cultural heritage of Europe. Cultural policy, however, remains a realm of Member States. The Union should only encourage these states to cooperate, complement their activities in the scope referred to in Art. 167(2) of TFEU. These activities include: improvement of the knowledge and dissemination of the culture and history of the European peoples, conservation and safeguarding of cultural heritage of European significance, non-commercial cultural exchanges, and artistic and literary creation, including in the audiovisual sector. This area has been determined in very broad terms, and perhaps too narrowly. In practice may occur problems whether organising scientific conferences and symposia falls within the range of improvement of the knowledge and dissemination of the culture and history of the European peoples. It must be remembered that due to their complicated history the European countries are toiling to develop their assessment of the past that would be non-controversial to their neighbours, and that this past often considerably weighs on their present political and economic relations (more: Sobczak, 2008; Kula, 2003; Kula, 2002; Stobiecki, 1998; Stobiecki, 2008: 175 et seq.; Tazbir, 2002: 360–367; Wolff-Powęska, 2007: 9; Pomian, 2006a: 140–152; Pomian, 2006b: 198; Domańska, 2006: 54–59; Motycka, Maurim, 2004; Bieńkowska, 1999; Siewierski, 2004: 342–344; Mencwel, 2006a; Mencwel, 2006b; Mencwel, 2006c; Gawin, 2005: 25; Golka, 2009; Szpociński, Kwiatkowski, 2006; Kwiatkowski, 2008; Szacka, 2006; Szpociński, 2009; Malinowski, 2009; Czajowski, 2003).

An obligation to favour cooperation related to culture with third countries and international organisations in the field of culture, in particular with the Council of Europe was imposed on the European Union and its Member States under Art. 167(3) of TFEU.

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problem of a possibility of introducing licences for tourist group guides, subject to a possibility of acquiring these licenses only by persons from the territory of a given state, the Court stated that the public interest consisting in a proper assessment of places and objects of historic significance and potentially wide popularisation of the knowledge of artistic and cultural heritage of a given country may constitute an overriding cause justifying restriction of the freedom of service provision. The Court recognised, however, that in specific cases the principle of proportionality had been violated by Italy, France and Greece. See the case: *European Commission v. France* C-154/89, in: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1991), p. I-3591; *European Commission v. Italy* C 180/89, in: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1991), p. 1709; *European Commission v. Greece* C 198/89, in: *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1991), p. I-727. For these matters, see A. Wyrozumka, 2004: 908–909.

<sup>10</sup> *Zbiór Orzeczeń Europejskiego Trybunału Sprawiedliwości* (1991), p. I-4007.

The activity of the Council was undoubtedly much more significant than that pursued by the European Community, and afterwards the Union. It's worth noting that in execution of these recommendations, as it were, Poland has concluded many international agreements and arranged a number of programmes concerning cooperation in the field of culture and science with non-Member States of the Union.<sup>11</sup> It must be emphasized that the Treaty obliged the Community to take into consideration the cultural aspects in its activities, particularly in order to respect and support the diversity of its cultures (Art. 167(4) of TFEU). This area was specified in extremely general terms. It appears that it concerns first of all free flow of works of art, books carriers of music and films, production, distribution of cultural objects, and free flow of persons involved in culture, primarily artists, journalists, writers, scientists. This provision definitely covered matters concerning flow of capital in financing of culture either. Art. 167(5) of TFEU finally declared that in order to contribute to the achievement of the objectives referred to in this article, the Council shall adopt "incentive measures, excluding any harmonisation of the laws and regulations of the Member States". This way, it was emphasized that within the scope of the common law in the field of culture there only exists a so-called soft law, and the acts of Community law in the form of regulations, directives or decisions touch upon this level only where the field of culture interpenetrates with the areas governed by Community law, such as flow of people, goods and protection of competition. In the conditions of single market, however, it turned out indispensable to harmonise part of the regulations in the area of copyright law, in the audiovisual sphere, and in that of export of cultural objects (Mik, 2009; Sobczak, 2005).<sup>12</sup> In execution of Art. 151 of TEC

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<sup>11</sup> Among them, one must mention, among others, Protocol between the Minister of Culture and National Heritage and the Minister of Culture of the People's Republic of China on cultural cooperation for 2007–2011, concluded in Warsaw on 25<sup>th</sup> May 2007 (MP 2007, No. 50, Item 580). Said Protocol was a consequence of the agreement between the government of the Republic of Poland and the government of People's Republic of China on cultural and scientific cooperation (Dz. U. 1988, No. 31, Item 222); Cooperation agreement between the Minister of National Education and Sport of the Republic of Poland and the Minister of Education of the Republic of Belarus (MP 2005, No. 57, Item 778). Agreement between the government of the Republic of Poland and the government of the Republic of Belarus on equivalence in higher education and equivalence of scientific titles and titles in the field of arts (MP 2006, No. 25, Item 288); Implementation programme for the Memorandum of understanding on cultural and scientific cooperation between the government of the Republic of Poland and the government of the Republic of Chile for 2003–2007 (MP 2003, No. 51, Item 806); Agreement between the government of the Republic of Poland and the government of the Arab Republic of Egypt on cultural and scientific cooperation (Dz. U. 2004, No. 28, Item 248); Agreement between the government of the Republic of Poland and the government of the Republic of Georgia on cultural and scientific cooperation (Dz. U. 1993, No. 117, Item 525); Agreement between the government of the Republic of Poland and the government of the Republic of Indonesia on cultural and educational cooperation (MP 2005, No. 31, Item 441); Programme of cooperation between the government of the Republic of Poland and the government of the Republic of Korea in culture, science and education for 2009–2011 (Dz. U. 2009, No. 46, Item 382); Implementation programme of cooperation between the government of the Republic of Poland and the government of the Republic of Moldova in culture, education and science for 2006–2008 (Dz. U. 2007, No. 117, Item 810); Agreement between the government of the Republic of Poland and the government of Tajikistan in the field of culture, education and science (MP 2005, No. 31, Item 443).

<sup>12</sup> See Directive 89/552 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

during the period of its validity, the European Parliament and the Council of the European Union took into account opinions of the Committee of the Regions in relation to a motion concerning the decision of the European Parliament and the Council establishing the Programme “Culture 2007” (2007–2013),<sup>13</sup> and they issued decision no. 1855/2006/WE of 12<sup>th</sup> December 2006 establishing the Programme Culture (2007–2013).<sup>14</sup> The Programme stated that resources for implementation of said decision of the Council 1999/468/EC of 28<sup>th</sup> December 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>15</sup> and Regulation of the Council (WE, Euratom) no. 1605/2002 of 25<sup>th</sup> June 2002 on the Financial Regulation applicable to the general budget of the European Communities,<sup>16</sup> and in accordance with the Regulation of the Commission (WE, Euratom) no. 2342/2002 of 23<sup>rd</sup> December 2002, laying down detailed rules for the implementation of Council Regulation no. 1605/2002.<sup>17</sup> A declared general objective of the Programme included in Decision no. 1855/2006/EC shall be to enhance the cultural area shared by Europeans and based on a common cultural heritage through the development of cultural cooperation between the creators, cultural players and cultural institutions of the countries taking part in the Programme, with a view to encouraging the emergence of European citizenship. The Programme shall be open to the participation of non-audiovisual cultural industries, in particular small cultural enterprises, where such industries are acting in a non-profit-making cultural capacity. It shall promote the transnational mobility of cultural players, encourage the transnational circulation of works and cultural and artistic products, encourage intercultural dialogue. Art. 5 of the Decision declared that the programme shall be open to the participation of EFTA countries which are members of the European Economic Area,<sup>18</sup> candidate countries benefiting from a pre-accession strategy, the countries of the Western Balkans in accordance with the procedures defined with those countries following the framework agreements providing for their participation in Community programmes, and other third countries which have concluded association or cooperation agreements with the Community, which include cultural clauses. In the Annex to the Programme are included descriptions of activities and supporting events: culture activities, entities operating in this area, research relating to this area.

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“Transfrontier Television”, “Official Journal of the European Communities”, 1989, L 298, p. 23 amended by Directive of the European Parliament no. 97/36 of 30<sup>th</sup> June 1997, “Official Journal of the European Communities”, 1997, L 202, p. 60. These documents are put together and discussed by C. Mik (2009), *Media masowe w europejskim prawie wspólnotowym*, Toruń. Also see: J. Sobczak (2005), *Europejski ład komunikacyjny w procesie globalizacji*, in: J. Sobczak, R. Bäcker, *Europejska myśl polityczna wobec globalizacji. Tradycja i wyzwania współczesności*, Łódź, pp. 39–70.

<sup>13</sup> O.J. EU C 2005, No. 164, p. 65.

<sup>14</sup> O.J. EU L 2006, No. 372, p. 1. Act of the same content was published in O.J. EU L 2006, No. 378, p. 22.

<sup>15</sup> O.J. EU L 1999, Nr 184, s. 23. This decision was amended by 2006/512/EC, O.J. EU L 2006, No. 2000, p. 11.

<sup>16</sup> In doctrine, this regulation is called “Financial Regulation”. O.J. EU L 2002, No. 248, p. 1 as amended.

<sup>17</sup> O.J. EU L 2002, No. 357, p. 1 as amended.

<sup>18</sup> O.J. EU L 1994, No. 1, p. 3.

Although the Union very strongly underscores the fact that cultural policy falls within exclusive competence of Member States, still, and perhaps exactly for that reason, it included in its legal system the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted at the General Conference of the United Nations Educational, Scientific and Cultural Organization held between 3<sup>rd</sup> and 21<sup>st</sup> October 2005,<sup>19</sup> whose objective is to protect and promote the diversity of cultural expressions; to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner; to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace; to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples; to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels; to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link; to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning; to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory; to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions. As set out in the Convention, it was deemed that the exclusive competence of the Community in relation to adoption of the Convention includes commercial policy, excluding commercial aspects of intellectual property and trade in cultural services, and audiovisual services.

The issue of culture belongs to exceptionally critical realms. In this area one has yet to grapple with numerous decentralist tendencies, and face xenophobia or nationalist prejudices of significant groups in the societies of the Union states. Implementing solutions declared in the Treaty on the functioning of the European Union will entail considerable costs, patience, tact, and ability to negotiate. This will surely be a long-standing and complex process, and shaping of the conception of European identity will depend on its success. Well-balanced judicature of the European Court of Justice may play a major role in this process.

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<sup>19</sup> Dz. U. 2007, No. 215, Item 1585.

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## ABSTRACT

The European Communities, later the European Union, for a long time did not pay attention to the protection of European cultural heritage, as well as to issues of cultural policy, leaving the area more or less consciously the Council of Europe. The cultural policy of the European Union treats the ambiguous term "culture" as an area that belongs to the sphere of national sovereignty. Undefined terms from the area of culture, such as the European cultural space, a common cul-

tural heritage, etc. appear in the documents of the European Union. Only Art. 151 of the *Treaty establishing the European Community*, currently Art. 167 of the *Treaty on the functioning of the European Union* is more specifically devoted to the issue of culture and more closely to the issue of heritage. The cultural policy on this ground includes the protection of European cultural heritage, undertaking projects involving the development of a culture and the promotion of European culture. In that respect, the attention should be paid to a number of bilateral agreements, international programs, and finally conventions.

**Key words:** culture, European Union law, the Treaty on the functioning of the European Union, cultural policy, cooperation in the field of culture, cultural programs

## BEZPIECZEŃSTWO W OBSZARZE KULTURY W PERSPEKTYWIE UNII EUROPEJSKIEJ

### STRESZCZENIE

Wspólnoty Europejskie, a później Unia Europejska, przez długi czas nie poświęcały uwagi ochronie europejskiego dziedzictwa kultury, jak i problematyce polityki kulturalnej, pozostawiając ten obszar mniej lub bardziej świadomie systemowi Rady Europy. Polityka kulturalna Unii traktuje wieloznaczny termin kultura jako obszar należący do sfery narodowej suwerenności. W dokumentach unijnych pojawiają się niedefiniowane w praktyce terminy dotyczące obszaru kultury, np. europejska przestrzeń kulturowa, wspólne dziedzictwo kulturowe itd. Zagadnieniu kultury, a ściślej dziedzictwa kulturowego poświęcił uwagę dopiero art. 151 TWE, obecnie art. 167 TFUE. Polityka kulturalna w tej płaszczyźnie obejmuje ochronę europejskiego dziedzictwa kultury, podejmowanie przedsięwzięć polegających na rozwijaniu kultury oraz promocję kultury europejskiej. W kwestiach tych zwrócić należy uwagę na liczne akty o charakterze bilateralnym oraz programy międzynarodowe i konwencje.

**Słowa kluczowe:** kultura, prawo Unii Europejskiej, Traktat o Funkcjonowaniu Unii Europejskiej, polityka kulturalna, współpraca w dziedzinie kultury, programy kulturalne

