

Gdańsk, 21 Decemeber 2016

The Minister of Culture and National Heritage refuses to comply with the Provincial Administrative Court's decision suspending the merger of the museums

With its decision of 16 November 2016 regarding case No. VII SA/Wa 2411/16 the Provincial Administrative Court in Warsaw suspended the execution of the ordinance of the Minister of Culture and National Heritage issued on 6 September 2016 regarding the merger of the public cultural institutions of the Museum of the Second World War in Gdańsk and the Museum of Westerplatte and the War of 1939 and the establishment of a new public cultural institution — the Museum of the Second World War in Gdańsk.

One should bear in mind that in the substantiation of the above decision the Court stated that the execution of the Minister's ordinance would result in the existing Museum of the Second World War's loss of its legal existence, which is undoubtedly a very harmful consequence and one that is difficult to reverse, and that the merger (including the necessary preparatory steps, such as, stocktaking, and with the unfinished construction works) would generate unjustified construction stoppages and unnecessary large costs.

Nonetheless, the Minister's attorney, Zbigniew Wawer, informed the Museum Director that despite the above decision of the Provincial Administrative Court and the consequences described by the Museum and the Court which would be caused by the Minister's decision regarding the merger, the Ministry of Culture and National heritage did not feel bound by the Court's decision as it had not become legally valid yet. The same position was presented on behalf of the Minister by the deputy director of the Department of Cultural Heritage of the Ministry of Culture and Cultural Heritage, Piotr Szpanowski, during the session of the Board of Trustees on 16 December 2016. Thus the Ministry expressed its intention to proceed as if there was no decision of the Court and to continue the process of the merger of the cultural institutions.

It should be stated that such an argumentation violates the idea of temporary protection provided for with the Act — Law on Proceedings before Administrative Courts, which is to prevent negative consequences of executing an ordinance before examining an appeal against it. This also finds confirmation in judicial decisions. For example, let us quote a fragment of the substantiation of the decision of the Provincial Administrative Court in Gdańsk of 20 April 2016 (I SA/Gd 225/16),

where the Court strongly emphasizes that "[t]he essence of the decision to suspend the execution of the appealed decision is to extend temporary protection to the appealing party, which consists in preventing the execution of the decision until the decision of the court of the first instance, for its execution could harm the appealing party or result in consequences which would be difficult to reverse. The conclusion that a decision regarding suspension of the execution of the appealed ordinance becomes applicable only after it becomes legally valid could lead to a situation where the appealed decision would be executed even before the examination of the complaint, which in the Court's opinion totally thwarts the essence of temporary protection provided as per article 61 § 3 p. p. s. a."

In the light of the above, the Museum regards the steps taken by the Ministry of Culture and National Heritage to be an act of violation of the November decision of the Provincial Administrative Court in Warsaw, one that is has no grounds in law, and harmful both to the Museum and to the State reasury.