Santander Art and Culture Law Review 2/2025 (11): 147-168
https://doi.org/10.4467/2450050XSNR.25.020.22685

VARIA

Wojciech Kowalski*

wkowalski@nid.pl
https://orcid.org/0000-0001-6532-9796
Humanitas Academy
ul. Jana Kilińskiego 43
41-200 Sosnowiec, Poland

Legal Status of Human Remains under Polish Cultural Heritage Law

Abstract: This article critically outlines the legal regime governing human remains in Polish law. It opens with a presentation of the legal definitions of remains and other relevant concepts, including, for example, monuments, archaeological monuments, and cemeteries. The apparent inconsistency of health law and cultural heritage law is pointed out here. The second part establishes the legal status of human remains as objects of civil law. An analysis of the views of legal scholars on the relevant legislation has made it possible to recognize them as "things", which results in their admittance even to commercial circulation. The status of things also stipulates that remains can be recognized as monuments and archaeological monuments according to the 2003 Law on the Protection and Guardianship of Monuments. The exception is the remains of identified persons, which in any case must be released to the family. Therefore, legally speaking they are not monuments and do not become property of the State Treasury as archaeological monuments. The last part of the article signals the main assumptions of the draft of the

* **Wojciech W. Kowalski** is a Professor of Law at the Humanitas Academy in Sosnowiec, Poland. Previously, he served as Head of the Department of Intellectual and Cultural Property Laws of the University of Silesia in Katowice, Poland. From 1991 to 1994, he was the Polish Government Plenipotentiary for Polish Cultural Heritage Abroad. He was also the plenipotentiary of the Minister of Foreign Affairs of the Republic of Poland for the recovery of cultural property. Kowalski served as Vice-Chair of the Cultural Heritage Committee of the Council of Europe and as one of the founders of the International Committee on Legal, Administrative and Financial Issues of the International Council on Monuments and Sites (ICOMOS), serving as its deputy chairman between 1998 and 2000.

new Law on Cemeteries and Burial of the Dead, which are relevant to the discussion. The article closes with a brief conclusion.

Keywords: human remains, historical monuments, archaeological monuments, personal goods

Introduction

For at least as long as regular archaeological excavations have been conducted, the excavation and subsequent study and preservation of human remains has been accepted in many countries, and has rarely raised major objections. This has resulted in numerous collections of such remains in various museums, universities, and other scientific institutions, which continue to expand their collections.[1]

For some time now, however, this practice has become the subject of intense debate in museum, archaeological, and anthropological circles. On the one hand, growing ethical concerns are being raised due to the fact that these remains are human.[2] In addition, human remains belonging to Native Americans and Indigenous peoples may have a sacred meaning, and it is difficult for these people to treat them as "ordinary things".[3] Bearing in mind this aspect, Sotheby's recently decided to postpone an auction of jewels linked to the Buddha's remains after India called for their return.[4] On the other hand, however, arguments of a scientific nature are given to justify their value as a source of information relevant to various studies, for example, on the common history of health.[5] In some countries, moreover, attention

[1] See more on such collections in Belgium, for example, in K. Quintelier et al., *Belgium*, in: N. Márquez-Grant, L. Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislation: An International Guide to Laws and Practice in the Excavation and Treatment of Archaeological Human Remains*, Routledge, London–New York 2011, p. 52; or, regarding Greece, in C. Eliopoulos et al., *Greece*, in: N. Márquez-Grant, L. Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislation: An International Guide to Laws and Practice in the Excavation and Treatment of Archaeological Human Remains*, Routledge, London–New York 2011, p. 175.

[2] See, in particular, T. Scovazzi, *Human Remains as Cultural Heritage*, in: L. Lixinski, L.K. Morisset (eds.), *The Routledge Handbook of Heritage and Law*, Routledge, London 2024, pp. 456-472; L. de Tienda Palop, B.X. Currás, *The Dignity of the Dead: Ethical Reflections on the Archaeology of Human Remains*, in: K. Squires, D. Errickson, N. Márquez-Grant (eds.), *Ethical Approaches to Human Remains*, Springer, Cham 2020; G. Scarre, *Archaeology and Respect for the Dead*, "Journal of Applied Philosophy" 2003, Vol. 20(3), pp. 237-249.

[3] Cf., for example, M. Pickering, *Policy and Research Issues Affecting Human Remains in Australian Museum Collections*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006, pp. 42-47.

[4] H. Regan, *Sotheby's Postpones Auction of Jewels Linked to the Buddha after India Calls for Their Return*, "CNN Style", 7 May 2025, https://edition.cnn.com/2025/05/06/style/piprahwa-gems-auction-buddha-india-sothebys-intl-hnk [accessed: 29.05.2025].

[5] Compare R. Steckel et al., *The Scientific Value of Human Remains in Studying the Global History of Health*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006, pp. 60-70.

has been drawn to the possible necessity of returning the remains to the original communities that were once deprived of them.[6] They have also begun to regulate the rules for handling them, a good example being the *Guidance for the Care of Human Remains in Museums*, developed in 2005 by the UK Department for Culture, Media and Sport.[7] We should also note the most recent initiative taken in this country in March 2025, aimed at banning the sale and public display of human remains in museums. This was called for by the All-Party Parliamentary Group on Afrikan Reparations following the release of a new policy brief entitled *Laying Ancestors to Rest*, prepared by the African Ancestral Remains Project.[8]

Museums in Poland do not have such large collections of remains as the institutions listed above, but the existing collections are constantly being enriched with new remains found during archaeological excavations. The conduct of these works itself is regulated by law, and these laws also specify the rules for further handling of any objects that are found and may, moreover, resolve ownership issues. However, there are no provisions among these regulations relating directly to human remains, and practice shows that they are treated in a similar way to other finds. Thus, they usually end up in museum collections, where they are entered in the collection inventory and become ordinary museum exhibits.

For some time this practice has also been a subject of discussion in Poland,[9] and guidelines are being prepared to ensure the respect and appropriate treatment of human remains in the context of historic preservation.[10] In addition to ethical problems, the strictly legal aspect of the issue is also fundamental, and it is this that will be discussed further as the main topic of this article.

[6] There is extensive literature on this topic; see, for example, F. McManamon, *Policy and Practice in the Treatment of Archaeological Human Remains in North American Museum and Public Agency Collections*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006, pp. 48-59; N. Lichwa, P. Stec, *Repatriacja zwłok i szczątków ludzkich jako problem prawa dziedzictwa kulturowego* [Repatriation of Human Corpses and Remains as a Problem of Cultural Heritage Law], "Palestra" 2023, Vol. 9, pp. 104-111; N. Ferris, *Between Colonial and Indigenous Archaeologies: Legal and Extra-Legal Ownership of the Archaeological Past in North America*, "Canadian Journal of Archaeology" 2003, Vol. 27, pp. 154-190; J.Y. Henderson, *The Appropriation of Human Remains: A First Nations Legal and Ethical Perspective*, in: J.O. Young, C.G. Brunk (eds.), *The Ethics of Cultural Appropriation*, Blackwell, Oxford 2009, pp. 55-71.

[7] Department for Culture, Media and Sport and Department for Digital, Culture, Media & Sport, *Guidance for the Care of Human Remains in Museums*, 11 October 2005, https://www.gov.uk/government/publications/guidance-for-the-care-of-human-remains-in-museums [accessed: 25.02.2025].

[8] All-Party Parliamentary Group on Afrikan Reparations, *Report – Laying Ancestors to Rest*, 12 March 2025, https://www.appg-ar.org/news/report-laying-ancestors-to-rest-2025 [accessed: 24.05.2025].

[9] See, for example, the discussion panel "Szczątki ludzkie nie są zabytkiem archeologicznym – etyczne i prawne aspekty pracy z ludzkimi szczątkami kostnymi pochodzącymi z wykopalisk" [Human Remains Are Not Archaeological Monuments – Ethical and Legal Aspects of Working with Human Skeletal Remains from Excavations] at the 14th Conference of the Polish Anthropological Society, September 2013, quoted in E. Jastrzębska, *Prawne aspekty eksponowania szczątków ludzkich w muzeach polskich* [Legal Aspects of Presenting Human Remains in Polish Museums], "Muzealnictwo" 2015, Vol. 56, p. 185.

[10] These guidelines will be published in "Kurier Konserwatorski" before the end of this year.

Apart from the introduction, the article consists of five parts and a conclusion. It begins by presenting the definition of remains and other relevant concepts, including a monument, an archaeological monument, and a cemetery. It is based on Polish law, primarily those provisions which concern the protection of health and of cultural heritage. The second part of the article focusses on the legal status of human remains as objects of civil law. This determination and, in the first place, the determination of their status as "things", is essential for further considerations, since, for example, it defines their possible inclusion in trade. Establishing these facts paves the way for addressing the basic issue of the next part of the article, which is the status of human remains under cultural heritage law. In essence, this issue boils down to determining whether they can be considered monuments or archaeological monuments according to the 2003 Law on the Protection and Guardianship of Monuments.[11] The subsequent part of the article clarifies the issue of ownership of remains, that is, to whom they may belong or possibly belong. The last part indicates the main assumptions of the draft of the new Law on Cemeteries and Burial of the Dead, which are relevant to the subject under analysis.[12] The entire discussion is closed with a brief summary.

Legal Definition of Human Remains and Other Relevant Concepts

Proceeding to the analysis of terminological issues, it should be noted that Polish law contains a definition of human remains, but the legislature does not use this concept consistently in legal acts. According to Section 8(1) of the Ordinance of the Minister of Health of 7 December 2001 on the Handling of Human Corpses and Remains ("2001 Ordinance"),[13] they comprise 1) ashes resulting from the incineration of a corpse, 2) the remains of a corpse, excavated when digging a grave or under other circumstances, and 3) parts of the human body, detached from the whole.

At the same time, there is an undefined term of "human ashes" in criminal law. It is explicitly indicated in Article 262(1) of the Penal Code[14] that "[w]hoever desecrates a corpse, human ashes or the resting place of the deceased shall be sub-

[11] Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami, Journal of Laws 2003, No. 162, item 1568, consolidated text: Journal of Laws 2022, item 840.

[12] This draft was widely discussed between 2021 and 2023, and there is no indication that it could be adopted as binding law within the foreseeable future. However, it is worth analysing it to the extent indicated, as it contains important legislative proposals.

[13] Rozporządzenie Ministra Zdrowia z dnia 7 grudnia 2001 r. w sprawie postępowania ze zwłokami i szczątkami ludzkimi, Journal of Laws 2021, item 1910. It is worth mentioning that according to Section 8(2) of this regulation, "the bodies of deceased persons and stillborn children are considered corpses, regardless of the duration of pregnancy".

[14] Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny [Law of 6 June 1997 – Penal Code], Journal of Laws 1997, No. 88, item 553, consolidated text: Journal of Laws 2025, item 383.

ject to a fine, restriction of freedom or imprisonment for up to 2 years". It has been clarified by the legal scholarship that "ashes" here refers to "the remains after the corpse has been cremated, as well as the remains that remain after the corpse has been destroyed by the passage of time or other causes, such as burning in a fire".[15] The quoted author further adds that the concept should not be narrowed down to "post-cremation ashes only". Comparing this definition with that of remains in the aforementioned Section 8(1) of the 2001 Ordinance, it should be noted that the broadly defined remains of cremated corpses are in fact the ashes formed "as a result of cremation of the corpse" mentioned in Section 8(1)(1). In contrast, the remains "after the destruction of the corpse as a result of the passage of time" will certainly be "the remains of the corpse, excavated when digging a grave or under other circumstances" (Section 8(1)(2)). It follows that the concept of "human ashes" appearing in Article 262(1) of the Penal Code is, in essence, the same as that of remains within the meaning of Section 8(1) of the 2001 Ordinance. This finding makes it possible to clarify the aforementioned terminological inconsistency between the relevant provisions of health law and criminal law.

Furthermore, it should be noted that the definition of remains was created for the medical community, and thus does not directly refer to the protection of cultural heritage. From a structural point of view, at the same time, it is not synthetic in nature, but defines it by indicating two forms of remains, which are also found during archaeological investigations and as such are part of cultural heritage. These are the ashes left after the burning of a corpse and the remains of a corpse subjected to natural decomposition through the passage of time. Despite this convergence, civil law scholars do not use the term "human remains", but rather completely different, usually descriptive terms. This may seem puzzling, but the authors here usually write in the context in question, for example, about "parts of a human corpse",[16] "parts of the human body of unidentified origin (old skulls or tibias)"[17] or "skeletons, mummies or anatomical preparations".[18]

In addition to the terms that refer variously to human remains, some terms contained in the 2003 Law on the Protection and Guardianship of Monuments are also relevant to this analysis: a "monument" is defined in Article 3(1) as "an immovable or movable object, parts or assemblages thereof, which are the work of man or

[15] R.A. Stefański, *Przestępstwo znieważenia zwłok, prochów ludzkich lub grobu (art. 262 k.k.)* [Offence of Profaning Human Remains, Human Ashes, or a Burial Site (Article 262 of the Penal Code)], "Prokuratura i Prawo" 2004, Vol. 10, p. 23.

[16] T. Gardocka, *Czy zwłoki ludzkie są rzeczą i co z tego wynika?* [Is a Human Corpse a Thing and What Are the Implications?], in: J. Gołaczyński et al. (eds.), *Non omnis moriar: osobiste i majątkowe aspekty prawne śmierci człowieka. Zagadnienia wybrane* [Non omnis moriar: Personal and Property Legal Aspects of Human Death – Selected Issues], Oficyna Prawnicza, Wrocław 2015, p. 276.

[17] Ibidem, p. 275.

[18] S. Dmowski, S. Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna* [Commentary on the Civil Code, Book One, General Part], Lexis Nexis, Warszawa 2011, p. 250.

related to his activities and are a testimony of a bygone era or event, the preservation of which is in the public interest due to its historical, artistic, or scientific value"; an "archaeological monument", according to Article 3(4), is "an immovable monument that is a surface, underground or underwater remnant of human existence and activity, consisting of cultural strata and the products or traces thereof contained therein, or a movable monument that is such a product"; and "archaeological research" is described in Article 3(11) as "activities aimed at discovering, recognizing, documenting, and preserving an archaeological monument". As a commentary, it should be added that the referenced definitions are the subject of extensive discussion among Polish legal scholars,[19] but for the purposes of this text they will be used in their literal sense.

Finally, it is worth clarifying the meaning of other statutory terms connected with the subject of the article. Particularly relevant here are cemeteries, where a conflict between the interests of historic preservation and the rights of individuals may become apparent.[20] Among the immovable monuments subject to care and protection in Article 6(1)(1)(f), the legislature mentions "cemeteries", and under the archaeological monuments listed in Article 6(3), (b) "old burial grounds" and (c) "barrows" are indicated. It is noteworthy that "cemeteries" are designated as immovable monuments while "old burial grounds" are separately treated as archaeological monuments. One may assume the difference between the two is that a "cemetery" exists as an ordinarily "visible" immovable monument, while an "old burial ground" has yet to be "discovered, recognized, documented, and protected" as an "archaeological monument" during "archaeological research" (Article 3(11)).

In none of these cases does their "ancientness" matter, and the only qualifying criterion is the use of the "archaeological method". In other words, a cemetery that is invisible on the surface of the ground and completely forgotten – even a relatively recent one, such as some from the First World War – will become a "burial ground" when discovered and unearthed, and objects excavated in the area may be considered archaeological monument if supported by the "public interest", in ac-

[19] See, for example, M. Florek, *Kilka uwag o ustawowych definicjach zabytku archeologicznego i badań archeologicznych oraz ich konsekwencjach* [Comments on the Statutory Definitions of an Archaeological Find (Monument) and Archaeological Research and Their Consequences], "Ochrona Zabytków" 2019, Vol. 2, pp. 11-29; M. Trzciński, *Wokół definicji zabytku archeologicznego* [On the Definition of an Archaeological Monument], "Ochrona Zabytków" 2007, Vol. 4, pp. 111-117; idem, *Definicja zabytku archeologicznego – problemy i kontrowersje wokół stosowania prawa* [Definition of an Archaeological Monument – Issues and Controversies Surrounding the Application of the Law], in: K. Zeidler (ed.), *Prawo ochrony zabytków* [Monument Protection Law], Wolters Kluwer, Warszawa–Gdańsk 2014, pp. 115-122.

[20] See the well-known case European Court of Human Rights, *Potomska and Potomski v. Poland*, Application No. 33949/05, Judgment of 29 March 2011; for more on such conflicts of interests, see K. Campbell, *Conflicting Claims: The Interests of States in Cultural Property and the Rights of Individuals at the European Court of Human Rights*, "European Journal of Legal Studies" 2024, Vol. 16(1), pp. 109-146; and on the *Potomska* case, p. 131.

cordance with the definitions in Article 3(1) of the 2003 Law on the Protection and Guardianship of Monuments.

Legal Status of Human Remains in Civil Law

An analysis of the legal status of human remains should begin with civil law, and property law in particular. As mentioned, it will then be possible to determine whether they are things under this law, and this determination is a prerequisite for their possible recognition as monuments or archaeological monuments. The starting point is Article 45 of the Civil Code,[21] according to which things consist of "only material objects". When evaluating human remains against this otherwise sole criterion, there can be no doubt that it is met, and therefore they are things. Indeed, there is no way to deny materiality to either form of remains mentioned in the Minister of Health's regulations discussed above. Thus, both the "ashes" resulting from the incineration of a corpse and the "remains" of a corpse excavated when digging a grave or under other circumstances are things within the meaning of civil law. Polish civil-law scholarship is also clear about this assessment of remains, and it is worth quoting it for the sake of simultaneously indicating further consequences of such a position. As mentioned above, individual authors do not use a synthetic term for them, but rather examples of their various types. For example, Stanisław Dmowski and Stanisław Rudnicki write succinctly that "skeletons, mummies or anatomical preparations, as material objects, are things within the meaning of Article 45 of the Civil Code".[22] Stefan Grzybowski goes a step further, explaining that things of this kind "can be the subject of rights *in rem* and legal transactions".[23] On the other hand, the position was explained more broadly by Teresa Gardocka, starting from the statement that there is no explicit legal prohibition against possessing parts of human corpses for any purpose other than their burial.

> If it does not arise, then presumably the holders of these exhibits are their owners. And if they do own them, they can sell them, and others can buy them. In particular, this does not seem to be in doubt when dealing with parts of a human body of unidentified origin (old skulls or tibias); nothing prevents the holder from being considered their owner. This type of possession cannot be considered an insult to the corpse. The seller, buyer, or possessor of these corpse parts has no intention of insulting them. So it is difficult to deny that things of this kind are an object of ownership; they can be sold or bought, and stealing them will be a crime, like any theft of a movable object.[24]

[21] Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Law of 23 April 1964 – Civil Code], Journal of Laws 1964, No. 16, item 93, consolidated text: Journal of Laws 2024, item 1061.

[22] S. Dmowski, S. Rudnicki, op. cit., p. 250.

[23] S. Grzybowski (ed.), *System prawa cywilnego*, Vol. 1: *Część ogólna* [Civil Law System, Vol. 1: General Part], Zakład Narodowy im. Ossolińskich, Wrocław 1985, p. 411.

[24] T. Gardocka, *Czy zwłoki ludzkie…*, p. 275.

Another aspect is pointed out by Monika Drela in justifying the inclusion of skeletons, mummies, and anatomical preparations among things that can all, in principle, be traded. This is because they, like human cadavers, no longer constitute *res extra commercium*, since their exclusion from this category

> does not result in a violation of human dignity or the integrity of the person in question [...] in view of the purpose that is being pursued – the satisfaction of the needs of science, and the time that has elapsed since the death of the individual and the absence of persons who were emotionally connected to them.[25]

The views of legal scholars presented above are generally accepted, and therefore – bearing in mind Article 45 of the Civil Code – it can be concluded that under Polish law, human remains are things within the meaning of this law with all the aforementioned consequences of this finding.[26] Although such a conclusion seems obvious *prima facie*, it must be supplemented by an answer to the question of whether, since remains are by definition things, they can indeed all be subject to legal trade? This question can also be formulated differently: Is this trade subject to restrictions, for example, due to the existence of special rights to certain remains? The answer is affirmative, and is already partly evident from the quoted statements of Gardocka and Drela. Indeed, the first author mentioned that the lack of doubt about the possibility of trading in remains applies to situations "when dealing with parts of the human body of unidentified origin (old skulls or tibias)". The second writes about the passage of time since the death of the individual and the absence of people emotionally connected to them.

Developing the thought contained in these statements, it is necessary to clarify that in Polish law there is the institution of personal goods, that is, a kind of inalienable intangible property closely associated with each individual. It is anchored in the Constitution of the Republic of Poland, and in particular derives from the concept of human dignity, which, according to Article 30 of the Constitution is inalienable and a source of freedom and human rights, and its respect and protection is the duty of public authorities.[27] At the same time, it derives from the very fact of being a human being, and, moreover, inviolable, which means that no public interest, not even the most important, can justify interfering with human dignity.[28]

[25] M. Drela, *Własność zabytków* [Ownership of Monuments], C.H. Beck, Warszawa 2006, p. 98.

[26] For more on the problem of trafficking in human remains, see D. Huffer et al., *Bones of Contention: The Online Trade in Archaeological, Ethnographic and Anatomical Human Remains on Social Media Platforms*, in: S. Hufnagel, D. Chappell (eds.), *The Palgrave Handbook on Art Crime*, Palgrave Macmillan, London 2019, pp. 527-556.

[27] Article 30 of the Polish Constitution states, "The inherent and inalienable dignity of man is the source of human and civil liberties and rights. It is inviolable, and its respect and protection is the duty of public authorities".

[28] Biuro Rzecznika Praw Obywatelskich, *Art. 30 – Godność osobista* [Article 30 – Personal Dignity], https://bip.brpo.gov.pl/pl/kategoria-konstytucyjna/art-30-godnosc-osobista [accessed: 26.02.2025].

It needs no explanation that this dignity is the foundation of the modern concept of human rights and is therefore mentioned as early as the first sentence of the Preamble to the 1948 Universal Declaration of Human Rights.[29] The aforementioned personal goods and the rights associated with them are emanations of those human rights in Polish law.

According to Article 23 of the Civil Code, personal goods based on this concept include, *inter alia*, freedom, honour, freedom of conscience, surname or alias, and image, which are subject to the protection of "civil law regardless of the protection provided by other laws".[30] The personal goods listed in this provision do not directly relate to human remains, but the courts have clarified in a consistent line of jurisprudence that the goods in question also include the personal goods of the deceased's family, under which they have the right to bury the deceased's corpse and the "right to the cult of memory" of that person.[31] While only the right to bury a corpse, that is, a body shortly after death, is mentioned, it would be difficult to defend the view that it does not also apply to the identified human remains of a deceased person who was a member of that family. After all, the remains of Second World War victims are still being searched for and found in Poland, and even many years after the end of the war, no one denies the family the right to bury them. In the situation at hand, the aforementioned right to memorialize the deceased also speaks in its favour.

For a complete picture of these rights, it is still necessary to indicate the specific persons to whom they are entitled. They are delineated in the 1959 Law on Cemeteries and Burial of the Dead ("1959 Law on Cemeteries").[32] According to Article 10(1), priority is given to family members of the deceased in the following order:

[29] 10 December 1948, UN Doc. A/RES/217 A (III). The Preamble states, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

[30] Article 23 of the Civil Code states, "The personal rights of a person, such as, in particular, health, freedom, honor, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the dwelling, scientific, artistic, inventive, and rationalization creativity, shall remain under the protection of civil law regardless of the protection provided by other laws".

[31] See the judgment of the Polish Supreme Court of 13 July 1977, in which it stated that "under Article 23 of the Civil Code, a person's personal goods remain under the protection of civil law. The view has become established in case law that a person's personal property includes the veneration of the memory of his deceased loved ones". The ruling was not published. See also T. Gardocka, *Cmentarze jako dobra kultury* [Cemeteries as Cultural Property], in: T. Gardocka, J. Sobczak (eds.), *Prawna ochrona dóbr kultury* [Legal Protection of Cultural Property], Wydawnictwo Adam Marszałek, Toruń 2009, p. 140; A. Chodorowska, Ł. Szumkowski, *Problematyka prawa do grobu w kontekście dóbr osobistych* [Issues of the Right to the Grave in the Context of Personal Rights], "Studia Prawnoustrojowe" 2019, Vol. 46, p. 24. More recent court decisions include Supreme Court (Poland), Judgment of 23 September 2009, I CSK 346/08; Supreme Court (Poland), Judgment of 10 December 2015, V CSK 201/15; Supreme Court (Poland), Judgment of 29 June 2016, III CZP 24/16; and judgment of the European Court of Human Rights, *Solska and Rybicka v. Poland*, Application No. 30491/17 and 31083/17, Judgment of 20 September 2018.

[32] Ustawa z dnia 31 stycznia 1959 r. o cmentarzach i chowaniu zmarłych, Journal of Laws 2020, item 1947.

1) the remaining spouse; 2) descending relatives; 3) ascending relatives; 4) collateral relatives up to the 4th degree of consanguinity; and 5) relatives in direct line up to the 1st degree. A different rule applies to remains, and therefore to the remains of military persons and persons of merit to the state and society. If a military person died in active military service, then the right in question under the relevant military regulations is vested in the military authorities. In contrast, the right to bury the remains of persons of merit is vested in state bodies, institutions, and social organizations.

Finally, it should be added that there is an even broader emotional connection in the case of national heroes, which is expressed in the special protection of their remains. Article 5(7) of the 1959 Law on Cemeteries stipulates that "it is forbidden to use for reburial graves that have the value of historical memorabilia (due to their antiquity or the persons who are buried in them, or the events with which they are connected), or artistic value".

Legal Status of Human Remains Under Cultural Heritage Law

Having established the legal status of remains under civil law, we can move on to discuss the next issue addressed in this article, namely whether they can be ordinary monuments or archaeological monuments under the law of historic preservation. As mentioned above, both terms are defined within the framework of this law, so it is necessary to see how the issue of remains stands in light of these definitions.

As for the first, according to Article 3(1) of the 2003 Law on the Protection and Guardianship of Monuments, the general concept of a monument is based on four criteria.[33] A monument may be an immovable or movable object, as well as parts or complexes thereof. These objects must be manmade or related to human activity. They must also be a testimony of a bygone era or event, and at the same time their preservation must be "in the public interest" due to their historical, artistic, or scientific value.

The fulfilment of the first criterion is clear, since monuments can only be things, including movable things, and – as established above – human remains are precisely that. They can also be specific parts of immovable monuments such as cemeteries, barrows, and burial grounds, as mentioned above among the examples in Article 6(1)(1)(f) of the 2003 Law on the Protection and Guardianship of Monuments. Less obvious is the fulfilment of the next two criteria, which are considered very vague and as such are widely discussed in the literature.[34] Despite the possi-

[33] See K. Zalasińska, *Ustawa o ochronie zabytków i opiece nad zabytkami: komentarz* [Law on the Protection and Guardianship of Historical Monuments: A Commentary], C.H. Beck, Warszawa 2020, p. 11.

[34] For more on this subject, see W. Kowalski, *Prawna problematyka konserwacji zabytków* [Legal Issues in the Conservation of Monuments], in: B. Szmygin (ed.), *Współczesne problemy teorii konserwatorskiej w Polsce* [Contemporary Issues of Conservation Theory in Poland], Wydawnictwo Politechniki Lubelskiej, Lublin 2008, pp. 51-56.

ble objections, however, it is difficult not to consider remains as things generally "related to [human] activities", and even more so as a "testimony to a bygone era or event". More debatable is the last criterion, linking the status of a monument to the public interest in preserving it because of its historical, artistic, or scientific value.[35] Of these values, historical or scientific significance comes into play first and foremost as an argument for recognizing human remains as a monument.

The combined fulfilment of these criteria allow remains to be considered monuments, but they are not necessarily so in all cases. This is because the already explained issue of a family's personal rights to burial and remembrance of the deceased cannot be overlooked in this context. After all, if the remains are identified and the persons to whom these rights belong are still alive, then the "public interest" argues for respecting their rights and releasing the remains to them for burial. As explained above, these rights have constitutional legitimacy and undoubtedly precede the possibility of recognizing the remains as a monument in the legal meaning of this term. Thus, we are faced with a situation in which, although the remains meet the three required criteria, they will not be recognized as a monument because of the public interest that dictates they be released to the family.

In the author's opinion, this situation can be described as the result of the fourth criterion, which is not explicitly mentioned in the statutory definition of a monument, according to which it can only be the remains of unknown persons, that is, not identifiable and no longer having successors who would be entitled to the relevant personal rights. Usually, the passage of time is the deciding factor here, and a good example of such a situation is the mummy of an Egyptian woman in the collection of the Racibórz Museum in southern Poland. Thanks to modern research on the sarcophagus, she has been identified as Jed-Amonet-ius-anch,[36] but due to the passage of almost 3,000 years since her death, it is impossible to determine whether there are living descendants.

Turning to the analysis of human remains under the definition of an archaeological monument, it is also necessary, as before, to extract from it the qualification criteria. Here, in accordance with Article 3(4) of the 2003 Law on the Protection and Guardianship of Monuments, this type of monument includes only things (1) in the form of immovable or movable objects which (2) are the surface, underground, or underwater remains of human existence and activity and which (3) consist of cultural stratifications and the products or traces thereof contained therein.

When analysing these criteria, it should be noted first of all that this category of monuments can only include the explicitly indicated immovable and movable things that meet the criteria of the "ordinary" monuments discussed above. In other words, an archaeological monument can only be a monument that meets some fur-

[35] See K. Zalasińska, op. cit., p. 14.

[36] Muzeum w Raciborzu, *W Domu Ozyrysa* [In the House of Osiris], 16 April 2020, http://muzeum-raciborz.pl/art,6,w-domu-ozyrysa [accessed: 25.02.2025].

ther criteria differentiating it from other monuments by definition. An analysis of Article 3(4) indicates that two criteria contained therein are at issue. One is the requirement of being a "remnant of human existence and activity", which is not a distinguishing feature of an archaeological monument since it must already be met under the general definition of a monument, as a thing being "the work of man or related to his activities". Indeed, only the second criterion has a defining character: it must be remains located on the surface, underground, or underwater, consisting of cultural layers including the creations found in them. So, as one can see, in fact, this is the only unique qualification criterion for an archaeological monument that distinguishes it from an "ordinary" monument. It is worth adding, however, that this definition and its interpretation are the subject of doubt and wider debate among legal scholars, but a discussion of it is beyond the scope of this paper.[37]

Having made these findings, it is possible to return to the main thrust of the analysis and conclude that, bearing in mind the unique criterion of an archaeological monument, human remains are an archaeological monument if they meet the criteria of the general definition of an ordinary monument and are part of a monument located on the surface, underground, or underwater, composed of cultural layers including the creations found in them.[38] Most often, but not exclusively, they are found in the cultural strata of "old burial grounds" and "barrows", which are themselves archaeological monuments under Article 6(1)(3)(b) and (c) of the 2003 Law on the Protection and Guardianship of Monuments. Instead, they may be excavated as part of a "find" (Article 33), or, more often, as part of a planned archaeological survey, which Article 3(11) defines as "activities aimed at discovering, recognizing, documenting, and protecting an archaeological monument".

Summarizing the above remarks, we can close this part of the analysis with a synthetic answer to the question posed at the beginning: Can human remains be monuments under the law of monument protection? Indeed they can, if they meet the conditions discussed above set forth by the relevant definition, including of archaeological monuments. Only remains covered by the personal rights of relatives to burial and remembrance of a deceased person will not constitute a monument as defined in Article 3(1). As an aside, it may be added, moreover, that the vast majority of remains are obtained in Poland from archaeological research and

[37] See, for example, W. Kowalski, *Nabycie własności dzieła sztuki od nieuprawnionego* [Acquisition of Ownership of a Work of Art from an Unauthorized Person], Zakamycze, Kraków 2004, pp. 223 and 238; M. Trzciński, *Definicja zabytku archeologicznego…*; Z. Kobyliński, J. Wysocki, *Ujęcie problematyki ochrony zabytków archeologicznych w Ustawie o ochronie zabytków i opiece nad zabytkami – stan obecny i postulaty zmian* [The Protection of Archaeological Monuments in the Law on the Protection and Guardianship of Historical Monuments – Current State and Proposals for Change], in: K. Zeidler (ed.), *Prawo ochrony zabytków* [Monument Protection Law], Wolters Kluwer, Warszawa–Gdańsk 2014, pp. 123-141.

[38] See the opinion expressed by M. Drela (op. cit., p. 98): "a part of the human body in the form of a skeleton or a mummy is a thing; thus, it is a movable archaeological monument if it has features important for science and archaeologists".

finds. However, they can also be "ordinary" relics that have a different origin, such as remains found in coffins in the crypts of churches, or made immediately after death, or the antique preparations and bones located in the Museum of Forensic Medicine at Wrocław Medical University.[39]

Who Owns or Can Own Human Remains?

In light of the topic of this article, the question of ownership boils down to remains which are potential archaeological monuments. As long as the remains are in cultural layers in the ground or underwater, then they generally[40] constitute *res nullius*, that is, no-one has ownership rights over them. This means that the owner of the land in which they are located does not own them either. In particular, the owner does not acquire this right by what is known as adverse possession, since, as Drela deduces,[41] they did not perform any act of proprietary possession or acts of actual authority with respect to them. This position was confirmed by the Polish Supreme Court in its judgment of 28 March 1963,[42] in which it clarified that possession of real estate is not *ipso facto* possession of things buried in it.

The situation changes dramatically when remains are extracted from the ground, for under Article 35 of the 2003 Law on the Protection and Guardianship of Monuments, "objects that are archaeological monuments discovered, accidentally found or obtained as a result of archaeological research are the property of the State Treasury".[43] In interpreting this provision, it should be noted that the State Treasury does not acquire ownership of all things discovered or found, but only on "objects that are archaeological monuments". This means that the provision applies only to those remains that meet the above-discussed statutory criteria for archaeological monuments. The acquisition of ownership of them is of primary character,[44] so Article 181 of the Civil Code, which stipulates that "ownership of a movable object without an owner is acquired by taking possession of it in its own right", cannot be applied. Neither can such remains be awarded the right of possession under Article 174 of the Civil Code, as it is difficult to claim that they are held in good faith, as required by this provision, since *ipso iure* they are the property of the State Treasury. In addition, according to Articles 32(1)(3) and 33(1) of the 2003 Law

39 https://muzeauczelniane.pl/en/museum-of-forensic-medicine/ [accessed: 20.12.2022].

40 This caveat is due to the fact that there may also be things in the ground that are someone else's property, for example, hidden during the war. This right therefore does not expire, and in the owner's absence it passes to the owner's heirs – see more in M. Drela, op. cit., pp. 190-191.

41 Ibidem, p. 186.

42 Supreme Court (Poland), Judgment of 28 March 1963, III CR 205/62, OSN 1964, no. 3, item 56.

43 See also Article 35(2), which reads, "The property of the State Treasury also includes objects that are archaeological monuments obtained as a result of the search referred to in Article 36(1)(12)".

44 M. Drela, op. cit., pp. 186 and 191.

on the Protection and Guardianship of Monuments, it is incumbent on the finder to notify "the competent provincial conservator of monuments in the find, and when this is not possible, the competent village head (mayor)".

The further fate of remains which are archaeological monuments is decided by the said conservation authority, which may deposit it in a museum or other organizational unit,[45] and may transfer ownership of it to this museum.[46] This is done on the basis of an administrative decision, which must be preceded by an inspection of the objects by the provincial conservator and a determination of whether they are archaeological monuments within the meaning of Article 3(4) of the 2003 Law on the Protection and Guardianship of Monuments. Conducting such inspections is prescribed explicitly in Articles 32(3) and 33(3) of that Law, and is necessary in each case, since the discoverers under Article 32(1) and the finders under Article 33(1) do not present for inspection archaeological monuments, but discovered or found "objects" that are merely presumed to be archaeological monuments.[47] It is only by visual inspection that the provincial conservator can determine the nature of any submitted objects and whether any of them are archaeological monuments, and consequently whether they constitute state property under Article 35 of the 2003 Law on the Protection and Guardianship of Monuments.

In the context of human remains, moreover, it should be clarified that the conservator's decision here is not entirely discretionary.[48] This is because it is determined by the findings of these inspections, which should also include a de-

[45] 2003 Law on the Protection and Guardianship of Monuments, Article 35: "3. The place for storing archaeological relics discovered, accidentally found or obtained as a result of archaeological research or the exploration referred to in Article 36(1)(12) shall be determined by the provincial conservator of monuments, transferring them, by decision, on deposit to a museum or other organizational unit, with its consent. 4. The transfer of archaeological monuments to a museum or other organizational unit may take place if the unit 1) provides their permanent safekeeping; 2) carries out inventory and appropriate conservation work; 3) makes these monuments available for scientific purposes. 5. The provincial conservator of antiquities may issue a decision to revoke the deposit of archaeological relics if the museum or other organizational unit does not provide the conditions referred to in Paragraph 4".

[46] 2003 Law on the Protection and Guardianship of Monuments, Article 35(6): "At the request of the director of the museum, archaeological relics which are on deposit at this museum may be transferred to its ownership based on the decision of the provincial conservator of monuments".

[47] See Article 32: "1. Whoever, in the course of construction or earthworks, discovers an object which is presumed to be a monument, is obliged to [...] 3) immediately notify the competent provincial conservator of monuments [...]. 3. The provincial conservator of monuments shall, within 5 days of receiving the notification referred to in Paragraph 1(3) and Paragraph 2, inspect the discovered object". See also Article 33: "1. Whoever accidentally found an object which is presumed to be an archaeological monument is obliged, using available means, to secure the object and mark the place where it was found and immediately notify the competent provincial conservator of monuments about the finding of the object [...]. 3. Within 3 days of accepting the notification referred to in Paragraph 1 and Paragraph 2, the provincial conservator of monuments is obliged to inspect the object and the place where it was found and, if necessary, organise archaeological research".

[48] For a different opinion, see P. Mazur, E. Nowak, *Research Freedom and Access to Knowledge in Archaeological Research on Human Remains: Legal and Extra-Legal Perspectives*, "Acta Universitatis Lodziensis, Folia Iuridica" 2024, Vol. 109, p. 148.

termination as to whether the discovered or found remains can be identified, and consequently, whether the persons to whom the personal rights associated with these remains is due can be identified. A clue here will be the location of the discovery or find, the objects found with the remains, and possibly other circumstances. Undoubtedly, this will not usually be an easy task, however, it is a necessary one because at this stage and on the basis of these findings, the provincial conservator should decide whether to recognize the remains as an archaeological monument or release them to the family.

On the background of these remarks, one can add a suggestion *de lege ferenda*. Bearing in mind the indicated difficulties, perhaps we should consider introducing a presumption[49] that no-one is entitled to personal rights to discovered or found human remains. This would allow them to be recognized as archaeological monuments if they meet the required statutory criteria. This presumption could be rebutted by persons who have an emotional bond with these remains based on kinship.

To conclude this part of the discussion, it should also be added that the procedure described above also applies to all things, and therefore also to human remains, found on the seabed within Polish waters,[50] especially wrecks. This follows directly from Articles 32(10) and 33(4) of the 2003 Law on the Protection and Guardianship of Monuments.[51] At the same time, it should be taken into account that in 2020 Poland ratified[52] the UNESCO Convention on the Protection of Underwater Cultural Heritage,[53] in which human remains are *expressis verbis* classified as underwater cultural heritage.[54] As such, they are subject to a general order of

[49] The author thanks Prof. Katarzyna Zalasińska for this suggestion.

[50] These are territorial waters which are a part of the territory of Poland; for more information, see W.W. Kowalski, *Wydobywanie zabytków z morza w świetle obowiązującego prawa polskiego* [Recovery of Monuments from the Sea in Light of Current Polish Law], "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej" 2022, Vol. 2, pp. 5-21.

[51] The powers of the provincial conservator of monuments are exercised on the basis of these provisions by the competent directors of maritime offices. See Article 32(10): "The competent director of the maritime office shall be immediately notified of the discovery in Polish maritime areas of an object referred to in Paragraph 1. The provisions of Paragraph 1(1) and (2) and Paragraphs 3-8 shall apply accordingly". See also Article 33(4): "The competent director of the maritime office should be immediately notified about the discovery in Polish maritime areas of an object referred to in Paragraph 1".

[52] Ustawa z dnia 27 października 2020 o ratyfikacji Konwencji UNESCO o ochronie podwodnego dziedzictwa kulturowego przyjętej dnia 2 listopada 2001 roku w Paryżu [Law of 27 October 2020 on the Ratification of the UNESCO Convention on the Protection of the Underwater Cultural Heritage Adopted on 2 November 2001 in Paris], Journal of Laws 2020, item 2021.

[53] 2 November 2001, 2562 UNTS 1.

[54] "Article 1 – Definitions: For the purposes of this Convention: 1. (a) 'Underwater cultural heritage' means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years such as: (i) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context".

respect[55] and are excluded from legal circulation, as is all underwater heritage excavated from the sea under Article 2(7) of this Convention: "Underwater cultural heritage may not be used for commercial purposes".

For the avoidance of doubt, this principle is elaborated and detailed in the set of principles annexed to the Convention as follows: "Commercial exploitation of underwater cultural heritage for commercial or speculative purposes or leading to its irreversible dispersion is in flagrant contradiction to the protection and proper management of underwater cultural heritage. Underwater cultural heritage cannot be traded, sold, bought or exchanged as a commercial commodity". It is difficult not to notice that these provisions introduced a kind of dualism in the legal status of human remains. This is because, in general, remains as things can be traded, but not if they are excavated from the sea, as they become *res extra commercium*.[56] In the author's opinion, this dualism poses a *de lege ferenda* challenge and should be resolved in future work on the possible amendment of the Law on the Protection and Guardianship of Monuments.

Comments on the Draft of the New Law on Cemeteries and Burial of the Dead

As announced, the assumptions of the draft of the new Law on Cemeteries and Burial of the Dead should still be presented. For historical reasons, these issues are of great importance in Poland and are the subject of scientific studies,[57] but here it is necessary to focus on issues related to the problem of human remains. This draft was published on 23 September 2021,[58] and in June of the following year the Legislative Council under the Prime Minister presented its opinion to it.[59] At the outset, it should be noted that a significant part of the provisions of the comprehensive draft do not apply to matters related to human remains and remains in the con-

[55] "Article 2. Objectives and general principle: [...] 9. States Parties shall ensure that proper respect is given to all human remains located in maritime waters".

[56] For more on the subject, see W. Kowalski, *Wydobywanie zabytków z morza w świetle Konwencji UNESCO o ochronie podwodnego dziedzictwa kulturowego z 2001 roku* [Recovery of Cultural Heritage Objects from the Sea in Light of the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage], "Santander Art and Culture Law Review" 2022, Vol. 1(8), pp. 17-40.

[57] See, for example, W.S. Staszewski, *Protection of Graves and Cemeteries in Treaties on Friendship and Cooperation Signed by Poland with States Formed after the Collapse of the USSR*, "Roczniki Nauk Prawnych" 2020, Vol. 30(3), pp. 161-181; A. Malarewicz, *The Legal Character of "Cemetery Property" in Polish Civil Law*, "Białostockie Studia Prawnicze" 2008, Vol. 4, pp. 120-124.

[58] Kancelaria Prezesa Rady Ministrów, *Projekt ustawy o cmentarzach i chowaniu zmarłych* [Draft Law on Cemeteries and Burial of the Dead], https://www.gov.pl/web/premier/projekt-ustawy-o-cmentarzach-i-chowaniu-zmarlych2 [accessed: 20.01.2025].

[59] Rada Legislacyjna przy Prezesie Rady Ministrów, *Opinia z dnia 30 czerwca 2022 r., o projekcie ustawy o cmentarzach i chowaniu zmarłych* [Opinion of 30 June 2022 on the Draft Law on Cemeteries and Burial of the Dead], RL.461.16/2022.

text of archaeology and museums. The remaining provisions do not fundamentally change the current legal status of the subject matter under discussion. They only concern terminology and the group of entities authorized to organize burials. Worthy of special attention, however, is the proposed new provision in the nature of a general standard on respect for human remains.

According to Article 6(1) of the draft, the aforementioned exemption includes the law's provisions on "storage, exhumation, transportation and the obligation of burial", which "do not apply to corpses, remains and human ashes from archaeological research and archaeological finds, relics, corpses, remains and human ashes stored in museums, research and teaching units related to archaeology or heritage preservation". This exemption is to be welcomed, as the handling of such remains is completely different in nature and purpose than burying the remains of people, usually shortly after death and generally known by name. However, there are doubts about the very broad definition of a cemetery introduced in the draft, a consequence of which is that the scope of this exemption is too narrow. According to Article 2(4), a cemetery is "an area where burial of corpses, human remains or human ashes has been or may be carried out in an organized manner, excluding religious buildings".

As the Legislative Council aptly pointed out, formulating the exemption provision in this way will result "in the provisions of the Project being applicable to cemeteries, which are archaeological monuments within the meaning of Article 3(4) of the Act of 23 July 2003 on the Protection and Guardianship of Monuments". Indeed, the effect of including the broad definition of a cemetery will be to consider as such any area "on which corpses, human remains or human ashes were ever buried in an organized manner, whether it was, for example, four hundred or four thousand years ago". Thus, in the event that these regulations come into force, the discovery of a cemetery that is an archaeological monument will result in the need to apply regulations to it, for example, regarding the decommissioning of cemeteries. This will lead, as the Council further argues, to the overlapping of "two legal regimes – concerning archaeological monuments and their protection, as provided for in the Law on the Protection and Guardianship of Monuments, and relating to cemeteries, which may cause numerous problems with the application of the regulations, as well as hindrances in the conduct of construction or earthworks". Thus, the postulate concluding this argument, which calls for the introduction of "an exclusion of the application of the provisions of the Act to cemeteries which are archaeological monuments, as defined in Article 3(4) of the Law on the Protection and Guardianship of Monuments", should be considered entirely appropriate, although not without reservation. The aforementioned objection, on the other hand, is the use of the term "cemetery", while what is meant here is rather "old burial grounds", as it can be an archaeological monument according to Article 6(1)(3). This observation also encourages consideration of whether "cemeteries" that are immovable monuments under Article 6(1)(1)(f) should be excluded alongside cem-

eteries, although a counterargument can be made that cemeteries – even if they are monuments – are usually still used for burials and should be covered by the general regulation concerning those.

In addition to this comment, the Legislative Council has raised terminological objections that relate to the term "research unit" and the separate inclusion of "human ashes". However, these issues will certainly be corrected further in the legislative process.

On the other hand, the aforementioned new provision on the obligation to respect the dignity and honour due to the deceased in the handling of cadavers, human remains, or human ashes should be welcomed with particular appreciation. The Legislative Council also evaluated it positively and devoted a longer passage to it in its opinion. As it stressed, "respect for their dignity, which is a derivative or a kind of residuum of human dignity, which, as Article 30 of the Constitution of the Republic of Poland indicates, is inherent and inalienable, being the source of constitutional freedoms and rights".

One should undoubtedly agree with this argument, and should consequently recognize that respect for dignity should be an essential guideline for the handling of ashes and human remains in both archaeological work and the procedures of conservation authorities and museums discussed above. As for the Council's opinion, it can also be added that because of respect for the dignity of the deceased, among other reasons, it considered the project eligible for further legislative work.

Conclusion

With the above remarks in mind, one can conclude the considerations by stating that under Polish law, human remains are generally things and can be objects of legal circulation. They can be formally recognized as monuments, as well as archaeological monuments, if they meet the criteria set for them by the law on the protection of cultural heritage.

This principle is limited in relation to identified remains, since the family of the deceased is entitled to personal rights in the form of the right to burial and the right to worship and remember the person. This lasts as long as there are persons who have an emotional connection with the remains of a specific person, and therefore subjects of these rights. It should be added, moreover, that in accordance with Article 24 of the Civil Code, the protection of these rights is served by a possible claim to stop actions that violate them and remove their effects.

As long as the remains lie in the ground, they are the property of no-one, though this situation changes when they are excavated. If they are recognized as an archaeological monument, then they will *ipso iure* become the property of the State Treasury and will be handed over by the provincial conservator of monuments to a museum institution of their choosing. However, if they are identified then they will be handed over to the family. The same rules apply to the handling of remains

found in Polish maritime areas, except that, unlike remains found in the ground, they are excluded from legal circulation.

Finally, it should be added that a draft of a new Law on Cemeteries and Burial of the Dead is being prepared, though it will not apply to the handling of remains recognized as monuments and located in museums. However, the introduction of the general principle of respect for human remains in this draft is to be welcomed.

References

All-Party Parliamentary Group on Afrikan Reparations, *Report – Laying Ancestors to Rest*, 12 March 2025, https://www.appg-ar.org/news/report-laying-ancestors-to-rest-2025 [accessed: 24.05.2025].

Biuro Rzecznika Praw Obywatelskich, *Art. 30 – Godność osobista* [Article 30 – Personal Dignity], https://bip.brpo.gov.pl/pl/kategoria-konstytucyjna/art-30-godnosc-osobista [accessed: 26.02.2025].

Campbell K., *Conflicting Claims: The Interests of States in Cultural Property and the Rights of Individuals at the European Court of Human Rights*, "European Journal of Legal Studies" 2024, Vol. 16(1).

Chodorowska A., Szumkowski Ł., *Problematyka prawa do grobu w kontekście dóbr osobistych* [Issues of the Right to the Grave in the Context of Personal Rights], "Studia Prawnoustrojowe" 2019, Vol. 46.

de Tienda Palop L., Currás B.X., *The Dignity of the Dead: Ethical Reflections on the Archaeology of Human Remains*, in: K. Squires, D. Errickson, N. Márquez-Grant (eds.), *Ethical Approaches to Human Remains*, Springer, Cham 2020.

Department for Culture, Media and Sport and Department for Digital, Culture, Media & Sport, *Guidance for the Care of Human Remains in Museums*, 11 October 2005, https://www.gov.uk/government/publications/guidance-for-the-care-of-human-remains-in-museums [accessed: 25.02.2025].

Dmowski S., Rudnicki S., *Komentarz do kodeksu cywilnego. Księga pierwsza. Część ogólna* [Commentary on the Civil Code. Book One. General Part], Lexis Nexis, Warszawa 2011.

Drela M., *Własność zabytków* [Ownership of Monuments], C.H. Beck, Warszawa 2006.

Eliopoulos C. et al., *Greece*, in: N. Márquez-Grant, L. Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislation: An International Guide to Laws and Practice in the Excavation and Treatment of Archaeological Human Remains*, Routledge, London–New York 2011.

European Court of Human Rights, *Potomska and Potomski v. Poland*, Application No. 33949/05, Judgment of 29 March 2011.

European Court of Human Rights, *Solska and Rybicka v. Poland*, Application No. 30491/17 and 31083/17, Judgment of 20 September 2018.

Ferris N., *Between Colonial and Indigenous Archaeologies: Legal and Extra-Legal Ownership of the Archaeological Past in North America*, "Canadian Journal of Archaeology" 2003, Vol. 27.

Florek M., *Kilka uwag o ustawowych definicjach zabytku archeologicznego i badań archeologicznych oraz ich konsekwencjach* [Comments on the Statutory Definitions of an Archaeological Find (Monument) and Archaeological Research and Their Consequences], "Ochrona Zabytków" 2019, Vol. 2.

Gardocka T., *Cmentarze jako dobra kultury* [Cemeteries as Cultural Property], in: T. Gardocka, J. Sobczak (eds.), *Prawna ochrona dóbr kultury* [Legal Protection of Cultural Property], Wydawnictwo Adam Marszałek, Toruń 2009.

Gardocka T., *Czy zwłoki ludzkie są rzeczą i co z tego wynika?* [Is a Human Corpse a Thing and What Are the Implications?], in: J. Gołaczyński et al. (eds.), *Non omnis moriar: osobiste i majątkowe aspekty prawne śmierci człowieka. Zagadnienia wybrane* [Non omnis moriar: Personal and Property Legal Aspects of Human Death. Selected Issues], Oficyna Prawnicza, Wrocław 2015.

Grzybowski S. (ed.), *System prawa cywilnego*, Vol. 1: *Część ogólna* [Civil Law System, Vol. 1: General Part], Zakład Narodowy im. Ossolińskich, Wrocław 1985.

Henderson J.Y., *The Appropriation of Human Remains: A First Nations Legal and Ethical Perspective*, in: J.O. Young, C.G. Brunk (eds.), *The Ethics of Cultural Appropriation*, Blackwell, Oxford 2009.

Huffer D. et al., *Bones of Contention: The Online Trade in Archaeological, Ethnographic and Anatomical Human Remains on Social Media Platforms*, in: S. Hufnagel, D. Chappell (eds.), *The Palgrave Handbook on Art Crime*, Palgrave Macmillan, London 2019.

Jastrzębska E., *Prawne aspekty eksponowania szczątków ludzkich w muzeach polskich* [Legal Aspects of Presenting Human Remains in Polish Museums], "Muzealnictwo" 2015, Vol. 56.

Kancelaria Prezesa Rady Ministrów, *Projekt ustawy o cmentarzach i chowaniu zmarłych* [Draft Law on Cemeteries and Burial of the Dead], https://www.gov.pl/web/premier/projekt-ustawy-o-cmentarzach-i-chowaniu-zmarlych2 [accessed: 20.01.2025].

Kobyliński Z., Wysocki J., *Ujęcie problematyki ochrony zabytków archeologicznych w Ustawie o ochronie zabytków i opiece nad zabytkami – stan obecny i postulaty zmian* [The Protection of Archaeological Monuments in the Law on the Protection and Guardianship of Historical Monuments – Current State and Proposals for Change], in: K. Zeidler (ed.), *Prawo ochrony zabytków* [Monument Protection Law], Wolters Kluwer, Warszawa–Gdańsk 2014.

Kowalski W., *Nabycie własności dzieła sztuki od nieuprawnionego* [Acquisition of Ownership of a Work of Art from an Unauthorized Person], Zakamycze, Kraków 2004.

Kowalski W., *Prawna problematyka konserwacji zabytków* [Legal Issues in the Conservation of Monuments], in: B. Szmygin (ed.), *Współczesne problemy teorii konserwatorskiej w Polsce* [Contemporary Issues of Conservation Theory in Poland], Wydawnictwo Politechniki Lubelskiej, Lublin 2008.

Kowalski W., *Wydobywanie zabytków z morza w świetle Konwencji UNESCO o ochronie podwodnego dziedzictwa kulturowego z 2001 roku* [Recovery of Cultural Heritage Objects from the Sea in Light of the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage], "Santander Art and Culture Law Review" 2022, Vol. 1(8).

Kowalski W.W., *Wydobywanie zabytków z morza w świetle obowiązującego prawa polskiego* [Recovery of Monuments from the Sea in Light of Current Polish Law], "Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej" 2022, Vol. 2.

Lichwa N., Stec P., *Repatriacja zwłok i szczątków ludzkich jako problem prawa dziedzictwa kulturowego* [Repatriation of Human Corpses and Remains as a Problem of Cultural Heritage Law], "Palestra" 2023, Vol. 9.

Malarewicz A., *The Legal Character of "Cemetery Property" in Polish Civil Law*, "Białostockie Studia Prawnicze" 2008, Vol. 4.

Mazur P., Nowak E., *Research Freedom and Access to Knowledge in Archaeological Research on Human Remains: Legal and Extra-Legal Perspectives*, "Acta Universitatis Lodziensis, Folia Iuridica" 2024, Vol. 109.

McManamon F., *Policy and Practice in the Treatment of Archaeological Human Remains in North American Museum and Public Agency Collections*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006.

Muzeum w Raciborzu, *W Domu Ozyrysa* [In the House of Osiris], 16 April 2020, http://muzeum-raciborz.pl/art,6,w-domu-ozyrysa [accessed: 25.02.2025].

Pickering M., *Policy and Research Issues Affecting Human Remains in Australian Museum Collections*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006.

Quintelier K. et al., *Belgium*, in: N. Márquez-Grant, L. Fibiger (eds.), *The Routledge Handbook of Archaeological Human Remains and Legislation: An International Guide to Laws and Practice in the Excavation and Treatment of Archaeological Human Remains*, Routledge, London–New York 2011.

Rada Legislacyjna przy Prezesie Rady Ministrów, *Opinia z dnia 30 czerwca 2022 r., o projekcie ustawy o cmentarzach i chowaniu zmarłych* [Opinion of 30 June 2022, on the Draft Law on Cemeteries and Burial of the Dead], RL.461.16/2022.

Regan H., *Sotheby's Postpones Auction of Jewels Linked to the Buddha after India Calls for Their Return*, "CNN Style", 7 May 2025, https://edition.cnn.com/2025/05/06/style/piprahwa-gems-auction-buddha-india-sothebys-intl-hnk [accessed: 29.05.2025].

Rozporządzenie Ministra Zdrowia z dnia 7 grudnia 2001 r. w sprawie postępowania ze zwłokami i szczątkami ludzkimi [Ordinance of the Minister of Health of 7 December 2001 on the Handling of Human Corpses and Remains], Journal of Laws 2021, item 1910.

Scarre G., *Archaeology and Respect for the Dead*, "Journal of Applied Philosophy" 2003, Vol. 20(3).

Scovazzi T., *Human Remains as Cultural Heritage*, in: L. Lixinski, L.K. Morisset (eds), *The Routledge Handbook of Heritage and Law*, Routledge, London 2024.

Staszewski W.S., *Protection of Graves and Cemeteries in Treaties on Friendship and Cooperation Signed by Poland with States Formed after the Collapse of the USSR*, "Roczniki Nauk Prawnych" 2020, Vol. 30(3).

Steckel R. et al., *The Scientific Value of Human Remains in Studying the Global History of Health*, in: J. Lohman, K. Goodnow (eds.), *Human Remains and Museum Practice*, UNESCO and Museum of London, Paris–London 2006.

Stefański R.A., *Przestępstwo znieważenia zwłok, prochów ludzkich lub grobu (art. 262 k.k.)* [Offence of Profaning Human Remains, Human Ashes, or a Burial Site (Article 262 of the Penal Code)], "Prokuratura i Prawo" 2004, Vol. 10.

Supreme Court (Poland), Judgment of 10 December 2015, V CSK 201/15.

Supreme Court (Poland), Judgment of 23 September 2009, I CSK 346/08.

Supreme Court (Poland), Judgment of 29 June 2016, III CZP 24/16.

Supreme Court (Poland), Judgment of 28 March 1963, III CR 205/62, OSN 1964, no. 3, item 56.

Trzciński M., *Definicja zabytku archeologicznego – problemy i kontrowersje wokół stosowania prawa* [Definition of an Archaeological Monument – Issues and Controversies Sur-

rounding the Application of the Law], in: K. Zeidler (ed.), *Prawo ochrony zabytków* [Monument Protection Law], Wolters Kluwer, Warszawa–Gdańsk 2014.

Trzciński M., *Wokół definicji zabytku archeologicznego* [On the Definition of an Archaeological Monument], "Ochrona Zabytków" 2007, Vol. 4.

UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001, 2562 UNTS 1.

Universal Declaration of Human Rights, 10 December 1948, UN Doc. A/RES/217 A (III).

Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny [Law of 6 June 1997 – Penal Code], Journal of Laws 1997, No. 88, item 553, consolidated text: Journal of Laws 2025, item 383.

Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Law of 23 April 1964 – Civil Code], Journal of Laws 1964, No. 16, item 93, consolidated text: Journal of Laws 2024, item 1061.

Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Law of 23 July 2003 on the Protection and Care of Monuments], Journal of Laws 2003, No. 162, item 1568, consolidated text: Journal of Laws 2022, item 840.

Ustawa z dnia 27 października 2020 o ratyfikacji Konwencji UNESCO o ochronie podwodnego dziedzictwa kulturowego przyjętej dnia 2 listopada 2001 roku w Paryżu [Law of 27 October 2020 on the Ratification of the UNESCO Convention on the Protection of the Underwater Cultural Heritage Adopted on 2 November 2001 in Paris], Journal of Laws 2020, item 2021.

Ustawa z dnia 31 stycznia 1959 r. o cmentarzach i chowaniu zmarłych [Law of 31 January 1959 on Cemeteries and Burial of the Dead], Journal of Laws 2020, item 1947.

Zalasińska K., *Ustawa o ochronie zabytków i opiece nad zabytkami: komentarz* [Law on the Protection and Guardianship of Historical Monuments: A Commentary], C.H. Beck, Warszawa 2020.