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SOURCES OF LAW RELATING TO ACCESS TO RESOURCES OF POLISH PUBLIC AND SCIENTIFIC LIBRARIES

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ABSTRACT

The 1997 Act on Libraries stipulates that libraries organize and assure access to resources of achievements of science and of Polish and global culture, and it enumerates two, naturally interconnected, fundamental responsibilities of libraries: to collect, process, preserve and protect library materials, and to serve users, primarily by way of providing access to resources. The Act confirms the general right to use libraries according to rules provided in the law, precising the general declaration of the Polish Constitution, according to which the Republic of Poland ensures conditions for equal access to cultural assets.

The problem of making collections available, however, arises from the overlapping of the definition of library materials in the Act of 27 June 1997 on Libraries and that of archival materials formulated in the Act of 14 July 1983 on the National Archival Fonds and Archives. The latter contains provisions relative to rules and procedures of, generally also free, access to archival materials, whereas the Act on Libraries leaves regulating the use of libraries to libraries themselves. That raises the question whether libraries

– in particular, public and scientific ones – which could preserve and often preserve materials covered literally by the definition of archival materials (being simultaneously library materials) are obliged, as far as user access to is concerned, to apply the provisions of the Law of 14 July 1983 or to apply their proper regulations issued on the basis of the Act on Libraries. The article is an attempt to solve that, genuinely legal, problem. The conclusion is that all materials that are held in library collections, regardless of whether they meet the statutory definition of archival materials or not, should be made available to the public on the terms and in the manner prescribed according to the Act on Libraries – in the regulations established by the libraries themselves.

KEYWORDS: access to library resources, archival materials, library materials, National Library Fonds

Introduction

The 1997 Act on Libraries[1], the fundamental piece of legislation concerning the entire library system in Poland, states (Article 3 Para. 1) that libraries organize and assure access to resources of achievements of science and of Polish and global culture, and it enumerates (Article 4 Para. 1) two fundamental responsibilities of libraries: to collect, process, preserve and protect library materials, and to serve users, primarily by way of providing access to resources. Those responsibilities are naturally interconnected – the mission of libraries is to make resources they collect, process, and preserve available to interested persons, protecting simultaneously resources against misuse, damage or loss. Article 3 Para. 2 of the Act confirms the general right to use libraries according to the rules provided in the Act, precising, therefore, the general declaration of Article 6 Para. 1 of the Polish Constitution, according to which the Republic of Poland creates conditions for equal access to cultural assets[2].

1 Journal of Laws of 2022, item 2393.

2 Cf. H. Izdebski, *Komentarz do Konstytucji RP. Art. 6, 70, 73* [*Commentary on the Constitution of the Republic of Poland: Articles 6, 70, 73*], Warszawa 2019, pp. 257 sqq.

The preservation of cultural assets falls within the scope of responsibility of many institutions and persons as well, primarily of such institutions as institutions of culture in the legal sense, run by the authorities of central government and of territorial self-government, in particular libraries and museums[3], and of the state archives functioning as specialized state offices, and all these institutions should contribute to ensuring equal access to cultural assets. The problem is that the rules and procedures for access are specified separately in the texts concerning the given specific category of entities, first of all libraries (the above cited Act on Libraries), and archives (the Act of 14 July 1983 on the National Archival Fonds and Archives[4] further referred to as "the Act on Archives"), as well as respective categories of cultural assets – as "archival materials" referred to in the Act on Archives – are referred to a the appropriate pieces of legislation.

The institution (e.g. the library) may not simultaneously have the status of the institution of culture and of the archive, the latter traditionally associated with administrative services, but the definition of library materials included in the Act on Libraries overlaps with the definition of archival materials included in the Act on Archives. The latter contains provisions relative to the rules and procedures of access, also generally free, to archival materials, whereas the Act on Libraries leaves regulation of access to libraries themselves (to be precise – to their heads). That raises the question whether libraries – in particular, public and scientific ones – preserving materials covered literally by the definition of archival materials (being simultaneously library materials) are obliged, as far as user access to is concerned, to apply the provisions of the Law on Archives or to apply their proper regulations issued on the basis of the Act on Libraries.

3 Cf. the Act of 25 October 1991 on Organizing and Conducting Cultural Activity (Journal of Laws of 2026, item 457).

4 Journal of Laws of 2020, item 164, with subsequent amendments.

The article is an attempt to solve that, genuinely legal, problem – important in the general perspective, but also practical one, and, in spite of its importance, rather marginally treated in the literature – which, moreover, is authored mainly not by lawyers but by archivists (and archive-oriented historians) or librarians, interested more in defining respective obligations and rights of archives and libraries regarding the building of collections and distinguishing in this context between archival and library materials than in the legal bases for accessing materials collected in the libraries[5]. Nevertheless, the concepts of archival and library materials should serve also, because it could seem to result from split legislation, as the starting point for the considerations presented in this article.

Library Materials and Archival Materials – Unclear Legal Definitions

The Act on Libraries, as previously mentioned, identifies serving users, primarily by way of providing access to resources, as one of the two fundamental responsibilities of libraries. The basic term defining the subject matter of library fundamental responsibilities is "library materials". The Act on Libraries contains an extensive definition of library materials, but it is not comprehensive, as the Act provides (Article 5) that these are, *in particular* (that is to say, not only), "*documents containing recorded expressions of human thought, regardless of their physical medium and the means used to record, especially graphic (using writing, cartographic, iconographic and musical), sound recording, visual, audiovisual and electronic documents*". Graphic documents can take the form of publication (i.e. in writing: book, periodical, etc.), but they could also be to the letter written or drawn, and, therefore, classified, in particular, as manuscripts: pieces, letters and archival fonds (*zespoły archiwalne*), the latter divided into family, personal, press, institutional archives and manuscript collections, as well as drawings within the broader group of icono-

5 Cf. the comprehensive study by the historian M. Konstankiewicz, 'Regulacje prawa polskiego mające znaczenie dla działalności archiwalnej' ['Regulations of Polish Law Relevant to Archival Activities'], *Archeion* 2020, in particular pp. 50 sqq.

graphic documents[6]. The term "archival fonds" is traditionally used by librarians in relation to the documentary (in the broad sense) legacy of individuals, families or other private collective subjects, and the attempts to apply the term *spuścizna* (to be translated literally as "legacy", although in librarian terminology this is referred to as "papers") in this instance – to distinguish from "archives" associated with products of public institutions and structures of public administration as well – has proved unsuccessful.

Some library materials also belong, as particular movables created some time ago, to the broad category of historical monuments, the monument having been defined in Article 3 Point 1 of the Act of 23 July 2003 on Protection and Care of Historical Monuments[7] as "*any immovable or movable property, their parts or complexes created by humans or relating to their activity, which bear witness to a bygone era or event and whose preservation is in the interest of society due to their historical, artistic, or scientific value*". This partial overlap of law provisions, however, does not give rise to major practical problems, as the Act relative to monuments declares (Article 2 Para. 1) that it does not infringe provisions, *inter alia*, of the Law on Libraries, and the latter differentiates (Article 6a) between library materials being and not being monuments.

This absence of major problems does not apply to the overlapping of the provisions of Law on Libraries with those of the Act on Archives, though the former is much more recent than the latter what could cause also thinking about the effects of the principle *lex posterior derogat* in the given matter *priori*.

The overlap is due to the broad and – formally – exhaustive definition of archival materials. According to Article 1 of the Act on Archives, archival materials (included in the National Archival Fonds what should mean that there are not included ones, but they are outside the scope of the definition) are "*acts and documents of any*

6 See Annex 3 of the Regulations of the Minister of Culture and National Heritage of 29 October 2008 relating to the method of inventorying library materials (Journal of Laws of 2008, item 1283).

7 Journal of Laws of 2024, item 1292, with subsequent amendments.

kind, correspondence, financial, technical and statistical documentation, maps and plans, photographs, films and microfilms, sound and videophone recordings, electronic documents [...] as well as other documentation, irrespective of the way of its creation, important as a source of historical value information on activities of the Polish State, its particular authorities and other state organizational units and its relations with other states, on development of social and economic life, on activities of political, social and economic, professional and confessional organizations, on organization and development of science, culture and art, and on activities of units of territorial self-government and other organizational units of self-government – created in the past and being created today".

It is obvious that the above definition, even assuming it excludes books and periodicals (what depends, however, upon the approach of interpretation)[8] would encompass a significant portion of documents preserved in libraries, in particular in major public and scientific ones.

Public libraries, as it is provided in Article 18 Para. 1 of the Act on Libraries, these are: the National Library ("the central library of the state" according to Article 16 Para. 1 of the Act), and libraries organized by the units of regional and local self-government. Article 21 Para. 1 of the Act on Libraries states that *ex lege* scientific libraries are: the National Library as well as libraries of higher schools (public and non-public), of the Polish Academy of Sciences (and its entities, in particular scientific institutes), and of the state R&D institutes. Other libraries can gain that status individually, on their motion and by the decision of the Minister of Culture and National Heritage; as experience shows, this optional participation may concern some public (especially regional) libraries as well as libraries of specialized NGOs, but also certain ecclesiastical

8 Moreover, interpretation could be oriented by such extreme opinions as that of P. Garderen for whom the library is a type of archival collection that consists of predominantly published materials which belong to the broader category of archival material – 'Archival material: a practical definition' (vangerderen.net/posts/archival-materials-a-practical-definition.html).

ones[9]. All public libraries belong to the public sector (but only the National Library represents the state sub-sector), whereas within the category of scientific libraries there are representatives of the state sub-sector, of the territorial self-government sub-sector and of the diverse types of the non-public sector.

Only some of the libraries under consideration possess legal personality – essential from the perspective of the ownership of the collected library, as legal persons may be formal owners of their own collections. The National Library has legal personality by virtue of Article 16 Para. 2 of the Act on Libraries, and the principle is that legal personality characterizes all other public libraries as they are territorial self-government institutions of culture possessing legal personality by virtue of Article 14 Para. 1 of the Act on Organizing and Conducting Cultural Activity[10]. On the other hand, libraries of higher schools, of the Polish Academy of Sciences or of the R&D institutes are internal entities of their organizers (higher schools, the Academy, institutes, etc.) who, being legal persons, are owners of their collections; for instance, the Seym Library, that has the status of scientific library, as an internal entity within the Chancellery of the Seym (i.e. the main parliamentary house) holds materials owned formally by the State Treasury.

The problem of overlapping definitions is complicated by other terms used in the Act on Archives, while compared with a respective term of the Act on Libraries. In the former, that concerns two terms: the National Archival Fonds (including in principle all archival materials[11]), and the State Archival Fonds as, together with

9 See the list in the Regulations of the Minister of Culture and National Heritage of 2 April 2012 on the rules and procedure to classify libraries among some scientific libraries and establishing their list (Journal of Law of 2021 item 251, with subsequent amendments).

10 See Note 3.

11 Cf. M. Ruzhanski, 'Pojęcie materiałów archiwalnych w prawie polskim' ['The Concept of archival materials in Polish Law'], *Actual Problems of Law – Aktual'ni Problemi Pravoznavstva* 2019/4, s. 50 sq. It has to be noted that, however, the quoted definition of archival materials concerns literally (Article 1 of the Act of 14 July 1983) materials belonging to the National Archival Fonds; it serves, therefore, simultaneously as a definition of the Fonds. As Article 14 Para. 3 of the Act relates

the Non-state Archival Fonds, an internal category within the National Fonds, distinguished due to the criterium of ownership (Article 2 Para. 2)[12].

The State Archival Fonds is composed (Article 15) of two groups of archival materials: materials generated and being generated as a result of activities of authorities of the state and of the territorial self-government, and of their organizational units (Para. 1), and materials generated as a result of activities of: political parties and other political, social, professional and economic organizations; churches and religious organizations; other non-state organizations and organizational units; political, social and economic activists, creators in the field of science and technology, culture and art, and other persons who made a historic contribution to development of the Polish state, political, social and economic life, and to development of science and culture, and of culture and art; families and noble houses that have had a historical influence on state affairs, political, economic and social relations, and relative to their estates, enterprises and other economic activity (Para. 2).

As the archival materials referred to in Para. 1 can be regarded as belonging *ex lege* to the State Archival Fonds (what does not rule out problems related to ownership), it is precisely the archival materials referred to in Para. 2 that may can specifically fall within the definition of library materials simultaneously. They form, however, part of the National Archival Fonds only if they entered the property of the state as a result of purchase, donation or other cause. This reservation should be very important from the perspective of the core issue of this article, because it relates essentially to the nature of materials preserved in libraries; as for archives, pursuant to Article 25 Para. 2 and Article 26 Para. 2 of the Act on Archives, they preserve their historical holdings (*zasób historyczny*) accumulated in the past, and they may also – if they so decide and

to export of archival materials that do not enter the Fonds, that means that, nevertheless, there have to be such materials – outside the definition of the Act.

12 The names of these aggregates will be written in capital letters in this study – even though lowercase letters are used in the appropriate pieces of legislation.

have the possibilities – acquire for the state the materials referred to in Article 15 Para. 2 of the Act on Archives.

It should be emphasized that Article 16a of the Act on Archives (added in 2016), declaring right of each person to access to archival materials, concerns access to materials belonging to the State Archival Fonds, and, thus, constituting state property. The problem is that Article 15 of the Act has remained fundamentally unchanged since 1983 (except of adding in Para. 1 territorial self-government as a result of decentralization of the state administration inaugurated in 1990), whereas the same wording had a different sense in 1983 and has nowadays.

In 1983, practically all libraries that would have been considered public or scientific if the Act on Libraries had been in force, were either state organizational units (generally equipped, like the National Library, with legal personality) or internal units within state organizational units, and, according to the then principle of uniform state property, all they acquired and preserved, except for formal deposits, was becoming state property. The separation of ownership between the state legal persons and the state (represented by the formal figure of the State Treasury), inaugurated in 1989, was formally declared in 1990[13], and there is no doubt that archival materials having been acquired since 1989/1990 by the state legal persons enter their property, and not that of the state. The ownership consequences of an earlier acquisition, generally considered as changed due to abandonment of the principle of the uniformity of state ownership, though the Act on Libraries does neither contain any provision about "historical holdings", could be open to debate, but only from the very formal point of view. The state archives had not and have not legal personality, and all they possess and acquire belongs formally to the State Treasury.

The Act on Libraries has introduced (Article 6) the institution that could seem similar to the National Archival Fonds – *"resources of li-*

13 The Act of 28 July 1990 amending the Civil Code (Journal of Laws of 1990, item 321).

braries of particular value and significance to the national heritage constitute, in whole or in part, the National Library Fonds". The resemblance, however, is only apparent. The definition of the National Library Fonds, based on the value and significance of the collections to the national heritage, is detached from the concept of any materials. Moreover, no library is covered by the institution *ex lege*, and this is the Minister of Culture and National Heritage who establishes, after having consulted the Council for the National Library Fonds (the usual translation of the name, somewhat misleading is "the Council for the National Library Resources"), the list of libraries which collections, in whole or in part, are classified as part of the National Library Fonds[14]. If the resources of specific libraries can constitute the National Library Fonds in their entirety (what is the case primarily for the National Library and the Jagiellonian Library in Cracow, the latter being the internal entity of the Jagiellonian University of Cracow), the distinction between archival and library materials may be considered as irrelevant, if not from the point of view of all libraries, at least from the point of view of those libraries[15].

14 See the list in the Regulations of the Minister of Culture and National Heritage of 4 July 2012 relative to the National Library Fonds (Journal of Laws of 2024 item 1117, with one subsequent amendment); the Regulations enumerate (Para. 5) categories of the Fonds, in particular manuscripts and drawings.

15 Remains outside the scope of our interest the production of archival materials themselves by libraries (or their organizers), that belong to the public sector and are obliged as well, according to the provisions of the Law on Archives, to maintain their internal institutional archives (*archiwa zakładowe*); the task of the institutional archive is to collect, preserve, and protect records generated by the organization in order to classify, select, and transfer them if they are classified as archival materials, as constituting state property, to the appropriate state archive, developing in that way the State Archival Fonds within the provision of Article 15 Para. 1 of the Law on Archives. As far as the institution of internal institutional archive is concerned, it should be added that access to documents held in such an archive is not subject to the provisions of the Act on Archives; however, the provisions of the Act of 6 September 2001 on Access to Public Information may apply. The judgment of the High Administrative Court expressing such a view (of 31 January 2017, I OSK 1258/16) should apply accordingly to the libraries in question, including the National Library, concerning, however, access to the documents held in their (if they are) internal institutional archives only.

Therefore, the institution of the National Library Fonds could provide an argument in favour of the general opinion that library collections consist solely of library materials, and, because of that, there are no grounds for distinguishing between archival and library materials within these collections. Librarians seem to share this opinion, but archivists could think otherwise – as follows also from the outline of views on the matter in question presented below.

Library Materials and Archival Materials – Varying Scholarly Opinions

The terms "archival materials" and "library materials" were carried over into the current acts from previous pieces of legislation, respectively the Decree of 29 March 1951 on State Archives[16] (which introduced the institution of the State Archival Fonds modelled after the Soviet regulations), and the Act of 9 April 1968 on Libraries[17], the latter containing the definition with an illustrative list of library materials[18]. Therefore, the terms were in use well before the current acts came into force, and they did not necessarily have to be unclear in themselves, especially if one takes into account the very broad definition of archival material in the previous regulations. Moreover, the terms discussed were already used to some extent by specialists before World War II, although at that time the official term *archiwalia* was much popular than *materiały archiwalne.*

From the interwar period onwards, however, fierce debates, with their peak in the 1950s, were taking place – and not only in Poland – between archivists and librarians. The debates regarded the genuinely contentious scope of respective fields of interest. The essential subject matter was, therefore, the demarcation of manuscripts

16 Journal of Laws of 1951, item 149, with one subsequent amendment.

17 Journal of Laws of 1968, item 63, with subsequent amendments.

18 It might be interesting to note that the Law-Decree of 24 February 1928 on the National Library (Journal of Laws of 1928, item 183), in force to 1968, specified "the intellectual output of the Polish nation, expressed in handwriting, print or by any other mechanical or chemical means" as the object of the Library activities – cf. T. Makowski, 'Principles for Developing the Collections at the National Library of Poland', *Polish Libraries* 2021, pp. 276 sqq.

of an archival nature and those of a library nature – demarcation not so much for the sake of the advancement of science, and certainly not to resolve the issue of the legal basis for making specific materials available in libraries[19], but rather in order to bring about the separation in relation to the acquisition of materials between libraries and archives, and, during the 1950s, also to the transfer of manuscripts deemed archival from libraries to the state archives[20]. In fact, in the 1950s, a number of collections, primarily manuscripts, were moved from libraries to archives, despite fierce opposition from the community of librarians. That means that it was the archivists who were the attacking party, while the librarians sought to defend their holdings; it was quite possible to call the debate a conflict.

In consequence, no uniform position could exist regarding to the theoretical foundations for distinguishing between archival and library manuscripts (and materials) – as there is no full consensus to this day. Among many numerous proposals, criteria such as following can be mentioned: the maker (institution, official vs. individual, private), the ultimate purpose (document intended for permanent preservation in a specific location as a source and record of facts of the past vs. document focused on contents as an end in itself), the method of construction (an ensemble, logically constructed and organic whole vs. loose collection of documents), or relationship with legal regulations (manifestation of the application of law provisions vs. detachment from the contents of provisions)[21].

19 It was not until 1983 that "the innovative rule of free access to materials constituting the state archival resource" was introduced – M. Konstankiewicz, 'Legal norms as a context for collecting, processing and providing access to archival materials in Poland in 1919–2019', *Klio* 2025/3, p. 166.

20 See, for instance, J. Kaliszuk, 'Rękopis archiwalny i biblioteczny. Dwa wykłady Piotra Bańkowskiego wygłoszone w trakcie kursu dla archiwistów (KUL, Lublin 1956, 1961)' [Archival and Library Manuscript. Two Lectures of Piotr Bieńkowski Delivered During a Course for Archivists (KUL, Lublin 1956, 1961')], *Archiwa, Biblioteki i Muzea Kościelne* 2025, pp. 228 sqq.

21 The following definitions proposed by the distinguished librarian – who served as director of the National Library from 1956 to 1962 – can still be considered

At present, there are no grounds to speak of a conflict between archivists and librarians, but the difference in positions remains evident, also manifesting itself in a different interpretation of the provisions of the same relevant acts.

Thus, on the one hand, some authors – while noting, however, that "the legal status of archival materials held in libraries and museums had become complex" following the enactment of respective legislation in 1997 and 1996[22] – maintain that the state and self-government libraries specified in Article 22 Para. 2 of the Act on Archives (these are, in particular, all public libraries and the majority of scientific libraries)[23] may hold significant quantities of archival materials belonging to the State Archival Fonds, and consequently (a point to which we shall return in the next part of this article) they should make these materials available under rules of the Act on Archives[24].

On the other hand, the librarian has noted that "the only reason why the archival materials of a person or institution end up in a library, and not in an archive, is a fundamental rule that should apply (and usually does apply) in a modern society that relates to private property: it is the owner of the documents held or the creator of the archival fonds who should decide where it is to be lo-

applicable: "An archival manuscript is a product of collective life regulated by the provisions of law; it is an expression of the provisions themselves and their application. A library manuscript is a product of an individual's life; it is an expression of his/her experiences, talents, interests, and the attitude toward the community" – B. Horodyski, 'Z pogranicza bibliotekarstwa i archiwistyki' ['At the Intersection of Librarianship and Archival Science'], *Przegląd Biblioteczny* 1956/3, p. 210.

22 M. Konstankiewicz, A. Niewęgłowski, *Narodowy Zasób Archiwalny i archiwa. Komentarz* [*The National Archival Fonds and Archives. Commentary*], Warszawa 2016, p. 453.

23 *Archival activities, within the scope of the state archival fonds are also carried out by [...] 2) libraries and museums holding archival materials that form part of the state archival fonds, and collecting archival materials specified in Article 15 Para. 2 that constitute the state archival fonds: a) for which the organizer is: minister or head of central office, unit of territorial self-government, state organizational unit; b) operating within state organizational units and organizational units of territorial self-government.*

24 Cf. M. Konstankiewicz, A. Niewęgłowski, op. cit., pp. 454 sqq.; also K. Konstankiewicz, 'Regulacje prawa polskiego dotyczące archiwów i bibliotek – obszary wspólne, podobieństwa i różnice' ['Regulations of the Polish Law Relative to Archives and Libraries – Common Fields, Similarities, and Differences'], *Przegląd Archiwalno-Historyczny* 2025, pp. 85 sqq.

cated and stored during his/her lifetime or after his/her death"[25]. Even more significant is his conclusion, according to which archival materials are collected in libraries, but, in such cases, they do not belong to the National Archival Fonds, if they are part of its library counterpart – the National Library Fonds; therefore; classifying materials as part of the National Library Fonds entails treating them differently[26]. If materials do not belong to the National Archival Fonds all the less they can belong to its part constituting the State Archival Fonds.

Library Access to Materials Considered Archival

The cautious title of this section stems from the fact that it could be often difficult to determine whether a material, in particular manuscript, held in a library – which meets the overlapping definitions of both archival and library material – actually constitutes archival material from the perspective of the Act on Libraries, the general act binding librarians, or not. If a given item is classified as archival material, furthermore belonging to the State Archival Fonds, a problem arises – which is the focus of this study: whether access to such material is governed by the rules set up in the Act on Archives or by the regulations of the specific library issued pursuant to the Act on Libraries.

It should be recalled that the libraries specified in Article 22 Para. 2 of the Act on Archives may hold archival materials belonging to the State Archival Fonds[27], but this resource is distinguished only

25 M.A. Supruniuk, 'Gromadzenie i opracowywanie kolekcji archiwalnych w bibliotekach naukowych na przykładzie Archiwum Emigracji Biblioteki Uniwersyteckiej w Toruniu' ['Acquisition and Processing of Archival Collections in Scientific Libraries: The Example of the Emigration Archive of the Toruń University Library'], *Bibliotheca Nostra. Śląski Kwartalnik Naukowy* 2010/3–4, p. 26.

26 Ibidem, p. 27.

27 It should be added that in this provision there is a distinction between archival materials which enter (*wchodzą do*) the Fonds and which constitute (*stanowiące*) the Fonds, the latter within the category of materials specified in Article 15 Para. 2. The wording is not clear and, therefore, open to various interpretations, including, literally, the understanding that "entering" encompasses only new materials generated by public institutions.

basing on ownership – ownership by the State Treasury. Therefore, in fact, the issue of access does not concern materials deemed by librarians to be the property of the library or its organizer, and inventoried as such in the inventory registers maintained in accordance with the provisions of the regulations relating to the method of inventorying library materials[28]; in this practical way, moreover, the aforementioned issue of ownership of pre-1989/1990 "historical resource" was resolved separately for each interested library.

What has been mentioned or stated so far in this section is not sufficient to indicate whether the libraries covered by this study – starting with the National Library – should, from a legal standpoint, differentiate the rules governing reader access to archival materials (even those only which belong to the State Treasury) and to library materials. Solving the problem, therefore, requires taking into account four further circumstances.

First, it should be borne in mind that the collections of certain libraries – including archival materials belonging to them – constitute, in whole or in part, the National Library Fonds, requiring – in the case of a partial inclusion – that they be segregated and afforded special protection, what means also special rules of access. This could imply the need to create a third, separate set of access rules of the same library, established, however, on the basis of the provisions of the Act on Libraries – without regard to the Act on Archives. May be, this would prompt one to recall Occam's razor.

Second, even if a conflict arises in general between the principles *lex posterior derogat priori* and *lex specialis derogat legi generali,* such conflict does not arise in the case under discussion. The Act of Libraries is both significantly more recent than the Act on Archives and – with regard to archival materials – contains special provisions that are specific with respect to the general Act on Archives.

Third, in addition to the aforementioned regulations concerning the National Library Fonds and the inventorying of library materials, particular attention must be paid to Article 14 Para. 4 of the

28 See Note 6.

Act on Libraries – concerning all libraries within the meaning of the Act – which stipulates that "*the rules and conditions for using the library are set out in the regulations to be established by its director (principal)*". The regulations – since they are intended to govern *the use of the library*, and even not of library collections (Article 4. Para 2 of the Act mentions making collections available) – are consequently intended to serve as the sole document regulating reader access to the entirety of the materials held by the library. This aggregate comprises library materials, archival materials (if they are – in the abovementioned sense), and – in cases when only a portion of the library's holdings is classified as belonging to the National Library Fonds – all materials included to that Fonds.

Fourth, there could be an additional argument, factual rather than legal. As part of a 2019 audit concerning the protection of the National Archival Fonds, the Supreme Chamber of Control examined the procedures for making materials within the fonds available to the public. However, the audit covered only state archives (and – falling outside the scope of the present study – so called "separate archives" maintained by institutions such as the Ministry of Foreign Affairs and the Ministry of the Interior and Administration). The fact that archival materials belonging to the National Archival Fonds but located outside the audited archives were excluded from the audit could imply that such materials are of negligeable (if any) importance within the National Archival Fonds, yet it also suggests the possibility that they may be made available under legal bases other than the Act on Archives.

Consequently, it is very difficult to subscribe to the view – cited in the previous section – that all archival materials belonging to the State Archival Fonds, including those held in libraries specified in Article 22 Para. 2 of the Act on Archives, should be made available under the rules of that Act. This view is based on the very broad wording of Article 39 Para. 2 of the Act on Archives[29] – with-

29 Organizational units specified in Para. 1 are subject to the provisions of this Act with respect to the archival resources they possess", and Paragraph 1 refers to

out taking into account the described actual changes in the ownership of library collections following 1989/1990, and – above all – without considering the effects of the entry into force of the 1997 Act on Libraries, which, in relation to the 1983 Act on Archives, constitutes not only *lex posterior*, but also *lex specialis.*

Final Remark

The conclusion is that all materials that are held in library collections, even if they meet the statutory definition of archival materials belonging to the National Archival Fonds (and within it to the State Archival Fonds) should be made available to the public on the terms and in the manner prescribed according to the Act on Libraries. These are regulations governing the use of individual libraries covered by this study. Even documents held in the internal institutional libraries (provided they are required by the Act on Archives to maintain such archives) are not subject to the provisions of the Act on Archives regarding their disclosure; instead, the provisions of the Act on Access to Public Information apply in this regard[30].

the libraries and museums specified in Article 22 Para. 2 that collect and preserve archival materials forming part of the state archival fonds.

30 See Note 15.