

## Article

# The Principle of Sustainable Development as the Basis for Weighing the Public Interest and Individual Interest in the Scope of the Cultural Heritage Protection Law in the European Union

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**Abstract:** The concept of sustainable development is widely used, especially in social, environmental and economic aspects. The principle of sustainable development was derived from the concept of sustainable development, which appears in legal terms at the international, EU, national and local levels. Today, the value of cultural heritage that should be legally protected is indicated. A problematic issue may be the clash in this respect of the public interest related to the protection of heritage with the individual interest, expressed, e.g., in the ownership of cultural heritage designates. During the research, scientific methods that are used in legal sciences were used: theoretical–legal, formal–dogmatic, historical–legal methods, as well as the method of criticism of the literature, and legal inferences were also used. The analyses were carried out on the basis of the interdisciplinary literature on the subject, as well as international, EU and national legal acts—sources of the generally applicable law. Research has shown that the interdisciplinary principle of sustainable development, especially from the perspective of the social and auxiliary environmental aspect, may be the basis for weighing public and individual interests in the area of legal protection of cultural heritage in the European Union. It was also indicated that it is possible in the situation of treating the principle of sustainable development in terms of Dworkin’s “policies” and allows its application not only at the level of European Union law (primary and secondary), but also at the national legal orders of the European Union Member States.

**Keywords:** principle of sustainable development; public interest; individual interest; cultural heritage; law



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## 1. Introduction

At the basis of the formulation of the concept of sustainable development, which the principle of sustainable development derives from, was an issue of protection of the environment from broadly perceived human activity, including the activity contributing to economic development [1] (p. 81). The very idea of sustainable development can already be noticed in the views expressed by M. Sommeville [2]. Reflections over the human impact on the natural environment led to a formulation of a concept of sustainable development. A concept, which initially concerned mainly environmental issues, is of an open character, since sustainable development may refer to many aspects of social, political, economic and cultural life. The concept of sustainable development, and *sensu stricto* its elements, has been gradually implemented in the international, national and local law. Next, it turned into the principle of sustainable development formulated in various legal acts. However, for the implementation of the principle of sustainable development to be effective, it is necessary to introduce the appropriate legal instruments at the international, European Union, national and local level, especially in the branch of administrative law [3]. The cultural heritage protection law, and more narrowly perceived historic buildings protection law, derives

from the administrative law. However, the cultural heritage protection requires taking into account on the legal level numerous branches of law, such as, for example, administrative, civil, criminal constitutional, international, European union law. Moreover, in professional literature, a separation of a branch of the cultural heritage protection law is postulated [4] (pp. 23–33). Protection of cultural heritage appears on the international, European Union, national and local level, and a form of historic heritage protection is subject to a process of continuous evolution [5] (pp. 219–243). Cultural heritage as a carrier of cultural identity is one of the key elements of the state and social life, so, therefore, its protection also has its public and legal dimension, especially that the preservation of heritage, and its transfer to future generations is included into the public best interest from the perspective of administrative law. At the same time, the designates (objects assigned to the given name) of cultural heritage, such as, for example, historic buildings or objects, may belong to various entities of public and private law. As a consequence, a dilemma may appear of weighing the public interest and individual interest in cases connected with designates of cultural heritage in situations in which there is a conflict between the right of ownership or the rights arising from contracts and the necessity of preservation of authenticity and integrity of designates of cultural heritage [6] (pp. 187–210), [7] (pp. 21–31). In the contemporary globalized world in which the state borders become blurred, the existence of *sui generis* clauses at the international level is necessary, which would allow for the solution of conflicts between public and individual interest. A principle of sustainable development, also in some legal acts and professional literature, is connected with cultural heritage issues [3,8], so, therefore, one should ponder whether the principle of sustainable development, as a principle present in numerous acts of international law, especially in the European Union law, could become the basis of weighing public interest and individual interest in issues connected with designates of cultural heritage.

The goal of this paper is an analysis of the possibility of using the principle of sustainable development derived from the concept of sustainable development to weigh public interest and individual interest in the scope of protection of cultural heritage in the European Union, as well as formulation of appropriate remarks *de lege ferenda* for the European Union legislator. As a preliminary research hypothesis, it was assumed that the principle of sustainable development is important and may be the basis for weighing the public and individual interest in the field of cultural heritage designations in the European Union. Cultural heritage designations, both movable and immovable, are often owned by bodies governed by public or private law. In this respect, these entities have a wide power over these designations, but its implementation may not necessarily coincide with the public interest, which is to preserve the designations of cultural heritage in the richness of their authenticity and integrity. As a consequence, it is often necessary to weigh the public and private interests in individual cases. Traditionally, this weighing may be based on the principle of proportionality, but it is not always effective to rely on it and, consequently, may lead to an ultimate advantage of one interest over the other. This problem, instead of the proportionality principle, could be solved using the principle of sustainable development. It is worth emphasizing that the concept itself, as well as the principle of sustainable development, has an interdisciplinary character, and the issues of protecting cultural heritage are also of a similar nature. As a consequence, the application of the principle of sustainable development as the basis for weighing public and individual interests would make it possible to find a certain compromise in specific situations and, to the greatest possible extent, enable the implementation of both public and individual interests. The application of the principle of sustainable development seems to be expedient also because it is present in the law of the European Union and, therefore, in all Member States of the European Union, which is important because nowadays the issue of protection of cultural heritage is often not international in nature only from the theoretical perspective (world or European cultural heritage), but also from a practical perspective, especially since the boundaries between the Member States of the European Union are becoming blurred, especially in the economic, social and cultural areas.

## 2. Methods of Research

During the analyses, the scientific methods characteristic for legal sciences have been employed. In order to analyze the principle of sustainable development based on the concept of sustainable development, as well as the issues of weighing legal and public interest in reference to the protection of cultural heritage in the perspective of theory of law, as well as axiology of law, a theoretical and legal method was used. The theoretical and legal method in the context of this article is used to analyze legal institutions in the field of administrative law, civil law and European Union law on the basis of legal acts and literature on the subject and also enables the analysis of tools and bases for the operation of public and private law entities. The area of the theoretical–legal method also includes considerations based on legal logic by identifying a set of referents of given concepts, analyzing the range relations of given concepts, analyses of functions and features of given concepts, taking into account the categories of syntactic names and functors, semantics of names, theory of definition, as well as the theory of relations between particular designates and notions. In order to analyze legal acts, which are relevant from the perspective of the subject of research, the formal and dogmatic method was used. The formal–dogmatic method in relation to this article is based on the analysis of legal acts and, as an auxiliary, legal doctrine. As far as the analysis of legal acts is concerned, it is based on normative material, as well as on the reconstruction of legal norms from various legal provisions. These legal provisions, which are in different hierarchies and degrees of interdependence, are then verified by applying conflict of laws rules (hierarchy, chronology and detail). Moreover, the normative material itself, after reconstruction, is analyzed and interpreted in the process of law interpretation, first at the semantic level (linguistic analysis), then at the system level (reference and verification of linguistic analysis in the context of a given branch or legal system) and, finally, the purposeful level (reference previous considerations for the purposes of a given regulation). The goal of the analysis of the subject of research in legal acts previously in effect, the historical and legal method was used. The historical–legal method in the context of this article made it possible to analyze previous legal regulations from the perspective of definitive issues, as well as the location of given concepts in the legal system in the past legal acts. This was of particular importance in the context of the analysis of the primary law of the European Union, which is no longer in force, but was the basis for the creation and shape of the current primary law of the European Union, also taking into account the issues of sustainable development and cultural heritage. In the scope of interdisciplinary analysis of professional literature from the scope of management science, economic science as well as legal sciences, the method of literary criticism was used. The analyses have been based on interdisciplinary professional literature as well as legal acts—international European Union law and national sources of the generally applicable law. The method of literary criticism was applied taking into account the selection of basic literature, its query, selection, preparation of the publication database, analysis of the content and, on this basis, the preparation of a report, which is the basis for the theoretical considerations of this article, as well as the formulated conclusions. The applied methods and legal conclusions are the means enabling for the implementation of the scientific output of economic science and management science in the scope of the concept of sustainable development into law, and specifically the cultural heritage protection law.

The research methodology of the article was based on the following stages:

1. Identification of the research problem and research gap.
2. Formulating the aim of the research and the initial research hypothesis.
3. Identification of the state of knowledge through the analysis of the literature on the subject and legal acts (normative material) of the *ius cogens*, *ius dispositivum* and soft law nature.
4. Collecting text and normative data.
5. Data analysis, coding and interpretation.
6. Development of research results.
7. Formulating conclusions.

### 3. Results

#### 3.1. Assumptions of a Concept of Sustainable Development

A concept of sustainable development as a response to the effects of human activity in the natural environment, but also numerous crises of the political, military, economic, social and environmental character, appeared in the 20th century, although its ideas had already been visible already in the 19th century. Most frequently, referring to the concept of sustainable development, the issue of development is indicated; however, from a historical perspective, the key issue was a concept of conservation presented by M. Sommerville, but also by G.P. Marsch and G. Pinchot [9] (pp. 2–3), postulating the preservation of the environment in the best possible condition for future generations [1] (p. 83). G. Pinchot acknowledges the necessity of preserving the environment and its benefits for future generations comparing this activity to the operations of an enterprise [10] (p. 136), which is connected strictly with the intergenerational justice principle [11] and the necessity of preservation and transferring the environment and its benefits in the best possible condition for future generations. M.C. Cordonier Segger notices that a concept of sustainable development should be treated as a compromise to preserve the natural environment for future generations [12] (p. 2). The significant economic growth impacts the environment as well as its natural surroundings, especially since some of them are non-renewable [13] (pp. 12–13). Economy in principle had been tackling the issue of economic benefits; however, currently, it is necessary to present responsible economic approach, which will also take into consideration ecological benefits [13] (p. 13), as well as social issues. In economy the problems of long-term and sustainable economic growth is analyzed in the perspective of the following theories of development:

1. Neoclassical theory of growth, subsequently connected with the liberal growth policy and the economic development.
2. New theory of growth (endogenic growth).
3. Theory of real business cycle.
4. Theory of sustainable development [13] (pp. 13–14), [14].

However, in principle, only in the sustainable development theory the condition of sustainability of growth is the sustainable development [13] (p. 14). Additionally, the fact must be emphasized that the concept of sustainable development is not only the economic theory but the ethical and philosophical theory as well [13] (p. 14); therefore, it has become possible to implement it into the generally applicable law. The interdisciplinary character of the concept of sustainable development is well described in the approach presented by D. Pearce and R.K. Turner who had stated that sustainable development “means the maximization of the net profits from the economic development, at the same time protecting and securing the reproduction of usability and quality of natural resources in a long term. Economic development then must mean not only the growth of per capita income, but also the improvement of other elements of social wellbeing. It must also include the necessary structural changes in economy, as well as in the entire society” [15], [13] (p. 17). W. Pearce, E. Barbier and A. Markandya think that the sustainable development means the implementation of defined goals, which are socially desirable, among which one must mention:

1. growth of the actual *per capita* income;
2. improvement of the health condition of the society;
3. fair access to natural resources;
4. improvement of the level of education.” [13] (p. 17), [16] (p. 2)

T. Tietenberg acknowledges the formation of an individual’s wellbeing in time as a starting point for sustainable development [17].

R. Carson noticed the relationship of economic development with the natural environment and social wellbeing [18]. One can notice, though, that in a concept of sustainable development one may differentiate three basic aspects, complementary towards one another, so, therefore, the environmental, social and economic aspects. They are of a character

of primary aspects, which form a concept; however, the elements of a concept began to be gradually implemented to the generally applicable law, and next, a principle of sustainable development was formed, which is present in some acts of international, European Union and the national law. The principle is of a general clause character, so it may refer to various aspects of social life; therefore, one should indicate secondary aspects, arising directly from the principle of sustainable development, and indirectly from the concept of sustainable development, which may include, inter alia, the political, legal, cultural aspects, related to the rights and freedoms of a human being and a citizen, and also safety. In the perspective of reflections over the weighing of the individual interest and the public interest, it is worth noting that taking into consideration the social aspect of economic development, which is compliant with sustainable development as an evolution could be perceived—from the wellbeing of an individual towards the social wellbeing, as well as an attempt to find a compromise between these interests [13] (p. 14). As a consequence, it should be stated that the necessity of prioritizing the social best interests should not be imposed immediately, but development of an individual and his/her wellbeing should be made possible, so that next, an individual should be gradually persuaded to reject one's own egoism and turn towards the social milieu—the communities. In professional literature, it is indicated that the connection of social interests and individual interests may be a concept of a “visible hand”, which according to A. Chandler, should be based on undertaking actions at various decisive levels in order to harmonize individual interest with social interest [19].

The above review of various approaches to the concept of sustainable development, and also the presentation of basic assumptions, does not have an exhaustive character, since due to its capacity and a broad scope of the notion, sustainable development in professional literature, one can notice various approaches and interpretations, especially in the concept of economic aspect and social aspect of the concept of sustainable development [1,9,12,20–23]. Analyzing the views and interpretations of the concept of sustainable development in the professional literature, one may notice that it is not homogenous, and even in some places, it is internally contradictory, which may particularly hinder its implementation into the generally applicable law, which should be internally cohesive [24].

### *3.2. A Concept of Sustainable Development as the Basis of Formulation of the Principle of Sustainable Development*

The problem regarding the relations of human activity in relation to the environment was a subject of various analyses at the scientific, organizational, political and legal level in the 20th century. In 1968, during the first Intergovernmental Conference of UNESCO Scientific Experts, during which an issue was dealt with of interconnections between the environment and the development, an interdisciplinary program (MAB) [25] was formed. One of the conferences, which also significantly impacted the further development of sustainable development in the political, social and legal perspective, was the United Nations Conference on the Human Environment (the so-called Stockholm Conference) in 1972, which tackled the issue of environmental protection and its relationship in reference to economic and social aspects [1] (p. 88). It is worth quoting Principle 8 of the Declaration of the United Nations Conference in the Human Environment: “Economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life” [26]. In the same year, the Club of Rome published “The Limits to Growth” [22], undertaking the issue of sustainable development. The issue of sustainable development, especially in a perspective of environmental protection, was subsequently referred to in the Brandt Report titled: “North: South—A Programme for Survival”, written within the scope of the Independent Commission on International Development Issues [1]. The requirements of the environmental protection were undertaken in the World Conservation Strategy [27] document of 1980, where for the first time in an official document a notion of sustainable development was used [28] (p. 28). A key document concerning sustainable development “Our Common Future” [29], i.e., the so-called Brundtland Report of 1987, contains the

following definition of sustainable development: “In essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations” [29]. The definition of sustainable development in the Brundtland Report has a character of a program [24], which from the legal perspective may create difficulties connected with inaccuracy of a notion and heterogeneity of a concept, and which follows the principles of sustainable development; however, from the other side, the flexible definition of program gives the possibility of adjustment to the dynamically varying social–economic–political situation in the world, and also, it enables the vast application of a concept in various fields of social life. Further development of the concept was continued during the Earth Summit in Rio de Janeiro, which took place in 1992. Its important output from the legal perspective is the Declaration Rio and the Agenda 21 [30,31]. Another important Earth Summit from the perspective of the concept of sustainable development formation was the Earth Summit in Johannesburg in 2002, during which the Johannesburg Declaration on Sustainable Development was adopted [32]. Additionally, a fact needs emphasizing that many international conventions, especially in the scope of environmental protection, are based in a defined measure on the concept of sustainable development. At the same time, one of the views in the doctrine of international law indicates that the concept of sustainable development is too general to be treated as a principle or a rule of common law [33] (p. 78); however, another view in this matter—just to the contrary—emphasizes the normativity of the concept and also allows us to declare that currently a concept of sustainable development law already exists [34]. It is worth emphasizing that the concept of sustainable development increasingly often has impact on the international but also on the European Union, national or local legislation, especially in the branches of public law, including administrative law [3].

In the European Union law, both primary and secondary, one may perceive a certain impact of the concept of sustainable development, especially in the scope of the protection of the environment. At the level of the European Union law, sustainable development is of a character of a political system founding rule. In the doctrine of European Union law, it is indicated that the European legal system does not consist only from the written law norms [35], but it is supplemented by general principles of law, which are a part of the legal order, which also finds a confirmation in the jurisdiction of the European Court of Justice. These principles from the perspective of the normative character are imposed by appropriate legal decisions of creators of policies, as well as the court jurisdiction [35]. J. Bengoetxea, in the classification of the principles constituting the European Union law, distinguished as the last ones such principles, which allow it to measure up to the arising new social problems among which, next to such notions as subsidiarity, environmental protection, proportionality, a principle of sustainable development appears [36] (p. 100–110). It is worth noting, though, that in this division the principles and values have been combined [35] (p. 106), [37] (p. 29). J. de Cendra Larragan distinguishes principles from values. In this respect, the principles should be treated as directing the actions, which they are a source of onto a goal, and also, they provide guidelines for a legislator and allow the courts to issue verdicts based on them in a situation of any gaps appearing in the law, whereas the values are the goal in themselves [35] (p. 106–107). In principle in the primary law of the European Union, one may notice the literal approach to the issue of sustainable growth (not yet development) only in the Treaty of Maastricht of 1992, through which, *inter alia*, the amendment of art. 2 was introduced of the Treaty establishing the European Economic Community, which formed the following wording: “The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of

social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States” [38]. Sustainable development was already recorded as a political system founding rule in art. 2 of the Treaty of Amsterdam of 1997 in the following wording: “The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States” [39]. The European Union legislator changed the narrower notion of sustainable growth to the wider scope of a notion of sustainable development derived straight from the concept of sustainable development.

In the currently applicable Treaty of Lisbon, which consists of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFUE) [40], the notion of sustainable development appears mainly in reference to environmental issues, but also to social and economic issues. In the Treaty on the European Union the principle of sustainable development treated as a political system founding rule [1] (p. 39), [41] (p. 282) appears in the Preamble of the Treaty on European Union: “Determined to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields” [40]. One could analyze, though, whether from the text of the Preamble one could conclude on the existence of principles, especially that the Preamble should rather indicate the directions of interpretation of a given act of law. However, regardless of these reservations of a normative character, one must emphasize that the European Union legislator expanded the use of a principle of sustainable development basically to many fields of social life. On the grounds of the Treaty on the European Union the sustainable development appears in:

Art. 3 section 3 paragraph 1 TEU among the European Union goals in the social, economic and social context: “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance” [40].

Art. 3 section 5 TEU, in which the European Union legislator decides that the goal of the European Union is the contribution to “the sustainable development of the Earth” [40].

Art. 21 section 2 letter d TEU and art. 21 section 2 letter f [40], which in principle transfer the European Union laws onto the level of its international cooperation with other states [24].

It is worth emphasizing a consequence of the European Union legislator who adopts sustainable development among the goals, not the values of the European Union, which from the axiological perspective and the nature of a concept of sustainable development is a correct approach [24]. The sustainable development was also undertaken on the grounds of a Treaty on the Functioning of the European Union in the following legal regulations:

Art. 5 TFUE—a principle of subsidiarity, which is strictly related to the principle of sustainable development.

Art. 11 TFUE, which states that “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development” [40]. Art. 11 can be found in Title II containing the EU principles. Analyzing art. 11 TFUE one can indicate, firstly, the principle of integration and, secondly, the principle of sustainable development. At the

same time, it must be pointed out that in principle they refer to environmental issues, so, therefore, they narrow down the principle of sustainable development.

Title XX named: “Environment”, which is based on the concept of sustainable development implements it to environmental issues. It is especially perceivable in the scope of the goals of the European Union environmental policy—in art. 191 section 1 TFEU: “preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change” [40], as well as the principles of the European Union environmental policy (especially art. 191 section 3 TFEU).

Art. 309 TFEU in principio, constitutes that “The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union” [40], which can be perceived as *sensu largo* a reference to the economic aspect of a concept of sustainable development in conjunction with art. 3 TEU.

Declaration on Article 126 of the Treaty on the Functioning of the European Union, paragraph 5, constitutes that “The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Treaties and the Stability and Growth Pact” [40]. In this Declaration one can also notice a reference to the economic aspect of the concept of sustainable development with the phrase “balanced economic growth”, which is derived from the concept of sustainable development; however, this Declaration refers to the issues connected with the budget deficit, so, therefore, this is a very narrowly defined economic perception.

In the primary and secondary law of the European Union, there is no definition of sustainable development, so, therefore, pursuant to the views of L. Kramer and D. Pyć [41,42], it should be stated that in the European Union law a definition of sustainable development is identical with the definition existing on the basis of the international law and, therefore, adopted in the Brundtland Report, pursuant to which “Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits—not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth” [29]. A problematic issue is the implementation of the heterogenous concept of sustainable development onto the legal grounds, as well as its effectiveness [43]. In the professional literature, *inter alia*, the following approaches to sustainable development in the European Union law are indicated:

A concept of sustainable development as the political system founding rule of the European Union [41] (p. 282).

Art. 191 of the TFEU, undertaking an environmental aspect of a concept of sustainable development is the treaty basis to issue the acts of the EU law in a situation when the main goal of the given act of law is environmental protection [44] (pp. 10–11).

Principles that may be interpreted based on art. 191 TFEU are the guidelines in the scope of the environmental protection policy [42].

The principle may be transformed into law in a situation when it is contained in the legal regulations; however, the policies cannot become the generally applicable law, and a concept of sustainable development should be treated as a policy [45] (p. 13).

Sustainable development is legally effective in European Union law [46].



Legal significance of a concept may be referred only to art. 11 TFEU (the environmental aspect) [47].

J.H. Jans indicates that the sustainable development is a guideline connected with political activity, and not the normative character [48] (p. 496).

A concept of sustainable development should be treated as an idea or a policy [49] (p. 19).

The analysis concerns European Union law, but it is worth noting that a principle of sustainable development also appears in national and local legal acts of various countries. As an example, it can be pointed out that in the Constitution of the Republic of Poland, the constitutional legislator in art. 5 decides that “The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development” [50]. On the grounds of this article, a dispute arose in the doctrine of law, whether the principle of sustainable development clearly pointed out by the Polish constitutional legislator refers only to the environmental protection or the issue of territorial sovereignty, human freedoms and rights, security of citizens and national heritage. In case of broad interpretation, it should be pointed out that the Polish constitutional legislator not only holistically implemented the principle of sustainable development, but also expanded its conceptual range as well, referring it also to the issue of national heritage protection. I. Niżnik-Dobosz and P. Dobosz state that “The principle of sustainable development belongs to the so-called programmatic norms of the Polish Constitution which—under the theory of the national law—outline only the general direction of operation for the state bodies, at the same time constituting the legal basis for formulation of specific norms, defining possibly unambiguously the addressee’s behaviour” [8]. One should lean towards the voices in professional literature, which point out to the broad implementation of the principle of sustainable development to the Polish law and, therefore, also to the issues connected with the protection of cultural heritage [8]. It can also be confirmed in the case law of the Polish Constitutional Tribunal, which had stated that “the principle of sustainable development includes not only the environmental protection or development of spatial planning, but also sufficient care for social and civilizational development, connected with the necessity of building the required infrastructure, necessary for human life and life of particular communities—taking into account the civilizational needs. Therefore, the idea of sustainable development includes a need to consider various constitutional norms and their appropriate balancing out” [51]. I. Niżnik-Dobosz and P. Dobosz, developing the analysis of the principle of sustainable development in reference to the cultural heritage pursuant to the Polish Constitution, distinguish three meanings (qualifications) of the principle of sustainable development: “firstly—the sustainable, harmonious development of a given sphere of social relations: business, economic, spatial, regional, secondly—is to be at the same time cohesive, friendly, corresponding to the principles of environmental protection. It is also possible to deliberate upon triple qualification, according to which the idea is about the sustainable development of harmoniously developing spheres of social relationships referred to above, which are compliant at the same time with the principles, notions and institutions of the Environmental Protection Law” [8]. I. Niżnik-Dobosz and P. Dobosz deem the adoption of double qualification as appropriate, which eventually, however, leads them to adopt the triple qualification as well [8].

### *3.3. Cultural Heritage as an Element of a Concept of Sustainable Development*

Prima facie, it would seem that the protection of cultural heritage does not become an inherent part of the concept of sustainable development; however, the very concept, as it had already been presented above, consists of three basic cornerstones: economic, social and ecological [13] (pp. 16–17), [52] (p. 148). The environmental aspect seems to be the most developed one. The social aspect of the concept has a broad conceptual range, so, therefore, its scope may contain an issue of cultural heritage protection. It has a particular justification from a perspective of the principle of intergenerational justice, which stands at the base

of social and environmental aspects of the concept of sustainable development. Cultural heritage is also frequently connected to the environmental milieu, in which it appears. The concept of cultural heritage is defined differently in different scientific disciplines. For example, one can mention the definition of J. Pruszyński, who considered cultural heritage as “the stock of movable and immovable things along with the related spiritual values, historical and moral phenomena, considered worthy of protection of the law for the good of society and its development and passing on to the next generations, due to understandable and accepted historical values, patriotic, religious, scientific and artistic, important for the identity and continuity of political, social and cultural development, proving the truths and commemorating historical events, cultivating a sense of beauty and civilization community” [53] (p. 50), and K. Zeilder treats cultural heritage as “the entire material and spiritual heritage of a given social group” [54] (p. 26). Pursuant to the acts of international law [55,56] and the professional literature, tangible and intangible cultural heritage can be distinguished; however, in principle the connection of tangible and intangible heritage creates a certain entirety and the complete dimension of cultural heritage. According to Art. 1 Convention Concerning the Protection of the World’s Cultural and Natural Heritage [55], the concept of cultural heritage (especially in relation to tangible cultural heritage) covers:

- “monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view” [55]. On the other hand, when looking for a legal definition of intangible cultural heritage, art. 2 clause 1 sentence 1, which states that: “The »intangible cultural heritage« means the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artefacts and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” [56].

Moreover, a fact of strong connection of heritage with religion and values needs emphasizing. In Europe, heritage has a religious dimension [57], and it is connected with Christianity and its values. In reference to the reflections over the cultural heritage in the context of the principle of sustainable development it is worth quoting J. Purchla’s view that “Relationship between the past and the future is not limited today to the issue of historic buildings and their protection. A notion which has been enjoying spectacular career lately, is the cultural heritage (cultural heritage). More and more often it replaces the classical notion of a historic building. Here one should absolutely state that although the historic building belongs to the past, the heritage serves contemporary goals, whereas this heritage is not limited only to tangible cultural assets, but also our memory and identity. Cultural heritage is a process with its own dynamics. It reflects both the relationship of the society to the world of values, but also a process of reinterpretation of values in itself. Herein lies also the growing significance of cultural heritage. Because the heritage belongs to all of us, and access to it is one of the most fundamental human rights. Therefore, the heritage always has the human dimension. From this fact the key significance of social capital stems from—not only for the dynamic process of continuous creation and reinterpretation of heritage, but also for its effective defense” [58] (p. 44). Therefore, one can state that the heritage has dynamic character when it is a certain process. The dynamics of changes and also a definite process of changes is also entered into the concept of sustainable development, and implementation of the principle of sustainable development allows for flexible adjustment to dynamically changing conditions of the social, economic and environmental milieu,

respectively. It is also worth noting that contemporary literature is concerned with the issue of sustainability in various contexts related to cultural heritage [59–61]. Connection of a principle of sustainable development with the protection of cultural heritage also allows for a multi-aspect approach to the issue of protection of cultural heritage, which should also contribute to the increasing the effectiveness of cultural heritage management, especially that in contemporary times the heritage must be appropriately managed [62,63]. The only problem can be the fact that the concept of sustainable development has not been holistically implemented to any legal order, which may cause a decrease in the effectiveness of the principle of sustainable development [24,43]. On the other side, however, on account of heterogeneity of a concept at the normative level, it is not possible to implement it holistically, so, therefore, perhaps, it should be treated as a sui generis programmatic norm or even the policy as well, which although, from the international perspective may be easier to introduce, and which also follows then to use in defining specified standards of policy in a given scope.

As a consequence, it can be noted that cultural heritage with all its material and non-material wealth, as well as taking into account the principle of intergenerational justice, which is the basis of the concept of sustainable development, as well as the protection of cultural heritage, is part of the concept of sustainable development, especially in the social aspect, but also environmental. In addition, the protection of cultural heritage should be subject to the processes of sustainable development and is part of them through the necessity to preserve the cultural heritage of the past and the present generation for future generations.

### *3.4. Weighing the Public Interest and Individual Interest in the Scope of Protection of Cultural Heritage*

Protection of cultural heritage requires from the legislator the introduction of certain restrictions of individual freedoms. Usually, these restrictions pertain mainly to the issue of the right of ownership, as well as the freedom of business activity. Protection of cultural heritage is connected with public interest, so, therefore, the necessity of preservation and transfer to future generations of the heritage of present and future generations, whereas the issues connected with individual freedoms, so, therefore, inter alia, the right of ownership and the freedom of business activity, relate to an individual's best interest. Public (social) interest is a diverse, variable and connected with a specific factual status [64] (p. 137). Evaluating the justifiability of protection of public interest in a given case one should consider numerous factors such as, inter alia, the ratio legis of a given legal act, its objectives and tasks, as well as the general principles of law [64] (p. 137). In the doctrine of administrative law, sometimes the public interest is identified with public welfare [65] (p. 106), which may include, inter alia, cultural heritage. Public interest is not the sum of private interests, either [65] (p. 107), but something above the private interest, because it includes various entities of public and private law. Public interest as an undetermined notion should be reviewed in a perspective of the values of the generally applicable law (especially legal rights, which are given the highest position in the hierarchy) [65] (p. 109). A notion of the public interest is flexible and is of dynamic character, allowing for adjustment to the changing political, social and economic conditions, with the concurrent preservation of legal foundations based on legal values and principles in a given legal order. Public interest on one side allows for effective protection of an individual's freedoms, which lies in the public interest, but at the same time, this notion often stands at the basis of restriction of an individual's freedom on account of the public interest [65] (p. 110), [66] (p. 34). Individual interest is the interest of an individual person, perceived very broadly, because also in the context of the factual interest [64] (p. 138). It is also worth emphasizing that legislators sometimes use terms qualifying this interest, such as for example a principle of equity, which indicates that the equitable interest of an individual cannot be illegal and principle of social coexistence [64] (p. 138).

Taking into account the public and individual interest, two underdefined general clauses, one should consider a situation in which the conflict of both of these interests

occurs [67] (p. 39–40). Therefore, one can present the following possibilities of solution to this conflict [67] (p. 40–41):

- a. In a situation of conflict, one should firstly implement the public interest.
- b. One should protect individual interest as far as the border of conflict with the public interest.
- c. Both interests should be balanced out and, bestowing the principle of equity to the individual interest, indicate the lack of protection of any subjective individual interest.
- d. The theory of sustainable development [13] (pp. 13–14).

The first of the possibilities is a characteristic for non-democratic states, for which the overriding goal is the public interest, even though de facto, it was of an individual character (public interest is equal to the interest of persons exercising power and authority). The other possibility de facto also in principle prejudices on the primacy of the public interest. The third presented possibility assumes balancing out the interests and restricts the subjectivism of an individual interest. It seems to be the most matching to balancing out the public and individual interest in the scope of the cultural heritage protection. Balancing out is also entered in a certain sense into the principle of sustainable development. Therefore, it is necessary to review this possibility from the perspective of the principle of sustainable development. As a consequence, reviewing a specific case using the principle of sustainable development, one should first reflect on the basis of analysis of various factors (legal, social, economic, environmental, cultural) upon the necessity of protection of a given designate of cultural heritage and, next, considering the scope of action that an owner of a given designate of cultural heritage wishes to undertake towards it, using the principle of balancing out the interests, make a decision regarding how much the protection of public interest is necessary and to what extent. Balancing out the interests based on the principle of sustainable development will also allow us to find a compromise between the protection of public interest and fulfillment of the individual interest by, for example, indicating certain elements, which have to be preserved, and allowing for modification/adjustment of elements less significant from the perspective of a given cultural asset in order to allow for exercising, for example, the right of ownership.

#### 4. Discussion

The principle of sustainable development, expressed in European Union law, is of interdisciplinary character and may be used in order to solve conflicts of legal interests supportively towards the principle of proportionality, which is of the primary and more general character. Although sustainable development is identified in majority with environmental issues, one should clearly emphasize that the assumptions of the concept significantly extend beyond the environmental protection, because they refer to broadly perceived social, economic and environmental aspects, and moreover, they are strongly connected with the principle of intergenerational justice, which also stands at the foundation of the cultural heritage protection. It is also worth noting that the concept of sustainable development derives also from the concept of conservation, a notion that is particularly related to the conservation of historic buildings. Protection of cultural heritage is entered into the social aspect of a concept of sustainable development. It should also be noted that the protection of cultural heritage may be also connected with conservation of greenery, entering into the wholeness and integrity of a given designate of cultural heritage. In a particular way, it concerns historic buildings, and especially the palace and park complexes, and protection of a given landscape is of significance to cultural heritage. It can be confirmed, though, that in specific cases the implementation of the principle of sustainable development in reference to the conservation of designates of cultural heritage is not even proper, but necessary indeed, because it also refers to the environmental aspect of the subject principle. Various approaches in professional literature presented in item 3.2 of this article to the principle of sustainable development at the level of the European Union law arise from heterogeneity, multi-dimensionality and multilevel character of the concept of sustainable development, being the foundation of forming the principle of sustainable development. Vast interpreta-

tional possibilities of this concept may lead to the danger of a lack of cohesiveness of the principle of sustainable development at the normative level, and this is the cohesiveness and clarity of law, which is necessary from the perspective not only of the very nature of law, but of the effectiveness of law as well. The European Union legislator, perceiving these problems, entered sustainable development into the European Union goals, and not values. The author thinks that at the level of European Union law, sustainable development cannot be treated as a political system founding rule and also as a legally binding one; the differentiation of using the principle of sustainable development should not be applied depending on which aspect it refers to. Additionally, it is difficult to treat the sustainable development only as an European Union/international idea or policy. As a consequence, in the author's opinion, it is worth invoking R. Dworkin's [68] concept, and it should be declared that the principle of sustainable development cannot be a legal rule but a standard, and specifically one of the "policies", outlining general goals, in this case referring to social, economic and environmental issues. One should emphasize, though, that Dworkin's "policies" are a part of the legal system, and they are not a sole result of the current international, European Union, national or regional policy. Taking the above into consideration, it seems fair to state that the principle of sustainable development should be treated as the principle outlining the goal, and also indicating the directions of interpretation of given legal provisions (legal regulations on the normative contents). As a consequence, then, a given legal interest should be interpreted in the context of the implementation of sustainable development. The principle of sustainable development should also be used in a situation of conflicts of common good and legal interests. In case of a conflict of common goods, it may be used supportively next to the principle of proportionality; whereas, in case of a conflict of interests within the environmental, economic or social aspects, the principle of sustainable development may fulfil a function of weighing the individual and public interest in a situation of their conflict. The linking of sustainable development with the individual and public (social) interest, especially in the context of harmonizing the individual interest with the social interest, is also perceivable in the professional literature [19], which had already been indicated in the course of reasoning contained in item 3.1. The concept of sustainable development is interdisciplinary, just like the approach to cultural heritage should be of such nature. Paying attention to the fact that cultural heritage is part of the concept, and thus the principle of sustainable development, should make it possible to look at the issue of cultural heritage protection not only from a legal or conservation perspective, but also from a social, environmental and even economic perspective. In principle, each person is responsible for some designations of cultural heritage, which are either in the public space, and then naturally belong to the entire society, or belong to individual bodies of public or private law. The necessity to weigh the public and private interest in the context of cultural heritage may, therefore, appear at any time, e.g., during construction, renovation, extension, reconstruction, sale, rental, maintenance and running a business. From the perspective of the protection of cultural heritage, it is also crucial to protect the authenticity and integrity of the designates of this heritage [6,7]. A holistic view of the issues of heritage protection shows many similarities in environmental protection; therefore, the choice of the principle of sustainable development seems to be purposeful. The above analyses have shown that the principle of sustainable development can be the basis for weighing public and individual interests in matters related to cultural heritage at the level of European Union law; however, the consequences of such an approach should also be indicated. So far, the principle of proportionality has been largely based on the necessity to choose between the individual interests of the owner of monuments and their expectations, and the public interest of the state or society and their expectations regarding the protection of a given heritage designate. However, the principle of proportionality is general and fundamental. The principle of sustainable development would allow for a more detailed and systematic approach to this type of issues and would also allow for an interdisciplinary approach, taking into account, apart from social issues, also environmental and economic issues. In addition, the principle of sustainable development in terms of Dworkin's "policies" would

allow to provide certain general rules and guidelines in such situations and would indicate the directions of solving this type of issues so as to reconcile the public and individual interests as much as possible. In addition, the principle of sustainable development occurs throughout the European Union and, therefore, would be a common determinant and direction for actions of public administration bodies and courts in this type of cases and, therefore, would enable more effective protection of cultural heritage and ensure uniformity and certainty of legal transactions in the European Union. In consequence, one can state then that the principle of sustainable development may be used in reference to the cultural heritage protection at the level of the European Union law, because it becomes an inherent part of the social aspect of the concept of sustainable development, which the principle of sustainable development is based on. Moreover, the principle of sustainable development may be the basis for weighing the public and individual interest in reference to the cultural heritage protection also at the level of the European Union, which confirms the adopted research hypothesis as well.

## 5. Conclusions

In summary, one should state that the principle of sustainable development, present in the European Union law, deriving from the broad, interdisciplinary, multi-aspect and multi-level concept of sustainable development, may be used in reference to the broadly perceived problems of cultural heritage protection in its social aspect, especially taking into consideration the principle of intergenerational fairness. Moreover, the principle of sustainable development treated in the categories of Dworkin's "policies", being a part of the European Union legal system may be used as the foundation of weighing public interest and individual interest in the scope of protection of the cultural heritage, enabling more effective exercising of law in specific situations. Using this principle in this context should include not only the level of the European Union law (primary and secondary), but also the level of national legal frameworks of the European Union Member States, which rather should not be a problematic issue, especially that many countries in a specific scope use the concept of sustainable development—or more specifically—the principle of sustainable development in their legal framework. Ultimately, the application of the principle of sustainable development to weighing public and private interests in matters relating to cultural heritage would contribute to increasing the effectiveness of protection, uniformity and certainty of legal transactions, as well as cooperation in the European Union, as well as public trust in state and EU bodies.

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