

CULTURAL HERITAGE LAW IN POLAND

Olgierd Jakubowski*

ojakubowski@nimoz.pl
National Institute for Museums and Public Collections
ul. Goraszewska 7
02-910 Warszawa, Poland

The Criminal Threat to Cultural Heritage in Poland – Analysis of the Events of 2014

Abstract: When studying the phenomenon of crime against cultural heritage different methods can be applied to diagnose the level of threat. A year-long study of specific crime cases where the victims are cultural goods allows one to see trends in the activities of the perpetrators and helps one to develop methods to counteract future incidents. Long-term studies of crime cases affecting cultural heritage enable for a complementary way of assessing the level of risk factors and to minimize the risk of their occurrence.

The study is expected to begin an annual series of articles aimed at the systematic presentation of the phenomenon of crime against cultural heritage in Poland. The text presents a selection of cases which, in the opinion of the author, may constitute an auxiliary tool to diagnose the level of the threat to cultural goods within the period indicated. There are presented in a shortened form cases of various types of criminal activities against heritage, such as theft, burglary and the destruction of valuable cultural objects.

Keywords: crime, cultural heritage, robbery, destruction

* **Olgierd Jakubowski** is a Chief Expert at the National Institute for Museums and Public Collections in Warsaw, where he is responsible for export licensing and cooperation with the police and customs. Olgierd is currently a member of the European Commission's working groups on the export and import of cultural goods.

Introduction

When analysing the level of security of cultural heritage in Poland, one should pay attention to the impact of crime on the level of threats to individual types of cultural goods. Crime against cultural heritage takes many different forms and is directed against its different components, thus the problem often requires – depending on the specific case – a different approach. The theft of a valuable picture from a museum, the destruction of a Gothic building, historical archive materials taken illegally out of the country or archaeological looting – all of these activities are a threat to cultural heritage broadly understood. The legal classification of such acts, the *modus operandi* of the perpetrators or the level of harm will, however, be different. Using in a study of this phenomenon only quantitative data concerning cases detected by law enforcement authorities can lead to erroneous conclusions. Such statistics will not take into consideration what are known as black crime statistics, which in some cases such as the smuggling of cultural property, is the essence of the problem.¹ As far as a crime directed against cultural heritage is concerned, it should be noted that a *case method* can be complementary to police statistical data in investigating the phenomenon. This method, which consists of a detailed description of the actual case and allows us to draw conclusions as to the causes and results of its course, can be very helpful in assessing the scale of threats to cultural heritage. In favour of this method is the fact that many cultural objects are individual and unique objects, whose loss irreversibly impoverishes cultural heritage. On the basis of individual cases, one can also specify certain patterns in the activities of the perpetrators, which allow one to develop methods of protecting endangered cultural goods.

The major sources of data concerning the scale and characteristics of crime against cultural heritage in Poland

When studying the issue of the nature and scale of crimes against cultural heritage the scholar should use a variety of materials. Only the combined analysis of data available from different sources allows for a proper assessment of the phenomenon.²

¹ See O. Jakubowski, *Zjawisko przemytu dóbr kultury*, "Archiwum Kryminologii" 2014, Vol. 36, p. 108.

² Different terminology may be a problem in interpreting research material related to the scope of the data presented. In particular the following expressions should be noted: "crimes against historical sites"; "crimes under the Act on the Protection and Guardianship of Monuments"; "crimes against cultural property"; "crimes against cultural heritage"; "crimes against archive materials"; "crimes against archaeological heritage"; "crimes in the art market". The above expressions and their scope are often interchangeable and are used in different contexts. For the purpose of this study the author uses the broadest, in his opinion, expression – "crimes against cultural heritage".

One of the main sources of information on crime against cultural heritage is the data compiled by the Polish National Police Headquarters.³ Data for the years 1998-2011 are published on the Police web sites⁴. Police statistics relating to the phenomenon under discussion for the years 2012-2013 are published in a journal devoted, among others, to the issue of recovering lost cultural goods – “Valuable Priceless Lost”.⁵ In this magazine there are also published statistics covering data for 2014.

According to police statistics in 2014 there were altogether 1,295 crimes where the subject of which were cultural goods, which means a decrease of 28.8% compared to 2013 when there were 1819 such offences. Of all the offences there were 108 criminal offences prosecuted by the Act of 23 July 2003 on the protection and guardianship of monuments⁶ (in 2013 there were 87 crimes). The detection rate of all crimes aimed at stealing national treasures in 2014 accounted for 34.4%, i.e. 3.6% less than in 2013.⁷

In the case of information on the smuggling of cultural goods, the data made available by the police should be complemented by statistics compiled by the Customs Service and the Border Guard, formations which in the course of their duties frequently come into contact with cases of the illegal export of cultural goods.⁸

An important and often underestimated source of data concerning the scale and specificity of crime against cultural heritage is the National Register of Stolen or Illegally Exported Objects of Historical Value. This database, which is regulated under Article 23 of the Act of 23 July 2003 on the protection and guardianship of monuments, is administered by the National Institute for Museums and Public Collections under the authority of the Minister of Culture and National Heritage. It is a commonly available electronic database, managed on a statutory basis, which

³ Using data from the statistics presented it should be noted that the system of collecting information by the police has changed several times. The increase or decrease in reported crime in the above data was associated with other methods of counting notifications, and not with the real evolution of the phenomenon – see for more: O. Jakubowski, *Karnoprawna ochrona zabytków – rozważania nad kierunkami zmian prawnych*, in: K. Zeidler (ed.), *Prawo ochrony zabytków*, Wolters Kluwer, Warszawa – Gdańsk 2014, p. 475.

⁴ <http://statystyka.policja.pl/st/wybrane-statystyki/przestepczosc-przeciwk> [accessed: 15.09.2015].

⁵ The magazine is now published by the National Institute for Museums and Public Collections.

⁶ Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act on the Protection and Guardianship of Monuments (APGM)], consolidated text: Dz. U. 2014, item 1446, as amended.

⁷ See K. Czaplicka, *Przestępczość kryminalna przeciwko dobrom kultury w Polsce w latach 2013-2014*, “Cenne, Bezcenne, Utracone” 2015, No. 1/82-2/83, pp. 94-98.

⁸ The journal “Cenne, Bezcenne, Utracone” [“Valuable, Priceless, Lost”] should be recommended for the reports containing detailed statistics of the phenomenon and in-depth analysis by the representatives of these services – see W. Krupiński, *Nielegalny wywóz zabytków w ocenie staży granicznej – w ocenie działań straży granicznej w latach 2012-2013*, “Cenne, Bezcenne, Utracone” 2013, No. 1-4, pp. 139-141; A. Skaldawska, *Rola Służby Celnej w walce z falsyfikatami*, “Cenne, Bezcenne, Utracone” 2009, No. 3; A. Skaldawska, P. Gawroński, *Zabytki na granicy – Działania Służby Celnej w ujawnieniu nielegalnie przewożonych zabytków*, “Cenne, Bezcenne, Utracone” 2015, No. 1/82-2/83, pp. 88-93.

contains information on antiquities lost as a result of criminal actions.⁹ It is often seen merely as a tool used to search for relics lost as a result of crime. One cannot, however, ignore its listing function as a tool containing quantitative data, which permits a substantial analysis of the theft or illegal export of cultural goods. Thanks to the information from the list, one can trace both the geographical distribution of crime, as well as assessing the types of individual cultural goods that most commonly fall victim to criminals. However, in order to use correctly the data from the National Register of Stolen or Illegally Exported Objects of Historical Value, one should know the specifics of the procedures and provisions concerning the principles of entering information into the database. Some information about the thefts of antiquities – in the case of the prompt recovery of objects – is on principle not reported by the relevant authorities. Another reason for the non-registration of an object is the lack of adequate documentation which would enable its identification and the lack of knowledge about the obligation to place the object on the register.

The database contains information about the objects sought, seized (in the case of illegal export) or recovered. In 2014 there were 48 cases of theft registered and divided according to the place of the crime:

- museums – 0,
- religious associations – 9,
- cemeteries – 1,
- private collections – 19,
- others – 19 comprising:
 - art galleries – 9,
 - antiquarian bookshop – 1,
 - village council – 1,
 - archaeological sites – 4,
 - shrines – 1.

As a result of the above mentioned crimes the missing objects were registered in the following categories:

- sculpture and minor art figures – 8,
- paintings – 21,
- furniture, wooden products – 1,
- jewellery – 5,
- weapons – 1,
- varia – 1,
- goldsmith items – 5,
- blacksmith and metal products – 1,
- cast and forged goods – 2,
- numismatics – 2.

⁹ See P. Ogrodzki, *Krajowy wykaz zabytków skradzionych lub wywiezionych za granicę niezgodnie z prawem*, in: K. Zeidler (ed.), *Leksykon prawa ochrony zabytków, 100 podstawowych pojęć*, Zakamycze, Kraków 2010, pp. 148-151.

When pointing out the sources of information concerning the scale of crimes against cultural heritage, one must not forget about research in this area conducted by specialized cultural institutions, such as the National Heritage Board of Poland and the National Institute for Museums and Public Collections. An example would be the survey on the prevention of crimes against cultural heritage started by the Centre for the Protection of Public Collections and maintained by the National Institute for Museums and Public Collections.¹⁰ One should also point out the study on the protection of collections in specific types of facilities, such as the questionnaire on protection against fire and crime at open-air museums¹¹ or the questionnaire for the National Library Collection.¹²

The data obtained on the basis of the studies of specialized institutes constitutes an important contribution and supplement to statistics of the law enforcement authorities related to crime against cultural heritage.

A selection of crimes against cultural heritage in 2014 in Poland

Given that in Poland, as indicated by police statistics, every year there are hundreds of cases of crimes against cultural heritage, for a comprehensive presentation of the phenomenon it is essential that these events are grouped. The following list is a selection of cases which in 2014 stood out in the context of other similar crimes. The sequence of events concerning crimes against cultural heritage in Poland is presented chronologically.

January

In Mysłakowice, a scrap dealer destroyed a nineteenth-century cotton mill – part of the former “Eagle” Flax Industry. The site was of great historical and cultural value, and was listed in the register of historic objects, which unfortunately did not save it from destruction. The perpetrator did not discontinue activities leading to the destruction of the site, despite the protests of the regional conservator. In the verdict of the court of first instance he was sentenced to two years imprisonment, suspended for five years, a fine of PLN 80,000 and PLN 50,000 in exemplary damages payable to a foundation related to the protection of antiquities. In this process, the regional conservator acted as an auxiliary prosecutor. In May 2015 the appeal court reduced the two year sentence to one year and the fine by half. This

¹⁰ This recent audit, which is repeated periodically, covered the year 2012. It engaged all regional conservators.

¹¹ A survey on the protection of open-air museums against fire and crime covered the period 2001-2012. It was completed by 28 institutions.

¹² In a survey conducted in 2012 by the National Institute for Museums and Public Collections of the 56 libraries sent a questionnaire, 48 attended: their collections were included at the time in the National Library Collection.

case shows, that as with the destruction of Lange's historic villa in Łódź, the current regulations do not work as a deterrent to an owner who has some interest in destroying a listed building. Even in the face of the obvious and deliberate destruction of the historic site there is no custodial sentence.

In Kalwaria Pałacowska two paintings were damaged in the chapels adjacent to the Sanctuary of Christ's Passion and Our Lady of Kalwaria. One of the paintings was partially burnt, on the other the face of Christ was damaged. The chapels themselves were also damaged. It turned out that the vandal was a 19-year old man who reacted in this way to a conflict with his mother.

In Kraków, there was a burglary which resulted in nine paintings being stolen from a private collection, including paintings by Jerzy Kossak and a painting by Vlastimil Hofman as well as other collectibles.

February

In Warsaw, there was a burglary at the Prima Porta gallery. Stolen, among other items, were Chinese art objects of a total value of approx. PLN 350 000, including figurines, cufflinks, a necklace, a sword and amulets.

In Gdańsk Oliwa, a painting by Wojciech Gerson, *Pilgrim*, was stolen from a private collection. The work of art had been bought at the gra-Art Auction House in 2005.

In Western Pomerania there was a burglary on private property, which resulted in the theft of a round table which was leaning on one leg in the shape of a column set on a triangular base – a French product, probably dating back to the late eighteenth century.

March

A small golden palm (a decorative ornament in the form of flower petals), dating back to the turn of the 11th century was stolen from the Poznań Archaeological Museum. The perpetrator stole the property from one of the museum display cases during its exhibition. Thanks to the monitoring system the theft was registered and the perpetrator was caught 5 days after committing the crime. He was charged with the theft of goods of special importance to cultural heritage.

In Głogów there was a burglary in the casemates within the moat, in the collection of the "Fortress Głogów" Association of Friends of Głogów Fortifications. The thief's spoils was a collection of antique weapons.

April

In Łagiewniki there was an attempt to destroy the painting of the Merciful Jesus in the chapel of St. Faustina at the Sanctuary of Divine Mercy. The perpetrator poured liquid on it, but thanks to the special glass security system the work of art was not damaged.

In Gryfów Śląski 2 offenders vandalised and stole a historic roadside shrine. Thanks to an anonymous tip-off the police managed to catch the perpetrators, who had transported their loot by tractor.

June

In Kruszyńiany the historic mosque was vandalised. This temple is the oldest building of its kind in Poland. This, along with the mosque in Bohoniki, has been recognized by the President of the Republic of Poland as a historic monument. The basis of the vandalism was most probably ideological. Certain similarities should be pointed out here to the case of arson in October 2013 at the mosque in Gdańsk. These cases indicate an increase in threats to such facilities.

In Warsaw, there was a burglary, as a result of which, among others, a valuable painting by Rafał Malczewski and a triptych by Jerzy Duda-Gracz were stolen from a private collection.

July

In the Auschwitz-Birkenau camp at Brzezinka a German citizen was arrested for stealing from the museum grounds some objects which were evidence from the Holocaust, i.e. a fork, a fragment of scissors, pieces of glass bottles and china. The perpetrator was charged with the theft of goods of special importance to cultural heritage.

September

In Pszczyna there was a burglary in the collection being prepared at the Pszczyna Museum of Military History. The offender, after breaking a double-glazed window, entered the building and stole many valuable objects. These included, among others, helmets, bayonets, and decorations. The stolen exhibits came from the period of the First and the Second World Wars and the Polish uprisings.

October

In Łódź police recovered an antique Egyptian mask offered for sale at auction, dating back to the period 1086–664 BC, which had probably been illegally exported from Egypt. An interesting aspect of the case is the fact that the holders had purchased the object in the US, for which they had appropriate documents. This case points to the issue of the international trade in illegally exported cultural goods, which may frequently be transported between countries before being found.

In Skoczów, an over 270 year old painting of Mary holding Jesus in her arms was damaged by an unknown perpetrator. The vandal made a hole in the canvas and left a deep slash in the place of the image of the face of Mary.

In Rudy Wielkie, the Cistercian church, now the Shrine of Our Humble Lady, was broken into. Valuable relics of St. Valentine and the blessed Karolina Kózkówna were stolen. The perpetrator broke into the shrine through the window of the

side aisle. As indicated by the evidence on the spot, the perpetrator most probably had earlier sawed through the bars in the window.

November

At the State Museum at Majdanek there was a burglary which resulted in the offenders breaking into an unmonitored barrack and cutting a hole in one of the metal cabinets, which held prisoner mementoes. Eight pairs of shoes of former camp prisoners were stolen.

December

In Częstochowa at Jasna Góra there was a robbery at the exhibition held in the Arsenal entitled "Craft in tribute to John Paul II". The perpetrator broke the glass of a showcase at the exhibition and seized a collection of religious medallions. While escaping he attacked the guard with gas. Despite the low monetary value of the lost objects, this case deserves attention owing to the fact that the perpetrator used violence, and that the threat occurred in a place of particular importance to culture.

In Wałcz there was a burglary at the Museum of the Pomeranian Embankment. The perpetrators forced the door and, despite the alarm going off, stole from the collection, among other items, an MG 42 machine gun and an anti-aircraft tripod.

When analysing the events related to crime against cultural heritage that took place in Poland in 2014, the following worrying trends are particularly noteworthy:

1. The threat to private museums and collections of memorabilia and weapons from the period the First and the Second World War – such objects are often poorly protected, while in Poland there is a big market for such memorabilia.
2. The threat of vandalism to shrines – both in the case of the attack on the mosque in Kruszyniany, as well as in the cases of vandalism at the churches mentioned in the text, the ideological basis of the crimes was clear. The destruction of the work of art was not a consequence of theft, but an end in itself. Unfortunately, attacks on shrines due to the hatred of a given religious group may intensify in the coming years.
3. The threat to martyrdom heritage sites and objects – in the last years we have observed the development of a disturbing phenomenon associated with an increased interest on the black market in collectible mementoes from the period of the Holocaust. This results in the rising incidence of theft of such objects. Poland, as a country in which there are many museums of martyrdom, is particularly exposed. This is evidenced by the theft from the former Dachau concentration camp of an iron gate fragment with the inscription "Arbeit macht frei" in Germany, in November 2014; this problem affects other countries as well.