

# CULTURAL HERITAGE IN POLAND

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## The Threat to Cultural Heritage from Crime in Poland: 2016 Cases

**Abstract:** Various methods of risk assessment can be deployed when examining the phenomenon of crime against cultural heritage. Annual data concerning instances of particular crimes involving cultural assets as well as case studies allow us to understand the trends in the activities of the perpetrators and help to develop methods of prevention. This article presents selected data as well as cases of offences discovered or committed in Poland in 2016, based on the statistics provided by the police, Customs Service, and Border Guard. It also presents data on final convictions of perpetrators of such acts. As part of the annual cycle of analysis, the developments illustrate the trends and risks to monuments and cultural assets in a given year. This complementary presentation of information about the threat to cultural heritage is important for research and policy-making aimed at developing strategies for its protection.

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**Keywords:** crime statistics, cultural heritage, robbery, destruction, Poland, police

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## Introduction

Each year, when diagnosing the level of safety of the cultural heritage in Poland, attention is paid both to the events in a given period as well as trends in comparison to previous years. This article is part of a series pertaining to the phenomenon of crime against cultural heritage in Poland. In articles<sup>1</sup> issued in 2015 and 2016, I have pointed out the primary sources of data on the scale and specifics of crime against cultural heritage in Poland and presented the cyclic assumptions. These studies are based on the available statistical data, and are also complemented by the so-called “case method” used to complement the statistical data, which allows us to study the phenomenon. The analysis of the scale of such crimes in 2016 in Poland is particularly important because of two new regulations: the Act of 25 May 2017 on the restitution of national cultural assets (which came into effect on 19 June 2017); as well as the Act of 22 June 2017, amending the Act on the protection of monuments and the guardianship of monuments, and certain other acts. These two acts have essentially changed the system of criminal law protection of cultural heritage in Poland. They have introduced new categories of offences, as well as granted additional powers to the enforcement agencies for combating this type of crime. The legal changes also include an increase in criminal responsibility for the destruction of a monument and the introduction of administrative penalties to the law on the protection of monuments and the guardianship of monuments, with such penalties to be paid to a newly created National Fund for Protection of Monuments.

Given that the above legislative changes came into force in 2017 and significantly changed the previously existing system of criminal law protection in Poland, an accurate analysis of crime rates and patterns in 2016 is important also for comparative studies, i.e. in order to be able to assess the effectiveness of the implemented regulations in the years following their entry into force. Having this in mind, in relation to the previous parts of the cycle this article has been expanded with information about final convictions in crimes against cultural heritage in Poland for the years 2008-2016.

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<sup>1</sup> See O. Jakubowski, *The Criminal Threat to Cultural Heritage in Poland – Analysis of the Events of 2014*, “Santander Art and Culture Law Review” 2015, Vol. 2; idem, *The Criminal Threat to Cultural Heritage in Poland – An Analysis of the Events of 2015*, “Santander Art and Culture Law Review” 2016, Vol. 2.

## The Scale and Characteristics of the Phenomenon of Crime Against the Cultural Heritage in Poland in the Statistics of Law Enforcement Agencies and the Customs Service

The data compiled by the Polish Central Police Command is one of the chief sources of information on crimes against cultural heritage. According to this data, the total number of crimes registered in 2016 in Poland amounted to 778,562. Seven hundred forty-seven of them were crimes against cultural assets.<sup>2</sup> In 2016, there were 90 offences prosecuted under the Act of 23 July 2003 on the protection of monuments and the guardianship of monuments (in 2015 this number was 92).<sup>3</sup>

To gain a more complete picture of the phenomenon, police data on crimes against the cultural heritage should be supplemented with analysis and statistics of the Border Guard and Customs Service. The Border Guard deals with the phenomenon of smuggling, mainly because borders are safe. Experts from the Border Guard point to a problem that has emerged in recent years: the control of exports of cultural assets outside the European Union, which are moved through Poland from other EU countries through a broadly defined transit.<sup>4</sup> It is recommended, e.g., to verify such items in the terms of the financial thresholds referred to in the Council Regulation No. 116/2009 of 18 December 2008 on the export of cultural goods.<sup>5</sup> The problems associated with the practical ability to control the export of cultural assets are confirmed by the statistics of this service. According to them, in 2016, three preparatory proceedings were initiated against three suspects and one indictment was obtained.<sup>6</sup>

In addition, the statistics on the activities of the Customs Service (currently the National Fiscal Administration) indicate a variety of problems related to control of the export of cultural assets.<sup>7</sup> According to the data, in 2016 there were 38 verifications conducted, 15 of which concerned the export of monuments and 23 cases concerned their import (smuggling in both instances). Most of the smuggled items were paintings, icons, coins, sidearms, and books. Export directions in-

<sup>2</sup> Data obtained from the Central Police Command – e-mail dated 21 June 2017. The data includes the acts of minors after the police obtained reliable information on the completion of proceedings by the family court in juvenile cases, but do not include the registration of the preparatory proceedings conducted by public prosecutors on their own.

<sup>3</sup> Data obtained from the Central Police Command – e-mail dated 28 March 2017.

<sup>4</sup> See W. Krupiński, *Nowe zjawiska w przemyśle zabytków w ocenie Straży Granicznej*, in: M. Trzciniński, O. Jakubowski (eds.), *Przestępczość przeciwko dziedzictwu kulturowemu. Diagnoza, zapobieganie, zwalczanie*, Department of Criminology, Faculty of Law, Administration and Economics of the University of Wrocław, Wrocław 2016, pp. 20-21.

<sup>5</sup> Codified version, OJ L 39, 10.02.2009.

<sup>6</sup> Data obtained from a representative of the Border Guard Chief Command – e-mail dated 19 June 2016.

<sup>7</sup> Data obtained from a representative of the Ministry of Finance – e-mail dated 14 June 2017.

cluded: the United States, Russia, and Ukraine. In four cases, falsified works were confiscated (10 paintings), which included works allegedly by Henryk Siemiradzki, Julian Fałat, Stanisław Żukowski, Adam Setkowicz.

## Data on Crimes Against Cultural Heritage on the National Register of Stolen or Illegally Exported Cultural Objects

An important complement to the data of the police, Border Guard, and Customs Service is information from the National Register of Stolen or Illegally Exported Cultural Objects.<sup>8</sup> This database, whose functioning is regulated by Article 23 of the Act on the protection of monuments and the guardianship of monuments, is operated by the National Institute for Museums and Public Collections under the authority of the Minister of Culture and National Heritage. It is a broadly available electronic database, operated on the basis of delegation of legislative powers. It contains information on monuments lost as a result of crime.<sup>9</sup> While it is often seen as merely a tool used to search for monuments lost as a result of crime, we should not overlook the fact that it is also a tool containing quantitative data enabling important analyses of the theft or illegal export of monuments. The information from the list makes it possible to both trace the geography of the crimes and to assess the types of individual cultural assets that are stolen most often. However, in order to properly use the data of the National Register of Stolen or Illegally Exported Cultural Objects one should know the specifics of the procedures and regulations regarding the rules on entry of information into the database. Some information about thefts of monuments – in cases of their quick recovery – is not reported by the relevant authorities. Other reasons for non-registration of an item are lack of adequate documentation to enable its identification, and the lack of knowledge about the obligation to notify the monument to the list. However, it seems to me that the data indicated in the list is worth presenting, if one takes into account different variables. It should be noted that some data overlap due to the fact that in some cases authorities competent to report duplicate their actions. The data in Tables 1-5 relate to the year 2016.<sup>10</sup>

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<sup>8</sup> Krajowy wykaz zabytków skradzionych lub wywiezionych za granicę niezgodnie z prawem [National Register of Stolen or Illegally Exported Cultural Objects], <https://skradzionezabytki.pl/i/#/> [accessed: 21.11.2017].

<sup>9</sup> 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*, C.H. Beck, Warszawa 2010, pp. 148-151.

<sup>10</sup> The author would like to thank Mrs Maria Romanowska-Zadrożna, an employee of the National Institute for Museums and Public Collections, for her help in processing the list data contained in the tables.

**Table 1.** Data categorized in relation to the reporting party<sup>11</sup>

Type of crime	Reporting party					Total	
	Conservation office	Police	Owner	Other	Border Guards or Customs administration	Reports	Objects
Theft	2	3	1	0	0	6	5
Theft with break-in	0	83	5	0	0	88	85
Mugging	0	0	0	0	0	0	0
Labour (unlawful) appropriation	0	0	0	0	0	0	0
Property appropriation	0	0	0	0	0	0	0
Disappearance	0	0	2	0	0	2	2
Illegal export	0	0	0	0	1	1	1
Attempted illegal export	0	0	0	0	0	0	0
<b>Total</b>	<b>2</b>	<b>86</b>	<b>8</b>	<b>0</b>	<b>1</b>	<b>97</b>	<b>93</b>

Source: Based on data from the National Register of Stolen or Illegally Exported Cultural Objects, <https://skradzionezabytki.pl/i/#/> [accessed: 21.11.2017].

**Table 2.** Data categorized in relation to the holder/owner

Type of crime	Holder/owner					Total
	Library	Religious organization	Museum	Private individual	Other	
Theft	0	1	1	3	0	5
Theft with break-in	0	4	0	81	0	85
Mugging	0	0	0	0	0	0
Labour (unlawful) appropriation	0	0	0	0	0	0
Property appropriation	0	0	0	0	0	0
Disappearance	0	0	2	0	0	2
Illegal export	0	0	0	1	0	1
<b>Total</b>	<b>0</b>	<b>5</b>	<b>3</b>	<b>85</b>	<b>0</b>	<b>93</b>

Source: Based on data from the National Register of Stolen or Illegally Exported Cultural Objects, <https://skradzionezabytki.pl/i/#/> [accessed: 21.11.2017].

<sup>11</sup> Sometimes reports overlap, as they are made by several authorized authorities simultaneously.

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**Table 3.** Data categorized in relation to the location of the crime

Crime location/ Place of discovery	Type of crime							Total
	Theft	Theft with break-in	Mugging	Labour (unlawful) appropriation	Property appropriation	Disappearance	Illegal export	
No data	0	0	0	0	0	0	0	0
House	0	70	0	0	0	0	0	70
Exhibition	0	0	0	0	0	1	0	1
Tenement	0	0	0	0	0	0	0	0
Chapel	0	1	0	0	0	0	0	1
Roadside shrine	1	0	0	0	0	0	0	1
Roadside column	1	0	0	0	0	0	0	1
Church	1	3	0	0	0	0	0	4
Flat	1	11	0	0	0	0	0	12
Open-air museum	0	0	0	0	0	1	0	1
Museum exhibit	1	0	0	0	0	0	0	1
Reported by the police	0	0	0	0	0	0	1	1
<b>Total</b>	<b>5</b>	<b>85</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>93</b>

Source: Based on data from the National Register of Stolen or Illegally Exported Cultural Objects, <https://skradzioneszabytki.pl/i/#/> [accessed: 21.11.2017].

**Table 4.** Data categorized in relation to the object

Object	Type of crime							Total
	Theft	Theft with break-in	Mugging	Labour (unlawful) appropriation	Property appropriation	Disappearance	Illegal export	
Document	0	0	0	0	0	0	1	1
Ceramic figurine	0	1	0	0	0	0	0	1
Graphics	0	59	0	0	0	0	0	59
Icon	1	0	0	0	0	0	0	1
Beer stein	0	0	0	0	0	1	0	1
Motorcycle	0	1	0	0	0	0	0	1
Painting	2	11	0	0	0	0	0	13
Badge	0	5	0	0	0	0	0	5
Ceramic box	0	0	0	0	0	1	0	1
Drawing	0	2	0	0	0	0	0	2
Sculpture (figurine, cross)	2	0	0	0	0	0	0	2
Beads bag	0	1	0	0	0	0	0	1
Sash	0	1	0	0	0	0	0	1
Candlestick	0	3	0	0	0	0	0	3
Bookbinder press	0	1	0	0	0	0	0	1
<b>Total</b>	<b>5</b>	<b>85</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>93</b>

Source: Based on data from the National Register of Stolen or Illegally Exported Cultural Objects, <https://skradzioneszabytki.pl/i/#/> [accessed: 21.11.2017].

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**Table 5.** Objects recovered in 2016

Type of crime	Date of loss							Total
	1964	1994	1997	1999	2005	2009-2012	2016	
Theft	0	0	0	1	0	0	1	2
Theft with break-in	0	2	0	0	0	1	0	3
Mugging	0	0	0	0	0	0	0	0
Labour (unlawful) appropriation	0	0	0	0	0	0	0	0
Property appropriation	0	0	0	0	0	0	0	0
Disappearance	1	0	0	0	1	4	0	6
Illegal export	0	0	0	0	0	0	0	0
Attempted illegal export	0	0	0	0	0	0	0	0
No data	0	0	0	0	0	0	0	0
<b>Total</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>11</b>

Source: Based on data from the National Register of Stolen or Illegally Exported Cultural Objects, <https://skradzionezabytki.pl/i/#/> [accessed: 21.11.2017].

In 2016, 11 monuments were recovered, including two pairs of candlesticks entered into the National Register of Stolen or Illegally Exported Cultural Objects. The items and their recovery are briefly described below:

- bas-relief depicting *Adoration of the Magi* of the 16th century triptych in the church of St. Anna in Bralin, stolen in 1994, appeared in 2015 in Vienna. Thanks to diplomatic negotiations, it was returned to the diocese in early 2016;
- bas-relief depicting *Adoration of the Child* of the 16th century triptych in the church of St. Anna in Bralin, stolen in 1994, appeared in 2015 in Vienna. Thanks to diplomatic negotiations, it was returned to the diocese in early 2016;
- sculpture by Alfred Daun, *Bust of Józef Szalay* from the Spa Park in Szczawnica Zdrój, stolen in 1999, recovered in August 2016 in Ożarów Mazowiecki;
- mass chalice from the middle of 17th century, workshop in Toruń, Roman Catholic Parish of Assumption of the Blessed Virgin Mary and St. Jacob in Szadek, lost between 2009 and 2012, recovered in April 2016 in Włocławek;



- painting *Assumption of the Blessed Virgin Mary (Immaculata)*, early 17th century, Roman Catholic Parish of Assumption of the Blessed Virgin Mary and St. Jacob in Szadek, lost between 2009 and 2012, recovered in April 2016 in Włocławek;
- painting *Coronation of the Virgin Mary*, early 17th century, Roman Catholic Parish of Assumption of the Blessed Virgin Mary and St. Jacob in Szadek, lost between 2009 and 2012, recovered in April 2016 in Włocławek;
- sculpture of St. Anna Samotrzecia, middle of 16th century, Roman Catholic Parish of Assumption of the Blessed Virgin Mary and St. Jacob in Szadek, lost between 2009 and 2012, recovered in April 2016 in Włocławek;
- painting by Wojciech Kossak (1856-1942), *Piłsudski na Kasztance*, 1930s, stolen in 1999, found in September 2016 in Warsaw;
- painting by Soter Jaxy Małachowski (1887-1952), *Seascape with a Boat*, 1920(?), stolen in February 2016, recovered in December 2016 in Kraków;
- baptismal font dating back to 1691, tin, Roman Catholic Parish of St. John the Baptist in Luborza, lost in 2005, recovered in March 2016 in Wyszaków;
- tombstone of Christian Krentzin from 1753, Roman Catholic Parish of St. Jack in Stępnica, lost in 1964, recovered in November 2016 in Szczecin.

In assessing the abovementioned data from the National Register of Stolen or Illegally Exported Cultural Objects, we can identify some regularities, especially when comparing the data from 2016 to that from 2015.<sup>12</sup> Most of the reports to the database in 2016 (86%) were made by the police authorities. This tool was used more frequently by those authorities than in 2015 (23 reports). The total number of entries in the register has increased considerably: from 38 reports covering 34 objects in 2015, to 98 reports pertaining to 93 objects in 2016. This can be attributed both to the increase in crimes against cultural assets and to the increase in awareness among competent authorities that there is a possibility to register them in the list. As in previous years, the largest number of stolen items were owned by private persons, followed by religious organizations and museums. This indicates that currently poorly secured flats and galleries are particularly dangerous places for keeping monuments. This also confirms that most (85%) of items were lost as a result of theft combined with break-in. The category of objects that is most vulnerable to theft are graphics, followed by paintings. However, this data must be interpreted together with the data of the police and other enforcement authorities.

<sup>12</sup> See O. Jakubowski, *The Criminal Threat ... 2015*, pp. 246-248.

## Data on Final Convictions for Crimes Against Cultural Heritage in the Years 2008-2016<sup>13</sup>

In order to diagnose the level of safety of cultural heritage in Poland, in addition to the statistics on revealed crime, one needs to take into account the number of offenders who actually were convicted of acts against items of national heritage. The number of discovered crimes, if not reasonably correlated with the number of perpetrators convicted for those crimes, may indicate that the criminal justice system is ineffective.

When examining the statistics of final convictions of perpetrators under the Criminal Code (CC),<sup>14</sup> based on data provided by the Ministry of Justice, we must bear in mind that some acts, although they violate monuments or other cultural assets, are not included in these statistics. This situation mainly relates to crimes against property, in which only certain acts directed against monuments and cultural assets are classified as crimes against property of particular cultural importance and separately disclosed in the statistics. For example, in the case of theft of a monument or a museum exhibit, if it is not qualified as an act against property of particular cultural importance it will be treated as standard theft of property. In the case of theft with break-in to a museum or a temple, or robbery and the loss of even a particularly valuable cultural asset, it will not be shown in the statistics of the Ministry of Justice as a crime directed against goods of special importance to culture.

The provisions in the CC relating to the protection of cultural heritage concern in particular:

- protection of cultural assets during armed conflict;
- crimes against goods of special importance to culture;
- other provisions that can be used to protect cultural heritage.

Due to the design of the provisions of the CC and the way of collecting data in the statistics of the Ministry of Justice, kept by the same body, only the first two categories of the abovementioned types of regulations can be distinguished:

1. The first category is related to the provisions of the 1954 Hague Convention, ratified by Poland in 1957, and the Additional Protocol to this Convention.<sup>15</sup> The Convention influenced the shape of the two offences referred to in Articles 125 and 126 of the CC on the violation of the cultural asset and the unacceptable use of protection signs for cultural assets.

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<sup>13</sup> Data obtained from the Ministry of Justice – letter dated 8 May 2017, Department of Statistical Information Management, Department of Strategy and European Funds, Ministry of Justice (ref. DSF-II-082-137/17).

<sup>14</sup> Consolidated version: Dz. U. 2016, item 1137.

<sup>15</sup> See J. Zajadło, K. Zeidler, *Prawna ochrona zabytków na wypadek wojny*, “Ochrona Zabytków” 2003, Vol. 1-2; M. Górską, *Ochrona dóbr kultury w czasie konfliktów zbrojnych i w sytuacjach kryzysowych*, in: T. Gardocka, J. Sobczak (eds.), *Prawna ochrona dóbr kultury*, Wydawnictwo Adam Marszałek, Toruń 2009.

2. The second category refers to legal institutions regulating the protection of cultural heritage on the basis of provisions penalizing actions directed against “goods of special importance to culture”, analysed and criticized over the years.<sup>16</sup> This term functions in Articles 294(2) and 295 of the CC.

Article 294 of the CC establishes qualified types of basic crimes against property, i.e. theft (Article 278(2) of the CC), misappropriation (Article 284(1-2) of the CC), fraud (Article 286(1) of the CC), destruction or damage (Article 288(1) of the CC), dealing in stolen property (Article 291(1) of the CC), if their subject is a “good of special importance to culture”. These crimes are punishable by imprisonment of up to 10 years. The data presented in Table 6 illustrate the divergence in the number of perpetrators in individual years. It should be noted that Article 294 of the CC does not contain the type of qualified crime of burglary (Article 279(1) of the CC) and robbery (Article 280(1) of the CC), despite the fact that the perpetrators of these crimes are committing crimes against cultural heritage.<sup>17</sup> In Article 295(1) of the CC, the institution of voluntary disclosure was established, which gives the possibility of extraordinary mitigation of punishment or withdrawal of punishment (Article 295(1) of the CC), or only the extraordinary mitigation of punishment (Article 295(2) of the CC) against the perpetrator. This institution is connected with the perpetrator’s compensation for the damage caused by the crime and concerns, among other crimes: theft, misappropriation, fraud, destruction of or damage to property, intentional and unintentional dealing in stolen property. This also applies to qualified types of certain crimes, the object of which is a good of special importance to culture. The CC does not define a good of special importance to culture. The legal doctrine attempts to define the concept by indicating its unique character or significant value.<sup>18</sup> The fact that there have been no final convictions of perpetrators under Articles 125 and 126 of the CC, which is shown in the data in Table 6, even in the context of a number of foreign missions of the Polish army, could indicate that in fact in recent years there have been no blatant violations of the 1954 Hague Convention in terms of the security of cultural assets (or that such deeds have not been detected).

<sup>16</sup> See J. Kaczmarek, M. Kierszka, *Pojęcia „mienia w wielkich rozmiarach”, „zniszczenia w świecie roślinnym lub zwierzęcym w znacznych rozmiarach” oraz „dobra o szczególnym znaczeniu dla kultury” w kodeksie karnym*, “Prokuratura i Prawo” 2000, Vol. 3; B. Gadecki, *Kontrowersje wokół odpowiedzialności za zniszczenie lub uszkodzenie dobra o szczególnym znaczeniu dla kultury*, “Ius Novum” 2013, Vol. 4.

<sup>17</sup> The total statistics of all final convictions of perpetrators of crimes against property are: in 2008 – 121,630, in 2009 – 116,724, in 2010 – 126,625, in 2011 – 127,963, in 2012 – 127,758, in 2013 – 113,431, in 2014 – 93,980, in 2015 – 83,397, in 2016 – 91,974.

<sup>18</sup> See M. Mozgawa (ed.), *Kodeks karny. Praktyczny komentarz*, Vol. II, Wolters Kluwer Polska, Warszawa 2007, p. 577.

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**Table 6.** Statistics on final convictions of perpetrators of crimes against cultural assets under the Criminal Code in the years 2008-2016

Type of crime	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Article 125 of the CC <sup>a)</sup> (violation of cultural assets)	0	0	0	0	0	0	0	0	0	0
Article 126 of the CC <sup>b)</sup> (inadmissible use of protective emblems)	0	0	0	0	0	0	0	0	0	0
Article 294(2) of the CC (qualified types of certain crimes against property, the object of which is a good of special importance to culture)	14	7	9	4	6	3	6	2	11	62
<b>Total</b>	<b>14</b>	<b>7</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>11</b>	<b>62</b>

<sup>a)</sup> Article 125. 1. Whoever, in an area occupied, taken over or under warfare, in violation of international law, destroys, damages or removes items of cultural heritage shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

2. If the act pertains to an item of particular importance to cultural heritage, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years. (The wording of the penal provision as of 30 December 2016.)

<sup>b)</sup> Article 126. 1. Whoever, in the course of warfare, illegally uses the emblem of the Red Cross or Red Crescent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

2. The same punishment shall be imposed on anyone, who, in the course of warfare, illegally uses protective emblems for items of cultural heritage or other emblems protected under international law, or uses a national flag or the military markings of the enemy, neutral country or an international organization or commission. (The wording of the penal provision as of 30 December 2016.)

Source: Own elaboration based on data from the Ministry of Justice.

Offences subject to prosecution under the Act of 23 July 2003 on the protection of monuments and the guardianship of monuments ("the UOZ") are contained in Chapter 11 of the Act. This part of the Act identifies the actions that directly or indirectly harm monuments.<sup>19</sup> Upon the entry into force of the UOZ, the

<sup>19</sup> J. Kaczmarek, K. Zeidler, *Karnoprawna ochrona zabytków*, "Prokuratura i Prawo" 2004, Vol. 2, p. 75.

provisions of the Act penalized offences concerning the destruction or damage to a monument in Article 108 and illegal export or failure to return a monument within the period specified in the permit in accordance with Article 109 of the UOZ. Subsequent changes to the criminal provisions were introduced by amendment under the Act of 24 February 2006 on amending the Act on the protection of monuments and the guardianship of monuments,<sup>20</sup> in which the legislature introduced two new criminal provisions, referred to in Articles 109a and 109b. These provisions, as shown in Table 7, have proved to be completely ineffective and have resulted in the conviction of only one offender since 2008. Theoretically, they were supposed to be a tool for combating the phenomenon of counterfeiting monuments. Items subject to the protection of the penal provisions in Chapter 11 of the UOZ are specified in Article 3(1) of the UOZ as a “real estate or a movable, their parts or complexes, being the work of human being, or connected with their activity, and constituting a testimony of a past epoch or event, the preservation of which is in the social interest because of historical, artistic, or scientific value”. Also, museums and library materials, protected on the basis of separate regulations, may also – if they meet the abovementioned definition of monuments – be protected by the penal regulations of the UOZ. In accordance with Article 2 of the UOZ, the exception in this regard is archival materials constituting a part of the national archival resources, governed by the provisions of the Act of 14 July 1983 on the national archive resources and archives<sup>21</sup> (“the UNZAA”).

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<sup>20</sup> Ustawa z dnia 24 lutego 2006 r. o zmianie ustawy o ochronie zabytków i opiece nad zabytkami [Act of 24 February 2006 on Amending the Act on the Protection of Monuments and the Guardianship of Monuments], Dz. U. 2006, item 362.

<sup>21</sup> Ustawa z dnia 14 lipca 1983 r. o narodowym zasobie archiwalnym i archiwach [Act of 14 July 1983 on the National Archive Resources and Archives] (consolidated version), Dz. U. 2016, item 1506; Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury [Act of 25 May 2017 on the Restitution of National Cultural Assets], Dz. U. 2017, item 1086.

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**Table 7.** Statistics on final convictions of perpetrators of crimes under the Act of 23 July 2003 on the protection of monuments and the guardianship of monuments in the years 2008-2016<sup>22</sup>

Type of crime	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Article 108 of the UOZ <sup>a)</sup> (destruction or damage to a monument)	23	14	15	28	35	31	39	17	17	219
Article 109 of the UOZ <sup>b)</sup> (illegal export or failure to return a monument to the country)	39	26	11	1	2	2	2	0	0	83
Article 109a of the UOZ <sup>c)</sup> (forging or falsification of a monument)	0	0	0	0	0	0	0	0	0	0
Article 109b of the UOZ <sup>d)</sup> (sale of forged or falsified monuments)	0	0	0	0	1	0	0	0	0	1
<b>Total</b>	<b>62</b>	<b>40</b>	<b>26</b>	<b>29</b>	<b>38</b>	<b>33</b>	<b>41</b>	<b>17</b>	<b>17</b>	<b>303</b>

a) Article 108. 1. Any person who destroys or damages a monument shall be imprisoned for a period of 3 months to 5 years.

2. If the perpetrator of a deed specified under Paragraph 1 acts unintentionally he or she shall be subject to the penalty of a fine, restricted liberty, or imprisonment for up to 2 years.

3. In case of conviction for the crime specified under Paragraph 1 the court decrees, and in case of conviction for the crime specified under Paragraph 2 the court may decree, punitive damages for an indicated social purpose connected with the guardianship of monuments. The punitive damages shall be between a total of three minimum salaries to the total of 30 minimum salaries. (The wording of the penal provision as of 30 December 2016.)

b) Article 109. 1. Any person who exports a monument without a permit granted, or after exporting it abroad does not return it to the country in the period of the permit's validity, or, in the case referred to in Article 56A(8), within 60 days from the date on which the decision to refuse the next permit for temporary export of the monument abroad has become final, or from the date

<sup>22</sup> Statistics of the Ministry of Justice also indicate valid rulings against minors for criminal acts under the UOZ concerning the destruction or damage of monuments. The rulings against minors were as follows: in 2008 - 2; in 2009 - 0; in 2010 - 0; in 2011 - 3; in 2012 - 2; in 2013 - 1; in 2014 - 5; in 2015 - 5; in 2016 - 0.

of receipt of the information that the application for the next permit for temporary export of the monument abroad is not considered, shall be imprisoned for a period of 3 months to 5 years.

2. If a perpetrator of a deed specified under Paragraph 1 acts unintentionally he or she shall be subject to a penalty of a fine, restricted liberty, or imprisonment for up to 2 years.

3. In case of conviction for a crime specified under Paragraph 1 the court decrees, and in case of conviction for the crime specified under Paragraph 2 the court may decree, punitive damages for an indicated social purpose connected with the guardianship of monuments. The punitive damages shall be between a total of three minimum salaries to the total of 30 minimum salaries.

4. The court may decree forfeiture of a monument even if it is not the property of a perpetrator. (The wording of the penal provision as of 30 December 2016.)

- c) Article 109a. Any person who forged or falsified a monument in order to sell it shall be subject to a fine, restriction of liberty, or imprisonment for a period of up to 2 years. (The wording of the penal provision as of 30 December 2016.)
- d) Article 109b. Any person who sells property as a monument, or sells a monument as another monument, knowing that they are forged or falsified, shall be subject to fine, restriction of liberty, or imprisonment for a period of up to 2 years. (The wording of the penal provision as of 30 December 2016.)

Source: Own elaboration based on data from the Ministry of Justice.

Chapter 5 of the UNZAA penalizes actions violating the criminal law protection of archival resources. Even though<sup>23</sup> archival resources are not monuments according to Polish legislation, they can often be cultural assets valuable for cultural heritage.

The UNZAA regulates the following offences: damage to or destruction of archives (Article 52), illegal export of archival materials (Article 53), sale of national archives (Article 54). The data presented in Table 8 shows that only occasionally have the perpetrators of crimes against this cultural heritage category, i.e. archives, been finally convicted and held responsible for their actions.

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<sup>23</sup> In accordance with Article 1 of the UNZAA, archival materials comprising a national archive resource, hereinafter called the "archival materials", include any and all files and documents, correspondence, financial, technical and statistical documentation, maps and plans, photographs, films and microfilms, sound and picturephone recordings, electronic documents as defined by the Act of 17 February 2005 on the computerization of operation of bodies performing public work (Dz. U. 2005, item 565), other documentation, regardless of its method of compilation, which bears significance as a source of information of historical value about the actions of the Polish State, its individual bodies, and other State administrative units and its relationships with other States, the development of social and economic life, the activities of political, social, economic, trade, and religious organizations, the organization and development of science, culture, and art, as well as the activities of local regional governments and other local administrative units - which has already been created and which is being created at present.

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**Table 8.** Statistics on final convictions of perpetrators of crimes under the Act of 14 July 1983 on national archival resources and archives in the years 2008-2016

Type of crime	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
Article 52 of the UNZAA <sup>a)</sup> (damage to or destruction of archives)	0	0	0	0	0	1	3	0	0	4
Article 53 of the UNZAA <sup>b)</sup> (illegal export or failure to return an archive to the country)	0	0	0	0	0	0	0	0	0	0
Article 54 of the UNZAA <sup>c)</sup> (sale of national archives)	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>4</b>

a) Article 52. 1. Any person obliged to protect archival materials who damages or destroys such materials is subject to a penalty of imprisonment not exceeding 3 years.  
2. If the perpetrator acts unintentionally, he or she is subject to a fine or the penalty of restricted freedom. (The wording of the penal provision as of 30 December 2016.)

b) Article 53. 1. Any person who exports archival materials outside of the territory of Poland without an approval or who does not return such materials after exporting them by the deadline set in an approval, is subject to the penalty of imprisonment not exceeding 3 years.  
2. If the perpetrator acts unintentionally, he or she is subject to a fine or the penalty of restricted freedom.  
The court may decree the forfeiture of the archival materials constituting the subject of the crime. (The wording of the penal provision as of 30 December 2016.)

c) Article 54. 1. Any person who sells or facilitates the sale or purchase of archival materials comprising a national archival resource knowing that the purchaser wishes to export these materials without the required approval, is subject to the penalty of imprisonment not exceeding 3 years.  
2. If the perpetrator acts unintentionally, he or she is subject to a fine or the penalty of restricted freedom. (The wording of the penal provision as of 30 December 2016.)

Source: Own elaboration based on data from the Ministry of Justice.

Summarizing the data in Tables 6-8 on final convictions for offences against cultural heritage between 2008 and 2016, it can be observed that the number of perpetrators who have actually been held accountable for such offences is negligible. If we analyse this data without confronting it with other sources of information,



we can get the wrong impression that in Poland there is no problem with forgery of art, that the smuggling of cultural assets is marginal, and that monuments and archival resources are very rarely destroyed. However, the actual state of affairs is different. Statistics on final convictions may in fact indicate that the criminal law system of heritage protection in Poland does not fulfil its functions, and that perpetrators frequently avoid punishment.

## Selected Crimes Against Cultural Heritage Committed in Poland in 2016

Taking into account the fact that the police statistics show that in Poland hundreds of crimes against cultural heritage occur every year, it is necessary to select certain representative events in order to present them correctly. The list below contains selected representative cases from 2016 that seemed particularly important compared to other crimes of this type. The sequence of events concerning crime against cultural heritage in Poland is presented chronologically.

### January

1. The Archaeological Museum in Gdańsk reported a burglary into a display cabinet whereby the perpetrator stole two pieces of amber worth more than PLN 20,000.
2. The National Archive in Łódź reported the theft of valuable archives. The crime was detected after the lost items appeared at an online auction in the USA.

### February

1. Acts of vandalism were discovered in Gdańsk. Historic matzevas were destroyed in the cemetery of the Jewish Community, including the 18th-century matzeva of Rabbi Elchanan Ashkenazi.
2. At the border crossing in Medyka, customs officers prevented the smuggling of archaeological monuments from Ukraine: old coins, rings, crosses, arrowheads, knives, and agricultural tools made of different metals (a total of 183 items).
3. Two flats were robbed in Kraków. The stolen works of art included the *Seascape with a Boat* painting by Soter Jaxa Małachowski, as well as a sketch by Jacek Malczewski and two porcelain figurines of horses with male characters standing next to them.
4. At the Dorohusk border crossing, customs officers prevented the smuggling of 3,150 collector coins from the USSR period. The offenders (citizens of Latvia) carried the coins in hand luggage on a coach.

## March

1. Relics were stolen from the vestry of the Church of St. Thomas in Szczecin – fragments of garment of St. John Paul II. The thief also took silver medals and pendants.
2. At the border crossing in Sławatycze, Border Guard officers prevented the smuggling of historic paintings from the 18th century. The perpetrators were two Belarussian citizens, who agreed to transport the monuments in exchange for money.
3. Destructions were reported in the palace in Wojcieszów, and the owner was the perpetrator. The perpetrator is accused of, among other things: removal of internal plastering and improper protection of the palace from damage, destruction and theft, as well as failure to maintain the palace building in proper technical and aesthetic condition despite the recommendations of the voivodeship conservator of monuments.
4. In Leśno a burglary into a private apartment occurred and a historic clock was stolen.
5. Acts of vandalism were revealed in the Museum of Coastal Defence in Hel. Vehicles from the exhibition were damaged and the guardhouse was turned over.

## April

1. In connection with illegal searches for monuments, the prosecutor's office filed charges of the misappropriation and destruction of monuments against eight members of the search group who were active in the Łódzkie, Mazowieckie and Pomorskie Voivodeships. The perpetrators were identifiable because they posted a film on the internet documenting their activity.
2. At the border crossing in Dorohusk, customs officers detected the smuggling of 72 Polish commemorative medals from the interwar period and from the times of the USSR, certification of the medal, and a German coin from 1911. A Ukrainian citizen transported the items hidden under passenger car seats.

## May

1. In the Southern Podlasie Museum in Biała Podlaska, an icon was stolen with the image of St. Michael the Archangel from the turn of the 18th and 19th centuries. The property was stolen in the opening hours. Lack of indoor monitoring facilitated the crime.
2. The theft of a historic samovar was reported in Tarnów. It dates back to the second half of the 19th century. The samovar was made in Petersburg, by the company of Carl-Wilhelm Aleksander Kucht.

3. There was a fire in Warsaw in a tenement house registered in the register of monuments at 8 Łucka Street. The tenement house was probably originally owned by Abram Ajzyk Włodawer. It was built in the years 1877-1878 as one of the first rental houses in the historical area of Wola. In the past, the tenement had been the victim of several fires.
4. In Poznań there was a fire in the Mill on Nadolnik, built in the 18th century. The conservation service suspects arson. The monument also suffered from fires in previous years, most probably also caused by arson.
5. In a burglary of a holiday home in Sopot, *Port*, the 20th-century image of Marian Moskwa, was stolen.
6. In the town of Trzuszczany Pierwsze, in the parish of the Holy Trinity and the Nativity of the Virgin Mary, the staff misappropriated a historic 19th-century monstrance (also known as an ostensorium).
7. At the Hrebenne border crossing, customs officers prevented the smuggling of 62 medals from the USSR period and four certificates for medals. A Ukrainian citizen transported the items in the coach's luggage compartment.

## June

1. Several items were stolen from a church in Sucha Beskidzka. The perpetrator committed the crime in the afternoon hours and also damaged the locks of the display cabinets.
2. During an inspection at the border crossing in Dorohusk, customs officers prevented the smuggling of sidearms from Second World War period: a bayonet sword and three cutlasses of the Third Reich assault division, which constituted elements of their representative uniforms.
3. An act of vandalism took place in Rzeszów. A historic chapel built in 1889 was shot with a BB gun.
4. At the border crossing in Medyka, officers of the customs service detected the smuggling of archaeological monuments originating from Ukraine, in the form of arrowheads, daggers, and coins (93 items in total).
5. Three flats and a house (near the city) were robbed in Łódź. They belong to an art collector. The perpetrators stole about 40 valuable paintings, including the works of Alfred Wierusz-Kowalski, Wojciech Kossak, as well as jewellery and silverware. Hired criminals only targeted selected items, leaving the rest of the collection alone. After three days, thanks to the efficient work of the police, the two direct perpetrators and their three customers were arrested. It was also discovered that the indicated perpetrators had attempted to break into the house a month earlier, but had been scared away.

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## July

1. At Jagiellońska Street in Kraków, the crown was stolen from the statue of Our Lady of Grace, dating back to 1771.
2. Customs service officers prevented the smuggling of two icons at the border crossing with Ukraine in Zosin. The paintings probably date back to the turn of the 19th and 20th centuries.
3. Due to an investor's efforts, a historic building was demolished in Warsaw. It was the old factory of Dąbrowski in Wola. The façade of the pre-war building was also destroyed, even though its preservation was a condition of giving permission for the demolition.
4. At the Auschwitz-Birkenau State Museum in Oświęcim, two Belgian and French citizens were arrested. They stole three historic insulators which were fence elements. The perpetrators were charged with theft of goods of particular importance to cultural heritage.
5. A collection of 80 graphics and sketches was stolen in Poznań. The perpetrators extorted works from the collector on the pretext of conducting a criminal case related to murder.
6. The Post and Telecommunications Museum in Wrocław reported an employee theft on a large scale. The staff of the institution, in cooperation with the antiquaries involved, replaced over 100 valuable stamps with counterfeits.
7. The trial of a former MEP Witold Tomczak was conditionally remitted for a year by the district court in Warsaw. He is accused of destruction of a sculpture of Pope John Paul II in Zachęta in Warsaw. In the court's opinion, the guilt and social harmfulness of the act were not significant.

## August

1. The Auschwitz-Birkenau State Museum in Oświęcim reported an act of vandalism – a wall was damaged. During the World Youth Day, young Portuguese people tried to carve their names on the so-called gate of death.
2. At the border crossing with Ukraine in Krościenko, customs officers detected the smuggling of 348 coins from the 18th and 19th centuries, carried by a citizen of Ukraine.
3. Vandals destroyed three historic tombstones in the cemetery of Soviet soldiers in Kielce.

## September

1. A theft took place in the Lapidarium gallery in Warsaw. Historical jewellery was stolen.

2. The regional court in Katowice acquitted the person allegedly responsible for illegal export of the diary of Rutka Laskier from Będzin. In the court of first instance, the court had found the perpetrator to be guilty of the alleged acts.

## October

1. Illegal searches for monuments were revealed in Lubomierz. A group of foreigners tried to illegally search without permission for antiques, probably hidden by their ancestors.
2. A piece of a wooden fragment of the roof of the Church of Peace in Świdnica was found on the Allegro online auction (the monument is on the UNESCO World Heritage List).

## November

1. A fire of a historic building took place in Warsaw, Wola. The nature of the case indicates arson.
2. A fire of a historic wooden building took place in Warsaw, Anin. The building was used by homeless people as a sleeping place. This could have caused the fire.
3. Within the framework of the Pandora international operation, the Provincial Police Command in Poznań discovered the identity of a man who had walked with a metal detector over fields between Ujście and Mirosławie. In his place of residence, approximately 1,000 different items from illegal excavations were found and secured, among which were five very valuable Roman fibulas from the times of the Roman Empire, elements of modern ceramics, components of leather straps and horse harnesses, small parts made of silver, buckles, cufflinks, and approximately 600 coins from the 18th to 20th centuries. The perpetrator sold the items on online auction portals. Some of the items had been illegally imported.
4. Within the Pandora international operation, officers from the Provincial Police Command in Poznań found and secured a historic 18th-century epitaph during an inspection of the so-called "Old butchery" antiques market. The artefacts are listed in the records of the National Museum in Poznań.
5. Within the framework of the Pandora international operation, officers from the Provincial Police Command in Łódź established the identity of 11 people illegally searching for monuments. During the inspection, the police found and secured numerous monuments from various historical periods, from the middle ages to the modern era, as well as the instruments used to detect metal and search for monuments that are located underground. The secured items included approximately 650 antique coins,

antique seals, fragments of historic spurs and stirrups, historic side arms, sabres and bayonets for firearms, approximately 20 helmets, 2 grapeshots and fittings, decorations and personal items of soldiers, frequently worn in the battlefields of our country. In addition, 12 antique firearms were secured, along with machine guns, rifles, pistols, and automatic pistols, along with large amounts of essential elements of firearms. There was also approximately 800 pieces of ammunition, 1 "Nebelwerfel" rocket missile, artillery munitions, anti-tank grenades, rocket launchers, and other war-related hazardous materials and equipment.

6. Within the framework of the Pandora international operation, the crime division of the Provincial Police Command in Bydgoszcz, based on information that there are potential archaeological antiques on the online auction portal, managed to establish the identity of the perpetrator and found various kinds of coins, their fragments, and other archaeological antiques.

### December

1. An attempted break-in to a historic chapel in Korzeniewo took place. Despite damaging the bars and shuttles, the perpetrator could not get inside.
2. An organized criminal group engaged in the illegal trade of antique coins was broken up. Eight suspects were detained in the Dolnośląskie, Śląskie, Świętokrzyskie and Pomorskie Voivodeships.
3. At the border crossing in Bobrowniki, customs service officers prevented the smuggling of archaeological monuments: a medieval helmet (12th century) and three medieval sabres (12th and 13th centuries). The perpetrators attempted to smuggle these monuments from Ukraine to Poland via Belarus.
4. At the Dorohusk border crossing, customs officers prevented the smuggling of 64 coins (the oldest from the 16th and 17th centuries). The items were found on the Lutsk-Lublin coach, in the possession of a citizen of Ukraine.
5. At the border crossing in Terespol, customs service officers prevented the smuggling of four archaeological fossils, ten petrified animal bones, and a silver-coloured ornamental historic bowl. The items were discovered in a train between Moscow and Warsaw and were transported by a citizen of Mongolia.
6. As a result of the act of vandalism, the statue of St. John of Nepomuk, entered into the register of monuments, was destroyed in the Szczeszyce commune.
7. The court in Włoszczowa sentenced the principal perpetrator of burglaries into the historic manor house in Ropocice to five years' imprisonment.

onment. The man stole monuments worth PLN 300,000. They included letters of Władysław Reymont and Maria Kasprowiczowa, the wife and muse of Jan Kasprowicz. The manor house was robbed in 2010, 2011, and 2014. The perpetrator offered stolen letters of Reymont to museums and antiquaries.

When analysing the events from 2016 related to crimes against cultural heritage in Poland, it is worth noting that, similar as in 2015, there is a disturbing trend to destroy monuments deliberately. The perpetrators are not deterred by the fact that objects have been entered in the register. Criminals' profit from such an act related, e.g., to the sale of the item for scrapping or cleaning the square for a new investment, by far exceeds the inconvenience associated with the possible penalties. Frequent fires of historic tenement houses indicate a pattern of crimes by perpetrators who use third parties to try to get rid of unwanted problems. Another significant phenomenon observed in 2016 is the planned intrusion and theft of private collections. Places where private collections are stored are usually poorly secured compared to museums. At the same time, perpetrators can easily obtain information about such storage places. As in previous years, vandalism and theft in martyrdom museums remain a serious problem, a sad example of which are the events at the Auschwitz-Birkenau State Museum. Archaeological sites are still being destroyed, despite the increased police activity aimed at reducing this phenomenon. Taking into account that, as a result of the ongoing war operations in Ukraine and the difficult economic situation there, many Ukraine citizens are coming to Poland, we can expect – which is confirmed by the numerous cases of detected smuggling attempts – an increase in the illegal trade in archaeological items and other cultural goods from Ukraine.

More generally, it should be noted that the crimes against cultural heritage in Poland have taken various forms: thefts from museums, churches, and private collections, counterfeiting of works of art, and smuggling of monuments.

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