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An overview of offences against monuments in the Polish law

Introduction

Over the last hundred years, Polish law for the protection of cultural heritage has been shaped by four basic legal acts¹. These were, in turn: Decree of the Regency Council on the Care of Art and Cultural Monuments of 1918², Regulation of the President of Poland on the Care of Monuments of 1928³, Act on the Protection of Cultural Property of 1962⁴ and the Act on the Protection and Guardianship of Monuments 2003⁵. The doctrine indicates that the law of cultural heritage protection should be considered as a separate, special branch of law. This is due to the fact that the regulations pertaining to the issue in question contain provisions of various branches of law, such as constitutional law, administrative law, criminal law, civil law, international law⁶.

I should be pointed out that the legislator uses a diverse conceptual grid regarding criminal protection of monuments. In legal acts regulating the sub-

¹ See: K. Zeidler, M. Marcinkowska (eds.), *Dekret Rady Regencyjnej z 1918 r. o opiece nad zabytkami sztuki i kultury z komentarzem czyli eseje o prawie ochrony dziedzictwa kultury*, Gdańsk 2017.

² Decree of the Regency Council on the Care of Art and Cultural Monuments (Journal of Laws 1918, No. 16, item 36), repealed on 29 March 1928.

³ Regulation of the President of the Republic of Poland on the Care of Monuments (Journal of Laws 1928, No. 29, item 265), repealed on 22 May 1962.

⁴ Act of 15 February 1962 on the Protection of Cultural Property (Journal of Laws 1999, No. 98, item 1150, consolidated text with amendments), repealed on 17 November 2003.

⁵ Act of 23 July 2003 on the Protection and Guardianship of Monuments (Journal of Laws 2022, item 840, consolidated text with amendments), hereinafter referred to as the APM or Act on Protection of Monuments.

⁶ K. Zeidler, *Prawo ochrony dziedzictwa kultury jako nowa gałąź prawa*, [in:] K. Zeidler (ed.), *Prawo ochrony zabytków*, Warszawa–Gdańsk 2014, p. 23–33; idem, *Prawo ochrony dziedzictwa kultury*, Warszawa 2007, p. 15–19; W. Kowalski, K. Złasińska, *Prawo ochrony dziedzictwa kulturowego w Polsce – próba oceny i wnioski*, [in:] B. Szmygin (ed.), *System ochrony zabytków w Polsce – analiza, diagnoza, propozycje*, Lublin–Warszawa 2011, p. 33.

ject matter in question appear, among others, such notions as “cultural heritage”, “cultural goods”, “goods of particular importance for culture” and “monuments”. These notions are not identical and should not be considered synonymous. The heterogeneity of the terms used in particular acts, and the lack of legal definitions for most of them, raises difficulties of interpretation related to the application of the legislation and thus hinders the effective protection of cultural heritage⁷.

The literature uses the notion “crime against monuments”, which in criminal law terms can be defined *sensu stricto*, *sensu largo* and *sensu largissimo*. In the narrow (*sensu stricto*) sense, “crime against monuments” is only criminal acts that are considered as offences. The broader (*sensu largo*) view includes not only crimes but also misdemeanours directed against monuments. The broadest perspective of this term (*sensu largissimo*) covers all acts for which legal liability is envisaged (crimes, petty offences and administrative torts)⁸. The notion “crime against monuments” is a part of concept so-called “crime against heritage”.

The provisions criminalizing behaviours directed against monuments are of so-called “semi-code” nature⁹. This means that some of them are located in the Penal Code¹⁰, the Petty Offence Code¹¹ and other legal acts, which, according to the doctrine, is not conducive to the transparency of the system of criminal law protection of monuments¹². The main core of criminal law regulations ensuring the preservation of monuments is the Act of 2003 on Protection of Monuments. Other legal acts regulating the criminal law on the protection of monuments are: Act of 1996 on Museums¹³, Act 1983 on the National Archival Resource and Archives¹⁴, Act 1997 on Libraries¹⁵, Act of 2017 on the Restitution of National Cultural Property¹⁶.

⁷ M. Trzciniński, *Przestępczość przeciwko zabytkom*, „Prokuratura i Prawo” 2011, No. 6, p. 36.

⁸ See also: B. Gadecki, O. Jakubowski, M. Trzciniński, K. Zeidler (eds.), *Praktyczne aspekty zwalczania przestępczości przeciwko dziedzictwu kulturowemu*, Gdańsk 2019, p. 42; M. Bojarski, W. Radecki, *Ochrona zabytków w polskim prawie karnym. Stan aktualny i propozycje de lege ferenda*, [in:] J. Kaczmarek (ed.), *Prawnokarna ochrona dziedzictwa kultury. Materiały z konferencji Gdańsk, 30 maja – 1 czerwca 2005*, Kraków 2006, p. 22.

⁹ B. Gadecki, *Ustawa o ochronie zabytków i opiece nad zabytkami. Art. 108–120. Przepisy karne. Komentarz*, Warszawa 2014, p. VII.

¹⁰ Act of 6 June 1997 Penal Code (Journal of Laws 2022, item 1138, consolidated text with amendments), hereinafter referred to as the PC.

¹¹ Law of 20 May 1971 Petty Offence Code (Journal of Laws 2021, item 2008, consolidated text with amendments).

¹² O. Jakubowski, *Karnoprawna ochrona zabytków – rozważania nad kierunkami zmian prawnych*, [in:] K. Zeidler (ed.), op. cit., p. 482 – 483.

¹³ Act of 21 November 1993 on Museums (Journal of Laws 2022, item 385, consolidated text).

¹⁴ Act of 14 July 1983 on the National Archival Resource and Archives (Journal of Laws 2020, item 164, consolidated text with amendments).

¹⁵ Act of 27 June 1997 on Libraries (Journal of Laws 2022, item 2393, consolidated text).

¹⁶ Act of 25 May 2017 on the Restitution of National Cultural Property (Journal of Laws 2019, item 1591, consolidated text).

The presented study is to provide overview of the criminal law regulations on the protection of monuments in Poland. The work is primarily of popularization character. Its aim is to acquaint the international society with the Polish law provisions concerning the subject in question. Due to the complexity and extensiveness of the issue studied, the paper focuses exclusively on offences against monuments contained in the Penal Code and the Act of 2003 on the Protection of Monuments. The basic research methods used for purposes of this article were the formal-dogmatic method, consisting in analysis the content of legal sources and the method of analysis of literature on the subject.

Key terms

The broadest of aforementioned in introduction terms is “cultural heritage”. It is emphasized that this notion is very complex, as it consists not only of movable and immovable monuments, but also of industrial heritage, works of art, cultural routes, intangible heritage, underwater heritage, etc.¹⁷ The criteria that determine the recognition of an object as “cultural heritage” therefore demonstrate great diversity, causing problems in their identification, recording and description¹⁸. In literature, the most frequently quoted definition is that created by Jan Pruszyński, according to whom “cultural heritage” is “a stock of immovable and movable property together with associated spiritual values, historical and customary phenomena considered worthy of legal protection for the benefit of society and its development and passing on to future generations, due to understandable and accepted historical, patriotic, religious, scientific and artistic values having significance for the identity and continuity of political, social and cultural development, proving the truth and commemorating historical events, cultivating the sense of beauty and civilization community”¹⁹. Summarily and at the same time aptly, the notion of “cultural heritage” has been defined by Wiesław Pływaczewski as “the material and immaterial heritage of a given group of communities”²⁰. If the heritage refers to a particular nation, its cultural identity resulting from a common language, history or religious traditions, it should be regarded as “national

¹⁷ See also: W. Pływaczewski, *Grabież i niszczenie podwodnego dziedzictwa kultury*, „Prokuratura i Prawo” 2008, No. 2, p. 24–37.

¹⁸ B. Szmygin, *System ochrony zabytków w Polsce – próba diagnozy*, [in:] B. Szmygin (ed.), op. cit., p. 10.

¹⁹ J. Pruszyński, *Dziedzictwo kultury Polski. Jego straty i ochrona prawna*, t. 1, Kraków 2001, p. 50.

²⁰ W. Pływaczewski, *Niszczenie dziedzictwa kulturowego – między imperatywem ekonomii i ekologii. Kryminologiczne ujęcie problemu*, [in:] E.W. Pływaczewski (ed.), *Współczesne zagrożenia przestępczością i innymi zjawiskami patologicznymi, a prawo karne i kryminologia*, „Białostockie Studia Prawnicze” 2009, Issue 6, p. 196.

heritage”. Article 5 of the Constitution of the Republic of Poland²¹ stipulates that the role of the state is to guard the “national heritage”, without, however, specifying what is meant by this term. Furthermore, an Article 6 of this act indicates that the state is to create conditions for the dissemination of and equal access to cultural goods, which are the source of the identity of the Polish nation, its continuity and development, and to provide assistance to Poles residing abroad in preserving their links with the national cultural heritage²².

Another concept, narrower in scope, is “cultural property”, which was defined in the expired Act on the Protection of Cultural Property of 1962. This term was understood as “any movable or immovable object, ancient or modern, which is of significance for heritage and cultural development due to its historical, scientific or artistic value”. However, this concept was not introduced into the binding Act on the protection of monuments of 2003, but at the same time, it is used by the PC of 1997. It is due to the fact that the Law on the Protection of Cultural Property was still in force when the Criminal Code was passed. When interpreting the term “cultural asset”, one may refer to the Act on the Restitution of National Cultural Assets of 2017²³. Article 2 of this act stipulates that a “cultural asset” is “a monument within the meaning of Article 3(1) of the Act on the Protection of Monuments, a movable thing that is not a monument, as well as their components or ensembles, the preservation of which is in the public interest due to their artistic, historical or scientific value or due to their significance for heritage and cultural development”. Furthermore, this concept is clarified in Article 2 of the European Parliament and Council (EU) Regulation 2019 on the entry and import of cultural goods²⁴ as “any object of archaeological, prehistoric, historical, literary, artistic or scientific interest, listed in the Annex”.

The term “cultural property” was also explicit in the Hague Convention for the Protection of Cultural Property In the event of armed conflict from 1954²⁵. According to art. 1 of the Convention, “cultural property” is considered to be, regardless of their origin and of the person of their owner: a) movable or immovable goods which are of great importance for the cultural heritage of a nation, for example, architectural, artistic or historical monuments, whether

²¹ Act of 2 April 1997 The Constitution of the Republic of Poland (Journal of Laws 1997, No. 78, item 483, with the amendments).

²² B. Gadecki, *Prawnokarna ochrona dziedzictwa kultury*, [in:] B. Gadecki, O. Jakubowski, M. Trzeciński, K. Zeidler (red.), op. cit., pp. 39–40.

²³ Act of 25 May 2017 on the Restitution of National Cultural Property (Journal of Laws 2019, item 1591, consolidated text).

²⁴ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods (Journal of UE Laws 2019, No. 151, p. 1).

²⁵ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague 14 May 1954 (Journal of Laws 1957, No. 46, item 212).

religious or secular; archaeological sites; building complexes having historical or artistic significance as such; works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections and major collections of books, archival materials or reproductions of the goods referred to above; b) buildings whose primary and practical purpose is the storage or exhibition of movable cultural goods as defined in subparagraph (a), for example, museums, large libraries, archives depots and shelters for the storage, in the event of armed conflict, of movable cultural goods as defined in subparagraph (a); c) centres housing a significant number of the cultural goods referred to in points (a) and (b), hereinafter referred to as “heritage centres”. In this definition, the key element is that movable and immovable goods are to possess the feature of being “of great importance for the cultural heritage of a nation”. It is therefore within the discretion of the state concerned to decide which goods meet this criterion. states themselves may therefore determine which goods meet this criterion²⁶.

In the Criminal Code, the legislator also uses the term “goods of particular cultural importance”. The literature on the subject points out that the classification of an item as a “good of particular cultural importance” is not determined by its value (although these are usually items of high property value), but by the fact that the item must be included among cultural goods of national significance²⁷. Noteworthy is the classification of goods which are considered to be of special significance for culture by Bartłomiej Gadecki. According to this author, such goods should be regarded as: 1) monuments recognized as monuments of history; 2) monuments inscribed on the “Heritage Treasures List”; 3) monuments in respect of which the Minister in charge of culture and national heritage protection refused to issue a single permit for the permanent export of the monument abroad in the case where the monument has a special value for cultural heritage; 4) cultural goods included in the “International Register of Cultural Property under Special Protection”; 5) cultural goods under enhanced protection included in the “List of Cultural Property under Enhanced Protection”; 6) goods included in the “World Heritage List”²⁸.

The narrowest in scope of aforementioned terms is “monument”. In addition, this concept is one of the few that has a legal definition which is contained in Article 3 pt 1 of the Act on Protection of Monuments. Within the meaning of this legal act, a monument is “an immovable or movable property, parts or

²⁶ Zob. B. Gadecki (ed.), *Kodeks karny. Komentarz. Art. 1–316*, 2023, Legalis, komentarz do art. 125 k.k.; H. Schreiber, *Konwencja o ochronie dóbr kulturalnych w razie konfliktu zbrojnego wraz z Regulaminem wykonawczym do tej Konwencji oraz Protokół o ochronie dóbr kulturalnych w razie konfliktu zbrojnego podpisane w Hadze dnia 14 maja 1954 r.*, [in:] K. Zalesińska (ed.), *Konwencje UNESCO w dziedzinie kultury. Komentarz*, Warszawa 2014, pp. 37–38.

²⁷ R.A. Stefański (ed.), *Kodeks karny. Komentarz*, 2023, Legalis, komentarz do art. 294 k.k.

²⁸ B. Gadecki (ed.), op. cit., komentarz do art. 294 k.k.

complexes thereof, being the work of man or related to his activity and being a testimony of a bygone era or event, the preservation of which is in the public interest due to its historical, artistic or scientific value". The Act on Protection of Monuments enumerates three types of monuments. These are, respectively: immovable monuments²⁹ (Article 3 pt 2 APM), movable monuments³⁰ (Article 3 pt 3 APM) and archaeological monuments, which are a qualified type of monuments and may take the form of both immovable and movable monuments³¹ (Article 3 pt 4 APM). According to the APM, an immovable monument is "an immovable thing, a part of it or a group of immovable things referred to in pt 1". A movable monument is "a movable thing, a part of it or a group of movable things referred to in pt 1". The last of the above-mentioned group of monuments consists of an archaeological monument which is defined as "an immovable monument, which is a surface, underground or underwater remnant of human existence and activity, consisting of cultural strata and the products or traces thereof contained therein, or a movable monument, which is such a product". The definition of monument contained in the Article 3 of the APM is supplemented by Article 6 of the APM which lists examples of objects and areas to which, irrespective of their state of preservation, the legislator grants statutory protection and care, provided that they meet the criteria for recognition as monuments. The Act on Protection of Monuments give protection and care to three groups of objects, regardless of their state of preservation. The first one concerns immovable monuments which are, in particular: cultural landscapes; urban and rural layouts and building complexes; works of architecture and construction; works of defence works; technical facilities, and in particular mines, steelworks, power stations and other industrial plants; cemeteries; parks, gardens and other forms of designed greenery; places commemorating historical events or the activities of prominent personalities or institutions. The second group refers to movable monuments which are, in particular: works of fine arts, artistic crafts and applied arts; collections, being collections of objects assembled and arranged according to the ideas of people who created these collections; numismatic and historical memorabilia, in particular militaria, flags, seals, badges, medals and orders; technological creations, in particular equipment, means of transport, machines and tools bearing witness to material culture, characteristic of old and new forms of economy, documenting the level of science and the development of civilization; library materials referred to in Article 5 of the Act on libraries³²; musical instruments; folk art and

²⁹ M. Duda, *Zabytki nieruchome*, [in:] K. Zeidler, M. Marcinkowska (eds.), op. cit., pp. 92–99.

³⁰ J. Narodowska, *Zabytki ruchome*, [in:] K. Zeidler, M. Marcinkowska (eds.), op. cit., pp. 130–136.

³¹ M. Trzeciński, *Definicja zabytku archeologicznego – problemy i kontrowersje wokół stosowania prawa*, [in:] K. Zeidler (ed.), op. cit., pp. 115–122.

³² Act of 27 June 1997 on libraries (Journal of Laws of 2019, item 1479, consolidated text with amendments).

handicraft products and other ethnographic objects; objects commemorating historical events or the activities of eminent personalities or institutions. The last group covers archeological monuments which are, in particular: field remains of prehistoric and historic settlements; cemeteries; burial mounds relics of economic, religious and artistic activities.

Offences against monuments

► Penal Code offences against monuments

The binding Penal Code does not devote a separate chapter to provisions criminalizing acts directed neither against cultural heritage nor monuments. At the same time, representatives of the doctrine postulate that the creation of such a chapter would raise the wound of legal norms protecting cultural heritage, especially the monuments³³. Furthermore, none of the provisions of the Penal Code use the term “monument” to define the constituent elements of the crime. Instead, one may encounter undefined terms such as “cultural asset/property” and “good of particular importance for culture”. Determining the scope of the particular terms is essential to be able to hold the perpetrator criminally liable under a relevant criminal provision (subsumption). For example, every monument will constitute a cultural asset, but not every cultural asset will meet the criteria of a monument. A similar relationship will apply to a good of particular importance for culture and a monument³⁴.

Under the Penal Code, criminal liability for acts against monuments is primarily envisaged in chapter XVI entitled “Offences against Peace, Humanity and War Crimes” and chapter XXXV “Offences against Property”.

The provisions of chapter XVI of the Penal Code concerning the protection of monuments correlate closely with the with international legal acts dealing with armed conflicts to which the Republic of Poland is a party³⁵.

Article 125 § 1 of the PC criminalizes the acts of destroying, damaging, looting or appropriating cultural property in violation of international law. The place of the perpetrator’s behaviour is an area occupied, seized or where armed actions are taking place. The subject of the assault in the light of the disposition of Article 125 of PC is cultural heritage, which is exposed to depletion during armed conflicts. This provision protects both the legal order established by international law and property in the form of cultural property³⁶.

³³ M. Bojarski, W. Radecki, op. cit., pp. 27–28.

³⁴ M. Trzeciński, *Przestępczość przeciwko...*, p. 47.

³⁵ See: P. Chorbot, M. Nowiński, *Ochrona dziedzictwa kulturalnego w trakcie konfliktów zbrojnych*, [in:] W. Pływaczewski, B. Gadecki (eds.), *Ochrona dziedzictwa kulturalnego i przyrodniczego. Perspektywa prawna i kryminologiczna*, Warszawa 2015, pp. 74–100.

³⁶ V. Konarska-Wrzošek (ed.), *Kodeks karny. Komentarz*, 2020, Lex.

The offence is of a substantive nature, which means that an result is required in order to incur criminal liability on the perpetrator. The offender's behaviour takes the form of action³⁷. It is a common offence that can only be committed intentionally. The criminal threat for the basic type is imprisonment of between year and 10 years. The qualified type is stipulated in Article 125 § 2 of the PC. In this case the prohibited acts involve the behaviours listed in § 1, and the objects of the attack are goods of particular importance for culture. The criminal sanction is deprivation of liberty for a period of not less than 3 years. As of 1 October 2023, the criminal sanction for the offence of Article 125 § 2 of the PC will be between three and 20 years' imprisonment. The offences under Article 125 of the PC are subject to the jurisdiction of the Polish courts on general principles and no international agreement introduces universal jurisdiction in this respect. The doctrine emphasizes that this offence requires the dual criminality of international law and criminal illegality. It should be noted that the Charter of the International Military Tribunal from 1945³⁸ does not mention the destruction of cultural property among war crimes³⁹. In the international context, *ratio legis* of the art 125 of the PC are primarily: the Hague Convention of 1954⁴⁰, the Paris Convention of 1970⁴¹, Protocol II to the Hague Convention of 1954⁴². In the Rome Statute of the International Criminal Court, the issue of cultural property is included in Article 8(2)(b) (ix). The aforementioned stipulation considers as the "war crime" an act of "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives"⁴³.

The legislator in Article 126a of the PC has introduced the punishment of behaviour consisting in public incitement or public praise of the commission of offences under Article 125 of the PC.

A subsequent provision, Article 126 § 2 of the PC, criminalizes the use of a protective sign identifying cultural property in violation of international law

³⁷ M. Mozgawa (ed.), *Kodeks karny. Komentarz aktualizowany*, 2021, Lex; E. Jurgielewicz-Delegacz, *Wybrane aspekty prawnokarnej ochrony zabytków na przykładzie Kodeksu karnego z 1997 r.*, „*Studia Prawnoustrojowe*” 2019, No. 43, pp. 143–144.

³⁸ Agreement for the prosecution and punishment of the major criminals of the European Axis. Signed at London, on 8 August 1945 (*Journal of Laws* 1947, No. 63, item 367).

³⁹ R.A. Stefański (ed.), *op. cit.*, komentarz do art. 125 k.k.

⁴⁰ Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, Hague, 14 May 1954.

⁴¹ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 14 November 1970.

⁴² Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, Hague, 26 march 1999 (*Journal of Laws* 2012, item 248).

⁴³ Rome Statute of the International Criminal Court of 17 July 1998 (*Journal of Laws* 2003, No. 78, item 708).

during military operations⁴⁴. The disposition of this provision is aimed at protecting the legal order established by international law and ensuring the reliability of signs ensuring security (in this particular case, the security of cultural property). This offence may be committed either by act or omission⁴⁵. Only intentional conduct by the perpetrator is punishable. The penalty for this act is up to 3 years' imprisonment.

Article 294 § 2 of the PC provides for criminal liability for the commission of the offences specified in § 1 of this article, if the acts are detrimental to goods of particular importance for culture. The following offences are listed in § 1 of this provision: theft (Art. 278 § 1, 2 or 5 of the PC), particularly aggravated theft (278a § 1 of the PC), appropriation (284 § 1 or 2 of the PC), theft of telephone impulses (Art. 285 § 1 of the PC), fraud (Art. 286 § 1 or 2 of the PC), computer fraud (Art. 287 § 1 of the PC), violation of the integrity of property (Art. 288 § 1 or 3 of the PC), illegal logging and timber theft (Art. 290 § 1 of the PC) or handling stolen items (Art. 291 § 1 of the PC).

Representatives of the doctrine point out that the content of Article 294 § 2 of the PC is fairly problematic. Firstly, its provision is non-self-contained in relation to the basic type (Article 294 § 1 of the PC), as it does not specify the elements of the prohibited act. Secondly, the necessary element for the application of Article 294 § 2 is the attribution to the good the characteristic of "particular importance for culture". In addition, it is argued that placing this offence in the chapter concerning offences against property may cause wrong perception of goods of particular importance for culture assessed mainly through their material value⁴⁶. According to some representatives of doctrine the shortcoming of this provision is that it does not cover all cultural goods, but only those whose importance is particular, and the interpretation of this concept is difficult⁴⁷. The penal sanction for the basic type and the qualified type under Article 294 of the PC is the same and consists of imprisonment from one to ten years.

⁴⁴ As an aside, it should be added that the author of this emblem is a Pole, Jan Zachwatowicz, who was the General Conservator of Monuments in Poland at the time of the enactment of the aforementioned Convention. See more on the website of the Ministry of Culture and National Heritage MKiDN – Znak Błękitnej Tarczy (accessed: 23.11.2020).

⁴⁵ M. Mozgawa (ed.), op. cit.

⁴⁶ J. Karaźniewicz, *Specyfika postępowania przygotowawczego prowadzonego w sprawach o przestępstwa przeciwko dobrom kultury*, „Prokuratura i Prawo” 2019, No. 1, p. 66; B. Gadecki, *Kontrowersje wokół odpowiedzialności za zniszczenie lub uszkodzenie dobra o szczególnym znaczeniu dla kultury*, „Ius Novum” 2013, No. 4, pp. 19–31.

⁴⁷ M. Trzciniński, *Przestępczość przeciwko...*, p. 49.

► Offences under the Act of 2003 on the Protection and Guardianship of Monuments

The basic legal act regulating the issues related to monuments is the Act on Protection of Monuments passed in 2003. Chapter XII, entitled “Criminal Provisions”, lists the prohibited acts that are either criminal offences or misdemeanours.

The initial version of the APM provided for only two offences, which were included in Articles 108 and 109 of the Act. However, the legislator successively expanded the catalogue of prohibited acts by adding further editorial units.

As it stands, the APM contains six offences, which are defined in Articles 108, 108a, 109, 109a, 109b, 109c, eleven petty offences, i.e. Articles 110, 112, 113, 113a, 114, 115, 116, 117, 118, 119, 119a⁴⁸ and five administrative torts, i.e. 107a, 107b, 107c, 107d, 107e⁴⁹.

The disposition of Article 108 of the APM has remained unchanged since the entry into force. The behaviours penalized under the provision are destruction or damage of a monument, which in the literature is also referred to as “vandalism of monuments”⁵⁰. It has been stated in the judicature that “destruction” of a monument consists in such change that the restoration of the previous state is not possible at all. On the other hand, “damage” to a monument involves such a change of properties or condition of the monument that it renders the monument permanently or temporarily unusable to perform the function for which it was intended⁵¹. This offence can be committed both by action and omission. In the case of an action, a subject to criminal liability is everyone. It is irrelevant whether the monument is someone else’s thing for the perpetrator (the subject to criminal liability is also the owner or holder of the monument)⁵². On the other hand, criminal liability for an offence of omission is incurred only by the person who is under a legal obligation to prevent the result⁵³. The basic

⁴⁸ See more: M. Duda, *Wykroczenia przeciwko zabytkom*, [in:] M. Duda, S. Buczyński (eds.), *Prawnokarne i kryminologiczne aspekty ochrony dziedzictwa kultury pogranicza*, Warszawa 2021, pp. 214–228.

⁴⁹ B. Gadecki, *Zmiany w zakresie karnoprawnej ochrony zabytków w związku z uchwaleniem ustawy z dnia 22 czerwca 2017 roku o zmianie ustawy o ochronie zabytków i opiece nad zabytkami oraz niektórych innych ustaw*, „Santander Art and Culture Law Review” 2018, No. 1(4), pp. 81–96.

⁵⁰ J. Narodowska, M. Duda, *Wandalizm zabytków z perspektywy kryminologicznej*, „Santander Art and Law Review” 2017, No. 1(3), pp. 37–52; J. Narodowska, M. Duda, *Ochrona zamków oraz pałaców i dworów szlacheckich na Warmii i Mazurach – aspekty prawnokarne i kryminologiczne*, „Studia Prawnoustrojowe” 2019, No. 43, pp. 250–253.

⁵¹ Judgment of the Supreme Court of 24 June 1993, III KRN 98/93, OSNKW 1993, No. 9–10, item 64, p. 46.

⁵² A. Gerecka-Żołyńska, *Rozważania wokół współczesnych problemów karnoprawnej i karprocesowej ochrony zabytków*, [in:] W. Szafrński (ed.), *Wokół problematyki prawnej zabytków i dzieł sztuki*, Vol. 2, Poznań 2008, p. 134.

⁵³ B. Gadecki, *Karnoprawna ochrona zabytków architektury*, [in:] W. Pływaczewski, S. Buczyński (eds.), *Wandalizm wobec dziedzictwa naturalnego i kulturowego*, Olsztyn 2015, p. 56; Different

type is included in paragraph 1 and involves intentional conduct by the offender. The criminal penalty is imprisonment for a term of 6 months to 8 years. A mitigated penalty is provided for the privileged type as defined in paragraph 2 and covers the unintentional conduct of the offender. If the perpetrator intentionally destroyed a monument, the court obligatorily orders punitive damages in the amount up to the value of the destroyed monument to be paid to the National Heritage Preservation Fund. If the perpetrator has intentionally damaged the monument, the court awards an obligation to restore the monument to its previous state, and if it is not possible, impose on perpetrator an obligation to pay punitive damages for the benefit of national Heritage Preservation Fund in the amount up to the value of the damage to the monument⁵⁴.

The offence under Article 108a the APM was introduced by the 2021 amendment to the Act on Protection of Monuments⁵⁵. The addition of another prohibited act was a consequence of the enactment of the Regulation 2019 of the UE Parliament and of the Council on the introduction and the import of cultural goods into the European Union from the third countries⁵⁶. Article 108a of the APM criminalizes conduct consisting in the introduction into the territory of the Republic of Poland of cultural goods specified in part A of the Annex to the above-mentioned regulation, which have been removed from the territory of a country which is not a member of the European Union, where the cultural property originated or was discovered, in violation of the statutory provisions of such country. The criminal sanction for infringement of the disposition of Article 108a item 1 of the APM is alternatively a fine, restriction of freedom or imprisonment of up to 2 years. In Part A of the Annex to the aforesaid Regulation, the following cultural goods are listed: a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest; b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance; c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or underwater; d) elements of artistic or historical monuments or archaeological sites which have been

stand point R. Golat, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Kraków 2004, p. 193.

⁵⁴ See B. Gadecki, *Odpowiedzialność za wykroczenia przeciwko przepisom*, [in:] K. Zeidler, M. Marcinkowska (eds.), op. cit., p. 253.

⁵⁵ Act of 15 April 2021 amending the Act on the Protection and Guardianship of Monuments and the Act on the National Revenue Administration (Journal of Laws 2021, item 954).

⁵⁶ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods (Journal of Law UE L 151 of 2019, p. 1). The Regulation stipulates conditions for the introduction of cultural goods and procedures for the importation of cultural goods in order to protect the world cultural heritage and to prevent illegal trafficking in cultural goods, in particular if illegal trafficking could be used to finance terrorism.

dismembered⁵⁷; e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; f) objects of ethnological interest; h) objects of artistic interest, such as: (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand); (ii) original works of statuary art and sculpture in any material; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; h) rare manuscripts and incunabula; i) old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections; j) postage, revenue and similar stamps, singly or in collections; k) archives, including sound, photographic and cinematographic archives; l) articles of furniture more than one hundred years old and old musical instruments.

A mitigated penalty is stipulated in Article 108a item 2 of the APM. In the case of a minor offence, the offender is liable to a fine. Thus, the penal sanction depends on the degree of reprehensibility of the perpetrator's behaviour, and the criterion determining the classification of the offender's act is, inter alia, the degree of social harmfulness⁵⁸. In addition, if the perpetrator fulfil the disposition of Article 108a item 1 and 2 of the APM, the court may impose the forfeiture of a cultural asset even though it is not the property of the perpetrator.

The aforementioned UE Regulation in Article 3 item 1 also indicates that customs authorities and relevant authorities are to take all appropriate measures in order to prevent the illegal introduction of cultural goods listed in Part A of the Annex. This provision is in correlation with the Article 33 item 1 pt 10 lit. h of the Act on National Revenue Administration⁵⁹, according to which the Head of National Revenue Administration is obligated to detect and combat the offences of under Article 108a and 109 of the APM. The subject of the act referred to in Article 108a of the APM can be anyone (common subject). Punishable is only an intentional act of the perpetrator. However, it is incomprehensible that the legislator placed the offence of illegal transport and export of monuments after Article 108 of the APM, which penalizes behaviour consisting in destruction or damage of a monument. Due to the content of Article 108a of the APM, it would seem more reasonable to place it after Article 109 of the Act, which criminalizes transporting a monument abroad without a permit. An argument that the legislator did not opt for such a solution may

⁵⁷ Liturgical icons and statues, even free-standing, are to be considered as cultural goods belonging to this category.

⁵⁸ See: W. Kowalski, *Nowe zasady wywozu zabytków za granicę w świetle prawa polskiego*, [in:] *Stop przestępczości przeciwko dziedzictwu. Dobre praktyki i rekomendacje*, Warszawa 2011, pp. 31–34.

⁵⁹ Act of 16 December 2016 on National Revenue Administration (Journal of Laws 2021, item 422, consolidated text with amendments).

be the fact that the remaining offences from Act on Protection of Monument specified in Articles 109a, 109b, 109c would then have to be renumbered. This legislative procedure could have caused some inconvenience for the procedural authorities.

The behaviour concerning illegal transporting monuments outside the Republic of Poland is penalized under Article of 109 of the APM. The binding content of this provision was introduced by the 2015 amendment to the Act on Protection of Monuments⁶⁰. In the light of the disposition of Article 109 of the APM, two acts are criminalized: transporting the monument outside of the Republic of Poland without permission and not bringing the previously transported monument back to the country. In the first situation, any removal of the monument without the required permit is prohibited. According to the doctrine, it is not exportation if a monument is moved to the territory of an embassy or consulate of a foreign state located on the territory of the Republic of Poland. This is because the territory of diplomatic representations accredited in Poland is its territory⁶¹. On the other hand, in the case where an antique is placed on board a Polish sea or air vessel which then moves outside the territory of the Republic of Poland, exportation is performed. This is because a Polish watercraft or aircraft does not constitute a part of Polish territory, but only falls under Polish jurisdiction, which is relevant for the application of the Polish criminal law, but is not relevant for the interpretation of the element of exporting an object abroad⁶². In the second situation the penalized behaviours consist in exporting the monument abroad and thereafter failing to bring it to Poland within the period of validity of the export permit or, in the case referred to in Article 58, within 60 days from the date on which the decision on the refusal to issue another permit for the temporary export of the monument abroad became final or from the date of receipt of information on leaving the application for another permit for the temporary export of the monument abroad unprocessed⁶³. The criminal sanction for infringement of the disposition of Article 109 of the APM is imprisonment from 3 months to 5 years. A mitigated criminal sanction is imposed for an unintentional act of the perpetrator, who is subject to a fine, restriction of liberty or imprisonment for up to 2 years. In the case of an intentional act, the court orders punitive damages to be paid to a social purpose designated for the care of monuments. The value of the punitive damages is between three times and 30 times the minimum wage. If the perpetrator act unintentionally the court is not obliga-

⁶⁰ Act of 10 July 2015 amending the Act on the Protection and Guardianship of Monuments and the Act on Museums (Journal of Laws 2016, item 1330).

⁶¹ L. Gardocki, *Zasady obowiązywania ustawy*, „Palestra” 1996, No. 3–4, p. 90.

⁶² B. Gadecki, *Ustawa o ochronie...*, pp. 51–53.

⁶³ K. Zalańska, *Ustawa o ochronie zabytków i opiece nad zabytkami. Komentarz*, Warszawa 2020, pp. 316–317.

ted to impose punitive damages. In addition, the court may order the forfeiture of the monument, even if it is not the property of the offender.

Article 109a of the APM was added to the catalogue of offences against monuments in 2006. The introduction of another prohibited act was dictated by the need to regulate the issues concerning the forgery of cultural goods and their introduction into circulation in order to gain financial benefits. It was observed that neither the Act on Protection of Monuments nor the Penal Code penalize this type of behaviour. At the same time, the demand for the introduction of such a provision has been raised for many years by antiquarians and collectors of monuments⁶⁴. The disposition of art. 109a of the APM criminalizes two types of act which consist in “counterfeiting” or “reworking” a monument in order to use it in the trade of monuments. According to legal doctrine, the following acts are considered as “counterfeiting” a monument: giving it a different appearance from the original one; altering an authentic monument; altering an existing monument in such a way that it may be perceived as a monument different from the one it actually is or it will not be perceived as a monument at all; introducing certain changes in order to deceive the purchaser⁶⁵. On the other hand, “reworking a monument” is defined as changing the original artistic or esthetic content of a monument and involves interfering with an existing monument⁶⁶. Such reworking may consist, among others, in: giving the monument a different appearance than the original one; altering the existing monument in such a way that it may be perceived as a different monument or not perceived as a monument at all⁶⁷. The offence under Article 109a of the APM is a common offence, which means that anyone capable of criminal responsibility can be held criminally liable. Only the intentional act of the perpetrator (*dolus directus coloratus*) is punishable. It is important to show that the perpetrator’s aim is to use the counterfeited or reworked monument in trade on the monument market. It is also indicated that the perpetrator must have intended to use such an object in the circulation of monuments even before or during the act of counterfeiting or reworking. The perpetrator will not be subject to criminal liability under Article 190a of the APM if the intention to introduce such an object in the circulation of the monuments only arises after the forgery or alteration has been carried

⁶⁴ Justification of the Government Bill on Amendments to the Law on the Protection of Monuments; Parliamentary Paper No. 50 (accessed: 14.03.2021).

⁶⁵ K. Złasińska, op. cit., p. 320; B. Gadecki, *Ustawa o ochronie...*, pp. 71–74; idem, *Kopia a falsyfikat w ujęciu prawnym*, [in:] A. Jagielska-Burduk, W. Szafranski (eds.), *Kultura w praktyce. Zagadnienia prawne*, Vol. 3, Poznań 2014, p. 199; A. Szczekala, *Falszerstwa dzieł sztuki. Zagadnienia prawnokarne*, Warszawa 2012, p. 116.

⁶⁶ D. Wilk, *Falszerstwa dzieł sztuki. Aspekty prawne i kryminalistyczne*, Warszawa 2015, p. 36.

⁶⁷ See more B. Gadecki, *Kopia a falsyfikat...*, p. 199.

out⁶⁸. An important criterion for determining the possibility of criminal liability is the timing of the intention. This limitation is criticized by the doctrine⁶⁹. Furthermore, it does not constitute an offence under Article 190a of the APM if the perpetrator counterfeits or reworks a monument for the purpose of: merely demonstrating his skill, adding it to his collection; trading in such a monument, but with the intention of informing the purchaser that the monument purchased is counterfeited or reworked. In the doctrine, however, there are concerns on the understanding of the term “circulation” of monuments. According to B. Gadecki, the term covers only the sale of a monument or its exchange. The term does not include donation. Therefore, if the perpetrator counterfeits or reworks a monument in order to make a donation, the disposition of Article 190a of the APM will not be violated⁷⁰. A different view has been expressed by Agnieszka Szczekala, who considers donation also as a form of turnover, as the monument changes ownership⁷¹. The offence under art. 190a is sanctioned with a fine, restriction of freedom or imprisonment for up to 2 years.

In the literature on the subject, the offence of Article 109b of the APM is referred to as offence of introducing a counterfeit into circulation⁷², handling of stolen monuments⁷³, and offence of fraud on the monuments market⁷⁴. The 2006 amendments to the Act on the Protection of Monuments sanctioned in Article 109b two forms of the offender’s conduct, which are the disposal of a movable thing as a monument or the disposal of a monument as another monument. In the first case, the offence consists in the disposal of a movable object which is not a monument, but has been counterfeited as a monument. The essence of this act is the “counterfeiting” of a movable object. If the perpetrator disposes of a “forged” movable object as a monument, he may be punished under Article 286, i.e. offence of fraud⁷⁵. In the second variant, the

⁶⁸ B. Gadecki, *Odpowiedzialność karna za podrabianie i przerabianie zabytków oraz obrót podrobionymi i przerobionymi zabytkami*, [in:] W. Szafranski, K. Zalasinska (eds.), *Prawna ochrona dziedzictwa kulturowego*, Vol. 3, Poznań 2009, p. 297.

⁶⁹ See: W. Szafranski, *Przeciwdziałanie fałszerstwom dzieł sztuki. Ku nowym rozwiązaniom prawnym*, [in:] *Problematyka autentyczności dzieł sztuki na polskim rynku sztuki. Teoria – praktyka – prawo*, Warszawa 2012, p. 416; B. Gadecki, *Karnoprawna ochrona autentyczności zabytków – aktualny stan prawny i propozycje de lege ferenda*, [in:] K. Zeidler (ed.), *Prawo ochrony zabytków*, Warszawa–Gdańsk 2014, p. 566–567.

⁷⁰ B. Gadecki, *Ustawa o ochronie...*, p. 71–72.

⁷¹ A. Szczekala, op. cit., p. 121.

⁷² K. Zeidler, *Nowe przestępstwa w systemie karnoprawnej ochrony dziedzictwa kultury*, „Ochrona Zabytków” 2006, No. 4, p. 66.

⁷³ K. Zeidler, *Rola i zadania Policji w zakresie ochrony dziedzictwa kultury*, [in:] A. Szymaniak, W. Ciepela (eds.) *Policja w Polsce. Stan obecny i perspektywy*, Poznań 2007, p. 402.

⁷⁴ W. Kotowski, B. Kurzępa, *Przestępstwa pozakodeksowe. Komentarz*, Warszawa 2007, p. 612.

⁷⁵ B. Gadecki, *Przestępstwo zbycia fałszyfikatu. Komentarz do art. 109b ustawy o ochronie zabytków i opiece nad zabytkami*, „Ochrona Zabytków” 2008, No. 56/2 (241), p. 89.

disposal refers to a monument that has been counterfeited, however, the legislator has not derived a limitation exclusively to movable monuments⁷⁶. It can be any category of monuments (movable, immovable or archaeological). Some doubts are raised with regard to the content of the verb “dispose”. This concerns the question of whether “disposal” covers only paid or unpaid transactions, including donation. The scientific community is divided on this issue⁷⁷. The offence under Article 109b of the APM can only be committed intentionally by action. The circle of persons who may be held liable is not limited to the counterfeiter, but also to other persons. There are also proposals that it would be reasonable to introduce criminalization of the unintentional introduction of the counterfeit into circulation. It has been suggested that the privileged type could be formulated as follows: “Whoever disposes of a monument which, on the basis of the surrounding circumstances, he ought and may presume to have been counterfeited or forged, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year”⁷⁸. Extending the scope of criminalization to unintentional form would enhance the safety of the circulation of monuments and their authenticity.

Illegal search for monuments as defined in Article 190c of the APM has been introduced to catalogue of offences in 2017⁷⁹. It should be noted that such behaviour had already been penalized under Article 111 of the APM. The criminal sanction for this petty offence was arrest, restriction of freedom or a fine. The legislator, by moving aforementioned behavior from the catalogue of misdemeanours to offences, clearly indicated that, in his opinion, illegal search for monuments has a significant degree of social harm⁸⁰. Article 109c of the APM sanctions the conduct of searching for hidden or abandoned monuments without permission or in violation of the conditions of permission, including with the use of any kind of electronic device, technical devices and diving equipment. The introduction of a requirement to obtain a permit in order to undertake searches implements the standard contained in Article 3 of the La Valletta Convention of 1992⁸¹. The object of protection is the inte-

⁷⁶ A. Książkowska-Kukulska, *Dobra kultury jako przedmiot ochrony w prawie karnym*, „Prokurator” 2007, No. 2, p. 109; D. Olejniczak, *Zarys problematyki prawnej fałszerstw dzieł malarstkich*, [in:] J. Włodarski, K. Zeidler (eds.), *Prawo muzeów*, Warszawa 2008, pp. 88–89.

⁷⁷ B. Gadecki, *Przestępstwo zbycia...*, pp. 89–90.

⁷⁸ Idem, *Karnoprawna ochrona zabytków: propozycje de lege ferenda*, „Ochrona Zabytków” 2009, No. 64(247), p. 93.

⁷⁹ Act of 22 June 2017 amending the Act on the Protection and Guardianship of Monuments and other acts *Journal of Laws* 2017, item 1595).

⁸⁰ See more: J. Narodowska, M. Duda, *Eksploatacja archeologiczna obszarów leśnych*, [in:] W. Pływaczewski, M. Duda (eds.), *Nielegalna eksploatacja obszarów leśnych*, Olsztyn 2013, pp. 192–204; W. Pływaczewski, *Grabież i niszczenie...*, p. 28.

⁸¹ European Convention on the Protection of the Archaeological Heritage (Revised), signed at La Valetta on January, 16, 1992 (*Journal of Laws* 1996, No. 120, item 564).

grity of monuments and the correctness of the search for hidden or abandoned monuments. Although the legislator did not expressly state whether it refers to movable or immovable monuments, in the context of art. 36 item 1 pt 12 of the APM, it shall be assumed that the provision of art. 109c of the AMP refers to movable monuments, including archaeological ones⁸². It is a crime which can be committed only by action, however to hold perpetrator liable it is not necessary that the result of finding the monument has occurred. If the perpetrator breaches the disposition of Article 109c of the APM, he is subject to a fine, restriction of liberty or imprisonment for up to 2 years.

Conclusions

Since the Act on Protection of Monuments came into force in 2003, it has been amended several times and the catalogue of acts considered as crimes has been gradually expanded. The addition of new offences was dictated primarily by the necessity to adapt national provisions to the EU laws and international acts to which Poland is a party. Although most of the offences against monuments have been sanctioned under the Act on the Protection of Monuments, a large number of them still operates in other Acts, which, as indicated above, does not favour the transparency of the system of monument protection. It is worth mentioning the Criminal Code, which, despite providing a number of provisions protecting monuments, does not include the term “monument” in the description of any of the prohibited acts. Moreover, the regulations protecting monuments are located in several unrelated chapters of the Penal Code. It has been rightly argued in the doctrine that due to the nature of the protected property, i.e. “monuments”, it is reasonable to introduce a separate chapter containing regulations condemning acts committed against monuments or even cultural heritage, which is a broader concept. Undoubtedly, this would raise the status of such regulations and point out to the public the particular need to preserve monuments. These assets are a testimony to history of mankind and constitute an unquantifiable national, European and global legacy. Therefore, due to their special nature, monuments should be granted enhanced legal protection so that they can serve future generations.

Another element that weakens the protection of monuments and cultural heritage is the use by the legislator of terms which do not have legal definitions on the ground of Polish law. Aforementioned terms are imprecise, hence, in determining their scope, one has to resort to acts of international law, jurisprudence and definitions formulated by the doctrine. Inconsistencies concerning

⁸² M. Duda, *Nielegalne poszukiwania zabytków jako zagrożenie dla dziedzictwa kulturalnego*, [in:] W. Pływaczewski, B. Gadecki (eds.), op. cit., p. 170.

the understanding of particular concepts, e.g. “cultural asset”, “asset of particular importance for culture”, “cultural heritage”, “national heritage”, cause problems in performing the proper legal qualification of an act. Due to the fact that these concepts are undefined in nature, they require assessment by the trial authority in each case. A consequence of the inconsistent system of notions relating to cultural heritage are practical difficulties in conducting criminal proceedings, e.g. in carrying out evidentiary activities and determining the powers of specialized bodies. These elements affects the effectiveness disclosure of crimes in the investigated area. Therefore, it seems that the available statistical data do not fully reflect a reliable depiction of crime against monuments. In this respect, it is also postulated to introduce their definitions into the legal system. This would greatly improve the work of services responsible for prosecuting crimes against monuments, and thus affect their effectiveness.

Another issue is the relationship between the provisions contained in the Criminal Code and the Law on the Protection of Monuments. An example of this is Article 294 § 2 of the PC, which criminalises, *inter alia*, theft, misappropriation, fencing, destruction or damage of an object of particular importance to culture. In the doctrine, doubts arise as to whether, due to the fact that this offence is located in the chapter “Offences against property”, it is necessary to apply the amount criterion when qualifying an act against an asset of particular importance for culture, as in the case of other property.

In recent years, there has also been a trend of moving offences from the catalogue of acts criminalized under criminal law to the catalogue of administrative torts in various areas of law. This is also reflected in the area of monument protection law. Indeed, in 2018, the legislator introduced a new chapter 10a entitled “Administrative fines” into the Law on the Protection of Monuments. The change of responsibility from criminal-legal to administrative-legal was dictated by the low effectiveness of the previous criminal sanctions. The aim of the amendments was to increase the efficiency of the implementation of tasks under the protection of monuments.

In the face of the armed conflict in Ukraine, one of the challenges in the field of the law on the protection of monuments, including criminal law, is the fulfillment of the provisions of international law. It is necessary to point out that the catalogue of acts which are detrimental to monuments remains the responsibility of individual countries. Thus, the scope of criminalization and the dimension of criminal sanctions vary from state to state. The exception is conventional law (within conventional crime), which is binding on the states that are parties to Conventions.

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Summary

An overview of the offences against monuments in Polish law

Keywords: law on protection of monuments, crime against monuments, monuments, offences, cultural heritage, Act on the Protection and Guardianship of Monuments.

The aim of the article is to overview the criminal law regulations and the standpoints of Polish doctrine concerning the protection of monuments under Polish law. The main discussion is preceded by an introduction, which explains

key concepts relating to crime against monuments, including what is to be understood by the criminological term “crime against monuments”. The next part of the study discusses crimes against monuments governed by the Penal Code and the Law on the Act on the Protection and Guardianship of Monuments. The paper closes with brief conclusions. One of the main postulates is the need to strengthen the criminal law protection of monuments by creating a separate chapter of the Penal Code dedicated to these assets.

Streszczenie

Przegląd przestępstw przeciwko zabytkom w prawie polskim

Słowa kluczowe: prawo ochrony zabytków, przestępczość przeciwko zabytkom, zabytki, przestępstwa, dziedzictwo kulturowe, ustawa o ochronie zabytków i opiece nad zabytkami.

Celem artykułu jest przegląd regulacji prawno-karnych oraz stanowisk polskiej doktryny dotyczących ochrony zabytków na gruncie prawa polskiego. Główne rozważania poprzedza wstęp, w którym wyjaśniono kluczowe pojęcia odnoszące się do przestępczości przeciwko zabytkom, w tym co należy rozumieć pod kryminologicznym pojęciem „przestępczość przeciwko zabytkom”. W kolejnej części opracowania zanalizowano przestępstwa przeciwko zabytkom uregulowane w Kodeksie karnym oraz w ustawie o ochronie zabytków i opiece nad zabytkami. Opracowanie zamykają krótkie wnioski. Jednym z głównych postulatów jest potrzeba wzmocnienia karnoprawnej ochrony zabytków poprzez utworzenie oddzielnego rozdziału Kodeksu karnego poświęconemu zabytkom.