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CONDUCT PROCEDURES IN CASE OF THEFT OF ARTEFACTS FROM MUSEUM COLLECTIONS

Adam Grajewski

Criminal Investigation Department, Crime Bureau of the National Police Headquarters

Abstract: Museum collections often contain artefacts of significant material value and great importance for national heritage. Exhibits listed in a museum inventory belong to the capacious category of national goods, which signifies that they are protected by law. Against the backdrop of crimes committed against cultural heritage museums are certainly the least threatened group of institutions and objects. However, it must be kept in mind that theft might happen even in the largest and best safeguarded museum. The following procedures should be applied in the case of the theft of a museum exhibit: closing all entrances, informing the security staff, checking security devices,

securing the crime scene and the terrain of the exhibition, restricting access to the crime scene to the necessary minimum, informing supervisors (directors), informing the police, inspecting all interiors and adjacent area, securing the monitoring system and documentation, filing a written report with the police, and submitting information about the loss together with a description made for the purpose of an official database. It seems worthwhile to take measures to increase the knowledge and awareness of museum employees on a regular basis, as well as to analyse patterns of conduct in reference to binding legal regulations and existing procedures.

Keywords: museum, collection, exhibit, theft, legal protection, procedures of conduct.

At present the demand for works of art, monuments, and other collectors' items, including widely conceived geological specimens, is growing rapidly. Theft of any sort of an object that is a museum exhibit, and thus legally protected, does not cause the loss of its value; on the contrary, years-long storage might result in a further growth of its worth. This situation was noticed by, i.a. criminal groups familiar with the needs of the collectors' market, which they apply. The 1990s witnessed a veritable tide of burglary involving sacral objects, museums, and private homes, in whose course objects of crime consisted mainly of monuments and works of art. Perpetrators were not intimidated by the protection of the objects or installed alarm systems. The majority of thefts were excellently planned, but some of the lost objects, despite the participation of law-enforcement agencies, were still not regained. In 1993 paintings by Juliusz and Wojciech

Kossak were stolen at the Museum in Górki Wielkie. In 1996 the Museum of the Kielce Village suffered the loss of almost 90 exhibits due to burglary. 1 In 1991 breaking and entering took place at the Museum of Gardening at the Research Institute of Horticulture in Skierniewice, resulting in the loss of five canvases.² In 2005 a portrait executed by Stanisław Ignacy Witkiewicz was stolen from the Anna and Jarosław Iwaszkiewicz Museum in Stawisko in Podkowa Leśna (2005).³ The above-presented examples are only a small fragment of problems connected with crimes committed against the widely comprehended National Heritage. Due to assorted conditions and the specificity of the problem it is difficult to determine the actual number of such felonies. Currently, collector's items are often stolen in the course of assorted exhibitions and auctions of minerals or antiques, as well as during accompanying events. All

www.muzealnictworocznik.com MUZEALNICTWO 59 197

lost objects, which left behind documentation useful for subsequent identification, should be registered in Krajowy wykaz zabytków skradzionych lub wywiezionych za aranice niezgodnie z prawem (National Register of Stolen or Illegally Exported Objects of Historical Value) available from July 2005 on: www.skradzionezabytki.pl. The activity of this database is regulated by art. 23 of the Act on the Protection and Guardianship of Historical Monuments (further as: Act on the Protection), which imposes upon, i.a. directors of museums cultural institutions – the obligation of immediately imparting information about the stolen monument or one illegally exported for the purpose of its inclusion into the list.⁴ Mention is due to the fact that the Act on Found Property entered into force in 2015 and introduced Krajowy rejestr utraconych dóbr kultury (National Register of Lost Cultural Property) into the Act on the Protection and Guardianship of Historical Monuments (chapter 2a). Art. 26 of the Act on Found Property also added changes in art. 223 of the Civil Code by including §4. Consequently, art. 223, §4 of the Civil Code provides that there is no time bar for the claims of the owner of an object listed in the National Register of Lost Cultural Property.⁵ The new Act on Found Property rendered precise the controversial question of the period of limitation for claims in the case of monuments and works of art. In accordance with amendments of the Act on the Protection and Guardianship of Historical Monuments introduced in 2015 by the Act on Found Property, a situation of this sort might take place when an object comprising a national good becomes lost. The legislator outright pointed out that such a claim is not subject to a limitation period when as a result of theft (art. 278 of the Penal Code), burglary (art. 279 of the Penal Code), armed robbery (art. 280 of the Penal Code), aggravated theft (art. 281 of the Penal Code), extortion (art. 282 of the Penal Code), and appropriation (art. 284 of the Penal Code) the owner loses a collection or a single element of a collection, which according to legal definition constitute museum exhibits, mentioned in art. 21 of the Act on Museums.⁶ In accordance with art. 24 of the Act on the Protection the only condition after the event is to enter information concerning the object lost as a consequence of a crime, together with photographic documentation and a description defining individual features enabling identification, into the National Register of Lost Cultural Property upon the request of the police, the prosecutor, the voivodeship conservator of monuments, the General Director of Polish State Archives, and the owner of the object mentioned in par. 2, or a person heading the organisational unit whose collections or resources contained the object.⁷

In reference to art. 3 of the Act on Museums the legislator indicated that museums can be *created for one or as many areas of human activity and natural assets*. This pertains to generally conceived cultural property, which in practice signifies an open catalogue since every museum exhibit, regardless of the domain of art or science it represents, is protected. Expanding this by art. 21, par. 1 of the Act on Museums we find out that *museum objects are movable and unmovable items that constitute the property of a museum and have been recorded in the inventory of museum objects*. Once museum exhibits are recorded in the museum inventory, regardless whether they constitute collections or a collection of objects, they comprise widely comprehended

national goods and hence are legally protected. Registration of lost objects in the above-mentioned databases is essential and makes it easier to recover them even many years after the theft, also in the case of their illegal export outside the borders of our country.

Before this takes place, however, it is unfortunately necessary to tackle the entire situation connected with breaking in or the disclosed theft affecting the exposition and committed during the opening hours of the museum institution. At this stage attention must be paid to the fact that apart from exposition collections objects deposited in the collection storeroom are also threatened with loss or damage; the same holds true for those objects, which owing to conservation requirements are being subjected to conservation and find themselves in ateliers outside the original institution. The prime objects of crime committed in museum institutions can be, first of all, paintings, sculptures, porcelain, silver exhibits, old prints, incunabula, old maps, engravings, weapons, botanical, paleontological and geological exhibits and other movable monuments depending on the theme of the museum exposition and the collections accumulated in the given museum. Upon frequent occasions museum collections are composed of objects of great material value and essential merit for national heritage. Against the background of general crime perpetrated against monuments museums are decidedly the least threatened group of institutions and objects. Nonetheless, it must be kept in mind that thefts can happen in every museum, even the largest and best-guarded one. 9 We distinguish several forms of events during which the theft of museum exhibits may take place. The first is burglary in an object closed for visitors (art. 279 of the Penal Code).¹⁰

The second case is theft of an exhibit committed during the opening hours of the museum, when the event in question might take place at all possible moments and almost right in front of staff members supervising work conducted in the object (art. 278 of the Penal Code). In order to achieve their objective felons could use assorted ways of drawing attention away or lulling the vigilance of the staff by means of their behaviour.¹¹ We know of cases when a perpetrator exploited the habits of museum employees who deviated from procedures established by rules, i.a. by leaving the showroom for a short time, for instance, just before the closure of the exhibition in order to change from official uniforms. Thefts of this sort are frequently disclosed rather quickly, and their perpetrator might be still in the museum. Very often the object of the crime, after the disclosure of its absence, remains within the museum building or in its proximity. In certain cases, the perpetrator, having committed the crime, threw the stolen object from a window or hid it in the museum grounds. Obviously, this depends predominantly on the size of the item and the sort of technical and personal protection of the seat of the museum as well as the layout of its interiors and communication routes. It is easier to conceal a small object, but taking a slightly larger exhibit out of a museum is already more complicated; it should be kept in mind, however, that in this case size is not a determinant since thefts of larger exhibits, e.g. "a Turkish-style table for making coffee" from a permanent exposition at the Museum in Łęczyca or Claude Monet's canvas: Beach in Portville from an exhibition at the National Museum in Poznań, 12 have been known. In the case of the Monet painting the crime was disclosed after a longer stretch of time; not only did the thief benefit from the reprehensible habits of the staff but also from failure to check the contents of the exposition. Such prosaic tasks as counting and checking the state of the exhibits were not performed thoroughly. In this case routine proved to be fatal. The exhibition was inspected only as regards the number of objects and not its contents, nor were the exhibits examined closely. The fact that the painting had been replaced was noticed a few days later when a copy of the canvas slid down from the hanging frame. 13 It is also worth noting that greater threats and situations facilitating theft occur frequently at a time, and in a place, which favours an uncontrolled influx of a larger number of visitors. Particularly dangerous are open-air exhibitions, palace gardens as well as restaurants and cafés within the museum complex. Another factor opening a wide gamut of opportunities for potential perpetrators could be chaos prevalent in the course of ceremonies accompanying exhibitions. The most menacing are mass-scale events held in the proximity of the museum complex, such as concerts or festivities. In the course of such an event accompanying an exhibition considerable difficulty is posed by supervision over persons touring the museum, since the preparation of the building and arranging the event are, as a rule, commissioned from outside firms, which only intensifies the confusion. In the case of numerous groups simultaneously touring the museum even a large number of custodians does not guarantee the safety of the collections. It is difficult to predict the conduct of such visitors, and the open character of the exposition makes theft easier.

The third case is so-called employee theft, which it is difficult to discover, and which may involve exchanging the exhibit for a forgery or a damaged and worse-preserved one. Often, stolen objects include small elements of collections, fragments of weapons, boxes or everyday items, which, however, cannot be replaced by newly purchased ones. Their loss creates a problem for every museum collection by making it impossible to transmit knowledge about the past to future generations and to carefully reconstruct the presented theme of the exhibition. It is also difficult to divulge such a situation and often information about the theft is disclosed much too late. As a rule, the absence of an exhibit is ascertained by accident while lending collections to another museum or taking inventories of stored collections. In such instances of a justified suspicion of the perpetration of a crime - and after a meticulous examination of the case and gathering all information about the circumstances of the loss – it is necessary to notify the police or the prosecutor's office.

In a situation when we are dealing with burglary at a museum it is requisite to immediately secure the crime scene and inform the police about the discovered event. Regulations of the Polish penal procedure insist on informing about a crime prosecuted ex officio. Art. 304, §1 of the Penal Code provides: A victim has the right to inform a prosecutor or the Police of an offence prosecuted ex officio committed to his detriment. ¹⁴ This duty involves not only the victim but also the direct witness and every person with information about the committed crime at his disposal. In the case of movable monuments in private hands this obligation involves the owner or possessor of the monument; in the case of monuments belonging to the State Treasury and recorded in a museum

inventory the duty in question is borne by the owner of the monument, i.e. a staff member responsible for the museum inventory. The obligation of immediately informing the police about the committed crime is also imposed upon the director or organiser of the museum upon the basis of the Regulation of the Council of Ministers of 2 September 2104 on Protecting Museum Collections against Fire, Theft and Other Destructive Hazards or Loss (§20, 1) The Regulation provides that in the case of finding that the collection had been lost, damaged or destroyed as a result of crime the museum director immediately informs the nearest police unit and the museum organiser. The intention of this Regulation is taking steps intent on countering the effects of the committed crime as rapidly as possible. 15 An employee who discovered the site of the burglary should additionally inform the museum security staff and directors. Until the arrival of police functionaries the adjacent terrain and the object should be immediately secured so as not to allow the entry of outsiders, who through their uncontrolled interference on the crime site could obliterate traces or introduce prints not connected with the activity of the perpetrator. A police functionary in every closest police unit is obligated to receive a report from the person informing about the crime and then to prepare a protocol acknowledging verbal notification about the given crime. Ultimately, the case will be conducted by a police unit in whose terrain the crime had been committed. Consequently, it is best to notify the unit on whose terrain the crime took place, which will accelerate indispensable additional work. Notification about a crime submitted in a police unit unsuitable for dealing with the case shall be immediately transferred to a unit responsible for the site of the event where further activities concerning the case will be conducted. Greatest importance, however, is attached to initial procedure, i.e. the examination of the crime scene and adjacent terrain. Collecting traces and evidence of the crime correctly can become a very essential element that could contribute to regaining the monument. 16 The legal foundation for conducting the examination is art. 207, §1: If necessary, a place, person, or material object shall be submitted to view (or bodily examination in the case of a person).¹⁷ It follows from this entry that such activity is facultative and that the decision to carry it out is made by the person conducting the proceedings. Every procedural activity of this kind – according art. 143, §1, point 3 of the Penal Code - calls for a record in writing. 18 Such a protocol is a fundamental document reflecting the course of the examination, which, in turn, serves, if the need arises, as a basis for suitable additional documentation in the form of sketches and photographs; the conduct of actions recorded may be transcribed by means of equipment recording pictures or sound (art. 147, §1 of the Penal Code). In such cases, and in accordance with art. 308 of the Penal Code, activity necessary for securing evidence and traces of the crime, and performed in urgent cases, is reserved for the police or the prosecutor.¹⁹ Nonetheless, it is recommended for selected museum employees familiar with the specificity of the institution to carry out an initial penetration of the terrain and interiors adjacent to the museum while keeping in mind not to touch or move any of the objects. All observed changes testifying to the activity of the offender should be immediately passed on to police officers who arrive on the site. Objects left behind by perpetrators, which constitute evidence in the case and upon numerous occasions are carriers of their

www.muzealnictworocznik.com MUZEALNICTWO 59 199

traces, deserve special treatment. With this objective in mind it is necessary to check all other interiors, which ostensibly have nothing in common with the event, as well as the terrain surrounding the building in question. This could be the site where stolen items as well as instruments that could have been used for committing the crime were abandoned. For this reason, entrances to the adjoining terrain should be secured for the sake of its examination; the same holds true for surveillance videos and documentation concerning entrances and exits to the object, receiving keys, and the course of work performed by museum and security staff. All documents and information gathered at the time could be very useful in the course of preliminary investigation.

In a situation when an employee discovers the theft of an exhibit during the museum opening hours the most important factor is rapid reaction. All exits should be closed immediately. Directors of the institution and security staff should be informed. A swift decision to close all entrances creates a problem if there are large numbers of visitors but in those cases when we are dealing with the theft of cultural goods or an object, which owing to its size can be easily taken out of the building, this appears to be the only correct solution. The surveillance video, however, should be secured so as to recreate it for the purpose of determining the time and circumstances of the theft and the likeness of the persons or person who could be connected with the event. The information flow between museum employees becomes very important for rendering precise all details concerning the offender and the object of the theft. The police should be informed so that functionaries could embark upon adequate activities - they should be told about the time of the event and given descriptions of the features of the item missing from the exposition as well as the appearance of people who could be connected with the event. During this time, it is also required to carry out a detailed check of all interiors in which it is possible to conceal the object as well as the terrain adjacent to the museum building. Outsiders must have limited access to the place where the absence of the object was discovered. Mention is due to the fact that a security employee is not entitled to carry out any sort of personal or luggage control in the case of justified suspicion of a criminal offence being committed, which may include theft in a museum, unless such control is conducted with the permission of the interested party and in a course that in no way violates his/her rights. A given person might be only apprehended and immediately handed over to summoned police officers as provided by art. 243 of the Penal Code: Any one has the right to apprehend a person caught in the act of committing an offence, or seized in a pursuit undertaken directly following the commission of an offence, if it is feared that such person may go into hiding or if his identity cannot be established. Every physical person, victim or witness of the crime can carry out apprehension, the necessary condition being for it to take place either in the course of the crime or directly after it had been committed.²⁰ The legislator foresaw an identical possibility in the case of the perpetration of a petty offence as provided by Art. 45, §2 of the Code of Practice for Petty Offences stating that art. 243 of the Code of Criminal Procedure is applied appropriately. The apprehension of a person consists of intervention into the constitutional right to freedom.²¹ Art. 41 of the Constitution

of the Republic of Poland provides: *Personal inviolability* and security shall be ensured to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with principles and under procedures specified by statute.²² Undertaking further action involving a person handed over to police functionaries, the police shall perform suitable activity if it is recognized that there exist justified foundations for such conduct.²³ Moreover, despite summoning the police to the crime scene it must be remembered that in order to grant a correct course to the procedure it is necessary to comply with formalities and file a report about the crime or the misdemeanour. The director of a museum is also obligated, having first ascertained the damage or loss of the collection, to dispatch pertinent information to a superior cultural institution.²⁴

Summing-up the above reflections it must be emphasised that the way of acting in the case of a theft of an item from museum collections can be reduced to several points, i.e. one should:

- · close entrances to the object,
- inform the security staff, check security devices,
- secure the site of the event and the terrain of the exposition,
- restrict entrance to the site of the events to the necessary minimum,
- inform superiors (directors),
- inform the police,
- · check all interiors and adjacent terrain,
- · secure monitoring and documentation,
- file a written report with the police,
- submit information about the loss together with a description of essential databases.

The above-described sequence of activity and the way in which one should react to the event does not guarantee that the lost object will be regained immediately. Nonetheless, such conduct will considerably facilitate and render efficient the co-operation of the museum staff and investigative authorities. It is also worth mentioning that the security of items in a museum collection is influenced by all factors creating an obstacle for persons planning to commit theft. These factors include, first and foremost: a suitable choice of exposition interiors, an appropriate selection and arrangement of security devices, a suitable organisation of qualified and professional physical protection both of permanent and temporary exhibitions, devising documentation adapted to current needs of museums, namely, rules of procedure, instructions of conduct and protection plans, participation in training and on-going supplementation of knowledge concerning threats and the protection of collections against crime, and an awareness of responsibility for the role played by museum institutions in guaranteeing protection and the popularisation of knowledge about our Cultural Heritage. Consequently, it appears purposeful to conduct regular training for employees and for staff members to participate in workshops dedicated to extraordinary situations. It seems highly advisable to improve the pertinent knowledge and awareness of employees, combined with an analysis of ways of acting in reference to binding legal regulations and devised procedures. Without doubt, knowledge gained in this manner might prove to be indispensable at a time of tackling the necessity of making

suitable decisions, primarily while reacting to the theft of an exhibit from museum collections.

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www.muzealnictworocznik.com MUZEALNICTWO 59 201

dr Adam Grajewski

Doctor of laws (University of Warsaw), archaeologist (Jagiellonian University); lecturer at postgraduate studies at the Jagiellonian University, functionary of the Criminal Investigation Department at the Crime Bureau of the National Police Headquarters; deals with crimes against the national heritage, in particular monuments, including archaeological ones, and the application of archaeological methods in criminalistics and procedures of searching for bodies, inspections and investigations of sites of explosions or catastrophes as well as exhumation procedures; author of numerous publications on the criminal justice protection of cultural heritage; distinguished with the "For the Care of Monuments" gold badge presented by the Ministry of Culture and National Heritage and twice awarded the Police Commander In Chief Distinction.

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Table of contents 2018: https://muzealnictworocznik.com/issue/10809