

mgr Joanna Klimczak

*(doktorantka w Instytucie Stosowanych Nauk Społecznych UW,
Instytut Wymiaru Sprawiedliwości)*

Contemporary thieves in Poland - their crime and punishment¹

ABSTRAKT

Kradzież jest jednym z najstarszych przestępstw znanych w historii. Przy ogólnej tendencji spadku ilości popełnianych przestępstw, kradzieże wciąż stanowią znaczący udział w strukturze polskiej przestępczości. W Polsce kradzież jest czynem, który może być ścigany jako wykroczenie lub jako przestępstwo – zależy to od wartości skradzionej własności. W związku z tym, kary za kradzież mogą się znacznie różnić. Sposób i wysokość tzw. „przepełnienia” kradzieży, czyli granicy od której będzie traktowana jako przestępstwo (i co za tym idzie surowiej karna), jest obecnie przedmiotem dyskusji w Polsce. Aby sprawdzić jak w rzeczywistości wygląda struktura orzekanych kar i za jakie wartości skradzionego mienia sprawcy byli pociągani do odpowiedzialności, przedstawiam wyniki badania, które przeprowadziłam w Instytucie Wymiaru Sprawiedliwości w 2017 roku. Przedmiotem analizy były losowo wybrane akta sądowe 420 spraw (w tym 233 spraw wykroczeń i 187 spraw przestępstw), które zakończyły się prawomocnie i w których postępowanie wykonawcze zakończyło się w 2016 r. Na podstawie zebranego materiału wylania się obraz polityki karnej przeciwko sprawcom kradzieży, którzy stanęli przed polskimi sądami. Artykuł jest rozszerzoną i zmodyfikowaną wersją referatu wygłoszonego na XVIII Konferencji Europejskiego Towarzystwa Kryminologicznego w Sarajewie, która odbyła się w dniach 29 sierpnia 2018 r. - 1 września 2018 r.

Introduction

First of all, it should be noted that crimes against property have recently accounted for about 50% of all crimes in Poland². The number of these crimes in Poland drops, and in 2016 there were about 30% of all crime. Nevertheless, the phenomenon of crime drop is observed in various countries around the world and the share of the decline in crime against property is significant. The National Crime Victimization Survey (NCVS), shows that theft rates declined rapidly from the early 1990s. to 2011³.

However, their number in Poland is still high, so it can be concluded that these crimes take a lot of time and energy to the judicial authorities. Therefore, in these groups of crimes, both the research effort and the practice of criminal policy must be concentrated.

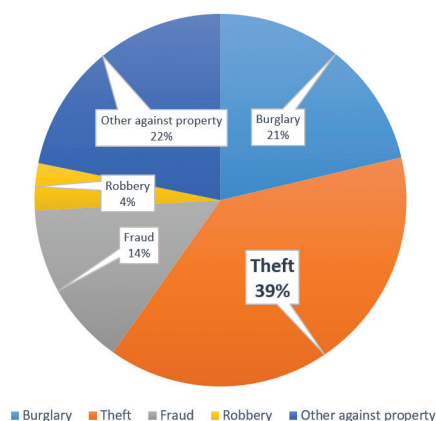
¹ The article is an extended and modified version of the speech delivered at the XVIII Conference of the European Society of Criminology, Sarajevo, August 29, 2018 - September 1, 2018.

² In 2002 it was 63,4% and in 2012 – 53,5%, compare with A. Siemaszko (red.), Atlas przestępczości w Polsce 5, Warszawa 2015, p. 16.

³ G. Farrell, N. Tilley, A. Tseloni, Why the Crime Drop?, Crime and Justice 2014, 43, p. 425.

Significantly, as part of the crime against property, the largest number of crimes identified is the theft of someone else's movable property – in 2012 it was 38.5%. Interestingly, the number of thefts among crimes against property has not dropped so spectacularly – in 2016 it was about 30%.

Graph 1. Crime against property in 2012 in Poland



In this situation, it should be recognized that crimes in Poland are primarily crimes against property, and in particular theft, which in practice is every second committed crime. We cannot forget about the significant involvement of theft in the group of so-called the dark number of crimes. The Polish Crime Survey conducted in 2007 showed that theft was the least reported crime among all victims. Only 37% of actual thefts were reported in the whole country, which means a very high – over 60% – dark number⁴. It is disturbing that one of the main reasons why victims do not report a theft is their disbelief in the effective operation of law enforcement – the detection of the perpetrator and the recovery of lost property⁵.

At this point, I want to explain the difference in the terms that will be used in this paper. In Poland, thefts are divided into the more serious ones – and those will be called a crimes⁶ – and for minor theft, which will be called as offences⁷. Depending on the value of the stolen items, the thief commits a crime or offence. The difference between the crime and the offence is significant. A crime of theft is subject to the penalty of imprisonment from 3 months to 5 years. In special cases (when the theft is less serious), the perpetrator is subject to a fine, community service or imprisonment for up to one year.

In contrast to the crime, the court may punish the perpetrator of the offence by an arrest (up to 30 days of imprisonment), community service or a fine. What is more, the perpetrator of the offence may be fined by an authorized officer without a court procedure – this fine is like a ticket for speeding.

⁴ A. Siemaszko, *Geografia występków i strachu*, Warszawa 2008, p. 37.

⁵ A. Marek, E. Pływaczewski, A. Peczeniuk, *Kradzież i paserstwo mienia prywatnego*, Warszawa, 1985, p. 34.

⁶ Article 278 § 1 of the Penal Code.

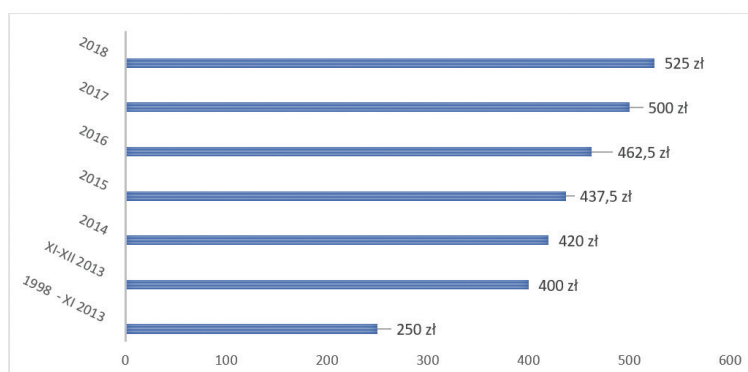
⁷ Article 119 § 1 of the Petty Offences' Code.

Where does the theft's threshold come from?

From 1998, the legislator assumed that the theft of movable property to 250 PLN (about 60 €) will be classified as an offence. So if you stole something for 250 PLN you commit an offence, and if for a larger amount you commit a crime.

From 9.11.2013, a law which changed the boundary between crime and offence, came into force. The change of this limit was related to the change in the criterion of its establishment – instead of the threshold expressed in terms of amount (PLN 250), it was set at 1/4 of the minimum wage. As it happens, since that time, the minimum wage in Poland is growing. How the changes in the minimum wage affected the theft threshold was presented in Graph 2.

Graph 2. Theft's threshold (1 zł ≈ 4,27 EUR)



The justification for the change is related to the phenomenon of inflation, which plays a significant role in the value of stolen property over the years. The current solution, however, particularly affects shopkeepers who are interested in changing the law related to punishing thieves. The change of theft's interpretation was strongly criticized by the owners of the shops⁸. First, for punishing thieves with fines (tickets) – because what is important, a maximum ticket is PLN 500. And secondly, they do not like the increase of the amount from which the theft is a crime and not just an offence, because they believe that punishing thieves by penalties as an offence does not frighten them. The following opinion shows the approach to this issue: “*The 500 zloty fine is a mockery. It is just as much as a driver can park in a place for the disabled. These actions are incomparable – says lawyer Piotr Kołodziej. - A thief can steal from the same shopkeeper with impunity. It's enough that he will do it once in a month. Throughout the year, this is a big loss for the trader. And such thieves can be two or three. The police and the owner are able to catch a few. And if anything, the punishment is small. Such thieves are not listed and their names do not go to the National Register of Sentenced Persons. The papers are so clean – he emphasizes.*”⁹.

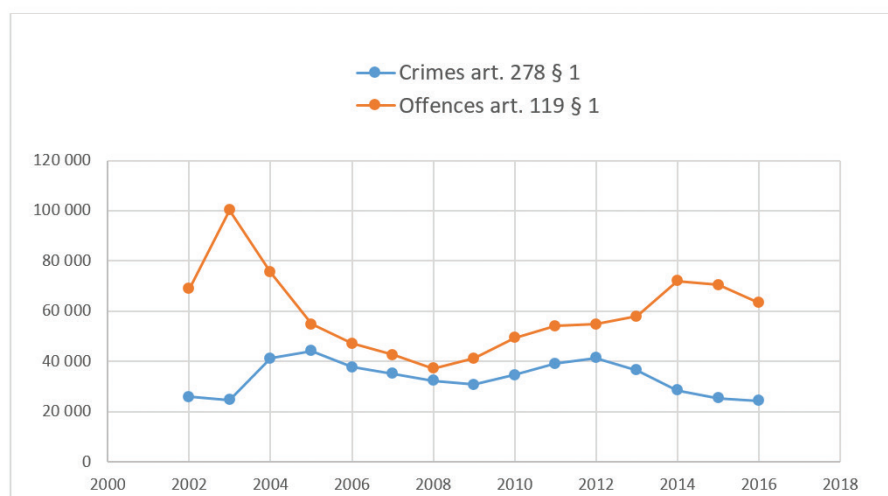
⁸ P. Szymaniak, Wróci stała granica między przestępstwem i wykroczeniem, <http://prawo.gazetaprawna.pl/artykuly/975767,wroci-stala-granica-miedzy-przestepstwem-i-wykroczeniem.html>

⁹ A. Brodziak, Co mi zrobisz, jak mnie złapiesz?, <http://biznes.onet.pl/wiadomosci/handel/co-mi-zrobisz-jak-mnie-zlapiesz/1hnspx>

In order to meet these demands, the Ministry of Justice was planning to return to the establishment of the crime threshold of theft in a quantitative manner, but setting it at the level of PLN 400¹⁰. One of the reasons for returning to the fixed amount was, according to the Ministry, that the courts each year had to review thousands of cases across the country to determine whether the theft, for which the penalty has not yet been fully enforced, is still a crime or just an offence. During the work on the act, the amount of the planned border has changed to PLN 500. However, at the moment the work on this law has not yet been completed¹¹.

Whether the change of theft's threshold refers to actual thieves' convictions should provide statistical data. Figure 2 presents data on the number of sentenced perpetrators of theft, from the Ministry of Justice reports for the years 2002 – 2016¹². As you can see, since 2013 the number of crimes (Article 278 § 1 of the Penal Code) and offences (Article 119 § 1 Petty Offences' Code), which by earlier for 3 years, it was almost evenly growing, it began diverge significantly. The number of crimes began to decline, with the increase in the number of offences. However, this situation lasted only for two years. Therefore, it can be concluded that the difference, which was reflected in the statistics, was caused by a change in the “threshold” of the theft (in 2013), which after a period of adjustment to the proceedings (including the replacement of part of the conducted crimes cases with offences) returns to its previous state.

Graph 3. The number of offenders convicted for theft in the years 2002-2016



Study

Now, I will move to the results of the study, which I conducted at the Institute of Justice in 2017. The research material to study was selected randomly, with a representative sample of files from two types of theft cases – offences and crimes. All cases were resolved and in

¹⁰ <https://ms.gov.pl/pl/informacje/news,9488,skuteczne-karanie-sprawcow-kradziezy--projekt.html>,

¹¹ <https://www.rp.pl/Prawo-karne/309149962-Sejm-uchwalil-nowelizacje-Kodeksu-wykroczen-kradziez-elektroniczny-rejestr-sprawcow-czas-na-oplacenie-mandatu.html>

¹² This data contains only cases handled by the court. Without cases resolved in a different way, eg. fined by an authorized officer.

which the enforcement proceedings ended in 2016. The total subject of the study was 420 cases (including 233 offences and 187 crimes). The questionnaire, which was used for research, contained questions about many topics (including characteristics of the perpetrator, act of crime/offence, and efficiency of the proceedings).

In the investigated 420 cases of theft, proceedings were conducted against 468 person. In cases of offence were 245 thieves and in cases of crime – 223. Men were more likely to be perpetrators of theft than women (83% of offenders) regardless of whether it was a crime or offence. The average perpetrator of the theft in the cases examined was 33 years old. The youngest perpetrator at the time of the theft was 17 years old. The oldest perpetrator was an 85-year-old woman. It turned out, that the perpetrators of crimes and offences did not differ in their age. Half of the respondents had already been punished before, and what's more, most of them had previously been punished for theft.

As for the object of theft, it turned out that it could be almost anything. Even the hen from the henhouse. The perpetrators of offences most often stole: fuel from gas stations, groceries and alcohol. However, for perpetrators of crimes, the most common object of the theft were metal and other elements constituting scrap, which were later sold by perpetrators. The other things stolen consisted of money and cell phones. Regardless of whether the theft was a crime or an offense, it was mostly the so-called shoplifting (38% of all investigated cases).

A detailed analysis of the value of stolen property in the cases examined leads to interesting conclusions. The vast majority of offenses, as much as 76%, were cases of theft for no more than PLN 200. Most of the crime proceedings (54%) concerned the value of stolen property with a value exceeding PLN 1,000. Then, the vast majority of the cases examined was far from the threshold of theft, regardless of whether it would be established on the basis of a fixed amount of PLN 250, PLN 400 or in accordance with the still valid solution - at the level of ¼ a minimum wage.

Punishment

In the case of perpetrators of offences, the most frequently applied penalty by the courts was a fine – 70.6% of convictions (173 perpetrators). Less than 1/4 of perpetrators were sentenced to community service (24.5%). In individual cases, the perpetrators were sentenced to arrest, and exceptionally to one offender, the court applied a reprimand. Against the perpetrators of crimes, the courts applied the fine both as an only punishment and as a penalty imposed alongside another penalty. At this separation, the fine as an only penalty in these cases occurred only in 37 cases, which places it as the least-imposed penalty in crime cases (16.5% of convictions). However, the fine imposed alongside another penalty was applied to 44 offenders (19.7%). In this situation, the courts most often ruled the penalty of suspended imprisonment (34.5%), followed by the penalty of community service (22.9%) and less often the penalty of imprisonment (20.2%).

It turned out that the punishment was not always carried out by the convict. In the case of a suspended imprisonment, 70% of convicts held it without its „hanging up” (54 cases from 77 - 70%). For the remaining 23 perpetrators (30%) the trial period was interrupted and the court ordered the execution of a prison sentence. In the case of fines, it turns out, that regardless of the type of the case – whether it was the perpetrator of an offence or crime – the enforcement of a fine remains at the level of about 65% (67% for perpetrators of crimes). In other situations, either the court turned the fine into another penalty or discontinued it. Finally, those sentenced to the penalty of community service mostly executed this punishment – only to 40% of them the court had to replace it with another penalty because of its non-performance.

Summary

In summary, “ordinary” thefts and their thieves are still a research challenge for criminology. This is supported first of all by the scale of the phenomenon, both in the structure of the crime disclosed and among the so-called the dark number of crimes.

The presented research results regarding the value of stolen property show the actual extent of theft in court cases.

Of course, it should be borne in mind that the examination of court files concerns a limited group of cases – it does not include, inter alia, cases dismissed at the stage of preparatory proceedings or completed by way of a fine (ticket) procedure. This is another field for future research in this area.

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ABSTRACT

Współcześni złodzieje w Polsce - ich przestępstwa i karanie

Theft is one of the oldest and clearly condemned crime in history. It takes a significant part in the crime structure in Poland. Nevertheless, it seems to be a forgotten and uninteresting subject among modern criminological research. In public opinion, theft invariably causes indignation, and the way of punishing thieves is a field of interest for both public opinion and politicians. In Poland, theft is an offence that can either be prosecuted as a misdemeanor or a crime –

it depends on the value of the property stolen. Therefore, legal penalties for crime related to theft may vary considerably. It is precisely this line between misdemeanor and crime that is currently being discussed in Poland. To talk about changes concerning the punishment of thieves, one should first check what is the current state of the criminal policy in this regard. Therefore, I want to present the results of the research, which I carried out at the Institute of Justice in 2017. I examined randomly selected court files of two above mention categories of theft, which ended validly and in which the enforcement proceedings ended in 2016. The research was conducted on 420 cases (including 233 misdemeanor and 187 crime cases). On the basis of the collected material emerges the image of the criminal policy against thieves who stood before the court, which gives the opportunity to consider whether and what changes in the law can be predicted against the perpetrators of the simple theft.

Słowa kluczowe: kradzież, złodziej, kradzież w sklepach, polityka karna

Keywords: theft, larceny, thief, shoplifting, penal policy