

Original article

## Criminal law and practical approaches to fighting crime in the area of protection of cultural property as an element of forming the cultural security of the Third Polish Republic

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### ABSTRACT

The objective of the article is to present criminal law provisions and also the actual effects of fighting crime in the area of protection of cultural property in Poland since the beginning of the 21<sup>st</sup> century.

A thesis has been formulated, according to which the protection of cultural property arising from the criminal law remains the key determinant of forming the cultural security of the Third Polish Republic.

The conducted analysis shows that the effective forming of cultural security of the Third Polish Republic depends on ensuring the appropriate protection for the property of special significance for culture. Actions taken in this area of the cultural security fit with the postulate of protecting the cultural heritage. An important aspect of actions undertaken by the state is to formulate and apply the criminal law provisions. On the basis of the presented arguments it can be stated that at the beginning of the 21<sup>st</sup> century the practice of counteracting and fighting crime against cultural property in the Third Polish Republic depended to a significant extent on the activity of the Police and the Border Guard.

### KEYWORDS

security, cultural property, criminal law, crime, historic monument



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## Introduction

The subject matter of the paper covers the issues of criminal law-based and practical approaches to fighting crime in the area of cultural property as an element of forming the cultural security of the Third Polish Republic. The article is the continuation of the author's series regarding the continuity and changes in the area of legal regulations on the protection of cultural property in Poland after 1918. The definitions of a historic monument and cultural property were discussed in the previous articles [1-5] and, therefore, the author intends to use both these terms, emphasising the key im-

portance of both of them as well as the change in the Polish law protecting the cultural property and historic monuments before and after the year 2003, respectively<sup>1</sup> [Cf. 6; 7; 8, p. 282-3]. This change was brought about by the Act on Protection and Care of Historic Monuments, which came into force on 23 July 2003 [9].

The objective of the article is to present the criminal law provisions and the actual effects of fighting crime in the area of protection of cultural property in Poland since the beginning of the 21<sup>st</sup> century. The paper aims to prove that the criminal law and efforts taken by the relevant institutions and public services to fight crime connected with the protection of cultural property represent an indispensable element of forming the cultural security of the Third Polish Republic. This security is understood by the author as – quoting J. Czaja – “the state’s ability to protect the cultural identity, cultural property and national heritage under the conditions of opening to the world, which enable culture to develop through internalising the values that do not contradict its own identity” [10, p. 36].

The practical approach to crime against cultural property in Poland was examined by analysing the data from the years 2001-2014. The adoption of such timeframe was motivated by the availability of analysed police data and the intention to grasp the main tendencies in the practical implementation of assumptions for fighting crime against cultural property on the basis of criminal law from the beginning of the 21<sup>st</sup> century.

While setting the direction for the conducted analysis the author relies on the thesis that the protection of cultural property based on criminal law remains the key determinant of forming the cultural security of the Third Polish Republic. Such approach is guided by the conviction that the protection of cultural heritage depends to a considerable extent on guaranteeing that the law protects properly historic monuments and other products of national culture<sup>2</sup> [Cf. 11, p. 128]. Only in this way it is possible to maintain the continuity of cultural legacy of a given nation, which remains one of the postulates introduced as part of the strengthening of the bases of cultural security<sup>3</sup> [Cf. 12, p. 191].

## **1. Criminal law-based protection of cultural property in the polish law**

The criminal law-based protection of cultural property in the law of the Third Polish Republic, in its comprehensive approach, is founded on the provisions contained in the Act of 6 June 1997, the Penal Code [13], and also on the Act on the Protection and Care of Historic Monuments. With regard to the regulations contained in the Penal Code, the relevant provisions applicable to protection of cultural property can be found in the specific part. In Art. 125 of the Penal Code, a system of penalties covers the destruction of, damage to or seizure of cultural property on the controlled or occupied

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<sup>1</sup> Using the terms “historic monument” and “cultural property” interchangeably with reference to the Polish legislative output at the turn of the 21<sup>st</sup> century is justified by the contemporary literature.

<sup>2</sup> In the literature on the subject it is emphasised that the protection of the Polish cultural heritage is taken into account in both the national legal order and the European Union law order. Such protection should take care of certain superior values characteristic for the cultural security of the Polish Republic in the 21<sup>st</sup> century.

<sup>3</sup> In the literature the grounds for this view are based on the fact that the whole cultural heritage forms the subject of the cultural security of a given state.

territory or within the area of military operations<sup>4</sup> [14]. The penalty for committing such acts is imprisonment for a period from one to ten years or imprisonment for a minimum period of three years if the perpetrator deliberately targeted the property of special significance for culture. A penalty of imprisonment for a maximum period of three years has been stipulated in Art. 126.2 of the Penal Code for committing an act which consists in using, during the military operations, the protective cultural emblem in the way contrary to the provisions of the international law.

In Art. 294.2 of the Penal Code the legislator established aggravated types of such crimes as theft, fraud, appropriation, deliberate dealing in stolen property as well as destruction of or damage to property which can be applicable with regard to the category of the so-called property of special significance for the existence of culture<sup>5</sup> [15, p. 34-5, 41; 16, p. 30; 17, p. 122]. The stipulated penalty includes imprisonment for a period from one to ten years<sup>6</sup> [Cf. 18, p. 35]. Art. 295.1 of the Penal Code provides, however, for a penal institution of extraordinary mitigation of punishment or even refraining from imposing a penalty in the situation where the perpetrator committing an aggravated crime against the property of special significance for culture has returned such property in an undamaged condition<sup>7</sup> [Cf. 19, p. 62].

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<sup>4</sup> The introduction of this provision to the Penal Code resulted from the obligation to adjust the Polish legal order to the provisions of the international law on the protection of cultural property during the military operations, namely the Hague Convention of 1954.

<sup>5</sup> In the Polish law the term “property of special significance for culture” can be found exclusively in the provisions of the Penal Code and it was not transposed to the provisions of the Act on the Protection and Care of Historic Monuments of 2003. It is emphasised in the literature that this term refers to the cultural property of solitary and unique nature or characterised by a considerable value, although the translation is purely doctrinal and it has not been defined separately by the legislator in any legal act, which renders difficult the proper interpretation of the provision contained in Art. 294.2 of the Penal Code. It would be difficult to disagree with B. Gadecki, who believes that applying the construct of aggravated types of crime against cultural property, particularly against objects recognised as historic monuments, in its present form, heads towards exaggerated casuistry of the law protecting cultural property in the Third Polish Republic. In the opinion of A. Sosnicka, the vague or even technically flawed character of the definition and the subjective scope of aggravated types of crime against the property of special significance for culture creates the need for redefinition of Art. 294.2 of the Penal Code. Undoubtedly, the lack of correspondence between the terms used in the provisions of the Penal Code and those in the criminal provisions and the terms characterising historic monuments in the Act on the Protection and Care of Historic Monuments of 2003, should represent a serious objection addressed to the legislator.

<sup>6</sup> In the literature on the subject it is emphasised that the legislator’s intention behind the differentiation of aggravated types of crimes against cultural property was the need for heightening penalties for committing prohibited acts against such property in comparison with the severity of penal sanctions for acts against the property that is not classified as the property of special significance for culture.

<sup>7</sup> As observed by M. Trzcinski, placing Art. 295.1, regarding the protection of property of special significance for culture, in the Penal Code shows the Polish legislator’s farsighted vision of protecting such property. Because of the specific nature of cultural property its actual value as well as the scientific value or the value for the national heritage may be substantial. Under such conditions the application of penal measures in relation to the perpetrator may turn out to be outweighed by the risk of losing completely the cultural property. In the opinion of the above-mentioned author the legislator’s intention was to be more effective in persuading potential offenders to demonstrate voluntarily their active repentance by returning the cultural property in an undamaged condition, thus counting on an extraordinary mitigation of penalty or the court’s refraining completely from imposing it.

For the criminal law-based protection of cultural property in the Third Polish Republic the regulations included in Chapter 11, i.e. in its part containing penal provisions, of the Act on the Protection and Care of Historic Monuments, adopted in 2003, are of vital importance. Art. 108 of the Act includes the classification by type of crimes of destroying or causing damage to a historic monument, indictable with a penalty of imprisonment for a period from six months to eight years and if the perpetrator acted unintentionally, with a fine, restriction of freedom or imprisonment for a maximum period of two years. In the case of a conviction for destroying a historic monument, the court is obliged to award compensatory damages equivalent to the value of the destroyed property for the National Fund for the Protection of Historic Monuments. In the case of a conviction for causing damage to a historic monument, the court imposes on the convicted party an obligation to restore the historic monument to its original condition or, if such restoration is impossible, awards compensatory damages in the maximum amount of the value of the damaged property for the National Fund for the Protection of Historic Monuments. In the situation where the perpetrator acted unintentionally, the court may award compensatory damages for the above-mentioned institution at the level from three to 30 times the minimum monthly wage.

Art. 109 of the Act includes the classification by type of crimes of exporting a historic monument outside the boundaries of the Polish Republic without the required permit or failing to bring it back to the territory of the Polish Republic within the timeframe specified in the permit. Such act is indictable with a penalty of imprisonment for a period from three months to five years. If the offender acted unintentionally, the penalty may be reduced to a fine, restriction of freedom or imprisonment for a maximum period of two years. The fact that the offender acted deliberately obliges the court to award (and in the case the offender acted unintentionally, the court has a possibility of awarding) compensatory damages furthering a social objective related to the care of historic monuments at the level from three to 30 times the minimum monthly wage. The prerogative powers of the court comprise also the possibility of ordering forfeiture of the historic monument even if it does not belong to the perpetrator of the prohibited act.

Other types of crimes mentioned in the Act on the Protection and Care of Historic Monuments include forging or altering historic monuments (Art. 109a), disposing of a forged or altered object while claiming it to be a historic monument (Art. 109b) and searching for abandoned or hidden historic monuments contrary to the permit conditions or without a permit, making use of technical or electronic equipment or diving equipment (Art. 109c)<sup>8</sup> [Cf. 20]. Each of the above-mentioned acts is indictable with

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<sup>8</sup> The last article was added by amending the Act on the Protection and Care of Historic Monuments, effected on 22 June 2017 and brought into force in the Polish legal order from 1 January 2018. More severe penalties for searchers for historic monuments who do not hold the required permits or carry out research works contrary to the permit conditions could result from the observed practice which showed that an increasing number of amateur-searchers for precious objects were acting on their own accord. An example of such action, which attracted most publicity, was the one connected with the search for the alleged "gold train", claimed to be located near Walbrzych. Searching by numerous unauthorised people on their own poses a threat of causing damage to the potential historic monument

a penalty of a fine, restriction of freedom or imprisonment for a maximum period of two years. Art. 110 mentions a prohibited act which consists in failing to protect properly a historic monument against destruction, damage, theft or loss and is indictable with a penalty of a fine, detention or restriction of freedom and award of compensatory damages furthering a social objective related to the care of historic monuments up to the level of 20 times the minimum monthly wage. Art. 111 comprises the repetition of the provision on imposing a penalty for searching hidden or abandoned historic monuments without a permit, adding the possibility of ordering by the court forfeiture of objects and tools used for this purpose and objects obtained by committing the offence and also the obligation to restore the original condition by the offender or pay the amount equivalent to the value of damage. The act which consists in infringing bans and restrictions applicable to a culture park, mentioned in Art. 112, is indictable with a penalty of a fine, detention or restriction of freedom or, in the case of an unintentional act, of a fine only.

The following prohibited acts, among others, are listed in the Act on the Protection and Care of Historic Monuments, the commitment of which is indictable with a penalty of a fine, often with compensatory damages up to the level of 20 times the minimum wage to further a social objective connected with the care of historic monuments:

- failure to notify the monument conservator of the destruction, damage, loss, theft, being in danger or changes to the historic object (Art. 113),
- failure to notify, within a period of 14 days, of the end of validity of the permit for importing a historic monument into the territory of the Polish Republic (Art. 113a),
- prevention or hindrance of access to the historic monument for the agency responsible for the protection of historic monuments (Art. 114),
- failure to notify the relevant agency, specified in the Act, of a discovery of a historic monument/artefact during the earthworks or construction works (Art. 115), or a failure to notify of an accidental discovery of a historic monument (Art. 116),
- performance of conservation and architectural works and tests, renovation works and construction works concerning a historic monument without the required permit (Art. 117),
- placing any inscriptions, advertisements or technical equipment on the historic monument, without any permit, as well as inciting to do it or assisting in doing it (Art. 118), indictable with a penalty of a fine or restriction to freedom,
- failure to implement the post-inspection recommendations issued by the Provincial Monument Conservator (Art. 119),
- failure to keep the historic monument records or keeping them in an inaccurate manner or falsifying them (Art. 120).

Penal provisions concerning the protection of historic monuments that have not been stipulated in the Penal Code, in particular Art. 86 of the Act of 10 September 1999, the

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(as well as to other potential historic monuments, the archaeological ones in particular), losing a part thereof and also deforming nature and landscape values of the region, which could incline the legislator to amend the Act and stipulate more severe penalties for self-appointed searchers for historic objects.

Penal and Fiscal Code, are worth taking into account in the presented considerations [21]. The provisions of this article concern a fiscal crime or a fiscal offence against customs obligations as well as the rules for trading in goods and services abroad. Depending on the value of an object which has not been reported and which may represent the cultural property, ignoring the obligation to submit a customs declaration when importing such property from the non-EU states or ignoring the obligation arising from the provisions on non-tariff quotas, in connection with the rules adopted under the European Union trade policy, is indictable with a penalty of a fine of up to 720 daily rates or imprisonment or both. These provisions actually apply to a fiscal crime or a fiscal offence consisting in smuggling in the meaning of customs regulations [22]. The application of Art. 86 of the Penal and Fiscal Code evidences that the Customs Law may provide an additional form of protection of cultural property in the Third Polish Republic.

## **2. Practical approach to fighting crime against cultural property**

To examine the practical approach to fighting crime against cultural property it is necessary to refer to the relevant statistical data, however, some cognitive and methodological limitations have to be taken into account. First, the police statistics<sup>9</sup> [Cf. 23, p. 39] – forming the main source of information – does not present separately crime against works of art not classified as historical monuments in the meaning of the Act on the Protection and Care of Historic Monuments.

Second, in the statistical reports prepared by the National Police Headquarters crimes against historic monuments are not presented as a separate category, but they fall into two dominant types of crime against property, i.e. theft of the property of another person and burglary. The reason for the above is the structure of the provisions of Art. 294.2 of the Penal Code as well as the collected police statistics showing that the theft of historic monuments – and causing damage to them – represents the most frequent aggravated form of crime against cultural property [24, p. 191].

Third, the police data presented in the “Cenne, Bezcenne, Utracone” quarterly, published by the National Institute for Museums and Public Collections (NIMOZ, Narodowy Instytut Muzealnictwa i Ochrony Zbiorow), show only the basic statistics concerning the analysed form of crime. The publisher of the quarterly places the main emphasis on the description of methods employed to measure crime against cultural property and presentation of effects of police work aimed at regaining the previously lost property. No distinction is made between the prohibited acts with respect to the types of their forms, particularly those listed in the Act on the Protection and Care of Historical Monuments.

Fourth, it should be remembered that in 2004, as a result of coming into force of the Act on the Protection and Care of Historic Monuments, the rules for keeping statistics on the measurement of analysed crime were changed. The definitions of the subjective

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<sup>9</sup> In the 21<sup>st</sup> century, in the Third Polish Republic, the Police remains the professional formation with the greatest significance for counteracting and uncovering crime against cultural property. It is worth mentioning that in 2007, the significance of the Police was additionally strengthened by establishing a National Team for Fighting Crime Against National Heritage at the Criminal Office of the National Police Headquarters.

scope of crimes as well as the list of crime venues were changed and the prepared statistics no longer included the objects of religious cult, excluded from the list of historic monuments in accordance with the provisions of the new Act [19, p. 169]. It is necessary to take into account the above methodological and cognitive limitations to discuss the practical approach to fighting crime against cultural property in the Third Polish Republic.

Table 1 presents the data on the number of crimes against historic monuments in Poland in the years 2002-2014.

**Table 1.** Number of crimes against historic monuments in Poland in the years 2001-2014

Year	Number of crimes
2001	1,036
2002	970
2003	1,162
2004	2,282
2005	2,368
2006	1,958
2007	1,201
2008	847
2009	970
2010	875
2011	1,022
2012	1,058
2013	1,819
2014	1,295
<b>Total</b>	<b>18,863</b>

*Source: Own work on the basis of [25, p. 6; 26, p. 10-12; 27, p. 4-8; 28, p. 28].*

Analysing the data collected in Table 1, it can be found out that in the years subject to analysis in Poland fewer than 19,000 crimes against cultural property and historic monuments were committed in total, relying on the terminology from before and after the Act on the Protection and Care of Historic Monuments came into force. The rate of increase and decrease in the level of the threat posed by the described form of crime is varied. A downward trend was observed in the years 2001-2002, 2005-2008, 2009-2010 and 2013-2014, whereas an upward trend occurred in the years 2002-2005, 2008-2009 and 2010-2013. The biggest growth rate in the number of crimes was observed in the years 2003-2004 (almost a twofold increase in the number of prohibited acts), i.e. in the transition period preceding the amendment of the act governing the protection of cultural property in Poland. An equally significant increase (reaching almost 72%) occurred in the years 2012-2013. The largest drops in discussed crimes were observed in the years 2006-2007 (over 38%) and 2013-2014 (over 28%). The scale

of the threat posed by crime against cultural property changed dynamically. The impact of the threat to cultural security required continuous efforts on part of the Police and other administrative agencies and fighting crime was difficult, since criminals would change their *modi operandi* and frequency of committing prohibited acts.

Theft was the most serious form of crime against cultural property and historic monuments, as indicated by the data presented in Table 2.

**Table 2.** Theft of historic monuments/artefacts, taking account of its venue, in Poland in the years 2001-2011\*

Year	Crime venue		
	Buildings (multi-family or detached)	Sacred structures (churches and chapels)	Galleries and museums
2001	259	77	31
2002	244	165	25
2003	124	31	11
2004	344	56	53
2005	399	47	37
2006	296	45	32
2007	196	26	18
2008	126	19	12
2009	217	17	16
2010	132	15	13
2011	196	20	13
<b>Total</b>	<b>2,533</b>	<b>518</b>	<b>261</b>

\* data up to the year 2011 were taken into account, as till then, the police statistics prepared for the purpose of cooperation with the publisher of the "Cenne, Bezcenne, Utracone" quarterly was consistent in terms of venue classification in cases of theft of historic monuments/artefacts, with a breakdown by buildings, sacred structures, and galleries and museums.

*Source: Own work on the basis of [25, p. 6; 26, p. 10-12; 27, p. 4-8; 28, p. 28].*

On the basis of the collected data it can be stated that in the years 2001-2011, in Poland, criminals committed 3,312 acts of theft of another person's property and burglary related to the illegal acquisition of cultural property and objects recognised as historic monuments/artefacts in the meaning of the law. During the examined years thefts committed in detached and multi-family buildings represented 76.5% of venues where cultural property and historic monuments/artefacts were lost. They were valuable for the protection of the Polish national heritage and, thus, for the formation and development of cultural security of the Third Polish Republic. Thefts committed in the buildings designed for practising a religious cult accounted for about 15.5% of all venues, whereas thefts in the galleries and museums were least frequent, as their share in the structure of crime venues amounted to less than 8%. The latter facilities are equipped with the most numerous and, concurrently, most effective security systems



against theft and burglary<sup>10</sup> [Cf. 29, p. 8-9]. They also house large numbers of works of art of high value, which justifies the need for using complex security solutions to protect the cultural property from theft and damage.

The comparison of detailed data regarding venues of committed crimes shows that in 2011, in relation to the year 2001, forming the baseline, the number of crimes committed in each of their respective major venues dropped significantly. In the detached and multi-family buildings this number decreased by almost 25%, in the sacred structures – more than 3.8 times and in the galleries and museums – almost 2.5 times. Such favourable drop in crime rates could result from successful actions taken by the prosecuting authorities, the Police in particular, the effectiveness of the social informational campaign and popularisation of protection of cultural property and historic monuments in the Polish society as well as from more comprehensive actions undertaken by the institutions protecting the Polish cultural heritage.

The practical approach to fighting crime in the area of the protection of cultural property can be analysed by referring to statistics prepared by the Border Guard, being the professional formation whose tasks include uncovering the smuggling of cultural property by people crossing the country's border. Table 3 presents the effects of actions taken by officers of the Border Guard in the years 2002-2014<sup>11</sup>.

As shown by the data included in Table 3, the Border Guard officers' contribution to fighting crime against cultural property in the Third Polish Republic should be regarded as significant. In the presented timeframe the Border Guard were able to seize and secure over 10,000 cultural property items smuggled through the Polish border. The total value of these items was estimated at about PLN 1.6 million. In the examined years, the intensity of the analysed threat to cultural security was varying, however, no dominant tendencies could be identified. This impossibility to determine a trend can be exemplified by the year 2004, during which the largest number of cultural property items was seized, but their total value was relatively low. In 2007 and 2008, on the other hand, the number of secured cultural property items was lower, but their value exceeded PLN 918,000, i.e. 58% of the value recorded in the years 2002-2014.

In the statistics prepared by the Border Guard the seized smuggled cultural property items are presented in three groups, i.e. icons; coins, tokens, medals, banknotes and the like; historic monuments/artefacts. The share of respective groups is presented in Table 4.

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<sup>10</sup> On the other hand, the results of the audit conducted by the Supreme Audit Office (NIK, Najwyższa Izba Kontroli) in 2008, referred to by P. Ogrodzki in one of his articles, present an interesting material. The audit, which took place in 28 Polish museums selected at random, showed that only one of them, i.e. the Warsaw Rising Museum (Muzeum Powstania Warszawskiego), received a positive opinion from NIK, which stated that its protection against fire, damage and theft of exhibits was fully effective. One of the most common shortcomings in the area of protection of exhibits against theft was ignoring by museums the obligation to obtain approval from the Centre for Protection of Public Collections (Osrodek Ochrony Zbiorow Publicznych) for the documentation of new or modernisation of existing engineering protection systems.

<sup>11</sup> The year 2002 is treated as a baseline, because since that year the Border Guard have started to prepare yearly statistical reports, published on the website of this security system formation.

**Table 3.** Smuggled cultural property items, uncovered and seized by the Border Guard in the years 2002-2013

Year	Number of seized cultural property items	Value of seized cultural property items (PLN)
2002	336	28,360
2003	169	103,500
2004	2,062	68,400
2005	2,889	139,097
2006	1,004	133,000
2007	375	295,235
2008	374	623,000
2009	1,094	134,400
2010	240	12,855
2011	119	3,000
2012	1,292	No data available
2013	79	37,000
2014	0	0
<b>Total</b>	<b>10,033</b>	<b>1,577,847</b>

Source: Own work on the basis of [30].

The data presented in Table 4 show that the smuggling of historic monuments/artefacts was the most frequent type of crime infringing the protection of cultural property observed in the years 2002-2014 – historic monuments/artefacts represented 53% of all cultural property items seized by the Border Guard. Coins, tokens, medals, banknotes and the like accounted for 43.5% of all cultural property items which criminals attempted to smuggle through the border of the Third Polish Republic. Icons had the lowest share in the seized smuggled items, at the level of 3.5%, and represented the cultural property allocated to the sacred sphere of the Polish cultural heritage.

Among the tendencies observed in border-related crime consisting in smuggling cultural property items, the share of illegal trafficking of religious artworks, decreasing since 2003, has to be mentioned, as well as the irregularly varying, although remaining relatively high during the whole analysed timeframe, share of both smuggled coins, tokens, medals, banknotes and the like, and historic monuments/artefacts<sup>12</sup>.

<sup>12</sup> It would be difficult to disagree with W. Krupinski, in whose opinion in the recent years in Poland a tendency has been observed for the illegal trafficking of cultural property which “stems from another type of crime, namely theft and dealing in stolen goods, and perceiving the issues connected with the illegal export of historic monuments only in the context of smuggling and its accompanying circumstances forms an incomplete analysis of this crime”. Krupinski W. *Nielegalny wywóz zabytków w ocenie Straży Granicznej na podstawie działań 2011 r.* Cenne, Bezcenne, Utracone. 2012;2:39. In other words, the smuggling of cultural property while crossing the border of the Third Polish Republic may lead to committing other crimes that pose a threat to the cultural security of the Polish state. Therefore, it is necessary to emphasise the specific role to be performed by the Border Guard in the nearest future, namely its contribution to prevention and fighting criminal activities which consist in importing into the territory of the Polish Republic or exporting from this territory Polish cultural property items.

**Table 4.** Smuggled cultural property items, uncovered and seized by the Border Guard in the years 2002-2013, with a breakdown by type

Year	Icons	Coins, tokens, medals, banknotes and the like	Historic monuments/artefacts
2002	38	12	286
2003	122	22	25
2004	68	600	1,394
2005	68	1,913	908
2006	24	628	352
2007	27	251	97
2008	0	153	221
2009	5	306	783
2010	0	115	125
2011	4	68	47
2012	0	283	1,009
2013	0	0	79
2014	0	0	0
<b>Total</b>	<b>356</b>	<b>4,351</b>	<b>5,326</b>

*Source: Own work on the basis of [30].*

Furthermore, the Border Guard was responsible for instituting preparatory proceedings concerning the illegal export of the Polish cultural property, which is presented in Table 5.

**Table 5.** Number of preparatory proceedings instituted by the Border Guard in connection with illegal export of the Polish cultural property abroad in the years 2003-2012

Year	Number of proceedings
2003	19
2004	27
2005	43
2006	140
2007	126
2008	75
2009	61
2010	27
2011	9
2012	4
<b>Total</b>	<b>531</b>

*Source: Own work on the basis of [19, p. 182; 31, p. 76; 32, p. 39; 33, p. 140].*

The data collected in Table 5 indicate that although the number of preparatory proceedings instituted by the Border Guard was growing consistently in the years 2003-2006 (a sevenfold increase), in the following years a significant and continuous drop in their number could be observed. The main reason for this phenomenon was Poland's membership in the Schengen area since 2007, and the abolition of regular border control at the border checkpoints of the European Union member states. The requirements of the European Union law related to the new form of control at the internal borders have an impact on the practical functioning of not only the Border Guard, but also the Customs Service. In the literature there are also mentions of "the higher social awareness of formalities related to the export of historic monuments abroad" being another important reason [31, p. 76]. It can be assumed that the civic education concerning the need for protection of cultural property and national heritage, being an element of cultural security of the Third Polish Republic, could bring about the expected results. Another reason can be attributed to the quickly progressing development of transactions and trade on the legal numismatic and antiquarian markets [33, p. 140].

## Summary and conclusions

While summarising the contents of the paper the following conclusions can be drawn:

1. The criminal law-based approach to fighting crime in the area of protection of cultural property in the Third Polish Republic relies on the application of provisions contained in the Penal Code, the Act on the Protection and Care of Historic Monuments and, in an ancillary manner, also in the Penal and Fiscal Code. In the 21<sup>st</sup> century, the fact that cultural property is protected is evidenced by the applicability of numerous provisions, owing to which it is possible to penalise crimes and offences.
2. The provisions contained in the Penal Code ensuring protection for the property of special significance for culture are not consistent and complementary in relation to the provisions included in the Act on the Protection and Care of Historic Monuments. This fact leads to numerous interpretation doubts related to the application of the law and weakens the criminal law-based system of protection of cultural property in the Third Polish Republic.
3. The penal regulations contained in the Act on the Protection and Care of Historical Monuments differentiate among numerous types of crimes and offences against cultural property and also stipulate severe penal sanctions, favourable from the point of view of improving such protection in the Third Polish Republic.
4. The practical approach to fighting crime in the area of protection of cultural property relies on the specific participation of the Police and the Border Guard in crime prevention and fighting. In the years 2001-2014, the said formations played an important role in the strengthening of cultural security of the Third Polish Republic.

The presented arguments confirm the validity of the thesis that the criminal law-based protection of cultural property remains one of the key factors that determine the cul-

tural security of the Third Polish Republic. The protection of the Polish cultural heritage is one of the important tasks of the state. The application of transparent legal provisions, significantly strengthening the actual protection of cultural property, ensures the preservation of this heritage. Despite some minor inconsistencies in the present legislation it should be stated that its evolution progresses towards the improved criminal law-based and practical protection of cultural property, particularly with regard to the property items placed in the official registers of historic monuments. The special role should be attributed to the application of comprehensive penal regulations stipulated in the Act on the Protection and Care of Historic Monuments.

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The author declared no conflict of interests.


### **Author contributions**

The author contributed to the interpretation of results and writing of the paper. The author read and approved the final manuscript.

### **Ethical statement**

The research complies with all national and international ethical requirements.

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#### **Prawno-karne i praktyczne ujęcia walki z przestępczością w dziedzinie ochrony dóbr kultury jako aspekt kształtowania bezpieczeństwa kulturowego III RP**

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##### **STRESZCZENIE**

W artykule przyjęto za cel przedstawienie przepisów prawno-karnych, a także faktycznych rezultatów walki z przestępczością w dziedzinie ochrony dóbr kultury w Polsce od początku XXI wieku.

Postawiono tezę, zgodnie z którą prawno-karna ochrona dóbr kultury pozostaje kluczowym determinantem kształtowania bezpieczeństwa kulturowego III RP.

Przeprowadzona analiza dowiodła, że skuteczne kształtowanie bezpieczeństwa kulturowego III RP zależy od zapewnienia właściwej ochrony dóbr o szczególnym znaczeniu dla kultury. Działania w tej sferze bezpieczeństwa kulturowego wpisują się w postulat ochrony dziedzictwa kulturowego. Ważnym aspektem działań państwa jest formułowanie oraz stosowanie przepisów prawa karnego. Zaprezentowane argumenty pozwalają stwierdzić, że praktyka przeciwdziałania i zwalczania przestępczości wymierzonej w dobra kultury w III RP na początku XXI wieku zależała w dużej mierze od aktywności policji i straży granicznej.

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**SŁOWA KLUCZOWE** bezpieczeństwo, dobro kultury, prawo karne, przestępczość, zabytek

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