SOCIETAS ET IURISPRUDENTIA
2019, Volume VII., Issue 3, Pages 35-48
http://sei.iuridica.truni.sk
ISSN 1339-5467

Theft of Cultural Property in the Context of the Polish Criminal Law[1]

Katarzyna Banasik

Abstract: *The aim of this paper is to examine whether the Republic of Poland guarantees cultural property appropriate protection against theft under the criminal law. The author begins by analysing the 1972 Paris Convention Concerning the Protection of World Cultural and Natural Heritage and presenting the relevant regulations. In the next part of the paper, she analyses the legal grounds for classifying cultural property theft as a felony or a misdemeanour. Moreover, the author explains the term "cultural property" and its relationship with the term "cultural relic". She also provides an exhaustive analysis of two particular elements of this category of theft: "property of considerable value" and "property of significant cultural value". She concludes by assessing the current state of the Polish criminal law from the perspective of the protection of cultural property against theft.*

Key Words: *Criminal Law; Cultural Property; Property of Significant Cultural Value; Cultural Relics; Theft as a Felony; Theft as a Misdemeanour; the 1972 Paris Convention Concerning the Protection of World Cultural and Natural Heritage; Poland.*

Introduction

Cultural property has value for the entire international community and not only the state in which it is located. Criminal acts committed against cultural property are international in character. It may happen that the theft of a cultural property in one state was ordered by citizens of another state. The protection provided for cultural property under the criminal law is an important and still relevant topic. One of the more frequent crimes committed against cultural property is theft. Guaranteeing cultural property protection against theft by means of appropriate provisions in the criminal law is in the interest not only of individual states, but of the entire international community.

[1] The research was co-financed with funds earmarked for financing of the statutory activities of the Faculty of Law, Administration and International Relations at the Andrzej Frycz Modrzewski Krakow University, research task no. WPAiSM/DS/22/2018-KON.

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2019, ročník VII., číslo 3, s. 35-48
http://sei.iuridica.truni.sk
ISSN 1339-5467

Poland is a party to the 1972 Paris Convention Concerning the Protection of World Cultural and Natural Heritage (hereinafter referred to as the "Convention"). Poland ratified this Convention on 6 May 1976,[2] thereby committing itself to guaranteeing protection of its cultural and natural heritage. Cultural heritage is defined in the Article 1 of the Convention as follows: "monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features which are of outstanding universal value from the point of view of history, art or science; groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view". Natural heritage is defined in the Article 2 of the Convention as follows: "natural features consisting of physical and biological formations or groups of such formations which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty".

The obligations of each State Party to the Convention are set out in the Articles 4 – 6 of the Convention. They include the obligation to take appropriate legal measures necessary to protect its heritage (Article 5 states: "To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible and as appropriate for each country: […] d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; […]."). Bearing in mind the topic of this paper, it should be stressed that moveable things

[2] See *The Convention Concerning the Protection of the World Cultural and Natural Heritage* [1976]. Journal of Laws, no. 32, item 190, appendix.

are also classified as cultural heritage. Things such as, for example, sculptures or paintings may be the subject of theft.

Discussion

In the case of Poland, the legal protection provided for cultural property is regulated mainly by the Protection and Preservation of Cultural Relics Act of 2003.[3] This statute does not employ the terms "cultural heritage" and "cultural property", but does define the term "cultural relic". According to its Article 3 (1), a cultural relic is an "immovable or movable thing, its parts or units, being man's work or connected with his/her activity and constituting a testimony of a past epoch or event, the protection of which lies in the public interest in view of its historical, scientific or artistic value". This statute also classifies certain acts committed against cultural relics as either felonies or misdemeanours, such as, for instance, the destruction or damaging of a cultural relic (Chapter 11, Articles 108 – 120). However, theft is not included among them. In the case of theft, the general provisions apply, i.e. the provisions of the Penal Code and the Code of Misdemeanours. Hence, the protection provided for cultural property in Poland under the criminal law comprises the provisions of the Protection and Preservation of Cultural Relics Act, the Penal Code and the Code of Misdemeanours. In the case of cultural property theft, the appropriate category of criminal offence should be sought either in the Penal Code or in the Code of Misdemeanours.

Under the Polish criminal law, theft is treated as a "hybrid" crime. This means that theft can be either a felony or a misdemeanour, depending on the value of the thing stolen. The boundary between those types of theft that are categorised as a felony and those deemed to be misdemeanour is determined by the Code of Misdemeanours.[4] Article 119 § 1 of the Code of Misdemeanours states: "Whoever steals or appropriates someone else's moveable thing, if its value does not exceed PLN 500, shall be subject to detention, deprivation of liberty or a fine". Thus, theft of a moveable thing with a value of up to PLN 500 is a misdemeanour. Theft of a moveable thing with a value exceeding PLN 500 is deemed a felony.

[3] See *The Protection and Preservation of Cultural Relics Act of 23 July 2003* [2003]. Journal of Laws, no. 162, item 1568, as amended.
[4] See *Statute of 20 May 1971 – The Code of Misdemeanours* [1971]. Journal of Laws, no. 12, item 114, as amended.

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It is important to note that in Poland there is an essential difference between the status of a person convicted of a felony and that of a person convicted of a misdemeanour. The conviction of a felony usually involves social condemnation, while the conviction of a misdemeanour does not entail such condemnation. Of course, social condemnation also depends on the nature of the prohibited act and its mental element. It should be pointed out here that in Poland felonies and misdemeanours are traditionally treated as separate and different categories of prohibited acts. However, the basic difference between them lies in the degree of social harm caused by the act. In the case of theft, it is very significant whether the perpetrator is convicted of a felony or a misdemeanour, not only in view of the severity of the imposed penalty, but also because of the different waiting periods for the expunction of a conviction. The waiting period for the expunction of a conviction of theft as a felony is obviously much longer than the waiting period for the expunction of a conviction of theft as a misdemeanour. The problem consists not only in the stigma of a conviction attached to a perpetrator until the moment of the expunction, but also in the real day-to-day obstacles to getting a job. One consequence of a conviction for an intentional felony is that the accused is legally barred from performing many professions or functions or from holding many positions (the formal requirements – including a legal obstacle in the form of a conviction for a kind of felony, depending sometimes on the mode of prosecution of this felony – are specified in the regulations governing a particular profession, function or position). On the other hand, a conviction in the case of an intentional misdemeanour does not constitute a formal obstacle to performing important functions or high positions or professions of public trust. The above-mentioned also, of course, applies to a perpetrator convicted of cultural property theft. *In abstracto*, classifying the theft of a particular cultural property as a misdemeanour implies that the latter is afforded less protection under the criminal law.

At this juncture, an analysis of cultural property theft is necessary, beginning with the question of whether such theft should be categorised as a felony. If a given theft of cultural property cannot be recognised as a felony, then it may be categorised as a misdemeanour. A few categories of theft are recognised as felonies under the Polish law: basic theft, privileged theft in the form of a minor felony and certain qualified categories of theft. In this paper, we will analyse basic theft of cultural property, i.e. theft without, for example, the use of force. In the case of this category of

theft, definitions of basic theft stated in the Article 278 § 1 of the Penal Code[5] and of qualified types of theft specified in the Article 294 § 1 and 2 of the Penal Code come into play. The basic provision in the Penal Code criminalizing theft reads as follows: "Who, with the purpose of appropriating, takes someone else's movable thing, is liable to imprisonment for a period of between 3 months and 5 years" (Article 278 § 1). Article 294 of the Penal Code provides for two qualifying elements of theft: "§ 1: Whoever commits the felony specified in the Article 278 § 1 or § 2, Article 284 § 1 or § 2, Article 285 § 1, Article 286 § 1, Article 287 § 1, Article 288 § 1 or § 3 or in the Article 291 § 1, with regard to property of considerable value is liable to imprisonment for a period of between 1 year and 10 years; § 2: The same punishment shall be imposed on a perpetrator who commits the felony specified in § 1, with regard to property of significant cultural value". In this way, Article 294 of the Penal Code creates two categories of qualified theft as felonies. From the provisions cited above, it follows *expressis verbis* that the felony of qualified theft is punishable by a more severe penalty than the felony of basic theft.

The above-mentioned definitions also clearly indicate that a cultural relic can be either a moveable thing or an immoveable thing. Both movable things and immoveable things can form part of a cultural heritage. However, only a moveable thing can be an object of theft, since it is not possible to take away an immoveable thing. Article 278 § 1 of the Penal Code clearly penalizes the taking-away of a moveable thing. Article 294 § 1 of the Penal Code refers to "property of considerable value". "Property" is a general term which also includes movable things. The interest protected by these provisions is property. The Penal Code includes a definition of "property of considerable value" in the Article 115 § 5: "A property of considerable value means a property the value of which at the time of the commission of a prohibited act exceeds PLN 200 000". Hence, the theft of a moveable thing with a value exceeding PLN 200 000 is punishable by the penalty specified in the Article 294 § 1 of the Penal Code, i.e. the penalty of imprisonment for a period of between 1 year and 10 years. The theft of a moveable thing with a value exceeding PLN 500, but not more than PLN 200 000 is punishable by the penalty specified in the Article 278 § 1 of the Penal Code, i.e. the penalty of imprisonment for a period of between 3 months and 5 years. If a stolen thing has a value of PLN 500 or less, the perpetrator is deemed to have committed the mis-

[5] See *Statute of 6 June 1997 – The Penal Code* [1997]. Journal of Laws, no. 88, item 553, as amended.

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demeanour specified in the Article 119 § 1 of the Code of Misdemeanours and is punishable by a period of detention (for a period of between 5 days and 30 days according to the Article 19 of the Code of Misdemeanours), a deprivation of liberty or a fine. The material value of a thing is the only criterion used to distinguish between the above-stated provisions. Thus, criminal responsibility for a theft of cultural property would depend exclusively on the material value of a particular cultural property unless the Polish Penal Code did not include Article 294 § 2 which introduces the term "property of significant cultural value". The interpretation of this term gives rise to many controversies.

It should also be mentioned that the Polish law includes a variety of terms regarding cultural property. This results in terminological chaos. The Constitution of the Republic of Poland[6] provides two terms: "cultural heritage" (Article 5) and "cultural property" (Articles 6 and 73). The provisions in the Penal Code dealing with felonies against property contain the terms "property of significant cultural value" (Article 294 § 2) and "a thing having significant cultural value" (Article 295 § 1), while the chapter entitled "Crimes against Peace, Humanity and War Crimes" features the term "cultural property" (Articles 125 § 1 and 126 § 2). The Protection and Preservation of Cultural Relics Act of 2003 currently in force does not make use of the term "cultural property". The previously applicable statute, i.e. the Protection of Cultural Property Act of 1962,[7] defined "cultural property" in the Article 2 in the following way: "Cultural property in the meaning of the statute is anything, whether movable or immovable, whether old or contemporary, which has significance for cultural heritage and development in view of its historical, scientific or artistic value". It is important to note that the term "cultural property" was introduced into the Polish law by following the ratification[8] of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954. Article 1 of the above-stated Convention contains the following definition of cultural property: "For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin

[6] See *The Constitution of the Republic of Poland of 2 April 1997* [1997]. Journal of Laws, no. 78, item 483, as amended.

[7] See *The Protection of Cultural Property Act of 15 February 1962* [1962]. Journal of Laws, no. 10, item 48, as amended.

[8] Poland ratified the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 on 16 July 1956. See *The Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict* [1957]. Journal of Laws, no. 46, item 212, appendix.

or ownership: (a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above; (b) buildings the main and effective purpose of which is to preserve or to exhibit the movable cultural property defined in the sub-paragraph (a), such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in the sub-paragraph (a); (c) centres containing a large amount of cultural property as defined in the sub-paragraphs (a) and (b), to be known as 'centres containing monuments'." During the period when the statute of 1962 was in force, the term "cultural property" was criticized for being too general and highly abstract.[9] As a consequence, the statute of 2003 introduced the term "cultural relic" in its place. The Penal Code and the Constitution of the Republic of Poland have not been amended and this has given rise to a problem of terminological inconsistency.

Interpretation of the phrase "property of significant cultural value", and thus answer to the question of when a theft of cultural property with a value not exceeding PLN 200 000 is punishable by imprisonment for a period of up to 10 years, first require an explanation of the mutual relationship between the above-mentioned terms. The terms used in those provisions of the Polish law applicable in the event of armed conflict remain beyond the scope of these deliberations, since the object of analysis in this paper is the legal classification of theft of cultural property committed in peacetime. The term "cultural heritage" is broader than the term "national heritage" which concerns the heritage of only one nation.[10] "Cultural heritage" refers to the heritage of the entire international community. In the meaning given in the provisions of the Polish Penal Code, not only the Polish cultural property, but also foreign cultural property (created by or being in other states) should be recognised as

[9] See GERECKA-ŻOŁYŃSKA, A. W kwestii definicji dobra kultury i dzieła sztuki. *Prokuratura i Prawo*. 1999, nr 9, pp. 104-109. ISSN 1233-2577; and TRZCIŃSKI, M. Przestępczość przeciwko zabytkom. *Prokuratura i Prawo*. 2011, nr 6, pp. 43-44. ISSN 1233-2577.

[10] See TRZCIŃSKI, M. Przestępczość przeciwko zabytkom. *Prokuratura i Prawo*. 2011, nr 6, p. 42. ISSN 1233-2577.

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ISSN 1339-5467

"cultural property". The term "cultural property" is broader than the term "cultural relic". Every cultural relic is a cultural property, but not every cultural property is a cultural relic.[11] A cultural relic is connected in some way with the past, while a cultural property can be, for example, a painting recently completed by a contemporary renowned artist. It is obvious that every "property of significant cultural value" is "cultural property". In the case of theft, the difference between the term "property of significant cultural value" and the term "a thing having significant cultural value" is unimportant, because a stolen property can only be a thing (a moveable thing).

When interpreting what is meant by a "property of significant cultural value", it should first be established whether a given property is a cultural property, and after this, whether this stolen cultural property has significant cultural value (it does not have to be of significant value to the Polish culture). Determining the latter is not always easy and incontestable. The element "property of significant cultural value" has a highly evaluative character. Admittedly, significant value is not identical with high material value.[12] Significant cultural value may result from the high historical, scientific or artistic value of a given cultural property. In the Polish literature, it has been correctly stated that a "property of significant cultural value" should have a unique character.[13] Examples of this kind of property include, for instance, archive materials or a natural specimen, such as the "Bartek" oak that grows in Poland.[14] Other exam-

[11] See ZEIDLER, K. *Prawo ochrony dziedzictwa kultury*. 1. wyd. Warszawa: Wolters Kluwer, 2007, p. 42. ISBN 978-83-7526-423-4; TRZCIŃSKI, M. Przestępczość przeciwko zabytkom. *Prokuratura i Prawo*. 2011, nr 6, p. 47. ISSN 1233-2577; and KULIK, M. and A. SZCZEKALA. Odpowiedzialność karna za przestępstwo zniszczenia lub uszkodzenia zabytku. In: T. GARDOCKA and J. SOBCZAK, eds. *Prawna ochrona zabytków*. 1. wyd. Toruń: Wydawnictwo Adam Marszałek, 2010, p. 139. ISBN 978-83-7611-770-6.

[12] See similarly M. Dąbrowska-Kardas and P. Kardas in ZOLL, A. ed. *Kodeks karny: Część szczególna: Tom III: Komentarz do art. 278 – 363*. 4. wyd. Warszawa: Wolters Kluwer, 2016, p. 471. ISBN 978-83-264-9949-4; E. W. Pływaczewski and E. M. Guzik-Makaruk in FILAR, M. ed. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2016, p. 1544. ISBN 978-83-264-9966-1; and L. Wilk in KRÓLIKOWSKI, M. and R. ZAWŁOCKI, eds. *Kodeks karny: Część szczególna: Tom II: Komentarz do art. 222 – 316*. 1. wyd. Warszawa: C. H. Beck, 2013, p. 694. ISBN 978-83-255-5088-2.

[13] See GÓRAL, R. *Kodeks karny: Praktyczny komentarz*. 5. wyd. Warszawa: Zrzeszenia Prawników Polskich, 2007, p. 508. ISBN 978-83-87218-39-3; and M. Kulik in MOZGAWA, M. ed. *Kodeks karny: Komentarz*. 6. wyd. Warszawa: Wolters Kluwer, 2014, p. 734. ISBN 978-83-264-3375-7.

[14] See RADECKI, W. Ochrona dóbr kultury w nowym kodeksie karnym. *Prokuratura i Prawo*. 1998, nr 2, pp. 13-14. ISSN 1233-2577; KACZMAREK, J. and M. KIERSZKA. Pojęcia „mienie

ples include cultural relics entered in the Polish Register of Cultural Relics, immoveable property regarded as a historical memorial in Poland as well as any object inscribed on the United Nations Educational, Scientific and Cultural Organization's List of World Heritage Sites, which should be recognised as a property of significant cultural value.[15] However, recognition of a cultural relic that has not been entered in the Register of Cultural Relics should not *in abstracto* be excluded.[16] Obviously, when it comes to interpreting the provision on theft, only moveable things or their parts are relevant. At this juncture, attention should be paid to theft from an object inscribed as a whole on the United Nations Educational, Scientific and Cultural Organization's List of World Heritage Sites. Objects of this kind situated in the Polish territory include the Krakow's Historic Old Town, the Wieliczka Salt Mine and the Nazi German Concentration Camp at Auschwitz. Obviously, it is not possible to steal the whole concentration camp, but it is possible to steal a thing from this camp. Such a case occurred in year 2009 when the metal sign with the inscription *"Arbeit macht frei"* spanning the entrance gate to the camp was stolen. A Polish court and public prosecutor rightly recognised that a property of significant cultural value had been stolen.[17]

A property of significant cultural value can, at the same time, be a property of considerable value. In such a case, it is protected by two qualified categories of theft as felony, i.e. Article 294 § 1 of the Penal Code and Article 294 § 2 of the Penal Code. A property of significant cultural value can have a high material value, but not a considerable value (in the meaning given in the Polish Penal Code). In this case, it would be protected by the Article 294 § 2 of the Penal Code. There is also such a thing as

w wielkich rozmiarach", „zniszczenie w świecie roślinnym lub zwierzęcym w znacznych rozmiarach" oraz „dobra o szczególnym znaczeniu dla kultury" w kodeksie karnym. *Prokuratura i Prawo*. 2000, nr 3, p. 119. ISSN 1233-2577; and MAREK, A. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2010, p. 622. ISBN 978-83-264-0275-3.

[15] See RADECKI, W. Ochrona dóbr kultury w nowym kodeksie karnym. *Prokuratura i Prawo*. 1998, nr 2, p. 16. ISSN 1233-2577; and TRZCIŃSKI, M. Przestępczość przeciwko zabytkom. *Prokuratura i Prawo*. 2011, nr 6, p. 44. ISSN 1233-2577.

[16] See KOWALSKA-BENASIEWICZ, E. Zbieg przepisów art. 108 – 109b ustawy o ochronie zabytków i opiece nad zabytkami z innymi przepisami typizującymi przestępstwa i wykroczenia. In: K. ZEIDLER, ed. *Prawo ochrony zabytków*. 1. wyd. Warszawa; Gdańsk: Wolters Kluwer; Wydawnictwo Uniwersytetu Gdańskiego, 2014, p. 494. ISBN 978-83-7865-175-8.

[17] On this case of theft see BŁAŻEJCZYK, P. To tylko metalowy napis czy zabytek o szczególnym znaczeniu dla kultury?. In: K. ZEIDLER, ed. *Prawo ochrony zabytków*. 1. wyd. Warszawa; Gdańsk: Wolters Kluwer; Wydawnictwo Uniwersytetu Gdańskiego, 2014, pp. 551-557. ISBN 978-83-7865-175-8.

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http://sei.iuridica.truni.sk
ISSN 1339-5467

a property of significant cultural value which is of little material value and is not worth more than the amount of PLN 500. In this case, the legal classification of the act committed by the perpetrator is open to debate and is a source of controversy in the Polish literature. The problem lies in the fact that the Penal Code does not provide for a category of basic theft of cultural property regardless of its material value, and the felony specified in the Article 294 § 2 is a qualified category of the theft specified in the Article 278 § 1 of the Penal Code. Some authors are of the view that a transition from misdemeanour to a qualified felony is not possible.[18] In our opinion, the opposite view is accurate.[19] Namely, it is legally acceptable to classify a theft of a moveable thing of a low material value, but, at the same time, of a significant cultural value as a felony under the Article 294 § 2 of the Penal Code.

The above-mentioned analysis also proved the existence of "common" cultural property which is not protected by the Article 294 § 2 of the Penal Code. The value of this kind of property may not exceed PLN 500 at the moment of the commission of the act, and thus it is not protected by the Article 278 § 1 of the Penal Code. There is also the question of how to classify the act of taking for the purpose of appropriating a moveable thing with a value not exceeding PLN 500 that is a "common" cultural property. Such an act is treated as a misdemeanour, as defined and penalized in the Article 119 § 1 of the Code of Misdemeanours. The harshest punishment imposed for such an act is a 30-day detention period. At the first glance, this legal classification may cause some indignation. However, it should be stressed that though *in abstracto* such a classification of theft of cultural property is possible, *in concreto* it happens only rarely, since the vast majority of cultural property has a material value in excess of PLN 500. Of course, one possible option would be to amend the Penal Code so that it includes a separate basic category of theft involving cultural property (theft of cultural property would be classified as a felony, irrespective of the material value of this property). Another approach might be to establish theft of cultural property as a separate felony in the Protection and Preservation of Cultural Relics

[18] See for example TRZCIŃSKI, M. Przestępczość przeciwko zabytkom. *Prokuratura i Prawo*. 2011, nr 6, p. 48. ISSN 1233-2577; and MICHALAK, A. and A. GINTER. *Ustawa o ochronie zabytków i opiece nad zabytkami: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016, p. 414. ISBN 978-83-264-9618-9.

[19] See for example M. Dąbrowska-Kardas and P. Kardas in ZOLL, A. ed. *Kodeks karny: Część szczególna: Tom III: Komentarz do art. 278 – 363*. 4. wyd. Warszawa: Wolters Kluwer, 2016, pp. 473-474. ISBN 978-83-264-9949-4.

Act, since some types of felony are already in it. It seems, however, that creating such a new category of felony would be unwise. Even if stolen "common" cultural property has little material value, the perpetrator would not go unpunished, but he or she would still be prosecuted for a misdemeanour. In general, introducing additional types of felonies is not advisable without strong justification, since it leads to an unnecessary increase in legal regulations. Excessive casuistry in law, including criminal law, is not desirable.

The final issue to be addressed in this paper is whether the element of felony theft specified in the Article 294 § 2 of the Penal Code ("a property of significant cultural value") should be replaced by another term. The element in question is highly evaluative and the criminal law should avoid evaluative elements in its description of felonies. This follows from the widely accepted principle of the criminal law *"nullum crimen sine lege certa"*. Nevertheless, eliminating all evaluative elements in the criminal law is, simply, not possible. In some cases, such instruments are unavoidable in the criminal law. And such, in our opinion, is the case here. A more accurate term, one moreover that is transparent and not evaluative, simply does not exist in the Polish language. The problem would also not be resolved by providing a definition in the Penal Code (Article 115: "Explanation of Legal Terms"), since it would not be possible to create a satisfactory and indisputable definition. Of course, it is also not possible to establish a catalogue of properties of significant cultural value. Thus, the task of interpreting this term should be left to the court issuing a ruling on such matters. Such a court can – although it does not have to – call expert witnesses or refer to opinions expressed in the literature.

Final Conclusions

Under the Polish law, there are many terms regarding cultural property, including "cultural heritage", "property of significant cultural value", "cultural property" and "cultural relic". A variety of terms results in terminological chaos. In the context of theft, the Polish Penal Code employs the element "property of significant cultural value" which has a highly evaluative character and makes it difficult to appropriately classify a case of cultural property theft. In the area of the criminal law protection of cultural property, the main legal problem lies in the fact that the Penal Code does not provide for a category of basic theft of cultural property regardless of its material value. However, this problem can be solved by employing the above-given solution created in the doctrine and does not in-

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ISSN 1339-5467

volve a need to amend the Penal Code. It is worth mentioning that cases of cultural property of low material value are not often, i.e. a cultural property has usually a high material value. It should also be stressed that all cases of cultural property theft, regardless of its material value, are penalized by the Polish law.

Bearing in mind the above-mentioned analysis of the current state of the law in Poland and the obligation of a State Party resulting from the Article 5 of the 1972 Paris Convention Concerning the Protection of World Cultural and Natural Heritage, in conclusion should be stated that in the aspect of theft of cultural property Poland has fulfilled this obligation. In Poland, the current level of the criminal law protection of cultural property from theft is good.

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Dr Hab. Katarzyna Banasik, Assoc. Prof.

Faculty of Law, Administration and International Relations
Andrzej Frycz Modrzewski Krakow University
Gustawa Herlinga-Grudzińskiego 1
30-705 Kraków
Poland
kbanasik@afm.edu.pl