

Oryginalna praca badawcza

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CRIMINAL LIABILITY FOR DESECRATION OF A GRAVE. COMPARATIVE STUDIES

ODPOWIEDZIALNOŚĆ KARNA ZA ZBEZCZESZCZENIE ZWŁOK. STUDIA PORÓWNAWCZE

Abstract: This article conducts a comparative legal study of the characteristics of the crime defined in Article 262 of the Polish Criminal Code, aiming to identify ways to improve the corresponding Ukrainian criminal legislation. In the current Ukrainian Criminal Code, Article 297 “Desecration of a grave, other burial place, or the body of the deceased” is classified as an offence against public order and morality. Improving Ukrainian criminal legislation could involve considering Poland’s experience in more clearly defining the objects of the crime and the objective side of the act. It is also worth considering expanding scientific research in this area to achieve greater consistency and effectiveness in law enforcement. On the other hand, Article 297 of the Ukrainian Criminal Code covers a much broader list of objects that are subjects of this crime, which could be beneficial for Polish legislation. Overall, the analysis showed quite close positions of both Ukrainian and Polish legal scholars, providing hope for the rapid adaptation of Ukrainian criminal legislation to the legislation of EU countries.

Zarys treści: W artykule przeprowadzono porównawcze badanie prawne cech przestępstwa określonego w artykule 262 Kodeksu karnego Polski, mające

na celu znalezienie sposobów na ulepszenie analogicznego ukraińskiego ustawodawstwa karnego. W obecnym Kodeksie karnym Ukrainy artykuł 297 „Zbezczeszczenie grobu, innego miejsca pochówku lub ciała zmarłego” jest zaklasyfikowany jako przestępstwo przeciwko porządkowi publicznemu i moralności. Ulepszanie ukraińskiego ustawodawstwa karnego może obejmować uwzględnienie doświadczeń Polski w precyzyjniejszym określaniu przedmiotów przestępstwa i obiektywnej strony czynu. Warto także rozważyć możliwość rozszerzenia badań naukowych w tej dziedzinie, aby osiągnąć większą spójność i skuteczność w egzekwowaniu prawa. Z drugiej strony artykuł 297 Kodeksu karnego Ukrainy obejmuje znacznie szerszą listę przedmiotów, które są przedmiotami tego przestępstwa, co może być użyteczne dla polskiego ustawodawstwa. Ogólnie rzecz biorąc, przeprowadzona analiza wykazała dość zbliżone stanowiska zarówno ukraińskich, jak i polskich prawników, co daje nadzieję na szybką adaptację ukraińskiego ustawodawstwa karnego do ustawodawstwa krajów UE.

Keywords: criminal law; public order; desecration of a grave, other burial place or the body of the deceased; subject of the crime; Poland; Ukraine.

Słowa kluczowe: prawo karne; porządek publiczny; zbezczeszczenie grobu, inne miejsce pochówku lub ciała zmarłego; przedmiot przestępstwa; Polska; Ukraina.

Introduction

The system of criminal offences against public order and morality was developed within the legislation of Romano-Germanic legal systems at the end of the 19th century.

Due to the absence of a comprehensive comparative legal analysis of the issue of grave desecration, it is reasonable to examine the regulation of this issue in the criminal laws of Ukraine and Poland using a comparative legal method. This can help identify ways to improve the relevant domestic criminal legislation.

Comparative Analysis of Ukrainian and Polish Legislation

In the current Criminal Code of Ukraine, Article 297 “Desecration of a grave, other burial place, or the body of the deceased” is addressed.¹ This article comprises four parts: “Desecration of a grave, other burial place, the body (remains, ashes) of the deceased, or an urn with the ashes of the deceased, as well as illegal possession of the body (remains, ashes) of the deceased, an urn with the ashes of the deceased, items located on (in) the grave or other burial place, on the body (remains, ashes) of the deceased” (part 1 of Article 297 of the Criminal Code of Ukraine); “Desecration or destruction of a mass grave or the grave of the Unknown Soldier, a monument erected in memory of those who fought against Nazism during the Second World War – Soviet liberators, participants in the partisan movement, underground fighters, victims of Nazi persecution, internationalist soldiers and peacekeepers, as well as persons who defended the independence, sovereignty and territorial integrity of Ukraine and took direct part in the anti-terrorist operation, in the implementation of measures to ensure national security and defence, repelling and deterring the armed aggression of the Russian Federation or another state recognized by the Verkhovna Rada of Ukraine as an aggressor, participants in the Revolution of Dignity, fighters for the independence of Ukraine in the 20th century” (part 2 of Article 297 of the Criminal Code of Ukraine); “Actions provided for in parts one or two of this article, committed repeatedly or by prior conspiracy by a group of persons, or for selfish or hooligan motives, or concerning a monument erected in memory of those who fought against Nazism during the Second World War, victims of Nazi persecution, as well as internationalist soldiers and peacekeepers, or combined with the use of violence or the threat of its use” (part 3 of Article 297 of the Criminal Code of Ukraine); “Actions provided for in parts one, two, or three of this article, if they caused severe consequences” (part 4 of Article 297 of the Criminal Code of Ukraine).² In 2001, at the time of the adoption of the new Criminal Code of Ukraine, the disposition of Article 297 of the Criminal Code of Ukraine contained only one norm, which, however, included two elements of this crime. These are “desecration of a grave, other burial place, the corpse, or an urn with the ashes of the deceased” as well as “theft of items located in the burial place or on the corpse.”³ A similar construction was present in the norm provided

¹ Criminal Code of Ukraine Act of 5 April 2001, <https://zakon.rada.gov.ua/laws/show/2341-14/ed20010405>, (accessed 10.06.2023).

² Ibidem.

³ Ibidem.

for in Article 212 of the previous Criminal Code of the Ukrainian SSR of 1960 “Desecration of a Grave” which referred to “Desecration of a grave, as well as theft of items located in the grave or on the grave.”⁴

In the current Criminal Code of Ukraine, grave desecration is classified as a criminal offence against public order and morality, which are designated in a separate Chapter XII of the Special Part of the Criminal Code of Ukraine. Additionally, the social relations arising in this area are regulated by the Law of Ukraine “On Burial and Funeral Affairs” dated 10 July 2003, and other regulatory legal acts.⁵ This legislation defines the “general legal principles for conducting burial activities in Ukraine, regulates relations that arise after the death (decease) of a person regarding the burial procedure, and establishes guarantees for the proper treatment of the body (remains, ashes) of the deceased and the preservation of the burial place.”⁶

In the criminal legislation of Poland, a similar crime is provided for in Article 262 of the Polish Criminal Code.⁷

Article 262 of the Polish Criminal Code contains two elements of a criminal offence: “desecration of a corpse, human ashes, or a resting place of the deceased” (§ 1 of Article 262 of the Polish Criminal Code) and “robbery of a corpse, grave, or other resting place of the deceased” (§ 2 of Article 262 of the Polish Criminal Code).⁸ It should be noted that this act has traditionally been included in the criminal codes of Poland in the twentieth century (Article 168–169 of the Polish Criminal Code of 1932, Article 197 of the Polish Criminal Code of 1969, Article 262 of the Polish Criminal Code of 1997).

In the Polish Criminal Code of 1997, Article 262 is classified under the group of crimes against public order (Chapter XXXII of the Polish Criminal Code of 1997). This demonstrates that “the legislator established that the behaviour specified in these provisions violates public order as a generic object of protection.”⁹

It should be noted that the concept of criminal offence for grave desecration differs from that provided in the Polish Criminal Code of 1969, where similar acts

⁴ V. Melenev's'kyi, S. Yatsenko (eds.), *Kryminal'nyy kodeks Ukrayins'koyi RSR*, Derzhavne Vydavnytstvo Politychnoyi Literatury URSR, Kyiv 1961, p. 74.

⁵ Pro pokhovannya ta pokhoronnu spravu Act of 10 July 2003, <https://zakon.rada.gov.ua/laws/main/1102-15>, (accessed 10.06.2023).

⁶ Ibidem.

⁷ Criminal Code Act of 6 June 1997, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>, (accessed 10.06.2023).

⁸ Ibidem.

⁹ R. Stefański, *Przestępstwo znieważenia zwłok, prochów ludzkich lub grobu (art. 262 k.k.)*, „Prokuratura i Prawo” 2004, no. 10, p. 20.

were established under Article 197 and were included in the chapter containing crimes against freedom of conscience and religion. At the time, in justifying the governmental draft of the Polish Criminal Code of 1997, it was stated that “desecration of a corpse or its robbery, as acts that infringe on legal interests different from freedom of conscience and religion, are punished under Article 262 of this chapter.”¹⁰ Polish scholar Z. Migros emphasizes that including the discussed provisions in the group of crimes against public order is due to the fact that sometimes human corpses are not part of religious rites. A different decision would contradict the constitutional principle of equality before the law, regardless of religious beliefs.¹¹

Since the adoption of the new Ukrainian criminal law in 2001, domestic scholars have continuously sought to clearly define the immediate object of the criminal offence stipulated in Article 297 of the Criminal Code of Ukraine. Some believe it to be social relations that ensure the moral foundations of remembering the deceased. Others argue it is the set of social relations that uphold the moral principles of society in preserving the heritage of the past and maintaining the connection between generations. In this context, memory means the ability to not forget the past.

However, the question arises: can such an object of protection be considered in relation to the bodies of recently deceased individuals, whose desecration is quite common in judicial practice?

Currently, the most widespread understanding of the object of the criminal offence stipulated in Article 297 of the Criminal Code of Ukraine is social relations that ensure the observance of funeral customs and traditions, the honour of the deceased, their memory, the peace of their bodies and burial places. This understanding of the object of this criminal offence also prevails in judicial practice.¹²

Regarding the immediate object of the act specified in Article 262 of the Polish Criminal Code, the views of Polish scholars vary. Some believe it includes the protection of public order, while others argue for a focus on the respect for the deceased:

¹⁰ *Nowe kodeksy karne z 1997 r. z uzasadnieniami*, Wydawnictwo Prawnicze, Warszawa 1997, p. 253.

¹¹ Z. Migros, *Przestępstwa przeciwko uczuciom religijnym w polskim kodeksie karnym z 1932 r.*, „Wojskowy Przegląd Prawniczy” 1982, no. 37, p. 196.

¹² N. Horb, *Naruha nad mohyloyu: kryminal'no-pravovyy ta kryminolohichnyy analiz*, Zaporizhzhya 2005; M. Mel'nyk, M. Khavronyuk, *Naukovo-praktychnyy komentarz Kryminal'no ho kodeksu Ukrainy*, Kyiv 2018; B. Odaynyk, *Kryminal'na vidpovidal'nist' za znyshchennya, ruinuvannya abo poshkodzhennya pam'atok-ob'yektiv kul'turnoyi spadshchyny*, Kyiv 2010.

- “honour and respect for the dead and their resting places” (K. Wick);¹³
- “honour, respect and peace for the deceased and their final resting places” (Z. Ćwiąkański);¹⁴
- “guarantee of respect for human remains and the resting places of the deceased” (M. Bojarski);¹⁵
- “respect and honour for the remains of the deceased and their resting places, as well as the feelings of the deceased’s relatives and possible religious sentiments” (D. Gruszecka);¹⁶
- “the feelings of people associated with the cult of the dead, especially those close to the deceased” (R. Góral);¹⁷
- “human dignity even after death, which manifests in the need to honour their remains and resting places, and in the case of Article 262 § 2, also to some extent, property rights and other rights to items belonging to persons who are, for example, heirs of the deceased or administrators of the resting place, or finally, relatives who, even by decorating the grave, do not relinquish ownership rights to the items they place there” (A. Michalska-Warias);¹⁸
- “respect for human corpses and their burial places, and the protection of the respect and honour of their relatives” (E. W. Pływaczewski, A. Sakowicz);¹⁹
- “the sanctity of the resting place, and in § 2 – the inviolability (though not ownership) of objects that belonged to the deceased, as well as the material inviolability of the resting place of the body” (J. Śliwowski).²⁰

Scholar A. Rybak holds a different position, believing that “it is incorrect to consider the inviolability of resting places or the bodies themselves as the object of protection, since there are situations where moving bodies is not condemnable but even beneficial, desirable, and culturally acceptable. Cells, tissues, and organs can

¹³ A. Grześkowiak, K. Wiak (eds.), *Kodeks karny*, C. H. Beck, Warszawa 2015, p. 773.

¹⁴ Z. Ćwiąkański, *Komentarze do art. 262*, in: W. Wróbel and A. Zoll (eds.), *Kodeks karny. Część szczególna*, Wolters Kluwer, Warszawa 2017, p. 1424.

¹⁵ M. Bojarski, *Przestępstwa przeciwko porządkowi publicznemu*, in: L. Gardocki (ed.), *System Prawa Karnego. Przestępstwa przeciwko państwu i dobrom zbiorowym*, vol. 8, Wydawnictwo C. H. Beck, Warszawa 2013, p. 796.

¹⁶ D. Gruszecka, *Komentarze do art. 262*, in: J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz*, Wolters Kluwer, Warszawa 2021, p. 944.

¹⁷ R. Góral, *Kodeks karny. Praktyczny komentarz*, Wolters Kluwer, Warszawa 2002, p. 423.

¹⁸ W. Zalewski, *Komentarze*, in: M. Królikowski, R. Zawłocki (eds.), *Kodeks karny. Część szczególna*, Wydawnictwo C. H. Beck, Warszawa 2017, p. 425.

¹⁹ A. Wąsk, R. Zawłocki (eds.), *Kodeks karny. Część szczególna*, Wydawnictwo C. H. Beck, Warszawa 2010, p. 517.

²⁰ J. Śliwowski, *Prawo karne*, PWN, Warszawa 1979, p. 426.

also be taken (within the limits and conditions prescribed by law).²¹ The author rightly points out that “the essence of this protection does not lie in human feelings associated with the body, as equal protection is afforded to the bodies and resting places of those who are forgotten after death and those remembered by their closest relatives and friends. The trade in tissues, cells, and organs is unacceptable even when the deceased leaves no one to remember them.”²² A. Rybak reaches a compromise conclusion that the protected object is human dignity, which, according to the scholar, does not cease to exist even after a person’s death. Therefore, the body of the deceased and their resting place also deserve respect and honour.²³ However, researcher T. Gardocka critically assessed this position, noting that “it is difficult to accept such a decision on strictly legal grounds, since in no other legal context is the dignity of a deceased person protected directly, but only through the protection of the feelings of those close to the deceased.”²⁴ Researcher R. A. Stefański unified this controversy by concluding that “the act specified in Article 262 does not directly violate human dignity but does so indirectly. Respect and honour for corpses, human ashes, and resting places of the deceased derive from human dignity. However, this does not mean that the object of protection is human dignity; rather, it is the cult of the dead, which stems from culture and tradition.”²⁵

The objective side of the act defined in Article 297 of the Criminal Code of Ukraine involves “desecration of a grave, other burial place, the body (remains, ashes) of the deceased, or an urn with the ashes of the deceased, as well as the unlawful seizure of the body (remains, ashes) of the deceased, an urn with the ashes of the deceased, or items located on (in) the grave, other burial place, or on the body (remains, ashes) of the deceased.”²⁶

Desecration of the body (remains, ashes) of the deceased means “committing indecent intentional actions on the body (remains, ashes) of the deceased, such as unauthorized removal of clothing from the body (remains, ashes), moving it to another place, or dismembering or destroying the body (remains, ashes), committing an act of necrophilia, using parts of the buried body for ritual or other

²¹ A. Rybak, *Prawnokarna ochrona godności zwłok człowieka*, „Palestra” 2004, vol. 49, no. 1–2, p. 100.

²² Ibidem.

²³ Ibidem.

²⁴ T. Gardocka, *Czy zwłoki ludzkie są rzeczą i co z tego wynika?*, in: J. Gołaczyński et al. (eds.), *Non omnis moriar. Osobiste i majątkowe aspekty prawne śmierci człowieka. Zagadnienia wybrane*, Oficyna Prawnicza, Wrocław 2015, p. 274.

²⁵ R. Stefański, *Przestępstwo znieważenia zwłok...*, op. cit., p. 21–22.

²⁶ Criminal Code of Ukraine Act of 5 April 2001, op. cit.

purposes not provided for by current legislation, or committing other actions aimed at disrespecting familial or societal memory of the deceased, demonstrating negative attitudes towards the deceased, causing offence to the relatives and close ones of the deceased, or showing contempt for societal, religious principles and traditions in this area.”²⁷

Desecration includes both an objective aspect – performing certain actions regarding the deceased or the burial site, and a subjective aspect – the awareness that these actions disrespect the memory of the deceased and violate societal norms in this area. Usually, desecration is committed through active actions, but there are cases when it occurs through inaction, for example, when domestic animals are not prevented from destroying a grave or relieving themselves on it.

The unlawful seizure of relevant items means their illegal removal and appropriation. This may include, for example, the illegal removal of organs from the deceased for transplantation, seizing the body or its remains for ransom, as well as dismantling and selling grave fences, monuments, slabs, wreaths, flowers, lamps, or appropriating valuables that are part of the burial.

The actions specified in Article 297 of the Criminal Code of Ukraine are not considered criminal if carried out in an established manner, such as exhumation of a corpse, moving a grave, organizing the burial site, archaeological research, or if certain actions with the corpse are not considered desecration (for example, dismembering a corpse to conceal a murder) (V. Navrotsky).²⁸

A criminal act is considered complete depending on the nature of the act. If it is desecration, the criminal offence is complete when the actions sufficiently indicate the presence of the objective and subjective elements of desecration. If the act involves appropriation, the criminal offence is complete from the moment the perpetrator gains the ability to dispose of the relevant items at their discretion (hide, sell, give away, etc.).

The objective side of the act, as defined in § 1 of Article 262 of the Polish Criminal Code, involves the desecration of a corpse, human ashes, or the resting place of a deceased person.²⁹

Polish scholars provide several possible examples of desecration:

- “defiling and any damage to the corpse, throwing faeces at it, placing offensive inscriptions on or near it, mocking the corpse or its parts, meaning touching or

²⁷ Pro pokhovannya ta pokhoronnu spravu, op. cit.

²⁸ *Naukovo-praktychny ykomentar Kryminal'noho kodeksu Ukrayiny*, op. cit., p. 889.

²⁹ J. Waszczyński (ed.), *Prawo karne w zarysie. Część szczególna*, Uniwersytet Łódzki, Łódź 1981, p. 150.

moving body parts with offensive or mocking statements, for example, criminal thoughts were harboured under this skull, the deceased often operated this hand in others' pockets" (L. Peiper);³⁰

- “verbal insults, indecent demonstrative gestures, pouring dirt or paint on the tombstone, spitting, changing the position of the body and the purpose of the grave, digging up the grave, smashing the monument, throwing the coffin or body out of the grave” (R. A. Stefański);³¹
- “digging up a grave, scattering the components” (E. W. Pływaczewski, A. Sakowicz);³²
- “throwing the body out of the coffin, scattering ashes from the urn, defiling the grave, drawing offensive words or symbols on the tombstone, damaging the grave, mutilating the body, leaving the body as food for wild animals, throwing the body into a septic tank or other sewage container” (A. Michalska-Varias);³³
- “throwing corpses or ashes from a coffin or urn onto the floor or ground, unlawfully removing them from a grave, tomb, or other place of permanent storage, fulfilling physiological needs, consuming alcoholic beverages, using drugs, playing cards on a grave or with the corpse or urn, spitting, damaging the burial site, destroying sculptures, monuments, or decorations placed on or near the grave, placing offensive writings or drawings, littering, trampling, throwing objects or placing inappropriate items on the body, ashes, or resting place; name-calling, offensive names, and other forms of provocative behaviour inappropriate to the place where the body, human ashes, or resting place of the deceased is located” (Z. Cwiakalski).³⁴

Polish scholars also suggest that desecration of a corpse may include sexual intercourse with the corpse or other sexual acts with it, as well as the use of body parts (such as the skull or limbs) to create various objects. A possible connection between the desecration of the corpse and occult practices of Satanism is also not excluded, which leads to the qualification of the act under Article 262 of the Polish Criminal Code.³⁵ If the perpetrator engaged in sexual intercourse with a corpse, believing that the person was alive but unconscious, then the perpetrator

³⁰ L. Peiper, *Komentarz do Kodeksu karnego*, Leon Frommer, Kraków 1936, p. 360.

³¹ R. Stefański, *Przestępstwo znieważenia zwłok...*, op. cit., p. 24.

³² A. Wąsk, R. Zawłocki (eds.), *Kodeks karny...*, op. cit., p. 518.

³³ W. Zalewski, *Komentarze*, op. cit., p. 425.

³⁴ Z. Cwiakalski, *Komentarze...*, op. cit., p. 1425.

³⁵ R. Paprzycki, *Prawnokarna analiza zjawiska satanizmu w Polsce*, Wolters Kluwer, Kraków 2002, p. 61.

is not charged with desecration of a corpse. Instead, it is classified as an attempt at an ineffective crime, as stipulated in Article 198 of the Polish Criminal Code.³⁶

Desecration of a deceased person's body and its resting place can also involve body theft. For example, in Poland, there was a notable case reviewed by the Lubaczów court in 2010, where criminals stole the body of a deceased suicide bomber from a grave, beheaded it, and burned it in a car to simulate the death of one of the criminals, with the aim of avoiding a return to prison and obtaining compensation.³⁷

The objects of the act specified in Article 297 of the Criminal Code of Ukraine are: a) a grave; b) another burial place; c) the body (remains, ashes) of the deceased; d) an urn with the ashes of the deceased; e) items located on (in) the grave, another burial place, on the body (remains, ashes) of the deceased.³⁸

The qualified composition of this crime is present if the object of the crime is: a mass grave or the grave of the Unknown Soldier, a monument erected in memory of those who fought against Nazism during World War II – soviet liberator soldiers, participants of the partisan movement, underground fighters, victims of Nazi persecution, internationalist soldiers and peacekeepers, as well as those who defended the independence, sovereignty, and territorial integrity of Ukraine and directly participated in the anti-terrorist operation, in the implementation of measures to ensure national security and defence, repelling and deterring the armed aggression of the Russian Federation or another state recognized by the Verkhovna Rada of Ukraine as an aggressor, participants of the Revolution of Dignity, and fighters for the independence of Ukraine in the 20th century.³⁹

A grave is a place in a cemetery, crematorium, columbarium, or another building or structure intended for the burial of the deceased, where a coffin with the body of the deceased or an urn with ashes is buried.⁴⁰ Another burial place is a cemetery, crematorium, columbarium, or another building or structure intended for the burial of the deceased.⁴¹ The current version of the Law of Ukraine “On Burial and Funeral Affairs” also provides for other types of burial places. Specifically, it includes an honorary burial site, defined as “a specially designated plot of land within or

³⁶ W. Zalewski, *Komentarze*, op. cit., p. 430.

³⁷ L. Wójtowicz, *Odkopali zwłoki i odcięli głowę*, *Dziennik Wschodni*, <http://www.dziennikwschodni.pl/zamosc/odkopali-zwloki-i-odcieli-glowe-ruszyl-proces-slawomira-j,n,1000122726.html>, (accessed 10.06.2023).

³⁸ Criminal Code of Ukraine Act of 5 April 2001, op. cit.

³⁹ *Ibidem*.

⁴⁰ *Pro pokhovannya ta pokhoronnu spravu*, op. cit.

⁴¹ *Ibidem*.

outside the cemetery intended for arranging honorary burials,”⁴² and The National Military Memorial Cemetery is a “spatially significant state-level site located on a specially designated plot of land, which includes a military cemetery, a museum complex, a ritual building, and other necessary structures for the organization of honorary burials of those who died (or passed away) defending the independence, sovereignty, and territorial integrity of Ukraine, fulfilling their official duties, and oath of allegiance to the Ukrainian people.”⁴³ The body (remains, ashes) of the deceased refers to a lifeless human body (corpse), which may be whole or dismembered, or its separate parts. This body is considered the object of a crime regardless of its condition—whether it is “freshly” embalmed, or mummified, and irrespective of the cause of death—natural, violent, or due to natural factors. The body of a deceased also includes the body of a stillborn infant and a body obtained as a result of an abortion.

An urn with the ashes of the deceased is a container designed to preserve the ashes of the deceased after cremation or ashes collected from an ancient burial site.

Items found on (in) the grave or another burial place, as well as on the body (remains, ashes) of the deceased, include any objects present in or on the grave, as well as in another burial place (e.g., a cross, stele, stone or other structure, or mound). These also include clothing, personal items, and jewellery, orders and medals, coffin, wreaths, lights, vases, etc. The Law of Ukraine “On Burial and Funeral Affairs” also identifies ritual objects as items that are attributes of burial and the arrangement of a grave (columbarium niche).⁴⁴

The object of the crime under § 1 of Article 262 of the Polish Criminal Code is the body of a deceased person, human ashes, or the resting place of the deceased. In § 2 of the Regulation by the Minister of Health of the Republic of Poland dated 7 December 2001, “On the Handling of Human Corpses and Remains,”⁴⁵ it is defined that corpses are the bodies of deceased persons and stillborn children, regardless of the gestational age.

Human ashes are typically the substance that remains after the cremation of a person. Researcher A. Michalska-Warias believes that a broad understanding of the terms “corpse” and “human ashes” is justified, as this implies the need

⁴² *Ibidem*.

⁴³ *Ibidem*.

⁴⁴ *Ibidem*.

⁴⁵ Regulation of the Minister of Health of 7 December 2001 on the handling of human remains, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20011531783/O/D20011783.pdf>, (accessed 10.06.2023).

to also recognize “parts of the human body (for example, an unearthed skull or fragments of the skeletal system) as corpses, and in the case of human ashes, it is the ash that results from burning (but not only from cremation, but also, for example, in a fire). Such broader interpretation results from the different purposes of using these terms in legislative acts (the difference between corpses and human remains in the regulation is necessary due to other technical requirements for handling them).”⁴⁶

Robbery, referred to in § 2 of Article 262 of the Polish Criminal Code, is the theft of a deceased person’s body, grave, or resting place for the purpose of appropriation. Polish doctrine states that robbing a body includes not only the appropriation of items that were on the deceased (such as jewellery, expensive watches, etc.), but also those that were with the deceased (for example, mementos left by relatives). It can also include elements permanently attached to the body (such as gold dental crowns, prosthetics).⁴⁷ Grave robbery or the theft from another resting place of the deceased should be understood as the theft of statues installed on the grave, metal elements, or tombstones.⁴⁸ Since the legislator clearly stated that robbery can pertain to a “grave or resting place of the deceased,” Polish authors argue that the object of the crime, where the robbery is committed, can only be a grave or resting place that actually contains the body (or ashes); if the grave or resting place is empty, its robbery constitutes the crime outlined in Article 278 of the Polish Criminal Code.⁴⁹

Conclusions

The issue of desecration of graves and other burial sites has always resonated strongly in society, as these actions violate not only legal order but also the moral foundations that ensure respect for the deceased. In the context of comparing the criminal laws of Ukraine and Poland, one can identify both common and distinct features in the approaches to defining and punishing this crime.

In the current Criminal Code of Ukraine, desecration of a grave is regulated by Article 297, which covers several aspects of this crime, from desecration of a grave to the illegal appropriation of items located at the burial site. Article 297 of the

⁴⁶ W. Zalewski, *Komentarze*, op. cit., p. 426.

⁴⁷ Ibidem.

⁴⁸ Z. Ćwiąkałski, *Komentarze...*, op. cit., p. 1425.

⁴⁹ W. Zalewski, *Komentarze*, op. cit., p. 427.

Criminal Code of Ukraine includes four parts, each describing different forms of the crime and aggravating circumstances, such as repeated offences, prior conspiracy by a group of persons, or actions that caused severe consequences.

In Polish criminal law, a similar crime is provided for in Article 262 of the Polish Criminal Code. Polish law also distinguishes between desecration of a corpse, human ashes, or a resting place of the deceased (paragraph 1) and robbery of a corpse, grave, or other resting place of the deceased (paragraph 2). It is important to note that in Polish law, this crime belongs to the group of offences against public order, emphasizing its social danger.

In the Ukrainian scientific community, there are several approaches to defining the immediate object of the criminal offence provided for in Article 297 of the Criminal Code of Ukraine. Some researchers believe that this object includes social relations that ensure the moral foundations of the memory of the deceased. Other scholars emphasize the set of social relations that support the moral principles of society in the preservation of heritage and the maintenance of intergenerational connections. The most common understanding of the object of the crime is social relations that ensure the observance of funeral customs and traditions, the honour of the deceased, their memory, and the peace of their bodies and burial sites.

In Polish scientific thought, there are also different views on the object of protection in the context of Article 262 of the Polish Criminal Code. Some researchers believe that the object is the honour and respect for the dead and their resting places; others emphasize the importance of respect for human remains and the resting places of the deceased. It is important to note that Polish scholars also highlight the need for respect for corpses and resting places, which stems from human dignity, although this does not mean that human dignity is the immediate object of protection.

The objective side of the act provided for in Article 297 of the Criminal Code of Ukraine includes desecration of a grave, another burial place, the body (remains, ashes) of the deceased, or an urn with the ashes of the deceased, as well as the illegal appropriation of the body (remains, ashes) of the deceased, an urn with the ashes of the deceased, or items located on (in) the grave or another burial place. The crime is considered completed when the actions sufficiently indicate the presence of objective and subjective signs of desecration or appropriation.

In Poland, the objective aspect of the act provided for in paragraph 1 of Article 262 of the Polish Criminal Code involves the desecration of a corpse, human ashes, or the resting place of the deceased. Polish law includes various forms of

desecration, such as defilement, damage, mistreatment of the corpse or its parts, and other actions that show disrespect towards the deceased.

A comparative analysis of the criminal laws of Ukraine and Poland regarding the desecration of graves indicates similarities in the approaches to defining this crime and its objects. Both countries recognize the importance of protecting social relations that ensure respect for the deceased and their resting places. At the same time, there are some differences in the emphasis of scientific positions and specific legislative formulations.

In light of this, improving Ukrainian criminal law could involve considering Poland's experience in more clearly defining the objects of the crime and the objective aspect of the act. It is also worth considering the possibility of expanding scientific research in this area to achieve greater consistency and effectiveness in law enforcement. On the other hand, Article 297 of the Criminal Code of Ukraine includes a much broader list of objects that are the subject of this criminal act, which could be useful for the Polish legislator.

Overall, the analysis showed quite close positions of both Ukrainian and Polish legal scholars, which gives hope for the rapid adaptation of Ukrainian criminal law to the legislation of EU countries.

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Summary

Desecration of graves and burial sites is a significant societal issue, affecting public order and morality. In Ukraine, this is covered under Article 297 of the Criminal Code, which includes various offences and aggravating circumstances like repeat offences and severe consequences. In Poland, similar crimes are addressed in Article 262 of the Criminal Code, distinguishing between desecration and robbery of a corpse or grave. Both countries recognize the importance of protecting societal respect for the deceased. Ukrainian legislation could benefit from Poland's clear definitions, while Poland might consider Ukraine's broader object list. The analysis reveals similarities, suggesting potential alignment with EU laws.