Lesław Rosicki
ORCID: 0009-0003-7060-3050

DOI 10.14746/ssp.2025.2.6

Remigiusz Rosicki
Adam Mickiewicz University, Poznań
Interdisciplinary Behavioral Science Lab for Security (IBS-Lab)
ORCID: 0000-0002-1187-5895

Penal Policy as Exemplified by the Criminalisation of the Offences of Espionage-Related Subversion and Sabotage in Poland

Abstract: The article explores criminal policy as a component of the broader concept of legal policy, with particular attention to the criminalisation of new manifestations and forms of espionage introduced into the Polish criminal law in 2023 (Article 130 §§ 7–8 of the Criminal Code). The primary aim of the study is to trace the diachronic processes that have led from the post-war penalisation of subversion and sabotage to today's criminalisation of the so-called "espionage-related subversion and sabotage." To specify the research scope, the analysis addresses two questions: (1) What are the arguments for the criminalisation of espionage-related subversion and sabotage in Poland in 2023?, (2) How can the correctness of the criminalisation of espionage-related subversion and sabotage in Poland in 2023 be assessed? The temporal framework spans 1944–2023, beginning with the Decree of the Polish Committee of National Liberation on the Protection of the State of 30 October 1944 and culminating in the amendment to the Criminal Code of 17 August 2023. Methodologically, the study relies mainly on an institutional-legal approach that combines: (a) dogmatic analysis (a descriptive examination of statutory provisions and their application) and (b) historical-comparative analysis (reference to earlier regulations and their evolution). Applying these methods makes it possible to evaluate both the substance of the new offences and their effectiveness and consistency with the goals of state protection and the prevention of espionage-related crime.

Key words: legal policy, criminal policy, state security, espionage, subversion, sabotage

Introduction

The research field of the analysis is related to a particular type of legal policy, namely criminal policy, within which penal policy is one of the main elements. The ancillary role of the law in relation to a political community was emphasised already in antiquity – by Aristotle in his works – and that was the way that role was viewed over the subsequent centuries. It is noteworthy that Aristotle understood politics itself not only as a technique of lawmaking, but also as general knowledge of human action and practical wisdom (Greek *Φρόνησις*, *phronesis*), serving to shape citizens capable of living in a community in a manner conducive to its development (Aristotle, 2000; Voegelin, 2011, pp. 53–85; Aristotle, 2019). Following this tradition, L. Petrażycki developed the idea of legal policy as a scientific instrument for predicting the effects of normative solutions, and as a tool for influencing the attitudes of individuals in the spirit of social goals. In his opinion, legislation should not only anticipate the effects of regulations, but also model the behaviour of citizens in the direction desired by the community (Petrażycki, 1959; Petrażycki, 1968). In the context of these issues, the penal law itself performs certain functions, which include: (1) protection, (2) repression, (3) guarantee, and (4) prevention (for more see Pohl, 2019, pp. 30–43; Bojarski, 2020, pp. 30–34; Mozgawa, 2020, pp. 28–31; Kulesza, 2023, pp. 37–46). There is no doubt that the law is there to, first and foremost, protect the political community from threats that the community finds relevant. Furthermore, the law is an instrument for the realisation of social justice through retribution for the offence committed. The penal law is also intended to act as a deterrent in at least two ways – firstly, by illustrating to the public what power is available to the authorities, and secondly, by influencing the attitudes of potential offenders. Some authors even consider the preventive function to be the dominant motive behind the institution of penal and police law, while pointing out that this can lead to arbitrary interference with individual rights (cf. Garland, 2001; Ashworth, Zedner, 2014). Bearing this in mind, in the text penal policy is understood as: (1) laying down the penal law, (2) applying the penal law, (3) assessing the effects of the laid-down and applied penal law, (4) assessing the effectiveness of the laid-down and applied penal law.

While the research field is related to penal policy as one of the elements of legal policy, the material scope of the analysis focuses on the criminalisation of selected new types and forms of espionage introduced

by the Polish legislator in 2023. Therefore, Article 130 §7 of the Polish Criminal Code will be the subject of a broader analysis thus performed. In this provision, the legislator has criminalised the offence of subversion, sabotage, or terrorism, while in Article 130 § 8 – making preparations for this offence. However, it should be noted that all of the listed forms of acts, i.e. subversion, sabotage, or a terrorist offence, performed for a foreign intelligence service and against Poland, were previously criminalised. Indeed, any task – in principle in any form – carried out in favour of a foreign intelligence service against the state of Poland fulfilled the indicia of the basic type of the offence of espionage under the previous legislation.

The main objective of the analysis is to present the diachronic historical processes of the criminalisation of subversion and sabotage in Poland up to the criminalisation of espionage-related subversion and sabotage under Article 130 §7 of the Criminal Code in 2023. In order to elaborate the objective scope of the research problem, the following questions have been presented in the text: (1) What are the arguments for the criminalisation of espionage-related subversion and sabotage in Poland in 2023?, (2) How can the correctness of the criminalisation of espionage-related subversion and sabotage in Poland in 2023 be assessed?

The analysis methodology in the text is mainly based on an institutional-legal approach, within which the dogmatic and historical-comparative interpretations play the most important role. The dogmatic approach justifies citing, in a descriptive form, the legal solutions as established by the legislator, along with the practices of their application. The particular prohibited acts and their selected elements will be analysed. The cited scholarly discussion, conducted by means of various interpretations, is supplemented with the author’s own opinions and conclusions. In order to present a broader context of the criminalisation as well as the diachronic logic of legal processes linked to the categories of subversion and sabotage, the analysis uses a historical-comparative approach, which includes references to earlier legal solutions (Ankersmit, 1983; Dubber, 1998, pp. 159–162; Zieliński, 1998, pp. 1–20; Samuel, 2014, pp. 57–60; Pohl, 2019, pp. 77–84). Thus, the temporal scope of the analysis covers the period from 1944 to 2023, which is connected with the entry into force of the Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the State, and the changes in the penal law concerning, *inter alia*, Article 130 of the Criminal Code pursuant to the Act of 17 August 2023 on the amendment of the Act – the Criminal Code and

some other acts (Journal of Laws 1944, no. 10, item 50; Journal of Laws 2023, item 1834; Journal of Laws 1997, no. 88, item 553, as amended). Insofar as this is necessary, some previous solutions will also be taken into account, if only because some of them were in force after the Second World War.

These assumptions are reflected in the structure of the text, the main elements of which are: (1) the conceptual aspects of subversion and sabotage, (2) the historical-legal aspects of the offence of subversion and sabotage, (3) the *de lege lata* and *de lege ferenda* aspects of espionage-related subversion and sabotage. A clarification of the meanings of the terms ‘subversion’ and ‘sabotage,’ an analysis of previous offences defined by these terms will enable a comprehensive evaluation of the new solutions that criminalise the so-called espionage-related subversion and sabotage.

Conceptual aspects of subversion and sabotage

Intelligence and espionage activities are often considered together with other forms of disruptive activity, such as sabotage or subversion. This approach is borne out by one of the well-known works on the subject of espionage – *Espionage, Terrorism and Subversion in an Industrial Society: An Examination and Philosophy of Defence for Management* by P. Hamilton (Hamilton, 1979). Theses of a similar sense can be found, for example, in a study addressed to German offices, excluding the German army, issued in 1944, which pointed out that those carrying out their duties concerned with preventing espionage counteract sabotage at the same time, as the former activity serves to spread the latter, e.g. by means of reconnaissance of infrastructure which can be called essential to security (*Guidelines...,* 1944). The problem of combating sabotage was also highlighted in one of the Königsberg railway instructions of 1942, in which this type of activity was directly linked to the effect of effective enemy intelligence. Railway and industrial workers were warned that even seemingly trivial conversations or the sharing of information with unauthorised persons (e.g. forced labourers, prisoners of war) could be used to “prepare the ground” for sabotage activities. One way of preventing acts of sabotage was to eliminate breaches of secrecy committed by, *inter alia*, photographing railway facilities, disseminating information about the movements of military transports, or

talking to third parties. It was particularly important to build up the right social attitudes, e.g. dutifulness and vigilance (*The Königsberg Railway Directorate instruction...,* 1942).

In the first place, it is worth drawing attention to the term “sabotage,” the origin of which is described in at least two ways. One etymological interpretation points to a derivation from the French word ‘*sabot’* meaning a wooden shoe popular with early workers. According to this version, workers were supposed to throw their *sabots* into machines during strikes, resulting in them being damaged or stopped – symbolically showing their opposition to poor working conditions. This is the version given by, *inter alia*, L. Faragó in *War of Wits*, where he also notes the evolution of the term’s meaning from a form of protest to an act of deliberate destruction of another’s property for a specific purpose (Faragó, 1961, pp. 225–228). Similar interpretations can be found in many lexicons and other types of studies (*Zasady, organizacje…*, 1965, pp. 3–5). However, it must be added that although the link between *sabots* and protest actions is often cited, some scholars point out that originally workers would use their clogs not so much to deliberately destroy machines, but rather to stop their operation in emergency situations. Another interpretation suggests that the term “sabotage” derives from the distinctive sound made by *sabots* while walking, which was intended to symbolise workers’ resistance and mass opposition during strikes. In É. Littré’s dictionary of 1873, the word meant, *inter alia*, “making a noise” or “doing careless, hurried work.” Earlier dictionaries, such as the one by G.A.J. Hécart of 1834, equated *sabotage* with the term *abloquer*, meaning to block (D’Hautel, 1808, p. 325; Hécart, 1834, p. 13; Littré, 1873, p. 1790).

The meaning of sabotage took on a new dimension at the turn of the 20th century, in the heyday of socialist and anarchist movements. One of the key figures developing the concept of sabotage as a tool of class struggle was Émile Pouget, a French anarchist and syndicalist. In 1898, he published a text entitled *Le Sabotage*, which was later released in an expanded version. According to Pouget, sabotage was an essential complement to strikes, a form of labour pressure aimed at reducing manufacturing efficiency, limiting company profits and enforcing workers’ due rights. Such actions – in his opinion – could be both individual and collective, and did not have to lead to the physical destruction of machinery. Rather, it was important to immobilise them, e.g. to prevent strike-breakers from working. In this sense, Pouget did

not see sabotage as a form of violence, but as a defensive action, intended to bring real benefits to the working class, and thus morally justified (Pouget, 1898, pp. 28–31; Pouget, 1911, pp. 3–66; Pouget, 1986). Sabotage in the context of the work environment has also been addressed by P. Hamilton, who distinguishes between its active and passive forms. The first one is about malicious destruction of the employer’s property by a disgruntled employee. The other one is a labour protest, e.g. in the form of a strike, slowdowns, work-to-rule, and deliberate disruptions of production of a subversive nature. Insofar as such disputes are not carried out for the protection of workers’ rights, but serve political, often non-constructive purposes, e.g. seizing power, acting against the interests of the state, obstructing the conduct of war, then such actions can be considered passive sabotage (Hamilton, 1979, pp. 32–40; Hamilton, 2023, pp. 30–38).

Interestingly enough, one study authored by the Training Centre of the 2nd Directorate of the Central Staff of the Polish Armed Forces[1] characterised sabotage as covert, short-term or long-term actions carried out against the enemy’s economy in order to weaken their economic, political and military potential. Such actions are usually undertaken by people employed at specific business facilities – either externally inspired or spontaneously – regardless of their affiliation with the resistance movement. The purpose of sabotage is: to weaken the enemy’s war and economic potential, destabilise their structures, provide indirect assistance to one’s own operational forces and resistance movement. Sabotage can be divided into different types, *inter alia*, with regard to: (1) the mode of action, (2) the effects of the action, and (3) the sector or sphere of influence (*Zasady, organizacje…*, 1965, pp. 5–12).

As regards the mode of action, sabotage can be divided into active sabotage (consisting of direct actions aimed at damaging or destroying equipment or facilities) and passive sabotage (consisting of non-violent resistance to the authorities and deliberately performing work in a slow or improper manner). As regards its effects, sabotage can be divided into repeated actions, stretched over time and space, aimed at systematically weakening enemy forces; and intensive actions leading to complete destabilisation of specific economic sectors. As regards the sectors of influence, sabotage can be divided into, by way of illustration, industrial,

[1] The 2nd Directorate the Central Staff of the Polish Armed Forces - a military intelligence institution of the Polish People’s Republic, active between 1951 and 1990.

communications (transport and communication) and military (*Zasady, organizacje…*, 1965, pp. 5–12; Hamilton, 1979, pp. 32–40; Hamilton, 2023, pp. 30–38).

The other category under analysis is “subversion,” which has been used interchangeably with the category of sabotage by some researchers. This has been due to, *inter alia*, the fact that the characteristics of the two analytical categories are not clearly defined. The unclear boundaries between the two can be seen in the analyses performed by the already cited L. Faragó (Faragó, 1961). In the introduction to the study authored by the Training Centre of the 2nd Directorate of the Central Staff of the Polish Armed Forces, the editors even state that the post-war literature on sabotage does not clearly distinguish between sabotage and subversion, the two terms being even synonymous, and hence the frequent use of the term “sabotage-subversive activities” (*Zasady, organizacje...,* 1965, p. 4). At the same time, another study by the Internal Military Service[2] described subversion as one of the forms of the so-called active sabotage, i.e. the destruction, with anti-state (counter-revolutionary) intent, of equipment or any objects of economic importance (*Specificity of investigations into espionage*…, 1969, pp. 4–10). This approach directly referred to the statutory understanding of subversion, while adopting a higher level of generality compared to the indicia contained in Article 3 of the Decree of 13 June 1946 on particularly dangerous offences during the period of national reconstruction (Article 3 (1–3), Journal of Laws 1946, no. 30, item 192).

One way to distinguish between subversion and sabotage is to lend the former term an external context and the latter – an internal one. Therefore, in the already mentioned 1969 study by the Internal Military Service, the authors themselves point out that in a military context, acts of subversion posed a negligible threat; nevertheless, in the cases investigated by the services in the recent years, numerous cases of sabotage-subversive activity were found. These acts included damaging combat equipment (e.g. aircraft, radios, cars), disrupting bearing devices, cutting cables, pouring foreign objects into fuel tanks, throwing metal into aircraft jets, puncturing tanks and starting fires. However, the authors point out that these cases should be scrupulously verified so as to distinguish them from other

[2] Internal Military Service - a special military service, operating between 1957 and 1990, which was an institution of military counter-intelligence and service dealing with the security of the Armed Forces of the Polish People’s Republic, and with the maintenance of military discipline.

causes, e.g. negligence, recklessness (*Specificity of investigations into espionage…*, 1969, p. 40). In a diploma thesis entitled “A subversive action threat to the territory of Poland,” defended at the ministry-affiliated Academy of Internal Affairs in 1990, the author identifies the threat of subversive acts with the functions and objectives of special-purpose troops of the NATO countries, which can be used during an armed conflict with the Warsaw Pact countries, including Poland. It should be noted, however, that this author’s thesis is based primarily on the analysis contained in a study entitled “The US Special Purpose Troops,” prepared by the Staff of the Internal Security Corps[3] in 1965 (*United States Special Purpose Forces…*, 1965; Grabowski, 1990).

The study prepared by the Staff of the Internal Security Corps considered the conduct of offensive operations by the special purpose troops in the enemy’s rear to be of a subversive nature. Above all, these include the organisation of underground armed units, the so-called guerrillas, their training and the direction of their activities. The destruction of the enemy military infrastructure – especially depots, warehouses and means of delivery of conventional and unconventional weapons that are of strategic importance – is also an important element in these activities. Besides, acts of subversion may target industrial plants, administrative offices and communication networks, with the aim of disorganising the enemy’s logistical and economic facilities. Command posts, communication nodes as well as radio and radiolocation equipment, the destruction of which disrupts the command and information flow, are also important targets for attacks. In addition to activities targeting civilian and military infrastructure, various types of psychological and propaganda activities should be included (*United States Special Purpose Forces…*, 1965; Grabowski, 1990, pp. 5–23).

An interesting study – in terms of its broad coverage of the problematics concerned with intelligence and counter-intelligence activities – is the 1924 training material authored by the Polish Ministry of Military Affairs entitled “Espionage and subversion” and intended for the Central Police School. This study basically identifies the problematics of subversion with the institutional, normative, procedural and personal aspects of domestic counter-intelligence activity aimed at combating: espionage, infiltration,

[3] Internal Security Corps - a special type of military formation, subordinate to the Minister of Public Security in 1945-1954, and in subsequent years to the Minister of Internal Affairs. The Corps was established by a State National Council resolution of 24 May 1945, and it was disbanded in 1965.

information leakage, foreign propaganda, foreign intelligence activities, and activities that threaten the security of vital facilities (Grudziński, 1924). A later ministerial study, based on, *inter alia*, the experience of the inter-war, but also post-war period in Poland, emphasises the significance of a particular type of subversion, i.e. subversive-political activity finding its support in formal and non-formal organisations operating within or outside the country and supporting the interests of foreign states. For example, adopting a broader perspective, not only of the inter-war period in Poland, J. Hajdukiewicz analysed the problem of anti-Polish activities undertaken by German organisations (Hajdukiewicz, 1972).

In sum, it can be assumed that, in a military context, subversion consists primarily in the physical destruction of selected infrastructure facilities of the enemy, with the aim of disrupting their operations and undermining their defence and logistical capabilities. The most commonly attacked targets include: viaducts, bridges, road and rail junctions, airport and seaport elements, radio and television stations, communications hubs, fuel and water pipelines and pumping stations, hydrotechnical facilities, water reservoir culverts, as well as energy transmission and distribution networks. Conventional means of destruction – including a whole range of explosives – as well as unconventional ones are used to carry out such tasks. Subversion is therefore a form of deliberate destructive action of strategic importance within military and intelligence operations (*United States Special Purpose Forces…*, 1965; Grabowski, 1990, pp. 22–23).

Ideological subversion, which is either a strategic or tactical activity, must be distinguished from military sabotage and subversion. In the first case, it is a long-term action aimed at the whole society; in the second case, it is short-termed and aimed at smaller social groups or narrower fields of influence (cf. Linebarger, 1948, pp. 37–47; Kossecki, 1975, pp. 406–418; Brzeski, 2014, p. 107). The strategic approach appears to embrace Y. Bezmenov’s concept of ideological subversion, whose aim is to stage a systemic (ideological) *coup* in a hostile state. In his view, ideological subversion is an organised influence exerted on the behaviour of individuals and communities with the aim of bringing about the collapse or takeover of the state, the starting point of which is to split and divide society (demoralisation), destroy the value system and sow conflicts among social groups (destabilisation), and ultimately lead to the delegitimisation and collapse of power (crisis) (Bezmenov, 1984).

Table 1

Comparison of categories: ideological subversion, subversion and sabotage

Category	Ideological subversion	Subversion	Sabotage
Objective	Destabilisation of the socio-political system from within	Diversion of enemy’s attention	Disruption of the use of resources or their destruction
Nature	Ideological-psychological	Military – strategic or tactical	Physical, material or cybernetic
Overtness and covertness of operations	Covert activity	Partially covert or simulated activity	Covert activity
Duration	Long-term	Short-term	Short-term and targeted action
Forms of action	Propaganda, disinformation and misinformation	Simulated attacks. False information on military logistics	Destruction of infrastructure or disruption of its operation
Examples	Destruction of the value system and social consensus	Confirming the opponent’s mistaken belief about the location of the attack	Destruction of or damage to civil or military infrastructure (e.g. factories, warehouses and transport)

Source: Own study.

The categories of ideological subversion, subversion and sabotage differ in both purpose, nature and means of implementation (see Table 1). The above tabular presentation of the meaning of each term does not constitute a proposal for their definitions, including but not limited to stipulative or operational definitions. The compilation of these only serves a reporting function in relation to their descriptions found in the existing subject matter literature.

Ideological subversion is a covert action carried out over the long term to destabilise the system from within through ideological and psychological influence. It uses, *inter alia*, propaganda, infiltration, disinformation and misinformation, aiming to shatter the public morale and weaken the state structures. Subversion is of a military nature both strategically and tactically, with the primary aim of diverting the enemy’s attention from the actual direction of operations. Operations of this type are most often short-term and partially overt – using false attacks or sham manoeuvres. Sabotage is an action aimed at disrupting or physically destroying various types of resources, most often in a covert manner, leading to clear

consequences, which include, by way of illustration, the destruction of bridges, industrial installations or IT systems. These three strategies share the common goal of weakening the enemy, but each uses different means, operating in a different social, tactical and material dimension.

Historical and legal aspects of the offence of subversion and sabotage

The offence of sabotage and subversion, during the period of the still ongoing Second World War, was criminalised by the Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the State. However, one must bear in mind the temporality of this legal act, which is already expressed in the content of the indicia of the offence of sabotage in Article 5, which reads that whoever commits an act of sabotage during wartime is liable. The episodic nature of the law was also pointed out by the Supreme Military Court in its decision of 30 January 1946 (see Lityński, 1960, pp. 34–38). Compared to subsequent amendments introduced in the period 1945–1946, the content of Article 5 is penally broader, as it includes the destruction of objects in addition to damaging or destroying devices (Article 5, Journal of Laws 1944, no. 10, item 50). W. Bogucki additionally points out that the provision of Article 5 has a broader application due to the fact that it also provided for liability for the manufacture of unfit objects of common, and not only military use (Bogucki, 1946, p. 29). Thus, among the acts of sabotage reckoned were: (a) damaging or destroying objects or equipment serving the general use or defence of the Polish or Allied State, (b) preventing or obstructing the proper operation of state or local government offices, factories or institutions of public utility, (c) manufacturing completely or substantially unfit objects of general or military use, shall be punishable by imprisonment or death (Article 5, letters a–c, Journal of Laws 1944, no. 10, item 50).

In his commentary, M. Lityński stated that the three-element form of the offence of sabotage in the Polish penal regulations was inspired by the Soviet legislation (Lityński, 1960, pp. 34–38). This does not however mean that there were no forms of criminalisation of sabotage whatsoever in the Polish pre-war legislation. An example of this can be found in Article 105 of the 1932 Criminal Code, which criminalises the supply to the army of weapons or other war equipment unfit for use. In addition, it is considered a criminal offence to fail to perform a contracted supply to

the military or to perform it contrary to the contract in time of war or in a period marked by a threat of war. Next to these direct actions, Article 105 criminalises the causing of the delivery of unserviceable items or the failure to fulfil contracts by suppliers, intermediaries, agents, or officials representing suppliers or intermediaries. Each one of the aforementioned acts could have been committed either intentionally, with direct or oblique intent, or unintentionally by way of recklessness or negligence. Thus, the subject of the offence may be both the one who has entered into a relevant contract with the military, and the one who participates in the execution of this contract in any way as a result of formal or actual relations with the supplier (Article 105 § 1–4, Journal of Laws 1932, no. 60, item 571; Makowski, 1933, pp. 304–306; Peiper, 1933, pp. 318–322). Significantly, according to the commentary by W. Makowski, the content of Article 105 imposes on the supplier not only a simple private-legal obligation to perform the delivery in accordance with the contract, but also a special obligation to perform it without harming the state interest, i.e. without endangering the state. Thus, the basis for criminality here is not so much the incompatibility of the conduct with the content of the contract as the harm to the interest of state defence (Makowski, 1933, p. 304; Makowski, 1937, pp. 356–358).

Other provisions under the 1932 Criminal Code that can be linked to sabotage are two articles in Chapter XXXIV – *Offences against public utilities* – Articles 223 and 224. Both concerned the criminalisation of obstructing or preventing the use of certain facilities or infrastructure. In the first case, the activities were directed at the use of public utility facilities intended for public transport or public communication. Thus, the category of transport facilities, according to W. Makowski, includes: roads, streets, canals, bridges, railway tracks, tracks of other mechanical transport, carts, water and air vessels, signal signs, harbours, technical facilities. And the category of means of communication included: technical communication devices (Makowski, 1933, p. 503). In the second case, the activities were directed at the proper operation of hospitals, and public utilities supplying water, light, heat or energy, or those serving the sewage system (Articles 223 and 224, Journal of Laws 1932, no. 60, item 571; Makowski, 1933, pp. 502–504; Peiper, 1933, pp. 604–609).

However, the most important regulation from which the lawmakers in the wartime and post-war period partly drew – contrary to the commentators’ emphasis on the role of the Soviet legislation – was the Decree of the President of the Polish Republic of 22 November 1938 on the protection

of certain interests of the State. In Article 1 of this Decree, the legislator criminalised the offender’s actions of damaging or rendering inoperable objects or equipment serving the purposes of the military defence of the State or the Armed Forces. Furthermore, Article 2 criminalised obstructing or preventing the proper operation of establishments producing weaponry or other military equipment. The good protected under these provisions were the defence capabilities of the state, but interestingly enough the entire title read: *Offences against the defence capabilities of the state and the national economy*. Hence, the following were also criminalised: (1) public dissemination of false information or the use of other deceptive means to undermine confidence in the Polish currency or public credit, (2) the supply abroad of counterfeit goods or falsely marked goods resulting in damage to the interests of Polish export. It can therefore be assumed that additionally the legislator criminalised actions detrimental to Poland’s economic interests by means of disinformation and actions sabotaging proper trade, harmful through the wrong perception of Poland as a trade partner (see Articles 1–4, Journal of Laws 1938, no. 91, item 623).

The 1938 Decree, Chapter III – “Offences against public order” – criminalised a number of acts that ought to be identified with the traditional understanding of sabotage, i.e. one linked to the labour context, just like, *inter alia*, in Pouget’s view. And so the following were criminalised: (1) public incitement to the general abandonment of work by workers (general strike), or to the general closure of establishments by employers, or to the stoppage of food delivery to towns (Art. 8 §1), (2) storing or transporting writings, prints or images intended for dissemination, inciting to the acts referred to in Article 8 §1 (Article 8 §2), (3) participating in an association aimed at the collective closure of work establishments (Article 9) (Articles 8–9, Journal of Laws 1938, no. 91, item 623). A form of punishable disinformation, consisting in public dissemination of false information likely to severely harm the interests of the State, or to weaken the defensive spirit of the society, or to diminish the dignity of the chief authorities of the State, was also placed within this group of offences (Art. 11, Journal of Laws 1938, no. 91, item 623). It is noteworthy that certain forms of labour and trade union sabotage would later be criminalised by the Martial Law Decree of 12 December 1981 (see Chapter VI, “Penal law provisions,” Journal of Laws 1981, no. 29, item 154).

The legal act replacing the Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the State, i.e. the Decree of 16 November 1945 on particularly dangerous offences in

the period of national reconstruction, should also be regarded as an episodic criminal law regulation. The counterpart of sabotage under wartime conditions, as regulated in the previous legislation, was Article 2 in the new legislation, which also adopted the three-element division of acts of sabotage. Among the acts of sabotage were therefore reckoned: (1) destroying or rendering unusable establishments, public utility and public communication facilities, or facilities serving the defence of the Polish or Allied State, (2) preventing or obstructing proper operation of establishments or facilities (referred to in item 1), (3) producing completely or substantially unusable objects of military use (Art. 2 (1–3), Journal of Laws 1945, no. 53, item 300).

The next legislative step was the adoption of a legal act referred to as the so-called “Little Criminal Code,” i.e. the Decree of 13 June 1946 on particularly dangerous offences in the period of national reconstruction. The first two types of sabotage were copied from the 1945 Decree into Article 3 of this act, but the third type was modified. In the new version, the act of sabotage connected with military supplies here concerned the manufacture – contrary to the terms of the agreed supply to the army – of objects that were completely or substantially unusable (Article 3 (1–3), Journal of Laws 1946, no. 30, item 192). And so in contrast to the previous legislation, the legislator returned to the category of “agreed” delivery referred to in the Criminal Code of 1932. At the same time, it is noteworthy that while in the 1945 Decree the legislator used the category of “objects of military use,” in the 1946 Decree it was only “objects” manufactured against the terms of the agreed supply to the army.

It is also worth noting that the regulations of the so-called “Little Criminal Code” of 1946 and the Criminal Code of 1932 co-existed until the end of 1969. This means that the provisions criminalising acts of sabotage, in the former one, overlapped the already cited provisions of Articles 223 and 224 in the 1932 Code.

In a 1947 commentary, M. Siewierski wrote that sabotage is a broad concept of action, usually undertaken in connection with political motives, and aimed at paralysing the functions of public life, especially those of the authorities, the military and the most essential public facilities. In his view, the concept of sabotage in the penal law system was back then new and not yet crystallised, hence the legislative procedure of naming the offence as acts of sabotage and at the same time making it more concrete by specifying what these acts were to consist in (Siewierski, 1947, pp. 29–32). At this point, it is worth noting that due to the earlier citing

of the Polish penal solutions from the 1930s, as well as analysing them synthetically, one should be somewhat sceptical about the theses of this kind. While, of course, referring to certain actions as acts of sabotage actually occurs in the decrees issued between 1944 and 1946, the very idea of this type of offence existed earlier and was related to the protection of such goods as public safety or order or state security, as well as external interests of the state. The very Chapter XXXIV in the 1932 Criminal Code – where the protected objects were public utilities themselves (see Articles 223–224, Journal of Laws 1932, no. 60, item 571) – is not irrelevant either. It can therefore be assumed that the very naming of the offence, which in its indicia of the *ratione materiae* has the category of sabotage, constitutes an ideological device creating a specific objective within the penal policy.

It is noteworthy that the offence of sabotage, along with such acts as the betrayal of the mother country, espionage, terrorist acts – to name but a few – was included in the category of counter-revolutionary offences on the one hand, and offences against the people’s state on the other hand. The first category mentioned – creating the ideological aspect of legally protected interests – is particularly evident in legal writing in the 1940s and 1950s, but later on is rather gradually eliminated. As I. Andrejew and S. Pławski wrote, counter-revolutionary offences are ones that are targeted directly against the political and socio-economic foundations of the state system. It is therefore evident that both typical political and economic offences are *de facto* included in one category. These authors also add that the gravity of economic offences – as offences against the people’s state – is due to the fact that the “class enemy” began to seek out and use the means of economic struggle (Andrejew, Pławski, 1953, pp. 33–55). The gravity of economic offences, in a political context, also finds its foundation in the 1952 Constitution, which indicates that: persons who commit sabotage, subversion, effect damage or other attacks on property shall be punished with all the severity of the law (see Article 77 §2, Journal of Laws 1952, no. 33, item 232). In regard to typical offences against the state, the Constitution recognises that the most serious crime, punishable with the full severity of the law, is treason against the mother country, carried out in the form of: espionage, weakening the armed forces, going over to the side of the enemy (see Article 79 §2, Journal of Laws 1952, no. 33, item 232). In both of the aforementioned cases, the legislator indicated a penal directive, which comes to be expressed in the formulation of the punishment of the aforementioned types of acts “with

all the severity of the law,” i.e. not leniently (Andrejew, Pławski, 1953, pp. 33–55).

When comparing the solution in Article 3 of the 1946 Decree and Article 77 §2 of the 1952 Constitution, it becomes clear that in the latter act, the legislator used – in addition to the categories of sabotage – some others: subversion and damage. Three categories were therefore juxtaposed side by side, which, according to M. Lityński, were introduced by the doctrine of the Soviet law pursuant to new penal regulations, including those concerning offences against the state, which came into force in 1927 (Lityński, 1960, pp. 96–110). These regulations extended the criminalisation of political offences as well as economic offences seen by the authorities as having a political nature (counter-revolutionary offences), which were placed within Article 58 of the Penal Code of the Russian Soviet Federative Socialist Republic (СУ № 80, ст. 600, 1926; СУ № 49, ст. 330, 1927; Leniart, 2009, pp. 68–85). They were then altered and exploited instrumentally to fight political opponents, the so-called enemies of the people (Russian *Враг народа*), as evocatively presented by Alexander I. Solzhenitsyn in his three-volume work entitled *The Gulag Archipelago*.

The subsequent Criminal Code, the regulations of which came into force on 1 January 1970, maintained the criminalisation of the offence of sabotage in Article 127, but changed its indicia (Article 127, Journal of Laws 1969, no. 13, item 94). It also introduced, alongside the offence of espionage, a new type of offence – betrayal against the mother land – which could take two forms: (1) activity within organisations with certain characteristics, and (2) activity for the benefit of a foreign intelligence service, which undermines the foundations of state security or defence (Articles 122 and 124, Journal of Laws 1969, no. 13, item 94; Bafia, Mioduski, Siewierski, 1977, pp. 310–318; Andrejew, 1978, pp. 97–105). Interestingly, all of these offences were categorised as offences against fundamental political and economic interests. While the offence of espionage itself was easy to link to a protected interest – the state’s political interest, unambiguously linking sabotage to only one of the two interests in this chapter was difficult. In a sense, this results from the duality of this act, and the fact that, under the new legislation, the legislator specified its subjective side while eliminating the term “sabotage” from its indicia. Hence, commenting on this provision, K. Mioduski writes that the offence of sabotage may harm the political or economic interests of the state, but also both of these interests simultaneously (Bafia, Mioduski, Siewierski, 1977, p. 323). J. Muszyński explicitly calls this offence “eco-

nomic sabotage,” but also emphasises that its potential consequences go beyond the sphere of economic relations and may threaten political relations in the state (Muszyński, 1972, p. 66).

Under the 1969 Criminal Code, the offence of sabotage could be committed by a perpetrator who, with the aim of undermining the authorities, causes disorder, sentiment of popular discontent or serious disruption to the functioning of the national economy: 1) destroys, damages or renders unusable establishments, equipment or other property of great importance to the Polish People’s Republic; 2) prevents or impedes the proper functioning of establishments, equipment or institutions of great importance to the state (Article 127, Journal of Laws 1969, no. 13, item 94). In the first place, it is noteworthy that this time the legislator added the “political” purpose to the offender’s action, which previously did not constitute an element of intentionality, which resulted in the fact that the subjective side of the act could only be committed with deliberate direct intent. Thus, the lack of such directed action necessitated the use of the provisions criminalising acts against property (Frankowski, 1968, p. 984; Grabowski, Kochanowski,1970, p. 36; Muszyński, 1972, pp. 66–67; Chybiński, Gutekunst, Świda, 1975, p. 39; Górniok, Lelental, Popławski, 1975, p. 27; Andrejew, 1978, p. 100).

According to K. Mioduski, in Article 3 of the 1946 Decree, compared to the solutions contained in Article 127 of the 1969 Criminal Code, the objective side in the offence of sabotage was more narrowly defined. This resulted in the fact that, apart from the perpetrator’s negative action in the earlier solution, there also remained such types of infrastructure as mining facilities and establishments, structures and industrial equipment (Bafia, Mioduski, Siewierski, 1977, pp. 322–323). Still, it is noteworthy that under the new legislation the legislator specified the nature of the facilities and establishments that were the object of the offence of sabotage through the prepositional phrase “of great importance” to the state. This is because they were previously defined as ones characterised by their public utility, either for public transport or for the defence of the state. Thus, liability for this offence is excluded where facilities of lesser importance were the objects of criminal attacks (Górniok, Lelental, Popławski, 1975, p. 26). At the same time, it was not indicated that this provision was not abused in an instrumental way, if only against opposition activists.

While in the 1946 Decree sabotage was about establishments or equipment of public utility, or public transport, or equipment used in the defence of the State, the 1969 Criminal Code already mentioned establishments, equipment and property (Article 127(1)), and establishments, equipment

or institutions of great importance (Article 127(2)). It is therefore difficult to consider the thesis of K. Łojewski and E. Mazur as unequivocally correct, whereby the legislator defined the object of protection against the offence of sabotage more synthetically. Undoubtedly, however, the subjective side was made more specific, resulting in the criminalisation of the subjective side in the aspect of deliberate direct intent – as mentioned earlier (Łojewski, Mazur, 1969, p. 55; Grabowski, Kochanowski, 1970, p. 36).

Under the legislation in force back then, establishments were to be understood as economic or social units constituting certain wholes, the purpose of which was to consolidate and develop the socialist economy. However, this did not only apply to public utilities, but also to manufacturing, service, scientific and research, agricultural, commercial, construction, and transport establishments, warehouses, depots, etc. that participate in the realisation of social and economic objectives. Equipment was understood as the technical devices used in individual establishments, e.g. buildings, apparatus, installations, machinery, but also the electrical, water and sewage systems as well as the means of communication and transport that serve their operation. In short, it can be said that the equipment was everything that was necessary for the proper functioning of a plant or the defence of the state. In turn, property was understood as movables and immovables, whether belonging to state entities or private individuals, as long as it met the characteristic of being of “great importance” to the state, i.e. of significant social or economic value. Within sabotage *sensu stricto*, the category of “institutions” was also indicated, which meant both state and social institutions, e.g. establishments in which the state was a shareholder; cooperatives, trade unions, other social organisations of the working people, military units. In a broader sense, this category encompassed all forms of organised social groups benefiting from legal protection (Art. 127 (1–2), Journal of Laws 1969, no. 13, item 94; Chybiński, Gutekunst, Świda, 1975, p. 39; Górniok, Lelental, Popławski, 1975, p. 26; Bafia, Mioduski, Siewierski, 1977, pp. 322–325).

The *de lege lata* and *de lege ferenda* aspects of espionage-related subversion and sabotage

On 1 October 2023, changes to the scope of criminalisation of the offence of espionage came into force. They took on the following structure within Article 130 of the Criminal Code: (1) participating in the activities

or acting on behalf of a foreign intelligence service (§1); (2) providing information to a foreign intelligence service (§2); (3) preparation *sui generis*, including declaration of readiness to act for a foreign intelligence service against Poland (§3); (4) organising and managing the activities of foreign intelligence (§4); (5) participating in the activities of a foreign intelligence service or acting for the benefit of a foreign intelligence service, by a public official or a person performing flexible territorial military service (§5); (6) espionage activities without the consent of the competent authority (§6); (7) sabotage, subversion and commission of a terrorist offence as part of espionage activity (§7); (8) preparation for sabotage, subversion and commission of a terrorist offence as part of espionage activity (§8); (9) disinformation as part of espionage activity (§9) (Art. 130 §1– 9, Journal of Laws 1997, no. 88, item 553, as amended; Art. 1(3), Journal of Laws 2023, item 1834).

Due to the material scope of the text, attention will only be focused on the content of Article 130 §7 with regard to the indicia of subversion and sabotage. The new aggravated type of the offence of espionage indicated in Article 130 §7 is about a situation in which the perpetrator, taking part in the activities of a foreign intelligence service or acting on its behalf, commits subversion, sabotage or a terrorist offence. In addition to the two indicia that are analysed in the text, the legislator also included the acts that consist in committing a terrorist offence. At this point, it is worth noting the general effect that is associated with this state of affairs. Firstly, in contrast to the category of a terrorist offence, the legislator did not present a legal definition of the acts of sabotage and subversion (for more see Gołda-Sobczak, Sobczak, 2018, pp. 92–119; Rosicki, 2023b, pp. 5–25). Secondly, taking into account the above-presented analyses concerned with the conceptual aspects of subversion and sabotage, as well as the historical-legal aspects of the offence of subversion and sabotage in Poland, it must be concluded that there is no unambiguous understanding of them at the level of general lexicon-type knowledge, as well as further stages of legal linguistic interpretation. Functional interpretation is rather of no help in this respect either, as the legislator did not include a logical and elaborate justification in the explanatory memorandum to the statutory amendments concerning Article 130 of the Criminal Code. Moreover, this problem is unreflectively approached by the doctrine in the form of the legal commentaries on the indicia of sabotage and subversion (Gardocki, 2023, pp. 240–241; Zgoliński, LEX/el. 2023; Błachnio, LEX/el. 2024; Budyn-Kulik, LEX/el. 2025; Kulesza, 2025, pp. 315–318).

Some commentators do not even bother to point out that, in defining the two terms, they are committing a *definitio per idem* error. An example of the latter can be found in the content of the commentary edited by J. Kulesza: “Subversion is about sabotage or propaganda activities carried out on enemy territory with the aim of disorganising the enemy’s war efforts, as well as about insidious activities aimed at disrupting the political and economic life of a country. Sabotage is a form of fight against the enemy, or protest involving work avoidance, faulty workmanship or damage to machinery and tools, as well as covert action to prevent someone from carrying out some plan” (Kulesza, 2025, p. 317). In the cited text, the indicium of subversion is defined by another indicium – i.e. sabotage – and further on, that in turn can also mean “subversive action,” which gives rise to the risk of a circular definition. In addition, one part of the definition points to hostilities on enemy territory; another one to disruptions to the life of the state (which may happen in peacetime). Therefore, there is a shift in the essential criterion for the definition, where once the emphasis is on wartime circumstances, and at other times on political circumstances. Hence, it is ultimately unclear what constitutes the essence of subversion. The way the category of sabotage is defined is also remarkable – for instance, the very phrase “a form of fight... or protest” is so general that it can lead to an error of vague classification. Furthermore, it can be regarded as an error of equivalence if at one time the *definiens* of the term “sabotage” is presented as an act of war, and at another time as an act of protest or disobedience involving obstruction of someone’s plans.

The doctrine steers clear of the discussion of the vagueness of the indicia contained in Article 130 §7, referring – and rightly so – to the absence of a legal definition of the indicia of subversion and sabotage, and thus to the necessity of resorting to linguistic interpretation, and so primarily to the lexicon meaning of these terms (Kala, Kosmaty, 2024, pp. 35–36; Grześkowiak, Wiak, 2024, p. 1090; Budyn-Kulik, LEX/el. 2025; Kulesza, 2025, p. 317). The problem, however, is that dictionaries of the Polish language and of foreign words most often do not provide a single meaning of either of the terms, which results in the ineffectiveness of linguistic interpretation, or even in the absence of its real applicability. Adopting the whole range of understanding of the terms would have the effect of criminalising – by way of illustration – strike activity carried out as part of espionage activities as an act of sabotage. For example, selected dictionaries of foreign words or of the modern Polish language accept that:

(1) subversion can mean: (a) an armed action carried out in the rear and back of the enemy troops with the aim of hampering the enemy’s action at the front, and lowering the combat value of the enemy troops (and their morale), (b) a propaganda action carried out in the rear and back of the enemy troops with the aim of hampering the enemy’s action at the front and lowering the combat value of his troops, (c) an action aimed at disrupting the political and economic life (some also add: the social and cultural life) of a state carried out covertly, clandestinely, (d) an action aimed at weakening the military potential of a state carried out covertly, clandestinely,
(2) sabotage can mean: (a) deliberate disorganisation of work by evasion or defective execution, by damaging or destroying machinery, tools, (b) making defective products, (c) a covert, disguised action aimed at obstructing some plan, (d) failure to carry out orders, (e) various types of conspiratorial actions, (f) a synonym for the word “subversion” (as cited in Sobol, 1995, pp. 263, 986; Dunaj, 1996, pp. 216, 995).

Given the above critical approach to the terms ‘subversion’ and ‘sabotage,’ it must be assumed that – unlike in previous legislation – it is not possible to clearly define what ‘sabotage’ and ‘subversion’ are under the penal law. It seems that the initiator, when presenting such changes, should have more knowledge about what they want to criminalise and how. Given the fact that there is such a broad category of a terrorist offence in the penal law, it is unnecessary to criminalise something that is vague or undefined. Ultimately, were the initiator to consider their solution valid, they at least ought to propose a legal definition of these two categories along the lines of the legal definition of a terrorist offence. The changes made with regard to the cited indicia do not seem to fulfil the maximum specificity of the type of offence, which is required by the principle of *nullum crimen sine lege certa*, one of the guarantee principles of the penal law, which is a development of the constitutional principle of legality – *nullum crimen sine lege*.

If we accept that the insufficient specificity of the indicia – in the form of the terms ‘subversion’ and ‘sabotage’ – does not meet the basic guarantee principles of the penal law, then the action of the legislator should take one of the following forms: (1) the elimination of the indicia of sabotage and subversion in Article 130 §7, or (2) the introduction of legal definitions – along the lines of the current legal definition of a terrorist offence – for the terms ‘subversion’ and ‘sabotage.’ Currently, the legal doctrine sporadically draws attention to this rather debatable solution that com-

promises the fundamental principles of law (cf. Hoc, 2023, pp. 136–137; Rosicki, 2023a, pp. 271–276; *Comments of the Supreme Court*…, 2023).

The argumentation in support of *de lege ferenda* postulates can be reinforced by a comparative analysis with the legal solutions of other countries in the broadly understood Central Europe. It is, however, difficult to find adequate solutions corresponding to those introduced in Poland in the sphere of espionage-related sabotage and subversion (cf. Rosicki, 2023a, pp. 298–302). Some comparison may nevertheless be drawn with substantive criminal law regulations in the Czech Republic. In the case of Czech legislation, the category of sabotage appears in Section 309 of the Criminal Code, which criminalises high treason. Thus, the criminalised act includes, inter alia, sabotage committed by a Czech citizen acting in connection with a foreign power or a foreign agent. It should be noted, however, that Section 309(1) refers to Section 314, which directly criminalises the offence of sabotage. For the Czech legislator, the perpetrator of sabotage is therefore a Czech citizen who, with the intention of impairing the constitutional order or defence capability of the state, or of harming an international organisation, abuses his or her employment, profession, position or function, or engages in another act with that aim, in order to: (a) thwart or impede the fulfilment of an important task of an international organisation, public authority, armed forces or security corps, economic organisation or other institution, or (b) cause disruption or other serious damage in the activity of such an authority, organisation or institution (Section 309(1–2) and Section 314(1–4) of the *Zákon trestní zákoník*, Zákon č. 40/2009 Sb).

Conclusion

The material scope of the research problem in the text focuses on the penal policy illustrated by means of the characteristics and assessment of the criminalisation of selected new types and forms of espionage that the Polish legislator introduced in 2023. Only the so-called espionage-related subversion and sabotage under Article 130 §7 of the Polish Criminal Code were selected for analysis. Given the need to elaborate the material scope of the research problem, the text features two research questions related to the following conclusions:

(1) What are the arguments for the criminalisation of espionage-related subversion and sabotage in Poland in 2023?

The criminalisation of espionage-related subversion and sabotage can be grounded in a number of arguments that stem from both the historical development of the law and the contemporary needs of state protection. The primary argument for criminalisation is the need to protect key interests of the state. The Polish legislator’s rationale was the dynamics of the threats posed by the Russian-Ukrainian war (2014 and 2022) and its consequences. The Polish legislator used those circumstances to criminalise, *inter alia*, the new types of espionage offence discussed in the text. Nonetheless, it should be noted that an important role, as part of a rational penal policy, is played by the criminological and criminal law justification of the changes introduced. Unfortunately, this is not to be found in the explanatory memorandum prepared by the initiator and the legislator, as it makes vague references to security issues, e.g. the need to adapt the penal law to the changing geopolitical situation, technological progress and the constant modification of the *modus operandi* of potential perpetrators, as well as the high risk of new open armed conflicts and non-military actions. The initiator stresses in the explanatory memorandum that this adjustment was because the law enforcement authorities encountered evidence-related problems. In the argumentation, the initiator even mentions the fact that the changes to the content of Article 130 were called for by state institutions responsible for national security, claiming that the new realities and identified threats required this. However, it seems that most often evidence-related problems arise from the absence of systematic and effective work in converting operational material into evidence that has relevance for the court proceedings. This, in turn, is a matter of proper preparation of law enforcement authorities, as well as training of special services personnel, and not of substantive criminal law.

Thus, the legislator provided no empirical quantitative or predictive rationale with regard to the risks of this type of offence. Nor did they take into account the need for a criminal law justification for the introduction of a new type of espionage, namely the legislator did not justify it by pointing to a specific loophole in the previous legislation. This is quite significant, because under the previous legislation, any execution of a task for a foreign intelligence service and against Poland was already covered by the basic type of the offence of espionage, so there could be no potential loophole for that matter. Therefore, it can be accepted that the initiator’s main criminal law objective was to introduce a higher, over-and-above sanction, thus highlighting the preventive objective of the penal law above others (general prevention).

The initiator’s rather vague reference to “evidence-related difficulties” suggests that such have been eliminated, if only by the criminalisation

of espionage-related subversion and sabotage. However, one cannot but make a negative comment on this, as the legislator only succeeded in basically eliminating the “loophole” consisting in the criminalisation of activities undertaken for the benefit of a foreign intelligence service and conducted on the territory of Poland under Article 130 §6, but not directed against Poland (apart from the change in the meaning of espionage preparation *sui generis* already present in the legislation).

(2) How can the correctness of the criminalisation of espionage-related subversion and sabotage in Poland in 2023 be assessed?

The main problem related to the criminalisation of espionage-related subversion and sabotage is concerned with the absence of a strict definition of the main functional indicia of the new type of offence. Besides, it is not possible to make an effective and unambiguous linguistic interpretation of the indicia of “subversion” and “sabotage.” This is due to the absence of their legal definitions, as well as the absence of – unambiguously translatable into legally relevant actions – the perpetrator of their *definientia*, indicated in Polish language dictionaries and dictionaries of foreign words. Dictionaries offer 3 to 6 different meanings of each of the words; they are often contradictory (war – worker-protest, armed act – propaganda). There is therefore a high risk of a circular interpretation and defining one term with another. For example, some of the commentaries use loose citations of ambiguous dictionary definitions with overlapping terminology, instead of making a legal analysis of the indicia found.

Taking the above into account, it should be assumed that since the linguistic interpretation does not produce an unambiguous result, and the systemic and functional interpretation was omitted in the justification of the draft, the legislator left an excessive margin of discretion to the courts and law enforcement authorities in determining the content of the prohibited act. Such broad discretion is in conflict with the principle of maximum definiteness of a type of offence. Thus, from the perspective of the constitutional principles, the new type of offence violates the postulate of *nullum crimen sine lege certa*. While in the case of terrorist offences, the legislator opted for a legal definition (which, incidentally, was necessitated by the implementation of the European Union regulation), in Article 130 §7 they adopted the opposite strategy, introducing amorphous and historically loaded categories without clearly defining them. As a result, despite the formal fulfilment of the *lex scripta* principle, the *certa* aspect of the *lex scripta* is not preserved, which carries the risk of arbitrary application of the penal provisions.

In presenting the *de lege ferenda* proposals, two solutions can be considered. Firstly, one solution may be to dispense with the separate treatment of sabotage and subversion in Article 130 §7, as these activities may be fully covered by the indicium of “committing a terrorist offence,” already present in the provision. Secondly, if the legislator regards retaining §7 as expedient, it is necessary to introduce precise legal definitions of both the terms, by analogy with Article 115 §20 of the Criminal Code (a terrorist offence). Their scope should be limited to actions that explicitly harm the material or operational capacity of the armed forces and the key infrastructure of the state, excluding behaviour of a purely protest-like or economic-labour nature. Only then will the criminalisation gain transparency while retaining an adequate, minimal character that corresponds to the standards of the rule of law.

Interesy konkurencyjne:
Autor oświadczył, że nie istnieje konflikt interesów.
Competing interests:
The author has declared that no competing interests exists.
Wkład autorów
Konceptualizacja: Lesław Rosicki, Remigiusz Rosicki
Analiza formalna: Lesław Rosicki, Remigiusz Rosicki
Metodologia: Lesław Rosicki, Remigiusz Rosicki
Opracowanie artykułu – projekt, przegląd i redakcja: Lesław Rosicki, Remigiusz Rosicki
Authors contributions
Conceptualization: Lesław Rosicki, Remigiusz Rosicki
Formal analysis: Lesław Rosicki, Remigiusz Rosicki
Methodology: Lesław Rosicki, Remigiusz Rosicki
Writing – original draft, review and editing: Lesław Rosicki, Remigiusz Rosicki

Bibliography

Act of 19 April 1969, *The Criminal Code*, Journal of Laws 1969, no. 13, item 94.
Act of 6 June 1997, *The Criminal Code*, Journal of Laws 1997, no. 88, item 553, as amended.

Act of 17 August 2023 *amending the Act – the Criminal Code and certain other acts*, Journal of Laws 2023, item 1834.

Ankersmit F. R. (1983), *Narrative logic. A semantic analysis of the historian’s language*, Martinus Nijhoff Publisher, Hague–Boston–London.

Andrejew I. (1978), *Kodeks karny. Krótki komentarz*, PWN, Warszawa.

Andrejew I., Pławski S. (1953), *Prawo karne. Część szczególna*, UW, Warszawa.

Ashworth A., Zedner L. (2014), *Preventive Justice*, Oxford University Press, Oxford.

Aristotle (2000), *Politics*, Dover Publications, New York.

Aristotle (2019), *Nicomachean Ethics*, Hackett Publishing, Cambridge.

Bafia J., Mioduski K., Siewierski M. (1977), *Kodeks karny. Komentarz*, Wydawnictwo Prawnicze, Warszawa.

Bezmenov Y. (1984), *Soviet Subversion of the Free-World Press: A Conversation with Yuri Bezmenov* (Video footage – G. E. Griffin’s interview with Y. Bezmenov), American Media.

Błachnio A. (2024), *art. 130*, in: *Kodeks karny. Komentarz*, ed. J. Majewski, LEX/el.

Bojarski M. (ed.) (2020), *Prawo karne materialne. Część ogólna i szczególna*, Wolters Kluwer, Warszawa.

Brzeski R. (2014), *Wojna informacyjna – wojna nowej generacji*, Antyk, Komorów.

Budyn-Kulik M. (2025), *art. 130*, in: *Kodeks karny. Komentarz aktualizowany*, ed. M. Mozgawa, LEX/el.

Chybiński O., Gutekunst W., Świda W. (1975), *Prawo karne. Część szczególna*, PWN, Warszawa.

Comments of the Supreme Court on the bill amending the Act – the Criminal Code and some other acts (Bill no. 3232) in the version of the own amendment to the draft act (Bill no. 3232-A) (2023), Supreme Court, Bureau of Studies and Analyses, Warszawa.

Decree of the President of the Republic of Poland of 11 July 1932 – The Criminal Code, Journal of Laws 1932, no. 60, item 571.

Decree of the President of the Republic of Poland of 22 November 1938 on protection of certain interests of the State, Journal of Laws 1938, no. 91, item 623.

Decree of the Polish Committee of National Liberation of 30 October 1944 on the protection of the State, Journal of Laws 1944, no. 10, item 50.

Decree of 13 June 1946 on particularly dangerous crimes during the period of national reconstruction, Journal of Laws 1946, no. 30, item 192.

Decree of 16 November 1945 on particularly dangerous crimes during the period of national reconstruction, Journal of Laws 1945, no. 53, item 300.

Dubber M. D. (1998), *Historical Analysis of Law*, „Law and History Review”, vol. 16, no. 1.

D’Hautel Ch-L. (1808), *Dictionnaire du bas-langage, ou, Des manières de parler usitées parmi le peuple*, L. Haussmann, d’Hautel & F. Schoell, Paris.

Dunaj B. (ed.) (1996), *Słownik współczesnego języka polskiego*, Wyd. Wilga, Warszawa.

Faragó L. (1961), *Wojna mózgów. Anatomia szpiegostwa i wywiadu*, Szefostwo Wojskowej Służby Wewnętrznej, Warszawa.

Frankowski S. (1968), *O stronie podmiotowej przestępstwa sabotażu w aspekcie projektu kodeksu karnego*, „Państwo i Prawo”, no. 12.

Gardocki L. (2023), *Prawo karne*, C.H. Beck, Warszawa.

Garland D. (2001), *The CuIture of Control. Crime and Social Order in Contemporary Society*, The University of Chicago Press, Chicago.

Gołda-Sobczak M., Sobczak W. (2018), *Problem definicji terroryzmu*, „Themis Polska Nova”, no. 2.

Górniok O., Lelental S., Popławski H. (1975), *Prawo karne. Część szczególna I*, Uniwersytet Gdański, Gdańsk.

Grabowski I. (1990), *A subversive action threat to the territory of Poland*, Academy of Internal Affairs, Legionowo.

Grabowski J., Kochanowski J. (1970), *Przestępstwa gospodarcze w nowym kodeksie karnym: problemy wykładni*, „Palestra”, no. 5.

Grudziński J. (1924), *Espionage and subversion /Lectures developed for the Central Police School*, Ministry of Military Affairs, The 2nd Department of the Central Staff, Warszawa.

Grześkowiak A., Wiak K. (eds.) (2024), *Kodeks karny. Komentarz*, C.H. Beck, Warszawa.

Guidelines for training on countering espionage, sabotage and corruption in offices [translated from German] (1944), Ministry of Public Security.

Hajdukiewicz J. (1972), *Działalność dywersyjno-polityczna i wywiadowcza NRF przeciwko Polskiej Rzeczpospolitej Ludowej*, Departament Szkolenia i Doskonalenia Zawodowego MSW, Warszawa.

Hamilton P. (1979), *Espionage, Terrorism and Subversion in an Industrial Society: An Examination and Philosophy of Defence for Management*, Peter A. Heims Ltd., Leatherhead.

Hamilton P. (2023), *Espionage and Subversion in an Industrial Society. An Examination and Philosophy of Defence for Management*, Routledge, New York.

Hécart G.-A.-J. (1834), *Dictionnaire rouchi-français*, Lemaitre (Valenciennes), Paris.

Hoc S. (2023), *Szpiegostwo w znowelizowanym Kodeksie karnym*, „Nowa Kodyfikacja Prawa Karnego”, vol. 67.

Kala D., Kosmaty P. (eds.) (2024), *Kodeks karny. Komentarz do zmian, tom III (2015–2023)*, Krakowska Szkoła Sądownictwa i Prokuratury, Kraków.

Constitution of the Polish People’s Republic passed by the Legislative Sejm on 22 July 1952, Journal of Laws 1952, no. 33, item 232.

Kossecki J. (1975), *Cybernetyka społeczna*, PWN, Warszawa.

The Königsberg Railway Directorate instruction manual on securing the railway against espionage, sabotage, etc. (1942), The German Reich railway, the Directorate of the Reich railway in Königsberg (East Prussia), [translated from German].

Kulesza J. (ed.) (2023), *Prawo karne materialne. Nauka o przestępstwie, ustawie karnej i karze*, Wolters Kluwer, Warszawa.

Kulesza J. (ed.) (2025), *Kodeks karny. Komentarz*, Wolters Kluwer, Warszawa.

Leniart E. (2009), *Usiłowanie zmiany ustroju państwa oraz usiłowanie usunięcia organów władzy jako zbrodnie stanu. Zarys problemu*, „Zeszyty Naukowe Uniwersytetu Rzeszowskiego”, no. 53.

Linebarger P. M. A. (1948), *Psychological warfare*, Infantry Journal Press, Washington.

Littré É. (1873), *Dictionnaire de la langue française: Tome 4*, Hachette, Paris.

Lityński M. (1960), *Przestępstwa przeciwko państwu ludowemu*, PWN, Łódź.

Łojewski K., Mazur E. (1969), *Kodeks karny: zestawienie porównawcze przepisów nowego i dawnego kodeksu karnego oraz ustaw szczególnych*, „Palestra”, no. 10–11.

Makowski W. (1933), *Kodeks karny. Komentarz*, Księgarnia F. Hoesicka, Warszawa.

Makowski W. (1937), *Kodeks karny. Komentarz*, Księgarnia F. Hoesicka, Warszawa.

Mozgawa M. (ed.) (2020), *Prawo karne materialne. Część ogólna*, Wolters Kluwer, Warszawa.

Muszyński J. (1972), *Przestępstwa przeciwko podstawowym interesom politycznym i gospodarczym PRL w kodeksie karnym z 1969 r.*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny”, no. 1.

Peiper L. (1933), *Kodeks karny i prawo o wykroczeniach*, L. Frommer, Kraków.

Pohl Ł. (2019), *Prawo karne. Wykład części ogólnej*, Wolters Kluwer, Warszawa.

Положение о государственных преступлениях», утверждённое постановлением ЦИК СССР от 6 июня 1927 года (СУ № 49, ст. 330, 1927).

Постановление ВЦИК от 22 ноября 1926 года «О введении в действие Уголовного кодекса РСФСР редакции 1926 года» (СУ № 80, ст. 600, 1926).

Pouget É. (1898), *Le Sabotage*, „Almanach du Père Peinard”, an 106.

Pouget É. (1911), *Le Sabotage*, Marcel Rivière, Paris.

Pouget É. (1986), *Le Sabotage*, Éditeur – le Goût de l’être, Amiens.

Rosicki R. (2023a), *Polityka kryminalna w zakresie zwalczania działalności szpiegowskiej w Polsce*, FNCE, Poznań.

Rosicki R. (2023b), *Terrorist Offences under Polish Law*, „Środkowoeuropejskie Studia Polityczne”, no. 1.

Samuel G. (2014), *An Introduction to Comparative Law Theory and Method*, Hart Publishing, Oxford–Portland.

Sobol E. (1995), *Słownik wyrazów obcych*, PWN, Warszawa.

Specificity of investigations into espionage, subversion, sabotage, terrorism and economic crime (1969), The directorate of the Internal Military Service, the Department of Training and Analysis, Warszawa.

United States Special Purpose Forces. Supplement to the Bulletin of the Staff of the Internal Security Corps*: Exercise no. 8/63 “Babie lato”* (1965), Staff of the Internal Security Corps, Warszawa.

Voegelin E. (2011), *Arystoteles*, Teologia Polityczna, Warszawa.

Zákon trestní zákoník (Zákon č. 40/2009 Sb).

Zasady, organizacja i prowadzenie sabotażu (1965), Ośrodek Szkolenia Zarządu II Sztabu Generalnego, Warszawa.

Zgoliński I. (2023), *art. 130*, in: V. Konarska-Wrzosek, *Kodeks karny. Komentarz*, wyd. IV, LEX/el.

Zieliński M. (1998), *Wyznaczniki reguły wykładni prawa*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny”, no. 3–4.

Polityka karna na przykładzie kryminalizacji przestępstwa dywersji i sabotażu szpiegowskiego w Polsce

Streszczenie

Przedmiotem analizy w tekście jest polityka karna jako element szerzej rozumianej polityki prawnej, ze szczególnym uwzględnieniem procesu kryminalizacji nowych postaci i form szpiegostwa wprowadzonych w 2023 r. do polskiego systemu prawa karnego (art. 130 § 7–8 k.k.). Z kolei celem głównym badania jest ukazanie diachronicznych procesów prowadzących od powojennej penalizacji dywersji i sabotażu do obecnej kryminalizacji tzw. „dywersji i sabotażu o charakterze szpiegowskim”. Aby skonkretyzować zakres problematyki badawczej, w tekście sformułowano dwa pytania: (1) Jakie argumenty przemawiają za kryminalizacją szpiegowskiej dywersji i sabotażu w Polsce w 2023 roku?, (2) Jak można ocenić poprawność kryminalizacji w zakresie szpiegowskiej dywersji i sabotażu w Polsce w 2023 roku? Zakres czasowy analizy obejmuje okres od 1944 do 2023 r., rozpoczynając od dekretu PKWN o ochronie Państwa z 30 października 1944 r., aż po ustawę nowelizującą Kodeks karny z 17 sierpnia 2023 r. Natomiast metodologia opiera się głównie na podejściu instytucjonalno-prawnym, w którym istotną rolę odgrywają: (a) analiza dogmatyczna (opis rozwiązań ustawowych i praktyki ich stosowania) oraz (b) analiza historyczno-porównawcza (odwołania do wcześniejszych regulacji i ich ewolucji). Zastosowanie tych metod pozwala ocenić zarówno treść nowych typów czynów zabronionych, jak i ich efektywność oraz zgodność z celami ochrony państwa i zapobiegania przestępczości szpiegowskiej.

Słowa klucze: polityka prawna, polityka kryminalna, bezpieczeństwo państwa, szpiegostwo, dywersja, sabotaż

Tekst wpłynął: 16.05.2025; tekst zaakceptowany: 28.10.2025.