

# Activities of organised crime in the area of cross-border waste shipments - a case study

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## Abstract

*Technological advances and rapid global population growth are degrading the environment. One of the problems is the growing amount of waste, which affects people's lives and health while posing a threat to the natural economy. Waste is generated in industry, agriculture and households. Considering their properties, they can be flammable, irritant, carcinogenic, toxic, mutagenic, corrosive, infectious or having a harmful effect on reproduction.*

*Internationally, environmental degradation has begun to become such a serious problem that there have been proposals to deal with acts that harm the environment as an environmental crime. Efforts in this respect began in 2010 and are being pursued by lawyers from around the world. .*

*The purpose of this article is primarily to introduce the mechanism used by one of the criminal groups in Poland, whose activities adversely affected the environment. In addition, the irregularities that occurred and the legal qualifications of the crimes accompanying waste management will be presented. The source base for writing the article was information obtained from the Tarnów Regional Prosecutor's Office, which is conducting the case, as well as from scientific studies and newspaper articles.*

## 1. Introduction

Technological advances and rapid global population growth are degrading the environment. One of the problems is the growing amount of waste, which affects people's lives and health while posing a threat to the natural economy. Waste is generated in industry, agriculture and households. Considering their properties, they can be flammable, irritant, carcinogenic, toxic, mutagenic, corrosive, infectious or having a harmful effect on reproduction.

Internationally, environmental degradation has begun to become such a serious problem that there have been proposals to deal with acts that harm the environment as an environmental crime. Efforts in this respect began in 2010 and are being pursued by lawyers from around the world [Pływaczewski, Zębek, Narodowska, 2020; Ekobójstwo jak ludobójstwo, 2021; <https://noizz.pl>].

Legal regulations on the disposal of hazardous waste pose a problem for some industrial plants because this can only be done in specially adapted plants, under strict control and is very expensive. For this reason, they choose to dispose of waste illegally by taking it to places not intended for this purpose. Most often, these are mine pits, agricultural plots, forest plots and buildings left over from old industrial plants.

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## 2. The environment and its protection

The environment is the basis of the existence of humanity. It provides the conditions for life and creates the surroundings. The problem of its protection emerged in Europe in the 1970s, when the depletion of natural resources constituting prosperity was noticed. As civilisation has developed, more and more attention has been paid to the management of energy resources and human health.

European Union policy in this area is well advanced. Its primary objective has become sustainable development that meets the needs of the present and thinks about the needs of future generations. Issues of human capital, climate protection and the preservation of ecosystem services are combined. Particular attention is paid to the problem of poverty, which makes the necessity to satisfy needs a secondary concern of environmental protection [Komisja Ochrony Środowiska Naturalnego, 2012; <https://www.europarl.europa.eu>].

Within the European Union, common environmental standards are being established, international regulations created and agreements concluded. Despite the efforts of individual countries to fulfil their obligations, there are still problems to deal with. These include:

- a) differences in legal systems,
- b) differences due to geographical conditions,
- c) differences caused by the level of awareness or knowledge,
- d) cultural and industrial differences,
- e) differences in economic development,
- f) differences in perception of the environment - some countries view the environment as providing technical opportunities and others as a constraint on development [Hołyst, 2016].

Poland is one of the European Union countries that produces the most industrial waste. It is also a country where the mining and construction industries play an important role in the economy. This is the reason for the high pollution rates recorded, and it should be noted that burning coal and biomass in domestic hearths also contributes to this. Recycling, which is the most popular method of environmental protection in Poland, is also a problem, resulting in an increase in municipal landfills. Much less attention is paid to reducing the purchase of unnecessary goods and the reuse of certain products.

As Paweł Łabuz points out, recycling in its conception is a process that should lead to the production of a new product in order to reduce waste, save natural resources and, consequently, limit the harmful impact of man on the environment. In addition, it is designed to reduce emissions of harmful gases, waste in landfills and landfill maintenance costs. However, inadequate legislation and passivity on the part of the state mean that the recycling mechanism does not function at a high enough level and criminal groups make huge profits from it [Łabuz, 2018].

### 3. Organised crime characteristics

Organised crime contributes to destabilising the social order in economic, legal and moral terms, affecting the sense of security. Its scope can be local, limited to a city or neighbourhood, domestic or international, covering at least two countries.

As Jarosław Stelmach points out, four basic types of organised crime are distinguished in Poland: drug-related, criminal, economic and multi-criminal.

The criminal type of organised crime is characterised by committing crimes against life, health and right to property. It is characterised by brutality and ruthlessness. It can be materially as well as existentially motivated in order to secure the group's ability to act, position and power.

Organised drug-related crime is distinguished by the fact that it generates very high income. It includes illegal production, trafficking and smuggling of various types of drugs. It is characterised by internationality, good organisation, permanence and a strong position in the criminal world.

Organised economic crime hammers citizens' sense of security and undermines the authority of the state. It is linked to globalisation, the development of societies and the growth of the private economic sector. There is a phenomenon of a decrease in the number of criminal groups and an increase in the number of groups involved in economic crime. The reason for this is the invention of loopholes in the law and the political instability of young democracies.

The fourth category is multi-criminal groups. They are characterised by activity in various areas such as VAT extortion, legalising money derived from criminal activities and smuggling of excise goods [Stelmach, 2022].

Organised groups operating in various categories share common characteristics, which are:

- 1) Criminal groups form the core of crime;
- 2) Other types of crime emerge around organised crime;

- 3) The organised nature reduces the risks of detection and punishment;

- 4) Crimes are committed by more than two participants;

- 5) The group operates for a specific or unlimited period of time;

- 6) Uses industrial or commercial structures;

- 7) Uses violence or other means of intimidation;

- 8) Influences the administration, the media, the judiciary, the economy and politics;

- 9) Operates internationally to effectively mislead law enforcement agencies and exploit differences in legal systems;

- 10) Uses a variety of methods to operate freely in passenger and cargo traffic;

- 11) Members of the group are increasingly professional perpetrators and use state-of-the-art means of communication;

- 12) They satisfy the demand of a part of the society for illegal services prohibited by law;

- 13) They seek to make the highest possible profits with the least possible effort and expense [Hołyst, 2016].

The final point to note is the recent trends observed among organised crime groups. It has been established that both in Poland and in Europe they are oriented towards committing crimes in the economic and drug-related area. The reason for this is globalisation, differences in the legal systems of individual countries and ease of movement. Adapting to the changing conditions, criminal groups are moving away from specialisation to universality, as Wiesław Pływaczewski points out [Stelmach, 2022; Pływaczewski, 2022; file:///D:/Users/Matysik%20Robert/Downloads/25-Pływaczewski.pdf].

### 4. Criminal mechanism - a case study

In an era of increasing population and production of consumer goods, there is a growing demand for the provision of efficient and low-cost waste disposal services. Market expectations in this area are met to some extent by organised crime groups. A particularly profitable business is the import of hazardous waste from other countries.

An interesting example is the activity of a criminal group operating until 2018, dumping thousands of tonnes of waste from Germany and Great Britain in Poland. It is worth noting that both Germany and Great Britain are countries where recycling laws are strongly enforced and the costs associated with this are borne by producers [Poskrobko, Piątek, Sidorczyk, 2004]. To reduce disposal costs, producers decided to sell the waste.

There is no data on the mechanism for the movement of waste from Great Britain, but the plants in Germany whose waste ended up in landfills in Poland have been identified. Interestingly, one of them was a waste disposal company. According to investigative journalist Marius Munstermann, who investigated the case, waste companies in Germany practised exporting waste by declaring in documents that it was recyclable, while in Poland no one intended to recycle or burn it for energy. The transfer of waste between producers in Germany and entities in Poland was mediated by

subcontractors. In this situation, the German entities explained that they were not aware of the onward movement of their waste [Opryszek, 2023; <https://oko.press/smieci-z-niemiec-rozmowa-opryszka>].

Waste from the German territory was transported to Poland. This was done on the basis of contracts signed with a business entity in Poland, holding the required official waste storage permits. The entity in Poland also had a waste recycling contract with another company located at the same address. The recycling company confirmed in its documents that it had accepted and recycled waste, which in fact did not take place, and stored it in two landfills located in Poland, registered to front persons. It also had the applicable waste storage contracts signed with these persons. In order to simulate the legitimate operation of the recycling line, a truckload of rubbish, i.e. approximately 22-25 tonnes, would arrive once a week at the yard where the line was located [Informacje uzyskane z Prokuratury Okręgowej w Tarnowie (Information obtained from the Prosecutor's Office in Tarnów)].

In the territory of Germany, the drivers of the freight forwarding companies received waybills and documents called Annex 7 [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006)], which showed "A" entity as the consignee and "X" as the place of unloading. After crossing the border with Poland, the documents were neutralised in order to conceal information about the origin of the cargo. This meant taking the existing documents away from the drivers and giving them WZ documents, which showed that the waste came from the Polish company "Z". They were stored in two locations in the territory of Poland. In this way, they lost the value of waste shipped from abroad, being listed as waste generated in the territory of Poland [Informacje uzyskane z Prokuratury w Tarnowie (Information obtained from the Prosecutor's Office in Tarnów)].

Shipping documents showed rubber and plastic waste when in fact it was municipal waste generated in households or by other producers [Informacje uzyskane z Prokuratury w Tarnowie (Information obtained from the Prosecutor's Office in Tarnów)]. It should also be noted that rubber and plastics are not regarded as hazardous waste by law, but since they take a very long time to decompose, they should be managed in an appropriate manner. Municipal waste, on the other hand, has to be managed in facilities that are authorised to process this waste through a recovery process. Some of this waste is not recyclable and is intended to be incinerated in waste incineration plants.

An analysis of data obtained from the Tarnów Regional Prosecutor's Office and press articles has highlighted the irregularities committed by the criminal group, namely:

- a) the waste was stored on unsuitable ground, which had an adverse effect on the groundwater and especially on a water intake located 70 m away,
- b) the method of storage posed a fire hazard,
- c) a wafting stench, reproduction of rodents and insects,

- d) the authorities issuing the landfill permit had not consulted the villagers beforehand,

- e) landfill sites operated legally and were registered to homeless people,

- f) a company registered in Germany, collecting waste from German entities, was registered to a homeless person,

- g) instead of storing declared sorted waste, municipal waste was sent to landfills,

- h) the procedure of notification of waste shipments and obtaining permission for waste shipments was not fulfilled,

- i) a company in Poland received EUR 75 per tonne of waste from German entities instead of the market value of EUR 120 [<https://wiadomosci.wp.pl/zwiezli-im-do-wsienielegalne-smieci-z-niemiec-smrod-robaki-i-mozliwe-skazenie-wody-6255234422630017>; Opryszek,

- https://oko.press/mafia-smieciowa-rozbita-slup-nie-zyje-smieci-zostaly; <https://uwaga.tvn.pl/reportaze/polska-smietnikiem-europy-stworzyliśmy-fikcyjny-system-na-którym-zarabia-sie-miliony-cz1-ls6695919>],

- j) a waste storage permit was issued to a legitimate entrepreneur but there was no physical control of the conformity of the documentation with the reality,

- k) producing documentation creating the semblance of legality, i.e. waste transfer note and antedated waste storage yard lease agreement,

- l) the recycling company did not have the capacity to process the declared amount of waste [Informacje uzyskane z Prokuratury w Tarnowie (Information obtained from the Prosecutor's Office in Tarnów)].

The described irregularities make it necessary to identify the legal provisions violated by members of an organised criminal group.

The shipment of waste from Germany to Poland was in breach of Article 2(35)(a) and (b) of Regulation No 1013/2006 of the European Parliament and of the Council of 14th June 2006 on shipments of waste and was illegal in nature, as it took place without the consent of the competent authorities concerned [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. art. 2 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006; art. 2)].

The regulation also sets out requirements for the shipment of waste within the European Union and between member states and third countries. It contains a so-called amber list of waste, which lists hazardous or potentially hazardous waste, such as batteries and televisions, and a green list of waste, which includes non-hazardous waste, such as waste paper and plastic waste [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. art. 2 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006; art. 2)]. The regulation also provides for two types of procedures for transboundary shipments of waste:

1. Shipments under information procedure.
2. Shipments under the notification procedure.

In the case of the presented criminal activity, there is a breach of the notification procedure, which required a written notification of a transboundary shipment of waste and

obtaining the consent of the competent authority of the point of destination for the transport of waste destined for disposal. This procedure in principle applies to amber-listed waste and involves the shipment of waste with hazardous properties destined for disposal or recovery [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. art. 3, paragraf: 1 a, 3 i 5 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006, paragraph: 1 a, 3 and 5)].

It should also be noted that the mere shipment of waste without Annex 7 is in breach of the legislation and is illegal. Having this document is provided for by an information procedure which applies to green-listed waste that is considered to be of low environmental impact and can be imported and exported for recovery purposes [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. art. 18 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006)]. The transportation of such waste requires that the participating entities fill in a document called Annex 7 [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. załącznik nr. 7 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006; annex 7)]. It contains information such as: details of the waste shipper; details of the consignee of the waste and information on the facility to be used for recovery. This document should be signed and accompany the shipment in order to trace the shipment. There should also be a signed contract between the waste shipper and the consignee of the waste for recovery, which must already be in force when the waste shipment starts and include an obligation that in cases where the shipment or recovery does not take place as intended or the shipment is illegal, the waste is taken back or its recovery is ensured [Rozporządzenia (WE) nr 1013/2006 Parlamentu Europejskiego i Rady z dnia 14 czerwca 2006 r. art. 18 (Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006; art. 18)].

Illegal importation of waste and improper storage exhausted the elements of such acts as acting in an organised criminal group - Article 258 of the Penal Code, transboundary movement of waste and storage in such a way as to reduce the quality of water, the earth's surface and damage to the plant world - Article 183 of the Penal Code, the attestation of the untruth in documents - Article 271 of the Penal Code, falsifying - Article 270 of the Penal Code and fraud - Article 286 of the Penal Code.

Members of the organised criminal group also violated regulations on improper storage of waste. These issues are covered by the Decree of the Minister of Infrastructure of 12th April 2002 on the technical conditions to be met by buildings and their location, which regulates the manner of waste storage, such as the necessity to harden the ground and maintain an appropriate distance from the area where a

drinking water intake is located [Artykuł 22 i 31 Rozporządzenia Ministra Infrastruktury z 12.04.2002r., w sprawie warunków technicznych jakim powinny odpowiadać budynki i ich usytuowanie, Dz. U. 2002 nr 75 poz. 690 (Article 22 and 31 of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements to be met by buildings and their location, Journal of Laws 2002 No. 75 item 690)].

The provisions of the Decree of the Minister of Internal Affairs and Administration of 7th June 2010 on fire protection of buildings and other buildings and grounds, were also violated. Among other things, it concerns the storage of waste at appropriate distances from the plot boundary, from the building and from electric lines [Paragraf 4.1 Rozporządzenia Ministra Spraw Wewnętrznych i Administracji z 7.06.2010, w sprawie ochrony przeciwpożarowej budynków oraz innych obiektów budowlanych i terenów, Dz. U. 2010 nr 109 poz. 719. (Paragraph 4.1 of the Regulation of the Minister of Internal Affairs and Administration of 7 June 2010 on fire protection of buildings and other construction facilities and areas, Journal of Laws 2010 No. 109 item 719)].

### Conclusion

Both locally and globally, rubbish is a product that is produced daily in huge quantities and waste trafficking is legal. Exploiting the inadequacies of the system for controlling the flow of waste, criminal groups set up illegal channels, profiting hugely from this practice.

There are a number of criminogenic factors that influence the functioning of the criminal practice. One of them is differences in waste disposal prices, which make it profitable for other countries to export waste to Poland where it is cheaper to manage.

Another criminogenic factor is the low penalties in Poland for a single shipment of waste on the basis of documents stating untruth revealed during a road check. Neutralisation of documents, i.e. entering data that do not indicate the real source of waste, is illegal but the administrative penalty provided for by the law is disproportionate to the benefits obtained [zob.: artykuł 92 a ustęp 1 Ustawy z dnia 6 września 2001 r. o transporcie drogowym (see: Article 92 a paragraph 1 of the Act of 6 September 2001 on Road Transport)]. There is a similar problem on the German side, where, according to the law, the penalty for disposing of improperly labelled rubbish in a truck is only a fine of a few hundred euros [zob.: Opryszek S., Czego szuka Niemiec w polskich śmieciach? Śmieci niemieckich [Rozmowa Opryszka], 16.08.2023, <https://oko.press/smieci-z-niemiec-rozmowa-opryszka>, [dostęp: 11.11.2024]]].

The final problem to be highlighted is the lack of full control over transboundary waste shipments and the lack of physical comparison of documents with waste transported to landfills.

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