

PENAL ASPECTS OF REGAINING FREEDOM BY A PERSON LEGALLY DEPRIVED OF IT IN THE UNITED KINGDOM AND THE REPUBLIC OF IRELAND

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1. INTRODUCTION

‘The act of Prison-Breaking, however natural to the inmates of those gloomy abodes, cannot be overlooked by the law, as being a violation of the order and course of justice, and a direct infringement of regulations essential to the peace and well-being of society.’¹ The words that a Scottish lawyer and historian Sir Archibald Alison said almost 200 years ago perfectly express the need to punish those who unlawfully regain liberty they were lawfully deprived of and those who help the former to liberate. However, there are opinions that punishment of self-liberation should be abolished mainly, as it should be assumed, because of the above-mentioned man’s natural pursuit of liberty.² However, the need to punish other persons involved in an escape (accessories, instigators, etc.) is not questioned. With the development of methods of executing a penalty of deprivation of liberty and other measures connected with isolation and the introduction of permits for leaving a prison temporarily or conditionally, a problem arose of being unlawfully at large after the permit expires or is withdrawn. British law also prescribes response to this type of acts.

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¹ A. Alison, *Principles of the Criminal Law of Scotland*, Edinburgh–London 1832, p. 555.

² For more on such suggestions in Polish literature, see P. Poniatowski, *Przestępstwa uwolnienia osoby prawnie pozbawionej wolności (art. 242 i 243 k.k.)*, Warszawa 2019, pp. 366–367. The opinions resulted in the lack of liability for self-liberation in some countries (Germany, Austria or Switzerland), *ibid.*, p. 41.

In Polish criminal law, social negatives of the conduct are emanated in Articles 242 and 243 CC,³ which are included in Chapter XXX entitled 'Offences against the administration of justice'. Basic and aggravated offences of self-liberation are classified in Article 242 § 1 and § 4, the offence of failure to return to prison is specified in Article 242 § 2 and § 3, and the offence of liberating or facilitating the escape of a person deprived of liberty is laid down in Article 243.⁴

The article aims to present the legal solutions concerning the title-related issues that are in force in the United Kingdom of Great Britain and Northern Ireland and in the Republic of Ireland. Criminal law in this part of Europe may be very interesting for a 'continental' lawyer, in particular because of the dualism of the legal system (*common law* and *statute law*) or great attention to detail in regulations (e.g. legal definitions often provided). I will try to find legal similarities and differences between particular countries of the British Isles and between them and Poland.

2. THE UNITED KINGDOM

2.1. ENGLAND AND WALES

An offence of escape from lawful custody, which is the equivalent of a prohibited act under Article 242 § 1 CC, is a common law offence in England and Wales.⁵ It carries a penalty of a fine or imprisonment.⁶

It is emphasised in case law that in a case concerning escape the prosecution must prove four things: (i) that the defendant was in custody; (ii) that the defendant knew that he was in custody (or at least was reckless as to whether he was or not); (iii) that the custody was lawful; and (iv) that the defendant intentionally escaped from that lawful custody.⁷ It is not important, however, whether a defendant was guilty of an offence for which he was imprisoned.⁸

To be able to say that a person is in custody, his liberty must be subject to such constraint or restriction that he can be said to be confined by another in the sense that the person's immediate freedom of movement is under the direct control of

³ Act of 6 June 1997: Criminal Code (consolidated text, Dz.U. 2020, item 1444, as amended); hereinafter CC.

⁴ The scope of the article does not make it possible to discuss those types of prohibited acts in detail; for more on the issue, see P. Poniatowski, *supra* n. 2, *passim*.

⁵ *Blackstone's Criminal Practice 2018*, D. Ormerod, D. Perry (eds), Oxford 2017, Nb B14.70. However, there are specific cases of escape regulated in statute law, which is discussed below.

⁶ *Ibid.*

⁷ Judgment of the Court of Appeal (Criminal Division) of 23 November 2005 in case *Regina v. Dhillon* [2005] EWCA Crim 2996, No 200500079/C2 (<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2005/2996.html>; accessed 8.4.2020) and judgment of the Court of Appeal (Criminal Division) of 31 July 2007 in case *Regina v. Montgomery* [2007] EWCA Crim 2157, No 200700057/C3 (<https://www.bailii.org/ew/cases/EWCA/Crim/2007/2157.html>; accessed 8.4.2020).

⁸ *Blackstone's Criminal Practice 2018*, *supra* n. 5, Nb B14.70.

another.⁹ A person in custody is especially a person arrested by the police and placed in the police custody or in prison.¹⁰ However, in case law there are examples of conviction for the offence of escape in a situation when a perpetrator was not under continuous and direct control.¹¹ It is also emphasised in literature that a given person is in lawful custody even when he is not physically constrained or directly guarded.¹²

What may help to interpret the term 'custody' is the definition laid down in section 13(2) Prison Act 1952,¹³ in accordance with which a prisoner shall be deemed in legal custody while he is confined in, or is being taken to or from, any prison¹⁴ and while he is working, or is for any other reason, outside the prison in the custody or under the control of an officer of the prison and while he is being taken to any place to which he is required to be taken, or is kept in custody in pursuance of any such requirement or authorisation.

⁹ Judgment of the Queen's Bench Division of the High Court (the Administrative Court) of 26 February 2002 in case *E v. Director of Public Prosecutions* [2002] EWHC 433 (Admin), No CO/133/2002 (<http://www.bailii.org/ew/cases/EWHC/Admin/2002/433.html>; accessed 8.4.2020).

In case law also a definition formulated by William Hawkins in the 18th century is quoted. In the context of prison break, he pointed out that: all such offences were felonies, if the party were lawfully in prison for any cause whatsoever, whether criminal or civil, and whether he were actually in the walls of a prison, or only in the stocks, or in the custody of any person who had lawfully arrested him (W. Hawkins, *A Treatise of the Pleas of the Crown; or, A System of the Principal Matters Relating to that Subject, Digested under Proper Heads*, Vol. II, London 1824, p. 183); see the above-mentioned judgment in case *Regina v. Montgomery* [2007] EWCA Crim 2157.

¹⁰ *Blackstone's Criminal Practice 2018*, *supra* n. 5, Nb B14.70.

¹¹ In case *Regina v. Timmis* [1976] Crim LR 129 (citation after *Regina v. Dhillon* [2005] EWCA Crim 2996), the defendant had been stopped as a result of erratic driving and breathalysed. The test proving positive, the defendant was told that he would be taken in custody to a police station and he was placed in a police car. He was then left alone for some considerable time whereafter he got out of the car and walked into a public house on the opposite side of the road where he remained for about an hour. On the other hand, in case *Regina v. Rumble* [2003] EWCA Crim 770 (which was referred to in case *Regina v. Montgomery* [2007] EWCA Crim 2157), the appellant, having surrendered to bail, appeared at the Swansea Magistrate's Court facing charges for a number of offences. Immediately after being sentenced by the magistrates to a custodial term, he simply left the court (he jumped over the bench where he had been standing and escaped via the public exit), which had at that time no usher or security staff present. He was subsequently convicted of escape from lawful custody. On appeal, he took the point that since at the moment he walked out no one had yet sought to subject him to any restraint, there being no one in court to do so, he could not be said to have been in custody. This court rejected that submission and held that the appellant was in the custody of the court from the moment that he surrendered to his bail, whether or not any officer or member of the court staff had actually sought to constrain his movements. However, the issue of having continuous control over a detained person is controversial. In the judgment in case *Regina v. Dhillon* [2005] EWCA Crim 2996, it was indicated that continuity of control and a detained person's knowledge of that is especially significant for the liability for their escape.

¹² *Blackstone's Criminal Practice 2018*, *supra* n. 5, Nb B14.71.

¹³ Source: <https://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52> (accessed 8.4.2020); hereinafter referred to as PA 1952.

¹⁴ The provisions concerning prisons and prisoners are also applicable to remand centres, detention centres, youth custody centres and to persons detained in them (section 43(5) in conjunction with section 43(4) PA 1952).

Deprivation of liberty is unlawful when the term for which a given person was to be in custody has passed.¹⁵ Escape in such a case is exempt from punishment. A situation in which a person has been physically restrained (e.g. handcuffed) but not legally arrested, in particular not informed that he is under arrest, does not constitute an offence of escape.¹⁶

It should be noticed that in order to be recognised as a perpetrator of an offence of escape from custody, an offender does not have to escape with the intention to be at large permanently or to achieve another special objective.¹⁷

While imposing a penalty in this class of cases, a court should consider whether there was planning or this was an impulse, whether there was violence or damage caused, what the reason for the escape was, whether the offender surrendered or made arrangements to surrender before he was caught, how long he was at large and what he did while he was at large.¹⁸ It is indicated in case law that the escape under a certain type of mental compulsion (e.g. concern about the family, fear of co-inmates) requires a relatively more lenient penalty (in the scale of months). On the other hand, a stricter penalty (in the scale of years) should be imposed on professional criminals who are assisted in their escape (from outside the prison or sometimes from within it).¹⁹

Breaking prison (breach of prison) is an aggravated type of the offence of escape as it consists in breaking safeguards or using violence during the escape (the equivalent of a type of a prohibited act under Article 242 § 4 CC).²⁰ It can be subject to a penalty of deprivation of liberty or a fine.²¹ An escape does not

¹⁵ Judgment of the Court of Appeal (Criminal Division) of 7 November 2010 in case *Regina v. O'Connor* [2010] EWCA Crim 2842, No 201001472/3932/C3 (<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2010/2842.html>; accessed 8.4.2020) and the decision of the House of Lords of 27 July 2000 in case *Regina v. Governor of Her Majesty's Prison Brockhill Ex Parte Evans* [2001] 2 AC 19 (<https://www.bailii.org/uk/cases/UKHL/2000/48.html> (accessed 8.4.2020)).

¹⁶ Judgment of the Court of Appeal (Criminal Division) of 20 September 2011 in case *Regina v. Shaid Iqbal* [2011] EWCA Crim 273, No 201006296 B4. In this case, the accused went to a court to a hearing. The police officers who were there detained him, handcuffed and informed that he was wanted by the police on suspicion of involvement in an offence. However, he was not informed that he was under arrest. He was told that he would be arrested and that the arrest would be effected not by the officers who had detained and handcuffed him, but by other officers and that he would have to wait. On the arrival of those officers, the accused ran off. He was pursued and caught approximately 100 yards away. He was convicted of attempting to escape from lawful custody. The Court of Appeal allowed the appellant's appeal and pointed out that the officers who detained the appellant did not arrest or purport to arrest him. They anticipated that he would at some future, unspecified, time be arrested by other officers. However, the common law offence of escape from custody does not cover those who escape from police restraint or control before they are arrested.

¹⁷ Judgment in case *Regina v. Timmis* [1976] Crim LR 129 (citation after *Regina v. Dhillon* [2005] EWCA Crim 2996).

¹⁸ Judgment of the Court of Appeal (Criminal Division) of 22 June 2007 in case *Regina v. Purchase* [2007] EWCA Crim 1740, No 2007/02503/A5 (<http://www.bailii.org/ew/cases/EWCA/Crim/2007/1740.html>; accessed 8.4.2020).

¹⁹ The above-mentioned judgment in case *Regina v. Purchase* [2007] EWCA Crim 1740.

²⁰ S. Ramage, *English Prison Law*, New York–Bloomington 2009, p. 295.

²¹ *Ibid.*, p. 295.

have to be from prison (e.g. it can consist in self-liberation from a police station through a broken window) or be connected with intentional damage caused (in one case it was recognised that unintentional movement of loose bricks while climbing a prison wall may match the features of this offence).²² It is emphasised that the use of force during escape is significant and it does not matter whether the fugitive is imprisoned in connection with a criminal or civil case. One of the judgments states that breaking prison is a very serious offence, for which a substantial sentence of imprisonment is always to be expected because of the fear and apprehension it generates, the disruption to prison life, the violence and disorder that it may lead to, and the need to deter both the culprit and others. The court also indicated that the facts to be taken into account, in determining the length of sentence, will include: (i) the nature and the circumstances of the crime for which he was in prison; (ii) his conduct while in prison; (iii) the methods employed in effecting escape and in particular, whether any violence was involved and whether there was extensive planning and outside assistance; (iv) whether he surrendered himself and how soon; and (v) a plea of guilty.²³

In England and Wales there is also a type of offence of remaining unlawfully at large. Simplifying, it is an equivalent of a prohibited act under Article 242 § 2 and § 3 CC. It is rightly indicated in case law that this type of conduct cannot be recognised as escape because a perpetrator is not in custody.²⁴

In section 1(1) Prisoners (Return to Custody) Act 1995,²⁵ an offence of remaining unlawfully at large after temporary release is classified. In accordance with this

²² *Blackstone's Criminal Practice 2018*, *supra* n. 5, Nb B14.72.

²³ Judgment of the Court of Appeal (Criminal Division) of 19 February 1997 in case *Regina v. Coughtrey* [1997] EWCA Crim 506, No 9602786/Z4 (<https://www.bailii.org/ew/cases/EWCA/Crim/1997/506.html>; accessed 8.4.2020). The Court stated that if the offender is serving a determinate sentence, a consecutive sentence should almost invariably be imposed. Obviously if he is serving a life sentence the sentence for breaking prison will have to be served concurrently. In the case discussed, the appellant with his co-accused who were allocated to similar duties left the works department, burnt through the perimeter fence with oxyacetylene equipment and used a ladder to scale the outside wall over which they made their escape.

²⁴ See the above-mentioned judgment of the Court of Appeal (Criminal Division) of 31 July 2007 in case *Regina v. Montgomery* [2007] EWCA Crim 2157, and the judgment of the Court of Appeal (Criminal Division) of 14 November 2007 in case *Regina v. O'Neil* [2007] EWCA Crim 3490, No 2007/4930/B3 (<http://www.bailii.org/ew/cases/EWCA/Crim/2007/3490.html>; accessed 8.4.2020). The case *Regina v. Montgomery* concerned an offender serving an imprisonment sentence in an open prison. The accused was released each morning to go to some form of employment. He was not under any form of supervision but he was obliged to return to the prison at a specific time each evening. One evening he did not return to prison. He was arrested after one and a half months and charged with escape from lawful custody. On the advice of counsel, he pleaded guilty, and he was sentenced to a term of eight months' imprisonment. He has since received advice that the admitted facts did not disclose the offence charged and he lodged an appeal against the sentence. The Court of Appeal allowed the appeal and stated that the accused cannot be said to have escaped from custody because during his period of temporary release he is not in custody as he is not in prison and not under the direct control of any representative of authority. On the other hand, in case *Regina v. O'Neil* the accused did not return to prison from a day's town leave.

²⁵ Source: <https://www.legislation.gov.uk/ukpga/1995/16> (accessed 8.4.2020); hereinafter referred to as P(RC)A 1995.

provision, with the reservation of subsection (2), a person temporarily released based on section 47(5) PA 1952²⁶ is guilty of an offence if: (a) without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released; or (b) knowing or believing an order recalling him to have been made and while unlawfully at large by virtue of such an order, he fails, without reasonable excuse, to take all necessary steps for complying as soon as reasonably practicable with that order. It is believed that a person remains unlawfully at large if the term for which he was temporarily released has expired or if an order recalling him has been made in pursuance of the rules (section 49(4) PA 1952 in conjunction with section 1(5) P(RC)A 1995). A person guilty of an offence under this section is liable: (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both), and (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both) (section 1(3) P(RC)A 1995).

A similar offence is classified in section 32ZA Crime (Sentences) Act 1997²⁷ (offence of remaining unlawfully at large after recall). The provision applies to persons sentenced to life imprisonment who have been conditionally released and then the release has been recalled (section 32 C(S)A 1997). In accordance with section 32ZA(1) C(S)A 1997, a person whose conditional release has been recalled based on section 32 commits an offence if: (a) he has been notified of the recall orally or in writing,²⁸ and (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible. In accordance with section 32ZA(5) C(S)A 1997, a perpetrator of the offence discussed is subject to: (a) a penalty of imprisonment for two years, a fine or both (conviction on indictment), or (b) a penalty of imprisonment for 12 months, a fine or both (summary conviction). The same regulations are applicable to convicts sentenced to determinate imprisonment who have failed to return to prison after conditional release was recalled (section 255ZA Criminal Justice Act 2003²⁹).

English law also recognises an offence of assisting a prisoner to escape. It is regulated in section 39 PA 1952. In accordance with this provision, a person who: (a) assists a prisoner in escaping or attempting to escape from a prison, or

²⁶ Rules made under this section may provide for the temporary release of persons detained in a prison, remand centre, young offender institution, secure training centre or secure college not being persons committed in custody for trial before the Crown Court or committed to be sentenced or otherwise dealt with by the Crown Court or remanded in custody by any court. However, in accordance with section 1(2) P(RC)A 1995, subsection (1) above shall not apply in the case of a person temporarily released from a secure training centre or secure college.

²⁷ Source: <http://www.legislation.gov.uk/ukpga/1997/43> (accessed 8.4.2020); hereinafter referred to as C(S)A 1997.

²⁸ A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if: (a) written notice of the recall has been delivered to an appropriate address, and (b) a period specified in the notice has elapsed (section 32ZA(2) C(S)A 1997). A person is also to be treated as having been notified of the recall if: (a) the person's licence requires the person to keep in touch in accordance with any instructions given by an officer or a provider of probation services, (b) the person has failed to comply with such an instruction, and (c) the person has not complied with such an instruction for at least 6 months (section 32ZA(4) C(S)A 1997).

²⁹ Source: <https://www.legislation.gov.uk/ukpga/2003/44> (accessed 8.4.2020).

(b) intending to facilitate the escape of a prisoner: (i) brings, throws or otherwise conveys anything into a prison, (ii) causes another person to bring, throw or otherwise convey anything into a prison, or (iii) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison), is guilty of an offence and subject to a penalty of imprisonment not exceeding ten years. Supplying whatever objects intended to facilitate escape constitutes a common law offence, whether it is undertaken or not.³⁰

The offence discussed concerns an escape from any prison (e.g. a remand centre, a young offender institution or a youth custody centre); however, it does not cover assistance to an inmate who escapes from an escort, a court, etc.³¹ As far as the above-mentioned assistance to escape from custody is concerned, it is suggested in case law that it may constitute a common law offence.³² Also an act consisting in liberating a person lawfully deprived of liberty with the use of force is a common law offence.³³ Guards who let prisoners escape are also subject to criminal liability.³⁴ It is emphasised in case law that lawfulness of the detention is a necessary requirement for the conviction for such an act. The circumstance cannot be presumed, it must be proved.³⁵

Finally, one more offence classified in section 1(1) Prison Security Act 1992³⁶ can be mentioned. It consists in taking part by a prisoner in a prison mutiny. Such a mutiny takes place where two or more prisoners, while on the premises of any prison (including a young offender institution), engage in conduct (acts or omission) which is intended to further a common purpose of overthrowing lawful authority in that prison (section 1(2) and (6) PSA 1992). A mutiny may result, for example, in prisoners' collective escape from a detention institution.

2.2. NORTHERN IRELAND

In Northern Ireland the provisions classifying offences connected with a prisoner's escape are placed in Prison Act (Northern Ireland) 1953.³⁷

A basic offence of self-liberation is regulated in section 26 PA(NI) 1953, in accordance with which every person who: (a) having been convicted of an offence,

³⁰ S. Ramage, *supra* n. 20, p. 295.

³¹ *Blackstone's Criminal Practice 2018*, *supra* n. 5, Nb B14.76.

³² See *ibid.*

³³ *Ibid.* and W. Hawkins, *supra* n. 9, pp. 201–202.

³⁴ W. Hawkins, *supra* n. 9, p. 190.

³⁵ Judgment of the Court of Appeal of Jamaica of 25 January 1982 in case *Roy Dillon v. The Queen* [1982] AC 484 (https://www.bailii.org/uk/cases/UKPC/1982/1982_1.pdf; accessed 8.4.2020). It was pointed out in the judgment in the case (where a police officer was accused of negligence, which resulted in the escape of two prisoners) that the principle known in British law: *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium* (all things are presumed to have been rightly and with due formality unless it is proved to the contrary) is not applicable.

³⁶ Source: <http://www.legislation.gov.uk/ukpga/1992/25> (accessed 8.4.2020); hereinafter referred to as PSA 1992.

³⁷ Source: <https://www.legislation.gov.uk/apni/1953/18> (accessed 8.4.2020); hereinafter referred to as PA(NI) 1953.

escapes from any lawful custody, whether in prison or not, in which he may be under such conviction; or (b) whether convicted or not, escapes from any prison or lock-up in which he is lawfully confined; or (c) being in any lawful custody otherwise than as aforesaid escapes from such custody; shall be guilty of felony and shall on conviction thereof on indictment be liable to imprisonment for a term not exceeding three years.

An aggravated type of escape is classified in section 28 'Prison breach' PA(NI) 1953, in accordance with which every person who, by force or violence, breaks any prison with intent to set at liberty himself or any person lawfully confined therein shall on conviction thereof on indictment be liable to imprisonment for a term not exceeding seven years. On the other hand, in accordance with section 27 'Attempts to break prison' PA(NI) 1953, every person who attempts to break prison or who forcibly breaks out of any cell or other place within any prison wherein he is lawfully detained or makes any breach therein with intent to escape shall on conviction thereof on indictment be liable to imprisonment for a term not exceeding five years.

Like in England and Wales (and, simplifying, in Article 242 § 2 and § 3 CC), in Northern Ireland, there is an offence of being unlawfully at large while under sentence. In accordance with section 25 PA(NI) 1953, every person who, having been sentenced to imprisonment, or ordered to be detained in a young offenders centre is afterwards, and before the expiration of the term for which he was so sentenced, at large without some lawful excuse, the proof whereof shall lie on him, shall on conviction thereof on indictment be liable to imprisonment for a term not exceeding two years.

On the other hand, section 29 PA(NI) 1953 lays down a provision on an offence of assisting or permitting a person to escape from lawful custody. In accordance with section 29(1), a person who assists any person in escaping or attempting to escape from lawful custody, whether in prison or not, is guilty of an offence. According to section 29(2), also a person who: (a) is an officer of a prison in which a person is lawfully confined, or (b) is a constable having a person in his lawful custody, whether in prison or not, is guilty of an offence if he voluntarily and intentionally permits that person to escape. In accordance with section 29(3), a person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

On the other hand, in accordance with section 31 PA(NI) 1953, every person who, by failing to perform any legal or official duty, permits any person in his lawful custody on a criminal charge or any prisoner in his lawful custody to escape therefrom shall be guilty of an offence and shall be liable on summary conviction thereof to imprisonment for a term not exceeding six months or to a fine not exceeding level 2 on the standard scale or to both such imprisonment and such fine. It is an unintentional offence.

An act classified in section 33 PA(NI) 1953 is also an offence connected with assisting in escaping. In accordance with this provision, any person who with intent to facilitate the escape of a prisoner: (a) brings, throws or otherwise conveys anything into a prison, (b) causes another person to bring, throw or otherwise

convey anything into a prison, or (c) gives anything to a prisoner or leaves anything in any place (whether inside or outside a prison), is guilty of an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

An interesting solution can be found in section 32 PA(NI) 1953 ('Causing discharge of prisoner under pretended authority') in accordance with which, every person who knowingly and unlawfully, under colour of any pretended authority, directs or procures the discharge of any prisoner not entitled to be so discharged shall be guilty of an offence and shall on conviction thereof on indictment be liable to imprisonment for a term not exceeding five years. Any prisoner so discharged shall be deemed to have escaped.

2.3. SCOTLAND

Like in England and Wales, self-liberation in Scotland constitutes a common law offence. Two types of this prohibited act are distinguished: prison breaking and escaping from lawful custody.³⁸ The latter act consists in escaping from a place other than a prison, e.g. a police detention area, a hospital where a perpetrator is under control of guards, or a workplace outside prison.³⁹ Obviously, the requirement for conviction of escaping is the establishment that a person was in lawful custody.⁴⁰ It should be pointed out that from the point of view of matching the features of the offence of escaping it does not matter whether an offender used violence against other persons, damaged property, used a bump key or bribed a guard, etc.⁴¹ Attempted prison breaking is also liable to a penalty.⁴²

The offence of remaining unlawfully at large is classified in section 32A Prisons (Scotland) Act 1989.⁴³ A person commits an offence if, having been deemed to be unlawfully at large by virtue of: (a) section 17(5) or 17A(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, (b) section 28(7) of this Act, or (c) section 40(4) of this Act, the person remains unlawfully at large. A person who commits an offence is liable: (a) on summary conviction, to imprisonment for a term not

³⁸ P. Ferguson, C. McDiarmid, *Scots Criminal Law. A Critical Analysis*, Edinburgh University Press 2014, Chapter 14.10; and *A Draft Criminal Code for Scotland with Commentary*, E. Clive, P. Ferguson, Ch. Gane, A. McCall Smith (eds), Scottish Law Commission 2003, p. 170 (https://www.scotlaw.com.gov.uk/files/5712/8024/7006/cp_criminal_code.pdf; accessed 8.4.2020).

³⁹ P. Ferguson, C. McDiarmid, *supra* n. 38, Chapter 14.10.

⁴⁰ J.H.A. Macdonald, *A Practical Treatise on the Criminal Law of Scotland*, Edinburgh 1877, p. 218; A. Alison, *supra* n. 1, pp. 555–556.

⁴¹ J.H.A. Macdonald, *supra* n. 40, p. 218; A. Alison, *supra* n. 1, p. 555; and *A Draft Criminal Code for Scotland*, *supra* n. 38, p. 170. Also see the judgment of 13 April 1837 in case *HM Advocate v. William Hutton*, in which the accused escaped because the prison gate remained open due to a guard's negligence (*Reports of Cases Before the High Court and Circuit Courts of Judiciary in Scotland: From November 1835 to December 1837*, A. Swinton (ed.), Edinburgh 1838, p. 497).

⁴² See the list of common law crimes in the electronic system of the Crown Office and Procurator Fiscal Service (https://www.whatdotheyknow.com/request/476668/response/1143126/attach/2/FOI%20request%20John%20Maguire%20R018273.pdf?cookie_passthrough=1; accessed 8.4.2020). The list does not contain escaping from a place that is not a prison.

⁴³ Source: <http://www.legislation.gov.uk/ukpga/1989/45> (accessed 8.4.2020); hereinafter referred to as P(S)A 1989.

exceeding 12 months or a fine not exceeding the statutory maximum (or both), (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both). It concerns persons released on licence, which was recalled, and persons who were temporarily released on licence to visit home, work outside or for medical purposes, which was recalled or the release period expired. The person remains unlawfully at large if the person: (a) is given notification of the matter of being deemed to be unlawfully at large, and (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after notification of the matter is given to the person (section 32C(3) P(S)A 1989). In the case of a person whose release on licence expired, the person is unlawfully at large if the person: (a) has been, orally or in writing (i) informed of the period of temporary release that is the subject of the person's licence, and (ii) warned of the requirement to return to prison after the expiry of the period and of the offence and punishment available for failing to do so, and (b) without reasonable excuse, fails to take all necessary steps in order to return to prison as soon as possible after the period of temporary release expires (section 32C(2) P(S)A 1989).

Scottish case law also classifies an offence of assisting in escaping to a person in custody.⁴⁴ It may in particular concern breaking into prison to rescue a prisoner whether it was successful or not.⁴⁵

Special regulations concerning assistance in escaping from custody are laid down in Police and Fire Reform (Scotland) Act 2012.⁴⁶ In accordance with section 91(1), it is an offence for a person to remove a person from custody, or to assist the escape of a person in custody. A person in custody is to be construed as (a) a person who is in the lawful custody of a police officer or a person assisting this officer, or (b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested (section 91(2)). A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both (section 91(4)).

2.4. REGULATIONS COMMON TO ENGLAND, WALES, NORTHERN IRELAND AND SCOTLAND

Armed Forces Act 2006 is in force in the whole territory of the United Kingdom.⁴⁷ It is a legal act applicable to the armed forces and issues concerning them. Prohibited acts that interest us are classified in its chapter entitled 'Offences against service justice'.

⁴⁴ Judgment in case *HM Advocate v. Martin* (following the opinion of 8 October 2010 issued in *HM Advocate v. Mark Harris* [2010] HCJAC 102, Appeal No: XC136/10 (<https://www.scotcourts.gov.uk/search-judgments/judgment?id=65aa86a6-8980-69d2-b500-ff0000d74aa7>; accessed 8.4.2020).

⁴⁵ J.H.A. Macdonald, *supra* n. 40, p. 219. Also Schedule 2 to Firearms Act 1968, apart from 'prison breaking', lists 'breaking into prison to rescue prisoners' among common law offences classified in Scotland (<http://www.legislation.gov.uk/ukpga/1968/27>; accessed 8.4.2020).

⁴⁶ Source: <http://www.legislation.gov.uk/asp/2012/8> (accessed 8.4.2020).

⁴⁷ Source: <http://www.legislation.gov.uk/ukpga/2006/52> (accessed 8.4.2020); hereinafter referred to as AFA 2006. The Act was to be abolished on 12 May 2017, however, the date is

In accordance with section 29(1), a person subject to service law⁴⁸ or a civilian subject to service discipline⁴⁹ commits an offence if he escapes from lawful custody. Moreover, section 29(2) classifies an offence which may constitute a stage of preparing or attempting to escape consisting in the fact that a person subject to service law or a civilian subject to service discipline: (a) uses violence against a person in whose lawful custody he is, or his behaviour towards such a person is threatening; and (b) he knows or has reasonable cause to believe that the custody is lawful (sections 29(2) and (3)). The above-mentioned types of offences carry penalties laid down in section 164 (inter alia, imprisonment, dismissal from Her Majesty's service or a fine); it is worth mentioning that imprisonment cannot exceed two years.⁵⁰

On the other hand, section 30 regulates criminal liability for an offence of allowing escape or unlawful release of prisoners. In accordance with section 30(1), a person subject to service law commits an offence if: (a) he knows that a person is committed to his charge, or that it is his duty to guard a person; (b) he does an act that results in that person's escape; and (c) he intends to allow, or is reckless as to whether the act will allow, that person to escape, or he is negligent. An act should be interpreted as an action or omission (section 30(3)). On the other hand, in accordance with section 30(2), a person subject to service law commits an offence if: (a) he knows that a person is committed to his charge; (b) he releases that person without authority to do so; and (c) he knows or has reasonable cause to believe that he has no such authority. A person guilty of an offence under this section is liable to any punishment mentioned in the Table in section 164 (see above), but any sentence of imprisonment imposed in respect of the offence must not exceed: (a) in the case of an offence under section 30(1) where the offender intended to allow the person to escape, or an offence under section 30(2) where the offender knew he had no authority to release the person, ten years; (b) in any other case, two years (section 30(4)).

Section 39 AFA 2006 introduces liability to punishment for an offence of attempting to commit offences discussed herein, including impossible attempts.⁵¹ A person guilty of an offence is liable to the same punishment as he would be liable to if guilty of the offence attempted (section 39(9)). Encouraging, abetting, assisting,

postponed based on successive orders issued by Queen Elizabeth II. In accordance with the latest order of 3 April 2020, The Armed Forces Act (Continuation) Order 2020, it should stop being in force on 11 May 2021.

⁴⁸ In accordance with section 367 AFA 2006, members of regular forces (e.g. the Royal Navy or the Royal Air Force) and in some situations members of reserve forces (e.g. the Royal Fleet Reserve, the Royal Naval Reserve or the Territorial Army) are subject to service law.

⁴⁹ A civilian is a person who is not subject to service law and is referred to in Part 1 of Schedule 15 to the above-mentioned act (e.g. a person who is on board Her Majesty's plane or ship), see section 370 AFA 2006.

⁵⁰ In accordance with section 164(2), a person guilty of a particular offence is liable to any one or more of the punishments so mentioned. Civilians and ex-servicemen are liable to a separate catalogue of punishments, however, some of them (e.g. imprisonment or a fine), and in case of ex-servicemen most of them are the same (Part 1 and 2 of Schedule 3 to AFA 2006).

⁵¹ A person attempts to commit an offence if, with intent to commit the offence, he does an act which is more than merely preparatory to the commission of the offence (section 39(5) AFA 2006).

aiding, counselling and procuring are also subject to punishment (sections 40 and 41). A person guilty of such behaviour is liable for an offence commission (sections 40(6) and 41(4)).

It is also necessary to mention regulations laid down in Mental Health Act 1983,⁵² which is in force in the United Kingdom. In accordance with section 128(2), any person who induces or knowingly assists another person who is in legal custody by virtue of section 137⁵³ to escape from such custody shall be guilty of an offence. Any person guilty of an offence under this section shall be liable: (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both (section 128(4)).

3. THE REPUBLIC OF IRELAND

In the Republic of Ireland escape from custody also constitutes an offence.⁵⁴ In statistics it is included in a general category of offences against the government, court procedures and connected with organised crime.⁵⁵ Breach of prison is also this type of prohibited act (connected with a criminal or civil case), which consists in escape with the use of force or violence.⁵⁶ Thus climbing a wall or going through the door shall be escape from custody and not breach of prison.⁵⁷

A special regulation concerning escape from custody is laid down in Defence Act 1954⁵⁸. In accordance with section 146 of this legal act, every person subject to military law who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes, or attempts to escape, is guilty of an offence against military law

⁵² Source: <https://www.legislation.gov.uk/ukpga/1983/20> (accessed 8.4.2020). The act concerns the proceedings in relation to persons who suffer from mental disorders. Regardless of this legal act, The Mental Health (Northern Ireland) Order 1986 is in force in the territory of Northern Ireland. In section 124, it lays down an analogous regulation (including the same punishments) as Mental Health Act 1983 (<https://www.legislation.gov.uk/nisi/1986/595>; accessed 8.4.2020).

⁵³ It is applicable to persons conveyed to any place or kept in custody or detained in a place of safety (e.g. a police station, a hospital, etc. where a person with mental disorders may be temporarily kept).

⁵⁴ The Irish Supreme Court judgment of 15 May 2019 in case *Finnegan v. Superintendent of Tallaght Garda Station* (Supreme Court No. 2017/130) states that escape from custody is an indictable offence and there is a clear public interest that convicted persons should serve a sentence of imprisonment imposed upon them ([https://beta.courts.ie/acc/alfresco/ad2311f9-11d3-414f-8e3b-b9180d3fc2c4/2019_IESC_31\(3\).pdf/pdf](https://beta.courts.ie/acc/alfresco/ad2311f9-11d3-414f-8e3b-b9180d3fc2c4/2019_IESC_31(3).pdf/pdf); accessed 8.4.2020).

⁵⁵ *Irish Crime Classification System*, the 2017 version, https://www.cso.ie/en/media/csoie/methods/recordedcrime/ICCS_V2.0.pdf (accessed 8.4.2020). Actually, they are classified as offences while in custody and related offences, and this means, what is interesting from the point of view of Polish regulations, another sub-category than offences consisting in perverting the course of justice.

⁵⁶ S.E. Quinn, *Criminal Law in Ireland*, Irish Law Publishing 2009, p. 1699.

⁵⁷ *Ibid.*

⁵⁸ Source: <http://revisedacts.lawreform.ie/eli/1954/act/18/revised/en/html> (accessed 8.4.2020); hereinafter referred to as DA 1954.

and shall, on conviction by court-martial, be liable to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Irish law also classifies an offence of being unlawfully at large after having been temporarily released. In accordance with section 6(1) Criminal Justice Act 1960,⁵⁹ a person who, by reason of having been temporarily released under section 2 or section 3 of this Act, is at large shall be deemed to be unlawfully at large if: (a) the period for which he was temporarily released has expired, or (b) a condition to which his release was made subject has been broken. A person who is unlawfully at large shall be guilty of an offence under section 6(1) and on summary conviction thereof shall be liable to imprisonment for a term not exceeding six months (section 6(2) CJA 1960). It should be pointed out that in accordance with section 13(3) Criminal Law (Jurisdiction) Act 1976,⁶⁰ the above-mentioned punishment is also applicable to a person who escapes from any custody in which he is required to be kept in accordance with the provisions of this Act.

Offences consisting in assisting a person in escaping from lawful custody are classified in section 6(1) Criminal Law Act 1976⁶¹. In accordance with this provision, a person who: (a) aids any person in escaping or attempting to escape from lawful custody or, with intent to facilitate the escape of any person from lawful custody or enable a person after escape to remain unlawfully at large, or with intent to cause injury to persons or property in a place where a person is in lawful custody, conveys any article or thing into or out of such a place or to a person in such a place or places any article or thing inside or outside such a place, or (b) makes, or takes part in, any arrangement for the purpose of enabling a person to escape from lawful custody, facilitating such an escape, enabling a person after escape to remain unlawfully at large, or causing injury to persons or property in a place where a person is in lawful custody, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

In the context discussed, an offence under section 32(2) Offences Against the State Act 1939⁶² should be also mentioned. In accordance with this provision, every person who shall aid or abet a person detained under this Act to escape from such detention or to avoid recapture after having so escaped shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for a term not exceeding three months.

In accordance with section 234 DA 1954, every person who aids any prisoner in escaping or attempting to escape from any military prison or detention barrack, or

⁵⁹ Source: <http://www.irishstatutebook.ie/eli/1960/act/27/enacted/en/print.html> (accessed 8.4.2020); hereinafter referred to as CJA 1960.

⁶⁰ Source: <http://www.irishstatutebook.ie/eli/1976/act/14/enacted/en/print.html> (accessed 8.4.2020). The above-mentioned legal act regulates, in general, issues of mutual relations between the law of the Republic of Ireland and the law of Northern Ireland within the scope of criminal liability and criminal procedure.

⁶¹ Source: <http://www.irishstatutebook.ie/eli/1976/act/32/enacted/en/print.html> (accessed 8.4.2020).

⁶² Source: <http://www.irishstatutebook.ie/eli/1939/act/13/enacted/en/print.html> (accessed 8.4.2020). The Act concerns combating offences against public order and the state's authority.

who, with intent to facilitate the escape of any such prisoner, conveys or causes to be conveyed into any military prison or detention barrack any mask, dress or other disguise or any letter or other article or thing of whatsoever kind shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for any term not exceeding two years. It is a general offence. In accordance with section 145 DA 1954, which classifies an individual offence, every person subject to military law: (a) who, without proper authority, sets free or authorises or otherwise facilitates the setting free of any person in custody, or (b) who negligently or wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody, or (c) who assists any person in escaping or attempting to escape from custody, is guilty of an offence against military law and shall, where a charge under this section is disposed of summarily under section 177C, 178C or 179C, as the case may be, be liable to suffer any punishment awardable thereunder or, on conviction by court-martial, be liable, in case he acted wilfully, to suffer imprisonment for a term not exceeding seven years or any less punishment awardable by a court-martial and, in any other case, to suffer imprisonment for any term not exceeding two years or any less punishment awardable by a court-martial.

Finally, it should be pointed out that an act consisting in rescuing a person from lawful custody with the use of force constitutes a common law offence.⁶³

4. CONCLUSIONS

Summing up the above discussion, it is necessary to highlight what follows:⁶⁴

(1) In all the legal orders analysed (including in Poland), escape (self-liberation) from lawful custody constitutes an offence. In some cases it constitutes a common law offence and in some a statutory offence. Conviction for escape requires that an offender was in lawful custody. The Polish Criminal Code stipulates that 'a court judgment or a legal order issued by another state body' constitutes legal grounds for isolation (Article 242 § 1). It is an obvious requirement because a person who is in unlawful custody cannot be forbidden to escape. The type of deprivation of liberty from which a person escapes is in general referred to as lawful custody. However, in Scotland escape from prison is distinguished from escape from another place. Thus, penalisation is not limited, e.g. only to escape of a convict serving an imprisonment sentence. A similarly general solution, which is in my opinion defective, is laid down in Article 242 § 1 CC. I suggest that the provision should be amended and it should concern deprivation of liberty as a result of the commission of a prohibited act matching the features of an offence or a fiscal offence.⁶⁵

The solutions analysed in general also envisage an aggravated type of the offence of escape from custody with the use of violence or damage to property ('breach of prison/breaking prison' in England and Wales, 'prison breach' in Northern Ireland,

⁶³ S.E. Quinn, *supra* n. 56, p. 1699.

⁶⁴ For the purpose of simplified reference to the regulations that are in force in the United Kingdom and the Republic of Ireland (i.e. the British Isles), I will use the term 'British law'.

⁶⁵ See P. Poniatowski, *supra* n. 2, pp. 370–371.

and 'breach of prison' in the Republic of Ireland). Scotland constitutes an exception because a separate aggravated type of escape is not classified there (a standard offence of escape also covers the conduct involving the use of violence, etc.). In Polish law, the aggravated type of self-liberation is classified in Article 242 § 4 CC (acting under an agreement with other persons, use of violence or threat of using it, damage to the place of custody). What draws attention is the fact that in British law acting under an agreement with other persons is not, in general, an aggravating circumstance. Therefore, one can ask a question whether the circumstance should increase a penalty in Polish law. I doubt that. I believe that escaping under an agreement with other persons does not influence the level of social harmfulness of escape to such an extent that it should increase the maximum level of statutory punishment by half (from two to three years of deprivation of liberty); if it influences this harmfulness at all. On the other hand, the issue is marginal because there have been just several convictions annually for an offence under Article 242 § 4 CC in Poland in recent years (there are no data how many of those cases were committed under an agreement with other persons).⁶⁶

It should be pointed out that British law also classifies a special type of escape committed only by a person who is, in general, subject to military law (Armed Forces Act 2006, which is in force in the whole territory of the United Kingdom and Defence Act 1954, which is in force in the Republic Ireland). There is a lack of such a regulation in Poland. I believe that there is no need to introduce one because it would increase the already extensive casuistry of the Criminal Code.

(2) All the legal orders analysed also classify an offence of remaining/being unlawfully at large, which consists in the fact that an offender fails to return to prison when his release expires or is recalled. In most cases (Ireland is an exception) it concerns failure to return to prison with no reasonable or lawful (in Northern Ireland) excuse. Article 242 § 2 and § 3 of Polish CC also lays down the concept of 'justified reason'. What draws attention is the construction of the offence discussed in British law. Undoubtedly, it is an offence permanent in nature (remaining unlawfully at large is penalised). In Polish case law and jurisprudence an offence under Article 242 § 2 and § 3 CC is treated similarly, which can raise doubts if the content of those provisions is considered.⁶⁷ It should be pointed out that the provisions analysed in the article do not, unlike in Polish CC, provide a period of being unlawfully at large that is not subject to penalisation. Article 242 § 2 and § 3 refers to failure to return to prison 'within three days after the assigned date at the latest'.

In addition, in England, Wales and Scotland, there is a type of offence of being unlawfully at large after the conditional release from prison has been recalled. In Poland such conduct is not penalised. It seems, however, that it is worth considering the introduction of such a type of prohibited acts. A decision on conditional release from serving the rest of the penalty of deprivation of liberty results from the

⁶⁶ *Ibid.*, p. 258.

⁶⁷ It should be treated as a one-time offence; see *ibid.*, pp. 195–211.

recognition of positive criminological forecast and constitutes the expression of trust in a convict.⁶⁸ If during the period of probation he is disloyal to the penitentiary court that placed trust in him, which resulted in recalling the conditional release,⁶⁹ the imposition of a penalty for unjustified failure to return to prison after the release has been recalled will probably not be in conflict with the principle of *ultima ratio* of criminal law. It is so because such a person successively failed to show respect for law (first time it took place when he committed an offence, which resulted in the imposition of the penalty of deprivation of liberty, and second time it happened when after the conditional release he acted in the way specified in Article 160 Penal Enforcement Code). Thus, *de lege ferenda*, one can propose the introduction of Article 242 § 3a CC in the following wording: 'A person who was released from serving the rest of the penalty of deprivation of liberty and, after the release was recalled, has failed to return to prison within three days after the assigned date shall be subject to a penalty determined in § 2 herein.' Reference made to a penalty for an offence of 'failure to return' is justified by the same nature and level of social harmfulness of the offender's act. It should be highlighted, however, that taking a criminalisation decision in this case should be preceded by research into, in particular, the scale of the phenomenon of failure to return to prison after the conditional release is recalled.

(3) Regulations that are in force in the British Isles also stipulate penalisation of assistance in escape and setting free a person in lawful custody (including with the use of force) and an individual offence of allowing a person to escape (laid down in sections 29(2) and 31 Prison Act (Northern Ireland) 1953, section 30(1) Armed Forces Act 2006 and section 145 Defence Act 1954). What is characteristic is the penalisation of aiding *sui generis* consisting in providing a convict with objects with the intent to facilitate his escape (section 39 Prison Act 1952, section 33 Prison Act (Northern Ireland) 1953, section 6(1) Criminal Law Act 1976, section 234 Defence Act 1954). Some provisions also lay down a penalty for instigating to escape (Armed Forces Act 2006, Mental Health Act 1983, Offences Against the State Act 1939). In Poland liability for setting free a person deprived of liberty and facilitating his escape is laid down in Article 243 CC. It is an intentional offence. Unintentionally allowed escape (subject to a penalty in accordance with some British provisions) can be covered by Article 231 § 3 CC. On the other hand, instigating to self-liberation is subject to a penalty in accordance with general rules as instigation under Article 18 § 2 in conjunction with Article 242 § 1 or § 4 CC.

⁶⁸ In accordance with Article 77 § 1 CC, a court can conditionally release a person who was given a sentence of deprivation of liberty from serving the rest thereof only when his attitude, personal character and conditions, circumstances of the offence commission and conduct after it and at the time of serving the penalty justify the conviction that when released a prisoner will comply with the criminal or preventive measure imposed and will observe the legal order, in particular he will not commit an offence again.

⁶⁹ Requirements for such a decision are laid down in Article 160 § 1–§ 4 Penal Enforcement Code.

BIBLIOGRAPHY

- A Draft Criminal Code for Scotland with Commentary*, E. Clive, P. Ferguson, Ch. Gane, A. McCall Smith (eds), Scottish Law Commission 2003.
- Alison A., *Principles of the Criminal Law of Scotland*, Edinburgh–London 1832.
- Blackstone's Criminal Practice 2018*, D. Ormerod, D. Perry (eds), Oxford 2017.
- Ferguson P., McDiarmid C., *Scots Criminal Law. A Critical Analysis*, Edinburgh University Press 2014.
- Hawkins W., *A Treatise of the Pleas of the Crown; or, A System of the Principal Matters Relating to that Subject, Digested under Proper Heads*, Vol. II, London 1824.
- Macdonald J.H.A., *A Practical Treatise on the Criminal Law of Scotland*, Edinburgh 1877.
- Poniatowski P., *Przestępstwa uwolnienia osoby prawnie pozbawionej wolności (art. 242 i 243 k.k.)*, Warszawa 2019.
- Quinn S.E., *Criminal Law in Ireland*, Irish Law Publishing 2009.
- Ramage S., *English Prison Law*, New York–Bloomington 2009.
- Reports of Cases Before the High Court and Circuit Courts of Justiciary in Scotland: From November 1835 to December 1837*, A. Swinton (ed.), Edinburgh 1838.

PENAL ASPECTS OF REGAINING FREEDOM BY A PERSON LEGALLY DEPRIVED OF IT IN THE UNITED KINGDOM AND THE REPUBLIC OF IRELAND

Summary

The article presents an analysis of legal solutions that are in force in England, Wales, Scotland, Northern Ireland and the Republic of Ireland concerning an offence of self-liberation (escape) from lawful custody, an offence of unlawfully being at large after the conditional release has expired or has been recalled and an offence of facilitating escape from lawful custody, liberating or allowing a person to escape. The article aims to present the regulations and compare them with each other and the solutions adopted in the Polish Criminal Code. The research conducted made it possible to establish many similarities between regulations that are in force in the British Isles and between them and Articles 242 and 243 of the Polish Criminal Code.

Keywords: offence of self-liberation (escape), offence of liberating a person deprived of liberty or facilitating his escape, deprivation of liberty, remaining unlawfully at large, law of the United Kingdom and the Republic of Ireland

KARNOPRAWNE ASPEKTY ODZYSKANIA WOLNOŚCI PRZEZ OSOBĘ PRAWNIE JEJ POZBAWIONĄ W WIELKIEJ BRYTANII I IRLANDII

Streszczenie

Artykuł zawiera analizę rozwiązań prawnych obowiązujących w Anglii, Walii, Szkocji, Irlandii Północnej i Republice Irlandii dotyczących przestępstwa samouwolnienia (ucieczki) osoby prawnie pozbawionej wolności, przestępstwa bezprawnego pozostawiania na wolności po

odwołaniu lub wygaśnięciu zezwolenia na opuszczenie miejsca izolacji oraz przestępstwa ułatwienia ucieczki osobie prawnie pozbawionej wolności, uwolnienia jej lub pozwolenia na ucieczkę. Celem opracowania jest przedstawienie omawianych regulacji i porównanie ich między sobą oraz z rozwiązaniami przewidzianymi w polskim Kodeksie karnym. Przeprowadzone badania pozwoliły ustalić wiele podobieństw między regulacjami obowiązującymi w krajach położonych na Wyspach Brytyjskich oraz między nimi a art. 242 i 243 polskiego k.k.

Słowa kluczowe: przestępstwo samouwolnienia (ucieczki), przestępstwo uwolnienia i udzielenia pomocy w ucieczce, pozbawienie wolności, bezprawne pozostawanie na wolności, prawo Wielkiej Brytanii i Irlandii

ASPECTOS PENALES DE LA RECUPERACIÓN DE LIBERTAD POR LA PERSONA PRIVADA DE LIBERTAD EN GRAN BRETAÑA E IRLANDA

Resumen

El artículo analiza las soluciones legales vigentes en Inglaterra, Gales, Escocia, Irlanda del Norte y la República de Irlanda relativas al delito de fuga de la persona privada de libertad legalmente, delito de libertad ilegal después de revocación o expiración de permiso para abandonar el lugar de aislamiento, delito de facilitar la fuga a la persona privada de libertad, liberarla o dejarla salir. La obra pretende presentar la regulación en cuestión y compararla con las soluciones previstas en el código penal polaco. La investigación llevada a cabo permite detectar muchas similitudes entre la regulación vigente en las Islas Británicas, entre ellas mismas y entre el art 242 y 243 del código penal polaco.

Palabras claves: delito de fuga, delito de auto liberación e ayuda en la fuga, privación de libertad, libertad ilegal, derecho de Gran Bretaña e Irlanda

УГОЛОВНО-ПРАВОВЫЕ АСПЕКТЫ НЕСАНКЦИОНИРОВАННОГО ВЫХОДА НА СВОБОДУ ЛИЦА, ЗАКОННО ЛИШЕННОГО СВОБОДЫ, В ВЕЛИКОБРИТАНИИ И ИРЛАНДИИ

Аннотация

В статье анализируются правовые решения, действующие в Англии, Уэльсе, Шотландии, Северной Ирландии и Ирландии в отношении преступлений, состоящих в самовольном выходе на свободу (побеге) лица, законно лишённого свободы, в незаконном пребывании на свободе после отмены или истечения срока действия разрешения на выход из места лишения свободы, а также в содействии побегу лица, законно лишённого свободы, его освобождению или позволении на побег. Целью работы является обсуждение соответствующих положений законодательства, их сравнение друг с другом и с решениями, содержащимися в Уголовном кодексе Польши. Проведённый анализ позволил установить, что между нормами, действующими на Британских островах, и положениями ст. 242 и 243 УК Польши имеется много общего.

Ключевые слова: преступление самовольного выхода на свободу (побега); преступление незаконного освобождения и пособничества в побеге; лишение свободы; незаконное пребывание на свободе; право Великобритании и Ирландии

STRAFRECHTLICHE ASPEKTE DER WIEDERERLANGUNG DER FREIHEIT DURCH EINE RECHTMÄSSIG INHAFTIERTE PERSON IN GROSSBRITANNIEN UND IRLAND

Zusammenfassung

Der Artikel beinhaltet eine Analyse der in England, Wales, Schottland, Nordirland und Irland geltenden Rechtsvorschriften in Bezug auf die Straftat der Gefangenenselbstbefreiung (Gefängnisausbruch) einer rechtmäßig inhaftierten Person, die Straftat des rechtswidrigen Aufenthalts in Freiheit nach Widerruf oder Ablauf der Erlaubnis zum Verlassen des Ortes der Verwahrung und die Straftat der Beihilfe zum Gefängnisausbruch einer rechtmäßig inhaftierten Person, der Gefangenenselbstbefreiung oder der Billigung der Entweichung von Gefangenen. Ziel der Studie ist es, die diskutierten Regelungen vorzustellen und diese miteinander und mit den im polnischen Strafgesetzbuch vorgesehenen Maßnahmen zu vergleichen. Im Rahmen der angestellten Untersuchung ließen sich zahlreiche Übereinstimmungen zwischen den in den Ländern der britischen Inseln geltenden Vorschriften und zwischen diesen und den Artikeln 242 und 243 des polnischen Strafgesetzbuchs feststellen.

Schlüsselwörter: Straftat der Gefangenenselbstbefreiung (Flucht), Straftat der Gefangenenselbstbefreiung und Beihilfe zum Gefängnisausbruch, Freiheitsentzug, illegaler Aufenthalt in Freiheit, Recht in Großbritannien und Irland

ASPECTS DE DROIT PÉNAL DE LA RÉCUPÉRATION DE LA LIBERTÉ PAR UNE PERSONNE QUI EN EST LÉGALEMENT PRIVÉE EN GRANDE-BRETAGNE ET EN IRLANDE

Résumé

L'article contient une analyse des solutions juridiques en vigueur en Angleterre, au Pays de Galles, en Écosse, en Irlande du Nord et en Irlande concernant le crime d'auto-libération (fuite) d'une personne légalement privée de liberté, le crime de séjour illégal en liberté après révocation ou expiration du permis de quitter le lieu d'isolement et l'infraction de facilitation de l'évasion d'une personne légalement emprisonnée, de sa libération ou d'autorisation de s'échapper. Le but de l'étude est de présenter les règlements discutés et de les comparer entre eux et avec les solutions prévues dans le Code pénal polonais. Les recherches menées ont permis d'établir de nombreuses similitudes entre les réglementations en vigueur dans les pays situés sur les îles britanniques et entre elles et l'articles 242 et 243 du Code pénal polonais.

Mots-clés: crime d'auto-libération (fuite), crime de libération et d'aide à l'évasion, privation de liberté, rester illégalement en liberté, droit de Grande-Bretagne et d'Irlande

ASPETTI PENALI DELL'EVASIONE DI UNA PERSONA DETENUTA IN GRAN BRETAGNA E IN IRLANDA

Sintesi

L'articolo contiene l'analisi delle soluzioni giuridiche vigenti in Inghilterra, Galles, Scozia, Irlanda del Nord e in Irlanda, riguardanti il reato di evasione (di fuga) delle persone detenute

per legge, il reato di illegale mancato rientro nel luogo di detenzione dopo la revoca o la scadenza del permesso di allontanamento, nonché il reato di favoreggiamento dell'evasione di una persona detenuta per legge, della sua liberazione o permesso alla fuga. L'obiettivo dell'elaborato è la presentazione delle regolamentazioni indicate e il loro confronto reciproco, nonché il confronto con le soluzioni previste nel Codice penale polacco. Gli studi condotti hanno permesso di stabilire molte analogie tra le regolamentazioni vigenti nei paesi delle Isole Britanniche nonché tra di essi e gli art. 242 e 243 del Codice penale polacco.

Parole chiave: reato di evasione (di fuga), reato di liberazione e di favoreggiamento dell'evasione, detenzione, mancato rientro nel luogo di detenzione, diritto della Gran Bretagna e dell'Irlanda

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