

Offences connected with regaining of liberty by a person legally deprived thereof (Art. 242 and 243 of the Criminal Code)

Summary

The object of the doctoral dissertation by LLM Piotr Poniatowski is the analysis of the legal solutions referring to offences connected with the regaining of liberty by a person legally deprived of it. The Author's aim is to solve two main problems. The first one is providing an answer to the question whether the binding regulations are compatible with the reality in which they function. The second problem is connected with an attempt to diffuse the interpretational doubts which appear in the legal doctrine and judicature referring to the offences analysed in the work.

The dissertation consists of seven chapters, an Introduction and Concluding remarks.

In the Introduction the Author delineates the scope of the work, justifies its title and the choice of the topic, points to the research aims assumed and research methods applied, he also describes the composition and content of the work.

Chapter I ("Introductory issues") is devoted to three problems: the historical development of legal solutions referring to the self-liberations of a person deprived of liberty, as well as to the facilitation of the escape of such a person; the problem of the individual and generic protected value of the discussed offences and the analysis of the legal regulations binding in several European countries and the United States of America.

In Chapter II, entitled "Statutory features of the offence of self-liberation in its basic and aggravated type (Art. 242 § 1 and 4 of the Criminal Code)", the statutory features of the offence of self-liberation have been analysed, much attention has been paid to the interpretation of the expression used in Art. 242 § 1 of the Criminal Code "deprived of liberty pursuant to a court ruling or a legal order issued by another state authority". In the last part of the chapter the problem of the concurrence of Art. 242 § 1 and 4 of the Criminal Code with other provisions has been discussed.

Chapter III which is entitled "Statutory features of the offences of not returning to a place of isolation (Art. 242 § 2 and 3 of the Criminal Code) contains the analysis of the types of offences in whose case the offender, being on a respite from serving the punishment of deprivation of liberty (including a pause in the serving of

deprivation of liberty), without an excusable reason fails to return to a penal facility within at least three days after the laps of the prescribed deadline. Many remarks have been devoted to the doubt-raising expression “unsupervised temporary release from a penal facility or a provisional detention facility”. The opinion dominating in the judicature and literature, according to which the discussed offence is a permanent one, has been criticised. The end of the chapter discusses briefly the problem of provision concurrence.

In chapter IV, entitled “Statutory features of the offence of liberating a person deprived of liberty or facilitating his/her escape (Art. 243 of the Criminal Code) the Author analyses the statutory features of the offence of liberating a person deprived of liberty or facilitating the escape of such a person. Most detailed remarks (besides the ones devoted to the concurrence of provisions) have been devoted to the problem of the forbidden activities described in Art. 243 of the Criminal Code.

Chapter V (“The measures of criminal reaction to the offence from Art. 242 and 243 of the Criminal Code”) contains the description of the types of punishment and other means of criminal reaction which can be imposed on the perpetrators of the discussed offences.

Chapter VI contains the analysis of the offences from Art. 242 and 243 of the Criminal Code in the light of statistical data of the Police (determined offences) and from the Ministry of Justice (the number of convictions, including the sex and age of the offenders and the place of the commission of the offence, types of punishments imposed by the courts and the type of punishment dominating in the judicature).

The last chapter has been devoted to the analysis of court files, conducted by the Author; it referred 137 cases which ended in valid decisions in the courts belonging to the Lublin Appellate Court region in the years 2015-2016 and in the first half of 2017. The research referred to three groups of issues: the characteristics of the offender, the act and its circumstances and data referring to the criminal proceedings.

In the Concluding remarks the Author sums up the findings of individual chapters and he also formulates some *de lege ferenda* postulates referring to possible modifications of Art. 242 and 243 of the Criminal Code.