Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XV, 2022, no. 1, pp. 243–254
https://doi.org/10.32084/tkp.4469

DELIMITATION OF OFFENCES UNDER ARTICLE 243 AND ARTICLE 239(1) OF THE POLISH CRIMINAL CODE – CONSIDERATIONS IN THE CONTEXT OF THE JUDGMENT OF THE COURT OF APPEAL IN SZCZECIN OF 12 JANUARY 2016, II AKA 151/15

Dr. Piotr Poniatowski

Department of Criminal Law and Criminology, Faculty of Law and Administration
Maria Curie–Skłodowska University in Lublin, Poland
e-mail: piotr.poniatowski@umcs.pl; https://orcid.org/0000-0001-9712-0663

Abstract. The paper addresses the problem of delineating the offence of facilitating the escape of a person deprived of liberty on the basis of a court decision or a legal order issued by another state authority (Article 243 of the Criminal Code) and the offence of assistance in avoiding criminal liability (Article 239(1) of the Criminal Code). The author claims that assistance provided after the escape should be considered an offence under Article 239(1) of the Criminal Code. He also draws attention to the problems occurring in practice with regard to the differentiation of these types of offences. His analysis also leads him to formulate postulates for the law as it should stand (*de lege ferenda*).

Keywords: offence of assistance in avoiding criminal liability, offence of facilitating an escape of a person legally deprived of liberty, Criminal Code

1. THE SUBJECT-MATTER AND PURPOSE OF THE STUDY AND THE RESEARCH METHODS USED

This article addresses the problem of demarcating the criminal offence of facilitating the escape of a person deprived of liberty under a court decision or a legal order issued by another state authority (Article 243 of the Polish Criminal Code[1]) and the offence of providing assistance in avoiding criminal liability (Article 239(1) CC). This is a demarcation both in dogmatic terms (distinguishing between types of offences) and in practical terms (the question of the correct legal classification of the facts of a case).

[1] Act of 6 June 1997, the Criminal Code, Journal of Laws of 2022, item 1138 [hereinafter: CC].

ISSN 1899-7694
e-ISSN 2719-7379

The aim of the study is to analyse the relationship between the provisions in question and to discuss the constituent elements of the offence under Article 243 CC that are relevant to the object of this study and to draw attention to the need for a thorough examination of the facts of the case and the correct interpretation of the provisions in question. Irregularities in the application of Article 239(1) CC and Article 243 CC may have far-reaching consequences, including the destruction of the objectives of the criminal proceedings, in particular the objective of holding the offender criminally liable (Article 2(1) of the Polish Code of Criminal Procedure[2]). Suffice it to say that the mistake made by the court a quo whose judgment was subject to review by the Court of Appeal in Szczecin in the title case II AKa 151/15, resulted (in view of the specific procedural arrangements – see further remarks herein) in acquitting the perpetrators, although they had committed criminal prohibited acts. The issues which will be discussed below are therefore important, as they concern the real problem of the application of law. An important role in achieving the intended objective is played by a precise description of what is meant by "escape" as referred to in Article 243 CC and the determination of the moment when the offence of self-release under 242(1) CC is committed.

The main means of achieving this objective is to use the dogmatic legal method, with particular use of the linguistic interpretation of the provisions. The dogmatic analysis is accompanied by a reference to judicial decisions taken with regard to the legislation in question.

It should also be pointed out at this point that this study does not constitute a commentary on the title judgment. The judgment is merely a starting point for considerations within the scope outlined above, but it is not the only subject of my interest. The most important interpretation problems and mistakes appearing in practice will be discussed on its example.

2. FACTS OF THE CASE WITH REGARD TO WHICH THE JUDGEMENT OF THE COURT OF APPEAL IN SZCZECIN OF 12 JANUARY 2016, REF. NO. II AKA 151/15,[3] WAS ISSUED

By judgment of the Regional Court in Szczecin of 10 April 2015 (ref. no. III K 261/13)[4] the accused D.J. was found guilty of the following: "on an un-

[2] Act of 6 June 1997, the Code of Criminal Procedure, Journal of Laws of 2021, item 534 as amended [hereinafter: CCP].

[3] Lex no. 2149584.

[4] It should be noted that it was a judgment issued after re-examination of the case. This was so because in the judgment of 21 November 2013, ref. no. II AKa 188/13, the Court of Appeal in Szczecin rescinded the judgment of the Regional Court in Szczecin of 13 May 2013, ref. no. III K 214/08 and remitted the case for re-examination, see http://orzeczenia.ms.gov.pl/content/u$0142atwia$0142$0020ucieczk$0119/155500000001006_II_AKa_000188_2013_Uz_2013-11-

specified date in July 2006, in the town of S., acting for the purpose of gaining a financial benefit, he facilitated the escape of W. R. imprisoned under a court decision, in such a way that he provided the said person with a forged passport issued in the name of another person, receiving PLN 3,000 as remuneration for this act," while accused N.J. was found guilty of the following: "in the period from 6 June 2006 to July 2006, having been convicted under an aggregate sentence issued by the District Court in Szczecin [...], *inter alia* for acts under Article 13(1) CC in conjunction with Article 279(1) CC and Article 242 CC to 3 years' imprisonment, which he served in the period [...], he facilitated the escape of W.R, imprisoned under a court decision, in such a way that, after the above-mentioned person fled on 6 June 2006, he rented to the above-mentioned person a flat in the town of S., located at [...] Street, where the latter then hid from the Police." These acts were qualified under Article 243 CC.

The Court of Appeal in Szczecin, in its verdict of 12 January 2016, as a result of appeals filed by the defence counsels, acquitted the defendants of the commission of these acts. In the grounds for the judgment it was indicated that: "These actions committed by D.J., which consisted in providing W.R. with a forged passport, were obviously undertaken after his escape from a prison, namely when W.R. had already moved into the rented flat and was planning to travel to the town of B. in order to commit a robbery at a jeweller's shop there. It was therefore not a question of facilitating his escape from prison, but possibly assisting him to avoid criminal liability to the full extent, i.e. the act defined in Article 239(1) CC, possibly also including the offence under Article 270(1) CC. However, changes toward this direction were not admissible, neither was the issuance of a cassation judgment, therefore D.J. was acquitted." The Court of Appeal further stated that: "In the case of N.J., the very description of the act points to activities undertaken after the escape (in this case the evidence had not been duly analysed properly bringing the indictment) and although the Regional Court hearing the case again made factual findings in the light of which the possibility to assume that the defendant had met the criteria of the offence pursuant to Article 243 CC could not be excluded, it would necessitate a change in the description of the act, but first of all we cannot lose sight of the factual findings made during the first examination of the case. These were limited to pointing out that immediately after the escape, W.R. contacted N.J., who, knowing that W.R. was hiding, rented for him a flat at [...] Street. It is therefore the nature of the findings according to which the behaviour of N.J. also constituted assistance in avoiding criminal liability within the meaning of Article 239(1) CC. The act the accused was charged of would require changing the description and legal qualification, which in the

21_001 [accessed: 06.02.2022]. However, the judgment of the Court of Appeal in Szczecin of 21 November 2013 does not contain findings on the wrong qualification of the acts attributed to the accused under Article 243 CC.

current circumstances of the case would not be possible to achieve, therefore also N.J. was acquitted of this act."

3. LEGAL-DOGMATIC CONSIDERATIONS

Article 243 CC criminalises the unlawful release of a person deprived of liberty under a court's ruling or a legal order issued by another state authority or assistance to that person in their escape. The same chapter of the Criminal Code ("Offences against justice") describes the offence of assistance in avoiding criminal liability, which involves obstructing or thwarting criminal proceedings by assisting the perpetrator of a criminal offence or fiscal offence in avoiding criminal liability, which may consist, in particular, in hiding the offender, covering up the traces of a criminal offence or a fiscal offence or serving a sentence instead of a convicted person.

It should be noted that a person who facilitates the escape of a person legally deprived of liberty can thus obstruct or thwart criminal proceedings by assisting the offender in avoiding criminal liability (e.g. helping a person sentenced to imprisonment or a person held in pre-trial detention to escape from a penitentiary). In such situations, there are a number of different legal assessments of the same act which, however, will not lead to its cumulative legal classification, since, to that extent, Article 243 CC must be regarded as a *lex specialis* to Article 239(1) CC (apparent concurrence of provisions).[5]

It should be pointed out, however, that the multiplicity of legal assessments will not occur at all when assistance to avoid criminal liability is provided only after the person deprived of his liberty has escaped. This is the problem of delimitation of the type of criminal offence described in Article 243 CC, which was faced by the Court of Appeal in Szczecin in the case which is the background to this study. This question should be addressed.

Article 243 CC uses the word "escape." What does it mean? According to the dictionary meaning of the word, "escape" as a noun means the act of running, fleeing from somewhere, from something, getting out, finding a shelter, while the verb "to escape" means to go out of a place by running (mainly due to the fear of being chased), to quickly leave, get out, flee from a guarded place [Doroszewski]. As one can see, the general language does not give an unambiguous answer to the question what the facilitating of an escape would involve.

[5] As proposed by: Szamrej 1977, 113; Stefański 2003, 41; Kunicka–Michalska 2010, 358; Poniatowski 2019, 244; the following authors were of different opinion, based on the Criminal Code 1932 (the wording of the provisions in question were similar to those of the Criminal Code of 1997): Makarewicz 1938, 400–401; Nisenson and Siewierski 1949, 131; Siewierski 1965, 196; Glaser and Mogilnicki 1934, 502; Wolter 1961, 52–53.

Thus, the normative context must be taken into account. Three elements will be important here. First of all, Article 243 CC refers to facilitating an escape of "a person deprived of liberty." Secondly, the facilitating of an escape was located next to another perpetration action, namely the unlawful release of a person lawfully deprived of liberty. And thirdly, Article 243 CC is preceded by Article 242 CC, in which § 1 provides for a penalty for the unlawful self-release of a person lawfully deprived of liberty.

As regards the first element, in accordance with the interpretation directive of terminological consequence [Morawski 2010, 119–20], the "deprivation of liberty" referred to in Article 243 CC should be understood as a concept interpreted in the context of Article 242 CC, and therefore as actual deprivation of liberty, i.e. a situation in which a specific person cannot change the place of their residence according to their will [Kunicka-Michalska 2010, 337; Wiak 2018, 1195; Wojtaszczyk, Wróbel, and Zontek 2018, 733–34; Poniatowski 2019, 73–78]. In fact, such deprivation of liberty must have a basis in a judicial decision (e.g. a judgment sentencing to imprisonment or a decision on the application of pre-trial detention) or a legal order issued by a state authority other than court (e.g. detention by the police of a person suspected of committing a crime).

As regards the second and third elements, it should be noted that the offence of facilitating an escape was located by the legislature next to acts resulting in the unlawful release of a person lawfully deprived of liberty, and thus in the context of self-release of such a person and release of this person by another one. The pointing out that the perpetrator allegedly facilitates the escape of a person deprived of liberty and the mentioned location of the offence of facilitating the escape in the structure of the chapter of the Criminal Code and the particular section allows us to assume that the "escape" should be understood as a self-release of a person legally deprived of liberty, and consequently to recognize that "facilitating the escape" means facilitating the self-release of such a person.[6]

Upon regaining liberty (self-releasing), the possibility of facilitating the escape within the meaning of Article 243 CC ends [Makowski 1937, 488; Stefański 2003, 39; Hansen 1982, 33; Wysoczyńska 2014, 151; Poniatowski 2019, 244–45]. The provision of assistance to a person who has already

[6] More specifically, "facilitating the escape" means the undertaking by the perpetrator of any conduct which may facilitate the release of a person lawfully deprived of liberty, with the exception, however, of conduct which must be qualified as the release of that person, i.e. a conduct which directly and spontaneously contributes to the restoration of his or her liberty (that reservation is necessary since Article 243 CC defines two acts). Unlike the release of a person lawfully deprived of liberty, where the role (in terms of effort made) of that person is little or none, in the case of facilitating escape, that person plays a central role, while the perpetrator of the offence under Article 243 CC only assists him/her in the implementation of his/her intention of self-release.

released himself/herself should therefore not be qualified under that provision. Such conduct may be treated in specific circumstances as assisting a perpetrator to avoid criminal liability under Article 239(1) CC. In judgment of 26 November 1934 (ref. no. 3 K. 1202/34),[7] the Supreme Court assumed that: "An «escape» within the meaning of Article 151 CC [Criminal Code of 1932, which is equivalent to Article 243 of the current Criminal Code – author's footnote] is the getting out of the supervision of persons assigned to execute a judicial decision or order of public authority by slipping out of a closed area or authority of the persons exercising the supervision over the inmate, the purpose of which action is to avoid the direct danger of loss of liberty until the reaction of the authorities has become ineffective and the need for issuing new orders have arisen in order to capture the fugitive. [...] while «facilitating the escape» consists in assisting a prisoner who escapes, in any form whatsoever, until immediate danger of loss of the liberty that has been regained is avoided, that is to say, avoiding pursuit prompted by immediate escape from a place of confinement or from the custody of the guards or public order and security authorities." This ruling is correlated with the concept, adopted herein, that the regaining of liberty by a perpetrator of self-release (the commission of this offence) occurs when the fugitive gets out of captivity (e.g. from a prison or a police arrest) or of the supervision of persons watching him/her (the guards, e.g. while escorting a detained person for a detention hearing from a police car to a court building), and, where the direct striving towards the self-release (an attempt) has been noticed and the pursuit has started, the moment when the offence is committed will be the moment when the immediate danger of capturing the offender ceases. This is so because if a fugitive has escaped from a guarded place but has been immediately subject to a pursuit, it cannot be assumed that the fugitive has already regained his or her liberty, since the change of whereabouts is determined solely by the need to avoid being captured. However, once the pursuit, even a short one, is avoided, the offender regains the liberty he/she was previously deprived of. Of course, the fugitive's behaviour will depend to a large extent on the way in which the pursuit is conducted, but the desire to avoid it will no longer be a determinant of the choice of the offender's place of stay. It then can be said that offender's freedom is kind of restricted.

It can therefore be seen that the most important issue in the context of the correct application of substantive criminal law in a case at the boundary between Article 239 CC and Article 243 CC is the determination whether liberty of the fugitive had already been regained when the aid was being provided to them, or not.

[7] "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 3 (1935), p. 694–95.

4. ANALYSIS OF THE JUDICIAL DECISIONS

At this point, we have to go back to the judgment of the Court of Appeal in Szczecin referred to in the title hereof. In the case of both acts classified by the court of first instance under Article 243 CC, the perpetrators provided assistance to the fugitive after he regained his freedom, i.e. after committing the offence of self-release. Providing the fugitive with a forged passport by defendant D.J. and renting an apartment for him by defendant N.J. could not therefore be regarded as facilitating the escape within the meaning of Article 243 CC. These acts should have been qualified as the offence of assistance in avoiding criminal liability under Article 239(1) CC. However, due to the procedural arrangement (the appeal was only brought in favour of the defendants), the Court of Appeal had to acquit the defendants of the charges (prohibition of *reformationis in peius*). The decision contained in the judgment of the Court of Appeal in Szczecin of 12 January 2016 should therefore be regarded as correct.

The proper distinction between the offence of facilitating an escape and the offence of providing assistance in avoiding criminal liability encounters difficulties in practice. In the case considered by the Regional Court in Szczecin (ref. no. III K 242/12; it was related to the title-referred decision of the Court of Appeal in Szczecin), the public prosecutor accused T.S. of "having facilitated, in the period from 6 June 2006 to the beginning of July 2006 in the town of S., the escape of W.R., deprived of liberty under a court decision, in such a way that he provided him with money for maintenance and rent of the apartment where the said person was hiding, i.e. an act under Article 243 CC." In the judgment of 20 January 2014,[8] the Regional Court in Szczecin, while not sharing the view of the public prosecutor with regard to the legal qualification of the act charged against the defendant, found (correctly) T.S. guilty of the act of having, "in the period from 6 June 2006 to the beginning of July 2006 in the town of S., obstructed criminal proceedings in the case of his brother-in-law W.R, who had been sentenced to 2 years and 6 months of imprisonment by the judgement of the District Court in Stargard Szczeciński [...] and subsequently, during his imprisonment, liberated himself which helped him avoid responsibility, by hiding W.R. and providing him with money for living expenses, i.e. by committing the offence under Article 239(1) CC in conjunction with Article 239(2) CC" and discontinued the proceedings related to this act pursuant to 414(1) CCP in conjunction with Article 17(1)(4) CCP. Due to the fact, that the defendant who assisted the fugitive was his close family member, the correct legal classification of the act resulted in discontinuance of proceedings

[8] Not published; its content is contained in the judgment of the Court of Appeal in Szczecin of 15 May 2014, ref. no. II Aka 59/14, Legalis no. 2180368.

in the described scope (this type of regulation is not contained in Article 243 CC, which the prosecutor requested the court to apply).

In another case, the District Court in Grudziądz, by its judgment of 23 November 2017[9] found the defendant, K.G. guilty that "on 10 October 2015 from 20:52 to 20:55 in the town of G., deliberately acting towards self-release by B.Ś., R.B. and M.P. from [...] in the town of G., where they served custodial sentences, he facilitated their escape by picking them up immediately after their self-release, at [...] Street in the town of G. and carried them to the town of O., i.e. guilty of the commission of the offence under 243 CC." Attention should be drawn to the internal contradiction of the act attributed to the accused (at the same time it is said that he intended B.Ś., R.B. and M.P. to liberate themselves, and helped them immediately after their self-release) and to the erroneous legal qualification. If, according to the court, B.Ś., R.B. and M.P. have already committed the offence of self-release, which, as stated above, the appropriate qualification of the K.G.'s act would be Article 239(1) CC. It cannot be ruled out that, in fact, the persons concerned have not yet recovered their liberty (within the meaning as above), the factual findings made in the substantiation for the judgment do not, however, provide an unambiguous answer to this question. Even if freedom has not actually been regained, the description of the act (specifically the words: "after their self-release") excludes a qualification under Article 243 CC.

An incorrect decision can also be found in the judgment of the Regional Court in Warsaw of 7 April 2017.[10] In that ruling, the court found the defendant guilty of the fact that "from 23 May 2013 to 30 May 2013 in the town of P. at [...] Street and in the town of S., he facilitated K.O.'s escape from the [...] Centre of [...] in the town of P. where he was kept pursuant to the decision of the District Court for Warsaw-Wola in Warsaw [...] and the decision of the Regional Court in Warsaw [...], in such a way that, after throwing over a rope making it possible to cross the fence and after K.O. thus left the medical facility, he drove him in his car to the town of W. and then provided him with necessary food in the town of S., where K.O. stayed until 30 May 2013." This act was qualified only under Article 243 CC. If we assume that the mentioned conduct of the perpetrator constituted a single act (due to the temporal compactness and continuity of throwing the rope over the fence, transporting him by car and the subsequent provision of food, attack on the same legal good, i.e. the proper functioning of the justice system, and, probably, because we cannot

[9] Ref. no. II K 4/17, Legalis no. 2018828.

[10] Ref. no. XVIII K 136/15, not published. The content of this ruling is contained in the judgment of the Court of Appeal in Warsaw of 8 May 2018, ref. no. II Aka 440/17, http://orzeczenia.ms.gov.pl/content/$N/154500000001006_II_AKa_000440_2017_Uz_2018-05-08_002 [accessed: 06.02.2022].

be sure of this – a premeditated intention),[11] then it should be concluded that the described situation was an actual concurrence of the provisions of Article 243 CC and Article 239(1) CC, which should result in a cumulative qualification of the act (actual proper concurrence of provisions) and – in the light of Article 11(3) CC – imposing a penalty on the basis of Article 239(1) CC. The escape was facilitated by throwing a rope to allow crossing the fence or (which seems doubtful, though we do not know the detailed circumstances of the case) transporting the fugitive to another locality. Providing food certainly constituted "merely" the assistance in avoiding criminal liability.

In one of the cases examined by the District Court in Chełm,[12] the prosecutor accused the defendant that the latter: "acting together and in agreement with B.T. in the town of D., on 14 September 2012, attempted to facilitate the escape of M.T.K., after his self-release following his detention by Border Guard officers in such a way that he intended to take him by car from the town of D. to the town of N., but failed to achieve his goal because M.T.K. was captured again." This act was qualified by the prosecutor as an attempted offence under Article 243 CC. By a decision of 5 June 2014, the District Court in Chełm discontinued the criminal proceedings, as it assumed that the act of the defendant did not contain the elements of a prohibited act (Article 17(1)(2) CCP). However, it should be noted that the court did not consider the issue of erroneous legal qualification at all, as the reason for the discontinuance of the proceedings was the determination that the defendant could not be attributed with the intention to commit the offence under Article 243 CC.

5. SUMMARY AND CONCLUSIONS

Summarizing the above considerations, it should be noted that the separation of the discussed types of offences in practice is difficult. In some cases, prosecutors and courts incorrectly classify an act related to providing assistance to a person who committed self-release. It seems that the reason for such a state of affairs is the small number of cases concerning the facilitating of an escape[13] and the related lack of Supreme Court's statements on this is-

[11] This type of criteria for the unity of the act are cited in the context of the sociological approach to the act [Mozgawa 2020, 413–14].

[12] Ref. no. VII K 310/13, not published (the case analysed by the author as part of file research).

[13] In the period 1999–2018 there were a total of 111 final convictions under Article 243 CC (author's calculations based on: Ministerstwo Sprawiedliwości, *Prawomocne skazania osób dorosłych w latach 1946–2018*, 3rd edition, https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/download,2779,8.html [accessed: 06.02.2022]. At this point, it should be kept in mind that this provision penalises not only the facilitating of an escape of a person deprived of liberty but also releasing that person.

sue. An example of an accurate assessment of the facts is the decision contained in the judgment of the Court of Appeal in Szczecin indicated in the title hereof. Hopefully, the comments made in the article will contribute to the understanding of the title issue and the correct application of the provisions of the Criminal Code.

Regardless of what has been said above, it is worth considering a reformulation of Article 239 or Article 243 CC in such a way that there is no doubt about the mutual relationship between these two regulations. For example, one can propose to add to Article 239 its section 4 which reads as follows: "The provision of § 1 shall not apply if the act meets the criteria of another prohibited act." This "other prohibited act" may be, in particular, the offence under Article 243 CC.[14] Such a clause of statutory subsidiarity would certainly induce courts adjudicating in factual states located between the "ordinary" assistance in avoiding criminal liability and the facilitating of an escape to the correct subsumption of established facts under the appropriate provision.

By the way, it should be added that the discrepancy between the sanctions provided for in the two provisions is worth noting. It is difficult to understand why assistance in the avoidance of criminal liability consisting in the facilitating of an escape (self-release) is punishable by a custodial sentence of between one month and three years, while other assistance (including concealing a perpetrator who has already committed a self-release), aimed at obstructing or thwarting the criminal proceedings, entails a custodial sentence of between 3 months and 5 years. It is worth noting that the types of offences in question were punishable under the Criminal Code of 1969[15] by up to 5 years imprisonment (Article 252(1) and Article 257(1) CC of 1969). The differences regarded only the lower limit of the penalty range. Interestingly, the provision on facilitating an escape was stricter in this regard (6 months versus 3 months for another type of assistance in avoiding criminal liability). Thus, it is reasonable to postulate that sanctions for these offences be equated. The multitude of possible facts to be considered under the provisions in question and the consequent social harmfulness of acts committed by the offenders rather speaks for "upward harmonization," i.e. harmonization with the sanction provided for in Article 239(1) CC. At the same time, however, it would be worth placing in Article 243 CC a regulation similar to that contained in Article 239(2) or, which is perhaps more reasonable, in Article 239(3) CC. If the escape has been facilitated by the person closest to the fugitive, that person should be subject to less strict liability, as in the case of any other type of assistance in

[14] Some cases of dealing in stolen goods (receiving) should also be considered as a specific variety of assistance in avoiding criminal liability. Also making false statements or using violence or unlawful threats to influence e.g. a witness or expert witness may meet the criteria of assistance in avoiding criminal liability.

[15] Act of 19 April 1969, the Criminal Code, Journal of Laws No. 13, item 94 as amended.

avoiding criminal liability. Such solutions are provided for in Italian law and Spanish law, for example.[16]

REFERENCES

Doroszewski, Witold, ed. *Słownik języka polskiego*. https://sjp.pwn.pl/doroszewski/ucieczka;5510261.html,https://sjp.pwn.pl/doroszewski/uciec;5510259.html [accessed: 06.02.2022].

Glaser, Stefan, and Aleksander Mogilnicki. 1934. *Kodeks karny. Komentarz*. Kraków: Księgarnia Powszechna.

Hansen, Edgar. 1982. *Przestępstwa więźniów w okresie izolacji penitencjarnej*. Warszawa: Państwowe Wydawnictwo Naukowe.

Kunicka-Michalska, Barbara. 2010. "Komentarz do art. 242 i 243 k.k." In *Kodeks karny. Część szczególna*. Vol. 2: *Komentarz do artykułów 222–316*, edited by Andrzej Wąsek, and Robert Zawłocki, 328–60. Warszawa: C.H. Beck.

Makarewicz, Juliusz. 1938. *Kodeks karny z komentarzem.* Lwów: Wydawnictwo Zakładu Narodowego im. Ossolińskich.

Makowski, Wacław. 1937. *Kodeks karny. Komentarz*. Warszawa: Nakładem Księgarni F. Hoesicka.

Morawski, Lech. 2010. *Zasady wykładni prawa.* 2nd edition. Toruń: Towarzystwo Naukowe Organizacji i Kierowania. „Dom Organizatora".

Mozgawa, Marek. 2020. "Zbieg przepisów ustawy i zbieg przestępstw." In *Prawo karne materialne. Część ogólna*, edited by Marek Mozgawa, 412–33. Warszawa: Wolters Kluwer.

Nisenson, Jerzy, and Mieczysław Siewierski. 1949. *Kodeks karny i Prawo o wykroczeniach.* Łódź: Wydawnictwo Prawnicze i Naukowe.

Poniatowski, Piotr. 2019. *Przestępstwa uwolnienia osoby prawnie pozbawionej wolności (art. 242 i 243 k.k.)*. Warszawa: Wolters Kluwer.

Siewierski, Mieczysław. 1965. *Kodeks karny i Prawo o wykroczeniach. Komentarz.* Warszawa: Wydawnictwo Prawnicze.

Stefański, Ryszard A. 2003. "Przestępstwo uwolnienia osoby pozbawionej wolności (art. 243 k.k.)." *Prokuratura i Prawo* 2:32–41.

Szamrej, Józef. 1977. *Przestępstwo poplecznictwa w polskim prawie karnym.* Warszawa: Wydawnictwo Prawnicze.

Wiak, Krzysztof. 2018. "Komentarz do art. 242 k.k." In *Kodeks karny. Komentarz,* edited by Alicja Grześkowiak, and Krzysztof Wiak, 1194–197. Warszawa: C.H. Beck.

[16] In accordance with Article 386(1) of the Italian Penal Code (Codice Penale) of 1930, a person who procures or facilitates an escape of a person lawfully arrested or detained for an offence shall be punishable by a term of imprisonment of between 6 months and 5 years. On the other hand, under paragraph 4 of that Article, the penalty should be mitigated when the offender is a close relative of the person deprived of liberty. As regards Spanish criminal law, the offence relevant from the discussed point of view is set out in Article 470 of the Spanish Penal Code (*Código Penal*) of 1995. A sentence of imprisonment of between 6 months and a year and a fine of between 12 and 24 months shall be imposed on the person who allows a convicted, imprisoned or detained person to escape, either from the place where the person is deprived of his/her liberty and while being escorted. If the offence was committed by a person referred to in Article 454 of the Spanish Penal Code (i.e. a person who is closest to the offender), the person is subject to a fine of between 3 and 6 months (Article 470(3) of the Spanish Penal Code).

Wojtaszczyk, Adam, Włodzimierz Wróbel, and Witold Zontek. 2018. "Samouwolnienie i ucieczka z więzienia." In *System Prawa Karnego*. Vol. 8: *Przestępstwa przeciwko państwu i dobrom zbiorowym*, edited by Lech Gardocki. 2nd edition, 731–43. Warszawa: C.H. Beck.

Wolter, Władysław. 1961. *Reguły wyłączania wielości ocen w prawie karnym*. Warszawa: Państwowe Wydawnictwo Naukowe.

Wysoczyńska, Małgorzata. 2014. *Utrudnianie postępowania karnego. Wybrane zagadnienia teorii i praktyki*. Warszawa: C.H. Beck.