

SCTMG 2020

International Scientific Conference «Social and Cultural Transformations in the Context of Modern Globalism»

ESCAPE FROM PLACES OF DEPRIVATION OF LIBERTY IN THE REPUBLIC OF ABKHAZIA

Bella Dzidzaria (a)*

*Corresponding author

(a) Associate Professor, Department of State and Law, Abkhaz State University, Republic of Abkhazia,
Sukhum.dzary@rambler.ru

Abstract

Escape from a place of deprivation of liberty in the Republic of Abkhazia has its own peculiarity, first, due to the lack of correction facilities corresponding to generally accepted standards. The aim of this paper is the justification for introducing amendments to the RA Criminal Code. As a result of a study carried out in the Republic of Abkhazia there were revealed the facts that the guards had left the entrance of the checkpoint unattended for an undetermined reason. Due to this reason, the convicts were able to leave the pre-trial detention facility and managed to hide. It is impossible to escape the facility without any help of police officers. That is why it is advisable to amend the existing Criminal Code of the Republic of Abkhazia with Article 315 (example 1). Accordingly, the Article 315 (example 1) of the RA Criminal Code should be set out taking into account the specifics of the mentioned above, i.e. “facilitating the escape” and punishment should be more substantial than actually imposed as “negligence” or “abuse of authority”. Such events should be effective if all structural units whose responsibility is to ensure the safety of these places are involved. Namely, this mutual control is expressed in an unscheduled inspection of places of deprivation of liberty, attraction of convicts to work, creation of technical conditions, providing information about people who have previously escaped.

2357-1330 © 2020 Published by European Publisher.

Keywords: Escape, places of imprisonment, arrest, staff, prevention.



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Noncommercial 4.0 Unported License, permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

1. Introduction

The novelty of the study: This is the first study aimed at the escapes from the places of deprivation of liberty conducted after the adoption of a new Criminal Code of 2007 in the Republic of Abkhazia. The escape from places of deprivation of liberty is one of the most common and dangerous types of crimes in the places of deprivation of liberty. They not only destabilize the normal activities of correctional institutions, but also constitute a dangerous encroachment on the interests of justice, as well as complicate the criminal situation in society as these persons often commit crimes repeatedly.

2. Problem Statement

The regulation improvement is aimed at an increase of responsibility among corrections officers and provision of measures to prevent escapes in the Republic of Abkhazia.

3. Research Questions

“Prisons arise as mirror images of society's values” W. Churchill.

A historical study of any phenomenon is important. It is history that allows us to determine whether to maintain the existing regulation, or cancel it due to unacceptability of its application, or modify it. Therefore, let us turn to the first regulatory acts, which historically secured the rules on escape. Initially, the norms of customary law of Abkhazians, acting at the initial stage of the application of punishment, did not contain rules on escape since there was no deprivation of liberty as a measure of punishment. Persons who committed crimes often turned out to be Abreks.

The legislation of the Soviet period was characterized by the diversity of regulation under consideration. In a certain period, the offender was punished by death for escape. In case of a second escape, the offender's term could be extended ten times the size of his original term (1919). Then, in the 1920s, an attempt would be made to separate the qualifying signs of escape using appropriate penalties, in order to separate guilty circumstances. Later, in the Criminal Code of the RSFSR of 1922, the “escape” was included into the chapter "State crimes" and provided for its commission by means of undermining, hacking, and damage to gates. Along with this, in the Criminal Code of the RSFSR there was an article for facilitating the escape (Article 94). In 1924, the criminal liability for escape would be abolished because it was practically impossible to commit it if the places of detention were properly established. The escape was also considered as poor-quality work of staff of the places of detention. Such a crime was considered as punishment for its improper maintenance in these places (Pertsova, 1992). For example, the Labor Code provided for only disciplinary liability for escape. In some cases, one regime could be replaced by another one. By 1926, this regulation was returned to the Criminal Code of the RSFSR. Starting that period, a process of tightening regarding escapes had already been observed. The legislation provided for responsibility not only for escaping from the places of deprivation of liberty, but also for escaping from the places of pre-trial detention. Along with this, the sanction was being tightened on those who, for no good reason, were late from vacation for more than 24 hours and these actions were also regarded as an escape.

Though the legislation of the Soviet State was tough, an unauthorized abandonment of colonies and settlements was not regarded as an escape (Article 188 of the Criminal Code of the RSFSR) (Radchenko, 2010).

Depending on who helps the criminal to escape the subjects, it was customary to classify into two groups: these are accomplices and officials. The first category included those who assisted in escaping from places of deprivation of liberty, not from among the employees of the corresponding places, that is, a private person. The second category, officials themselves, whose main task was to ensure order, were responsible for misconduct. Based on the foregoing, it was obvious that the concept of escape appeared in 1933.

In accordance with modern legislation of the Republic of Abkhazia, the corrective labor institutions are the regulatory acts governing the execution of the sentences (amended and supplemented in 1994), the Law on the Temporary Procedure for Calculating the Deadlines for the Execution of Sentences (amended on August 15, 2006 No. 1467-s-XIV, July 21, 2009 No. 2427-s-IV, July 30, 2009 No. 2449-s-IV), Internal Rules of Correction Facilities, Instruction on the Work of temporary holding facilities, etc.

The most common and dangerous types of crimes in prisons include escapes, as they not only destabilize normal functioning of correction institutions, but also constitute a dangerous encroachment on the interests of justice, as well as complicate criminal situation in society, as these individuals often commit Crimes repeatedly (Kryukova, 2018).

The regulation is part of the RA Criminal Code, Article 315 – Escape from the place of deprivation of liberty, from arrest or from custody.

1. Escape from a place of deprivation of liberty, from arrest or from custody committed by a person serving a sentence or being in pre-trial detention – the applicable sentence is deprivation of liberty for a term not exceeding three years.

2. The same act committed by a group of persons in a preliminary conspiracy or by an organized group – the applicable sentence is deprivation of liberty for a term of two to five years.

3. The acts provided for by the first or second parts of this article, committed with the use of violence dangerous to life or health, or with the threat of using such violence, as well as with the use of weapons or objects used as weapons – the applicable sentence is deprivation of liberty for a term of four to eight years. Therefore, this regulation consists of three parts. If to compare it with the legislation of foreign countries, there are some specific features regarding entities. For example, in accordance with the French law, complicity in escape by an official is a criminal offense. As for the Criminal Code of Switzerland, it provides a rule establishing criminal liability for an official assisting not only an escape, but also for allowing escape. All this is relevant within the framework of the Republic and our respective legislator. From the materials of criminal cases, the complicity of the guards can be stated. If you look at the statistics from 2007 to 2019, 19 escapes from the places of deprivation of liberty were committed and criminal cases were opened against 25 convicts. All convicted were sentenced for serious crimes. In 2007, 2 crimes were committed; in 2009 – 2; in 2010 – 2; in 2011 – 2; in 2012 – 3; in 2014 – 3; in 2015 – 2; 2016 – 2; 2017 – 0; 2018 – 0; 2019 – 1. These data were obtained from the Internet resources and the

study of criminal cases initiated by the RA General Prosecutor's Office. A survey and questioning were conducted (corrections staff and prisoners) due to unofficial data regarding such violations of the law.

In the theory of Criminal Executive Law, scientists identify the following reasons for escaping from the places of deprivation of liberty:

1) Inadequate service by administration, i.e. all convicts escaping through the security line one way or another.

2) Weak organization of supervision of convicts within the administration itself, i.e. the lack of control as a whole. For example, supervision is carried out in the places under consideration by different authorities and, accordingly, individuals, and each of them relies on the good faith of the other;

3) Persons who have strong ties with the family want to see relatives, family and friends, perhaps even if the family has problems and a desire to help at all costs;

4) Realization of aggressive intent, in the case when individuals who have committed crimes remain at large, either in relation to witnesses, their relatives, or law enforcement officials (Bury, 2014).

As Lelyukh (2016) noted, the absolute repeatability of preparation and execution of escapes is excluded. Moreover, even if the situation remains the same, there may be other factors that can change the situation radically.

Of all these reasons, in the Republic there are two grounds for escaping. Besides, there is a specificity and it concerns the conditions of detention of convicts in the Republic of Abkhazia (RA). First of all, they differ from the existing standards for the maintenance of convicts, for example, in the Russian Federation due to the lack of prisons and correction colonies in the RA. That is why they are kept in the pre-trial detention facilities of the Ministry of Internal Affairs of the Republic of Abkhazia, and temporary detention facilities of the Ministry of Internal Affairs of the Republic of Abkhazia. The lack of properly equipped places of detention for convicts is another factor contributing to the escape. In accordance with the Treaty of Friendship, Cooperation and Mutual Assistance of September 17, 2008 and the Treaty of Alliance and Strategic Partnership of November 24, 2014, on February 18, 2016 during the meeting of the Presidents of Abkhazia and Russia an agreement was reached on construction of new penitentiary institution in the territory of the Republic, which would be designed for 500 prisoners, where it is also supposed to ensure the employment of convicts. On the one hand, this would allow prisoners to be kept in acceptable conditions, and on the other hand, it would technically help organize the detention of convicts in order to prevent the escape.

As a result of studying the materials of criminal cases, it was revealed that involvement in the escape of officials whose duties include ensuring the regime of prisoners in the places of deprivation of liberty takes place. A real example is the case of an escape initiated by the Prosecutor's Office of the Gulryphsh Region. Two criminal cases were instituted: one was against B. L. himself (convicted) – Part 1 of the Article 315 (escape from the place of deprivation of liberty) of the Criminal Code of the Republic of Abkhazia and the second was against officials of the pre-trial detention facility of the Ministry of Internal Affairs of the Republic of Abkhazia – Part 1 of the Article 295 (negligence) of the RA Criminal Code.

Another example may be a criminal case initiated by the RA Prosecutor's Office. On 01.10. 2015, two escapes were committed and these persons had previously escaped in 2012. Of all the cases studied,

only in three cases employees were detained and charged. In the first case of February 10, 2011, the head of pre-trial detention facility was brought the charge under the Article. 285 “Abuse of power”. In the second case, there were nine people, among them the head of the -trial detention facility of the Ministry of Internal Affairs and his subordinates who were there. One employee of the Gal police, who was an accomplice of the escaped prisoners (this is the case of 2015), and the third case is dated 10.12.2015. In relation to the criminal cases under consideration, the employees were sentenced and convicted of negligence, abuse of power and sentenced to a fine, and also deprived of the right to hold positions in the structure of the Ministry of Internal Affairs of the Republic of Abkhazia for a period of 2 years (Data from the General Prosecutor Office of the Republic of Abkhazia, 2014–2015).

In 2012, three criminal cases were instituted by the officers of the Ministry of Internal Affairs and the State Security Service of Abkhazia. That year there were detained persons who escaped.

One of the last cases is the escape on June 21, 2019 from the pre-trial detention facility of the RA Ministry of Internal Affairs. The prosecutor’s office of the Republic opened a criminal case.

Out of the 19 cases studied, it was revealed that the escape was committed in accordance with Part 2 of the Article 315 of the RA Criminal Code, and one more case under Part 3. It should also be noted that all persons involved in the escape are imprisoned for serious crimes. The fugitives are not detained, most often they are hiding in Georgia, for example. In the case of 01.10. 2015, of all the materials studied, in only one case the persons who escaped were detained. As far as other cases is concerned, it was suspended in connection with the search of prisoners (Part 1, Article 196 of the Code of Criminal Procedure of the Republic of Abkhazia).

According to Zhuykov (2008) in order to correctly qualify crimes, it is necessary to interpret the concept of “escape”. Escaping from a place of deprivation of liberty, from arrest or from custody committed by a person serving a sentence or being in pre-trial detention is an unauthorized illegal overcoming of the facility security line by any means. Regarding the methods of escaping in practice and in the theory of the Russian Federation, it is worth highlighting the following: using vehicles, where they most often take refuge in exported goods, relying on the insufficient vigilance of the persons who control vehicles. Based on the results of the study, no such escapes were stated in the Republic of Abkhazia; however, the facts were revealed when the guards for any unknown reason left the entrance of the checkpoint unattended, therefore, the convicts had left the detention facility and were able to hide. No escapes that took place could be carried out without the help of the police officers. In this connection, it is advisable to amend the existing Criminal Code of the Republic of Abkhazia by supplementing it with the Article 315 (example 1). Accordingly, the Article 315 (example 1) of the RA Criminal Code should be set out taking into account the specifics of everything mentioned above, i.e. “escape facilitation” and punishment should be more substantial than actually imposed as “negligence” or “abuse of authority”. An experience has proven that few of those persons had sufficient punishment. Preventive measures taken in the places of deprivation of liberty, for example, conversations with convicts are not so relevant in our environment. Among convicted respondents, 224 out of 270 supported by the Ministry of Internal Affairs and temporary holding facilities of the Ministry of Internal Affairs of Abkhazia supported this position. Since their behavior is caused by non-stated regulations of the criminal environment. Therefore, the indulgence on the part of the employees leads to such negative consequences. In Russian science,

however, a position is expressed regarding the importance of educational work with prisoners in order to predict possible commission of an unlawful act, taking into account the features of the character of a person. Such personal characteristics as age, attitude to a crime and a court verdict, the presence of stressful situations should be taken into account primarily when studying potential fugitives (Zhidovtseva, 2017).

The next step on the way to changing the situation with the escapes in the Republic of Abkhazia is the adoption of a penal enforcement code, or its development from the moment of construction of a new prison. By that time, it is necessary to develop high-quality means of preventing escapes from prisons. Among the important aspects of this problem, the timely initiation of a criminal case should be highlighted and the actions of police investigators should be aimed at curbing the upcoming crimes, namely the prevention of escapes.

If to pay attention to the materials of existing criminal cases, as well as the survey conducted among people in the pre-trial detention facility of the Ministry of Internal Affairs of the Republic of Armenia and temporary holding facility of the Republic of Abkhazia, the information obtained before the shoots remained unclaimed, and could be used to prevent the escapes. The reasons for the escape should be analyzed and solve the main problem with the prevention of escapes. As our studies have shown, the conditions of detention in prisons and the attitude of employees to their professional activities do not allow us to fully implement everything mentioned above, but at the same time, preventive measures have been developed for years and would improve criminal situation in the country.

Besides, the employees of the departments need to improve their professional level, namely, trainings would somehow improve the knowledge of the staff in this area to properly use information in their practical work.

According to the real situations, it can be see that the escapes in the Republic are not situational in nature, as in other states because the situation in the pre-trial detention facility and temporary holding facility, namely the lack of organization of service by employees, becomes known long before they were sent to prison. Keeping this problem in mind, it is necessary to exert an impact on the personnel of correction institutions constantly.

The identification of convicts who have an escape on their mind may have a positive outcome relatively to the work of the officers and other personnel. To make it work, it is necessary to study personal files of convicts. However, the most effective approach is reading convicts' correspondence with their relatives or other persons. According to unofficial data, crimes are disclosed precisely due to this method as a measure to prevent the commission of crimes or imputation of guilt in relation to the detainee. All employees providing safety and security should carry out such activities. The drawbacks existing in this area are due to the relations of staff of the institutions with convicts that are not in a "convict – superintendent" relationship.

After studying the case and analyzing correspondence or negotiations and identifying a tendency to escape, these individuals should be registered. This is necessary, firstly, to prevent them from escaping, and secondly, for the inability of this person to negatively affect other convicts.

For the effective work of correction institutions, it is necessary to familiarize convicts about the consequences of previous escapes, and most importantly, the consequences that arose for the personnel who contributed to the escape.

Another important preventive effect, in our opinion, is the punishment of personnel who was to ensure the protection of the above-mentioned persons, thus, increase the responsibility of the head of the correction institution. It is necessary to supplement the RA Criminal Code with another corpus delicti, as discussed above.

To implement general preventive measures, mutual control of correction institutions and other structures of the concerned units should be carried out in order to take measures to disconnect the convicted person from the correction institution personnel. For timely identification of any possible conspiracy with employees and staff of correction institutions, a control by external structural units should be carried out.

Thus, it is necessary to carry out preventive measures of different levels to prevent escapes from a place of deprivation of liberty. Such events should be effective if all structural units whose responsibility is to ensure the safety of these places are involved. Namely, this mutual control should be expressed in an unscheduled inspection of places of deprivation of liberty, attraction of convicts to work, creation of technical conditions, providing information about people who have previously escaped.

Summarizing the study, the following conclusions and recommendations can be made:

The Article 315 (example 1) of the RA Criminal Code should be set out taking into account the specifics of everything mentioned above, i.e. “escape facilitation” and punishment should be more substantial than actually imposed as “negligence” or “abuse of authority”. An experience has proven that few of those persons had sufficient punishment.

Secondly, the lack of properly equipped places of detention for convicts is another factor leading to escapes.

Thirdly, preventive measures to avoid escapes from the places of deprivation of liberty will be effective in the case of comprehensive measure involving all of structural units. Namely, this mutual control is expressed in an unscheduled inspection of the places of deprivation of liberty, attraction of convicts to work, creation of technical conditions, providing information about people who have previously escaped.

4. Purpose of the Study

The aim of this paper is scientifically based design and improvement of the criminal law providing for responsibility for escaping from the places of deprivation of liberty and developing measures to prevent escapes.

5. Research Methods

To identify the peculiarities of criminal liability for escaping from the places of deprivation of liberty in the Republic of Abkhazia, a comparative legal research method was used, as well as empirical research methods.

6. Findings

The results obtained in the paper made it possible to recommend to the legislator in the Republic of Abkhazia to provide another regulation to the Article 315 in the Criminal Code of RA, as well as a set of measures to prevent escape from the places of deprivation of liberty.

7. Conclusion

Summarizing the study, the following conclusions and recommendations can be made:

The Article 315 (example 1) of the RA Criminal Code should be set out taking into account the specifics of everything mentioned above, i.e. “escape facilitation” and punishment should be more substantial than actually imposed as “negligence” or “abuse of authority”. An experience has proven that few of those persons had sufficient punishment.

Secondly, the lack of properly equipped places of detention for convicts is another factor leading to escapes.

Thirdly, preventive measures to avoid escapes from the places of deprivation of liberty will be effective in the case of comprehensive measure involving all of structural units. Namely, this mutual control is expressed in an unscheduled inspection of the places of deprivation of liberty, attraction of convicts to work, creation of technical conditions, providing information about people who have previously escaped.

References

- Bury, V. E. (2014). *Reasons for convicts to escape from prisons: criminological review*, iss. 7. Minsk.
- Kryukova, O. Yu. (2018). Criminal liability from places of deprivation of liberty, evasion of serving a sentence of imprisonment: historical aspect. *Vestn. of Instit.: Crime. Punishment. Correction*, 31.
- Lelyukh, V. F. (2016). *Mater. of Sci. and Pract. Conf. Novokuznetsk*. Publ. house “Kuzbass Institute of the Federal Service for the Execution of Sentences”.
- Pertsova, L.V. (1992). *Soviet criminal law on liability for escaping from places of deprivation of liberty Improving the activities of educational and labor colonies and the prevention of youth crime*. Moscow.
- Radchenko, V. M. (2010). *Commentary on the Criminal Code of the Russian SFSR*. Moscow.
- Zhidovtseva, Y. B. (2017). *Specific nature of work aimed at prevention of prison escape*. Omsk Academy of the Ministry of Internal Affairs of the Russian Federation.
- Zhuykov, A.L. (2008). *Criminal liability for escaping from prison, from arrest or from custody* (Doctoral Dissertation). Nizhny Novgorod.