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APPLICATION OF PRE-TERM RELEASE ON PUNISHMENT IN THE CONTEXT OF HUMANIZATION OF CRIMINAL LAW

Abstract. Conditional early release, being a reflection of the principle of humanism, is an act of encouragement of convicted persons, so they are responsible for demonstrating positive behavior during the execution of the sentence to benefit from the advantage of being released before the full execution of the sentence, because the conditional release of the sentence before the term represents the manifested attitude of the legislator or the reaction on the criminal phenomenon in terms of educating and correcting the convicted person or excluding the application of a sentence late or unnecessarily, which implies the character of a general importance of the approached topic.

Keywords: parole, humanism principle, convicted person, execution of sentence, unpaid work, life imprisonment, social adjustment, revocation of parole, probation body, corporal punishment, penitentiary institution.

The multitude of legal and criminal measures taken with regard to those who commit a criminal act represent, first of all, the levers by which the state ensures the rule of law, but at the same time pursues a series of smaller objectives, which would ensure that order. In this sense, the criminal law operates with a series of institutions applied according to the behavior of the convict during the execution of the prison sentence. It should be noted that the term of imprisonment set by the court does not
always accurately reflect the necessary assessment in which it is possible to correct or re-educate a convicted person. Here we are in the presence of two situations: the assessment of the term of imprisonment is treated either too exaggerated or insufficient for the correction and re-education of the convicted person. If we admit that the term of detention to which the person was sentenced is not sufficient, then we are in the presence of inadequate competence of the staff of penitentiary institutions. However, regarding the exaggeration of the term of detention of a convicted person, we can mention the following: the criminal law solves this problem through the institution of conditional release from early punishment.

However, this situation is conditioned by the attitude of the convicted person towards the subsequent resocialization, by the attitude towards work and the observance of the norms of coexistence in the penitentiary, according to the legislation in force. Therefore, it may happen that the purpose of the criminal punishment can be achieved during the execution of the prison sentence, thus generating a possible social reintegration of the convict before the deadline. The importance of this criminal institute, as mentioned in the literature, results from the fact that the conditional release of the person sentenced to prison separates him from the penitentiary environment which, no matter how well organized, still has a negative influence on all convicts, especially to the mayors.

Conditional early release (as, in fact, other types of release) is intended to encourage convicts to engage in impeccable behavior during detention. All the more so as the provision from art. 62 para. (3) The CP of the Republic of Moldova states that: “Unpaid work for the benefit of the community may be applied as the main punishment or in the case of conviction with conditional suspension of the execution of the sentence”, and we consider that also of the conditional release of the criminal punishment before the term (s.n.). - "as an obligation for the probationary period". Or this regulation from art. 62 does not find its place here, but, in our view, it would be more welcome in art. 90 para. 6) CP to RM. Thus, the conditional release from prison may be defined as a category of release from the criminal sentence consisting in the release of the convict from the place of detention before the full execution of the sentence, provided that until the end of its duration not also commit crimes or
misdemeanors, not to intentionally evade the fulfillment of the obligations established by the court. Any person sentenced to imprisonment, regardless of its duration, convicts sent to a military disciplinary unit, as well as those sentenced to life imprisonment may benefit from the institution of parole. It is the court that decides in each case whether or not it is appropriate to grant parole.

Therefore, the institution of parole is a reflection of the principle of humanism in criminal law. Its specificity consists in the release of the person who executes a certain type of punishment from its further execution, in the presence of certain conditions and by the observance of some obligations by the one released conditionally by the punishment before the term. Thus, this form of release can be both conditional and unconditional. If during the unexecuted part of the sentence the convicted person is charged with fulfilling certain obligations established by the court, then these become one of the reasons why the convict, in violation of them, may be sent to execute the part of the unexecuted sentence, established by sentencing. If certain obligations are not established in respect of him, the convict is to be reintegrated into society, without being limited by them.

The Council of Europe sees parole as an institution aimed at assisting detainees to move from prison life to law-abiding life. Community through post-release conditions and supervision that promotes and contributes to public safety and crime reduction in the community. Premature release allows for the motivation of detainees to rehabilitate in the penitentiary, the relations of detainees with prison staff, the motivation to rehabilitate in society and benefit from social services, monitoring in society, rapid incarceration in case of other crimes, reduction of overcrowding, reduction risk of recurrence. Is this to be ascertained whether early release is in favor of the detainee or the company?

A life sentence, in the sense of humanizing the criminal punishment, is a harsher sentence imposed by a sentence of indefinite duration imposed by the court immediately after the conviction for a criminal offense, which requires the imprisonment of the convict or for the rest of his natural life, or until his release following a judicial, executive or administrative process, which considers that the convict no longer poses a risk to society.
Parole is an alternative to detention for the convicted person, if he or she is flexible in correcting and re-educating, so in the case of those sentenced to life imprisonment, the state offers the prospect of parole which ensures compliance with convicts with the provisions of Article 3 of the European Convention on Human Rights. This perspective would not only bring hope to the convict, but also a purpose that would motivate positive behavior on his part. The Criminal Code of the Republic of Moldova regulates the conditional release from punishment before time, regarded as an act of stimulation of the convicted person, which motivates him to be released before the full term of punishment established by the sentence is effectively served. In this sense, the legislator, by regulating the norm provided in art.91 CP of the Republic of Moldova, establishes well-defined conditions that need to be met and respected by the detainee, in order to make it possible to apply conditional release before and apart. the possibility of applying this institution to those sentenced to the harshest punishment - to persons sentenced to life imprisonment.

The Enforcement Code of the Republic of Moldova stipulates as the purpose of the executive-criminal law “the protection of the rights, freedoms and legitimate interests of the person, as well as the provision of assistance to convicts for social adjustment”. As described above, the legislation of the Republic of Moldova does not define the specific purpose of life imprisonment or the purpose of serving such a sentence, but it is clear that life imprisonment applies if the custodial sentence is for a period of time. determined will not achieve the purpose of the criminal punishment. Life imprisonment, being the harshest punishment provided by the criminal law of the Republic of Moldova, also generates a more invisible hope of the convicted person to be released prematurely. In this context, the legislator, however, provides some possibilities to release sentenced to life imprisonment, prematurely, complying with certain conditions strictly provided by law, this phenomenon is part of the institution of parole before the term being clearly rendered by the appropriate legal norm, but as far as practical this chapter is concerned we are going to investigate. The wording of the law on the length of the sentence that needs to be served makes it possible for the person sentenced to life imprisonment to be released on parole sooner than others, even though they all started serving their
sentences on the same day and have the same amount of sentence. unlimited, for the same offense.

According to the case law of the European Court of Human Rights, in several Council of Europe member states, a person can be sentenced to life imprisonment without any prospect of parole. This is known as a "life sentence without right of appeal" and this is contrary to Article 3 of the Convention. We therefore have as an example of international judicial practice some concrete cases in which the Court presents itself promptly and expressly regarding the lack of a prospect of release from persons sentenced to life imprisonment. In recent years, the Court has examined a number of cases in which courts in different countries have imposed life sentences without the possibility of early or conditional release and where, beyond compassionate reasons or exceptional circumstances, a life sentence means that it has been applied for life. The most well-known judgment of the Court to date, expressed by the Grand Chamber in the case of Vinter and Others v. The United Kingdom, states that it is incompatible with human dignity, and therefore contrary to Article 3 of the European Convention on Human Rights. deprive a person of his or her liberty without at least giving him or her a chance to regain that freedom one day.

Deprivation of liberty has a special effect on the psyche of the convicted person, the person in question being forced to live for a longer or shorter period of time, isolated from society. When the convicted person comes into contact with the new way of life, with the restrictions imposed on him in the penitentiary, he has the possibility to realize that the act committed by him is a deed disapproved by society and that he will have to review his behavior in order to he rejoins those who have understood the rigors of a rule of law.

No society in general, a democratic society in particular, much less a society that wants to be modern, has or should have an interest in depriving the individual of liberty, after he has purified himself morally and the purpose of punishment has been achieved. The continued execution of the prison sentence, even when there are sufficient indications that it has achieved its purpose before the expiration of the period established by the court decision, would be in contradiction with the
principles of humanism of criminal law and criminal execution. Since it was proved that the custodial sentence can achieve its goal, that of correcting and resocializing the sentence, and before the moment of fulfillment of the amount that has been established to be executed in detention, the legislator created an institution to come to the aid of those who want be free as soon as possible.

The institution of parole, as it is concerned, facilitates the transition of convicts from the effective execution of the sentence to the place of detention to the regime of freedom and social reintegration, as a result of the other means, called penitentiaries, meant to achieve individualization on the spot. holding.

In this article, the conceptual aspects in the science of criminal law regarding the legal-practical regulation of the institution of conditional release from criminal punishment before the term and the consequences of non-compliance with these privileges granted by law are analyzed.

Criminal punishment being a measure of state coercion and a means of correcting and re-educating the convict applied by the courts, in the name of the law, to persons who have committed crimes, causing certain shortcomings and restrictions on their rights, has produced a negative reaction of the whole companies on the scourge of crime and, of course, attracted a response of criminal repression of convictions. Despite the fact that the purposes of the criminal punishment consist in restoring social equity, correcting the convict, as well as preventing the commission of new crimes by both convicts and others, they can sometimes be achieved without the execution of the sentence in detention, so the legislator provided in art.91 the Criminal Code of the Republic of Moldova, one of the legal institutions, which gives the judge the possibility to release the person from the criminal punishment, and more precisely the conditional release from the punishment before the term.

Therefore, in order for parole to be a motivating institution, the detainee needs to know what steps he or she needs to take to achieve it. Broadly speaking, the logic of the institution has been preserved today.

Although criminal punishment in the form of imprisonment has dominated for decades, it has not convinced society that it is the only perfect means of correcting
and re-educating those who have committed criminal acts, punishable by such a sanction. Thus, the institution of release from criminal punishment was established as a rescue pillar of the legislator in regulating situations that do not require the imprisonment of a person guilty of a criminal act. Due to the reversal of the postulate of completing the application of imprisonment as the only rational means of saving society from crime, the justice system has benefited from the legislator from the emergence of criminal rules governing such situations with alternatives to imprisonment. In this sense, the conditions that must be observed by the convicted person, is a primary aspect, in the application of the conditional release from criminal punishment before the deadline. The importance of this subject is appropriate due to the existence of the conditional element related to the exemption and favoring of the convicted person, as well as the tendency to re-educate and correct him from the state, which must prove the convicted person, without applying imprisonment qualified and restricted. In this order of ideas, we deduce the reasons and the specifics of the numerous requests and approaches received in the courts of the country, which proves a successful result of the application of the approached institution, manifested by the diligence of the convicts regarding the cumulative meeting of the conditions provided by criminal law. and the birth of their desire to go through the process of correction, re-education and resocialization, in order to be subject to conditional release from early punishment.

Due to the most pronounced value of the application of the institution of parole, the legislator admitted several inconsistencies and regulatory gaps, which require difficulties in applying, correct interpretation and fair interpretation of the provisions of Article 91 of the Criminal Code of the Republic Moldova, thus noticing a lot of amendments and completions of the criminal legislation on the legal regulation of the legal provisions on parole, which involves us even more in researching the topic addressed.

All this reinforces the need for an in-depth, scientifically argued study of the topics focused on the notions addressed by national law and contemporary doctrine, regulated by the criminal law on parole, its timeliness and importance, as well as the application procedure and revocation of this privilege, urging the solution of the
most litigious issues regarding the correct interpretation and application of the provisions of art. 91 of the Penal Code.

In accordance with the legal provisions enshrined in the norm of art.91 CP, the conditional release from early punishment stipulates that in case of application of conditional release, the control over the behavior of those released conditional on early punishment is exercised by the probation bodies, and on the behavior military - the respective military command. From here, the legislator sets out the effects of non-compliance with the conditions of application of parole:

1) Within the term of the sentence remaining unexecuted, the convict shall deliberately evade the fulfillment of the obligations established by the court to the application of the conditional release of the sentence before the term.

In this case, the court may, at the request of the probation body, issue a decision on the annulment of the conditional release of the sentence before the deadline and the sending of the convict to serve the unexecuted sentence. The time limit shall be deemed not to have been fulfilled from the date of entry into force of the conclusion by which the conditional release was applied.

2) During the term of the sentence remaining unexecuted, the convict recklessly commits a new offense, the cancellation or maintenance of the conditional release of the sentence before the term is decided by the court.

We note in this case that the court has the possibility to choose to cancel the conditional release or to maintain the probation period applied by the conclusion at the time of the conditional release. This is due to the lack of direct or indirect intent of the convicted person at the time of the crime, which was committed recklessly. Strictly speaking, the judge has at hand the intimate conviction based on the instruments of fact and law that characterize the personality of the convict, his behavior and the entire criminal history.

3) During the term of punishment remaining unexecuted, the convict intentionally commits a new crime, the court establishes his punishment under the conditions of art.85 CP. In the same way, the punishment is applied in case of committing a new reckless offense if the court annuls the conditional release of the sentence prematurely.
Revocation of parole, revocation of parole occurs for causes subsequent to parole. The new regulation, unlike the previous one, stipulates that the revocation of parole is mandatory in three situations that arose during the supervision:

a) the convict released on parole, in bad faith, does not comply with the supervision measures;

b) the convicted parolee, in bad faith, does not perform the obligations imposed by the court:

c) after being granted release, the convicted person committed a new crime, which was discovered during the term of supervision and for which a sentence of imprisonment was pronounced, even after the expiration of this term. In the first two situations, the court must revoke the conditional release and order the execution of the rest of the sentence in the penitentiary regime (art. 104 C. pen.).

In the third situation, the court revokes the release and orders the execution of the rest of the sentence in the penitentiary regime, and the punishment for the new crime is established and executed, as the case may be, according to the provisions of post-conviction recidivism or intermediate plurality.

The court may be notified of the causes of revocation of conditional release by the probation counselor, who, in turn, may be notified, as the case may be, by the competent bodies in charge of verifying the fulfillment of the obligations (police, General Inspectorate of Police General Directorate for Passports, General Inspectorate for Immigration, etc.), by the injured person or any other interested person. If it finds that one or more of the supervision measures or obligations have not been complied with established by the court during the term of supervision, the probation counselor verifies the reasons that determined this. When there are sufficient and serious indications that the prison sentence applied to the convict and being executed has reached its purpose before the expiry of the period established in the conviction, the need for full execution, in detention, of this sentence disappears and the continued execution contradicts the purpose of punishment and the principle of humankind.

Conditional release is intended not to unnecessarily prolong the execution of a final sentence since its purpose was achieved before its full execution. Thus, the
convicted person is to go through a probation period, in which he must show good faith in order to completely eliminate all doubts regarding his correction, as well as to diminish the possibility of being characterized negatively or potential recidivist offender.

According to the researcher I. Fondor, the institution of parole is referred to a certain category of convicts, namely convicts who, after the execution of a part of the sentence, show good conduct, being debatable if the execution is still useful. Further, in the penitentiary, of imprisonment until the expiration of its duration. For these convicts, the solution was found to be released before the expiration of the term of the sentence, no longer being necessary for the full execution of the sentence in the penitentiary. For this it is necessary that they meet the conditions for the execution of a part of the sentence and provide proof of correction; if these conditions are met, the convicts are released on condition of good conduct (i.e., not committing offenses until the expiration of the term of execution) and after obtaining release, otherwise they will be returned to prison for the execution of the remaining sentence. In this way, the institution of parole is regulated prematurely. The multitude of legal and criminal measures, taken with regard to those who commit a criminal act, represent, first of all, the levers by which the state ensures the rule of law, but at the same time pursues a series of objectives that would ensure that order. In this sense, the criminal law operates with a series of institutions applied according to the behavior of the convict during the execution of the prison sentence. At the same time, it should be noted that the term of imprisonment set by the court does not always accurately reflect the assessment of the necessary period in which a correction or re-education of a convicted person is possible. Here we are in the presence of two situations: the assessment of the term of imprisonment is treated either too exaggerated or insufficient for the correction and re-education of the convict. However, if we admit that the term of detention to which the person was sentenced is not sufficient, we are in the presence of inadequate competence of the staff of penitentiary institutions.

However, regarding the exaggeration of the term of detention of a convicted person, we can mention the following: the criminal law solves this problem through
the institution of conditional release from punishment before the term. However, this situation is conditioned by the attitude of the convicted person towards the subsequent social reintegration, the attitude towards work and the observance of the norms of coexistence in the penitentiary, according to the legislation in force. Therefore, it may happen that the purpose of the criminal punishment can be achieved during the execution of the prison sentence, thus generating a possible resocialization of the convict before the deadline. The importance of this criminal institution, as mentioned in the literature, results from the fact that the conditional release of the person sentenced to prison separates him from the penitentiary environment, which, no matter how well organized, still has a negative influence on all convicts, especially on the primary ones. V. Dobrinioiu and Gh. Costache support the idea that keeping a person in a penitentiary for a long time is not likely to lead him to follow the right path to his release. of detainees and is practically an act of clemency granted by the legislator to all persons sentenced to custodial sentences.

Based on the evolution and changes introduced over time in the regulation and application of the provisions of art.92 CP of the Republic of Moldova, we can state that this institution is important to achieve the purpose of criminal law and criminal punishment, but at the same time requires effective changes from the point of view of the practice of applying art.91, so that the applicability of this privilege to the convicted person to bring the expected contribution to fight crime, reduce criminal subculture and overcrowding in penitentiaries in the country an achievable humanization of criminal punishment.

In the Republic of Moldova, at the moment, approximately 7800 people are in detention, of which 121 are sentenced to life imprisonment, mainly for committing crimes and rapes. Their number is growing every year, and in the last decade, no life sentence has been released before the deadline, according to sources in the Ministry of Justice of the Republic of Moldova. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has criticized the very principle of such sentences in several visit reports, expressing serious reservations about the fact that a person sentenced to life imprisonment is considered
dangerous and she is deprived of any hope of parole (only out of compassion or forgiveness).

The practice of life imprisonment and the assessment of the possibility of parole has been researched by several participants in the administration of justice, in the light of international norms, and thus Moldova is to find a viable mechanism for early release. Norwegian Expert Mission for the Promotion of Supremacy Law (NORLAM) assisted our profile institutions by applying resocialization strategies for the reform and humanization of the penitentiary system.

In conclusion, we must change the perception of those who participate in the act of justice and of society, compared to those who are in life imprisonment, this being the harshest punishment applied in the Republic of Moldova.

The institution of parole shall be regarded as an act of encouragement to the convicted person, which shall motivate him to be released before the full term of the sentence established by the sentence has been served.

The condition for the execution of a part of the sentence by the convict concerns the execution of a part of the sentence as a guarantee that its purpose has been achieved, ie the convict has been re-educated and there is no need to execute the sentence. will also take into account the part of the duration of the sentence that can be considered, according to the law, as executed on the basis of work performed, as the period in which the convict worked is considered more advantageous depending on the nature and performance of the activity. In the specialized legal literature, it has been shown that this additional condition has the role “to prevent the possibility of conditional release at too short an interval from the beginning of the execution, thorough re-education and correction action ”.

The mention in the text of the law regarding the length of the sentence, which can be considered executed on the basis of the work performed, makes it possible for some convicts to be released on parole faster than others, although they all started serving their sentences on the same day and have the same amount of sentence. the same crime. It should be emphasized, however, that the execution of the mandatory penalties could not lead to a positive outcome in terms of parole, if the others were not cumulatively fulfilled.
In addition to these conditions regulated by criminal law, in order for the convicted person to be accepted, prepared and proposed for parole, he must also follow an extrajudicial procedure, which is mandatory even if he has not been complied with. the conclusion of the court is to be issued as inadmissible.

According to the provisions of the Statute of execution of the sentence by convicts, in each penitentiary a commission is set up in order to streamline the process of education, re-education and resocialization of convicts, to connect the practice of execution of criminal sentences of the detention regime for convicts. The priority competence of the penitentiary commission is "the examination of the proposal to present in court the convicts for parole".

The detainee and his lawyer may also address a request for early release, after they have completed the extrajudicial procedure provided by art. 266 and 267 of the Enforcement Code. The extrajudicial procedure to be followed by the detainee consists in completing a request addressed to the penitentiary commission, for his conditional release. The Commission will check that the conditions laid down by law for parole are met. If the conditions are met, then they will sue. In case of refusal, the detainee will be able to send the request for release to the investigating judge on his own initiative. The court will hold a hearing, where the detainee, his lawyer, the prosecutor and the representative of the penitentiary institution will be present. The court, in the person of a judge, is responsible for deciding the release of the person.

Therefore, in the light of the above, namely the fact of the examination of the presentation of the convict before the penitentiary commission regarding the possibility of his conditional release before the deadline, presents that obligatory preliminary route that the convict must take respect before going to court or before being proposed for such a conditional release by the detention body in whose custody he is in custody.

The penitentiary commission includes representatives of the security, regime and surveillance services, the legal service, special records, the education, psychology, social assistance, probation, medical service, as well as representatives of the local public administration authorities, the guardianship and curatorship authority, dislocation of the penitentiary, of public organizations. The Commission
proposes to present the convicts in court for parole, taking into account the actual sentence served, the part of the sentence considered executed, based on the work performed, school training, vocational training, the conduct of the convict, the efforts made by him for social reintegration, participation in educational and cultural activities, the results of psychological evaluation, the responsibilities entrusted, the incentives granted, the sanctions applied and the criminal record.

Prison Commission - Preliminary or "Obstacle" Way for a Convict? The legal condition regarding the execution of a part of the sentence by the convict concerns the execution of a part of the sentence as a guarantee that its purpose has been achieved, ie the convicted person has been re-educated and there is no need to execute the sentence. punishment, this condition being applied in accordance with internal regulations and orders approved by the national administration of penitentiaries, which aim to encourage the convicted person and his prosocial behavior.

It involves a program of preparation for release which is intended to monitor convicted persons before release and begins once they enter a criminal institution. Convicts need to be aware that society is ready to integrate them only after changes in the cognitive-behavioral process. This will help them to be part of society and not feel marginalized or excluded from it. Attend a training program for release is part of the rehabilitation process, in order to support them in order to better social integration.

In addition to these conditions under criminal law, in order for a convicted person to be accepted, prepared and proposed for parole, he must also comply with an extrajudicial procedure, which is mandatory even if he has not been complied with, the conclusion of the court will be issued as inadmissible.

According to the provisions of the Statute of execution of the sentence by convicts, in each penitentiary a commission is set up in order to streamline the process of education, re-education and resocialization of convicts, to connect the practice of execution of criminal sentences of the detention regime for convicts. The priority competence of the penitentiary commission is "the examination of the proposal to present in court the convicts for parole".
The opportunity of the extrajudicial way through the convicted person to go through this preliminary stage is obvious, we cannot deny that it is a very beneficial and efficient one. This is well thought out and developed from what we observe, through the implementation of a series of internal regulations, passed through reforms and modifications in accordance with the current needs and respectively the other tangentially correlative norms. In turn, there can be complaints and ambiguities from the convicts regarding the efficiency and correctness of the application of this institution, here, there are resonances and criteria of indirect impartiality on the personality of the convict. As he is being examined before the penitentiary commission, he appears in the commission before the members of the commission, partially, who have a direct contact with that person every day, being part of the activity of the penitentiary administration. The Commission has an obligation to ensure objectivity and impartiality in the process of assessing conditions of detention. In this respect, I would question the observance of these obligations, so I will come back with proposals and amendments by law on this issue.

Conditional early release is an alternative to imprisonment, which can be applied from the time of sentencing to the execution of the sentence, which is not yet fully implemented. Unlike the persons definitively released, the person released on parole may be subject to compliance with certain obligations by the court, and, in case of non-compliance with these obligations, the conditional release from early punishment, in addition to the grounds provided in para. (8) art. 91 CP of the Republic of Moldova, can be revoked.

Conditional early release is an alternative to detention for the convicted person, if he or she is flexible in correcting and re-educating, as examined by the employees of the penitentiary in whose custody the detainee is being held. , before going to court.

I consider the existing out-of-court avenue and the grounds for parole to be appropriate, as beneficial both in meeting the conditions for the possible conditional release of the convicted person and in view of the predominantly increasing number of cases pending in detention cases. in national courts, a relief from the work of the
judge. At the same time, the preliminary examination of the convicted person’s personality should be carried out much more truthfully and in a larger volume of information on the convicted person, in order not to allow the proposal for the conditional release of a convicted person fact does not meet the conditions provided by law.

In conclusion, we need to change the perception of those who participate in the act of justice and of society towards those who are in detention.

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