

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

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.

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.

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.

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.

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 (ie 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. Dobrinoiu 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. 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.

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.

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.

References:
2. Execution code of the Republic of Moldova, Law no. 443 of 24.12.2004
4. Winter and Others v United Kingdom, judgment (Grand Chamber) of 9 July 2013, paragraphs 119-122
5. Ioan Durnescu, Romania 2017 ,, Why it is important for parole to be predictable ,, publishing house: Actualitate.Opini
10. Annual activity report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2017-2019