

Analysis of the institution of parole in the context of criminal law theory and practice

by Sandugash Nuridin^{*}, Yerkin Ongarbayev^{**},
Meruert Muratkhanova^{***}, Dina Kalmaganbetova^{****},
Aigul Yessentemirova^{*****}

Abstract

In modern criminal legal systems, the institution of parole is an important element aimed at the rehabilitation of convicts and their social adaptation. The purpose of the study is to study the theoretical and practical problems associated with its application, including issues of legal guarantees and the effectiveness of the institute as a whole.

The article uses a comprehensive approach that includes an analysis of current legislation, judicial practice, as well as a sociological study of the opinions of practicing lawyers and representatives of the penitentiary system.

The authors propose a number of recommendations for improving the institution of parole, including clarifying legislative norms, increasing transparency and predictability of court decisions, as well as strengthening the role of preventive and rehabilitative measures for convicts. The implementation of the proposed measures will balance the interests of society and the rights of convicts, as well as increase the effectiveness of the institution of parole in the rehabilitation of criminals.

Keywords: parole, criminal law, rehabilitation of convicts, legal guarantees, judicial practice.

First submission: 13 February 2025; *accepted:* 09 April 2025

^{*} PhD Student in Law, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: nuridin2019@gmail.com.

^{**} Doctor of Law sciences, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: ongarbayev_yea@enu.kz.

^{***} Candidate of Law sciences, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: m.muratkhanova@gmail.com.

^{****} PhD in Law, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: dina_zhautikova@gmail.com.

^{*****} PhD in Law, Faculty of Law, Alikhan Bokeikhan University Kazakhstan, E-mail: Bam051289@gmail.com.

Rivista di Studi sulla Sostenibilità - Open access (ISSNe 2239-7221), 2025, 1

Doi: 10.3280/riss2025oa19392

1. Introduction

Punishment is one of the most important institutions of criminal law. The correct solution to a number of its problems is of great practical importance in the fight against crime and the preservation of public order.

In the theory of law, the concept of criminal punishment is used in a variety of meanings.: as a legal consequence of the commission of a crime; as a method (form) of criminal liability; as a means (instrument, measure) of criminal legal influence on the perpetrator of the crime; as a means (instrument, instrument) of criminal legal struggle against crimes; as punishment (retribution) to the perpetrator for the deed; as a form (measure) of state coercion applied against the perpetrator, such as pain (deprivation, suffering), some kind of damage caused on the basis of a court verdict to the perpetrator of a crime, and others (Kim, 2018).

According to Article 39 of the Criminal Code of the Republic of Kazakhstan, “1. Punishment is a measure of state coercion imposed by a court verdict. The punishment is applied to a person found guilty of committing a criminal offense and consists in the deprivation or restriction of the rights and freedoms of this person provided for in this Code. 2. Punishment is applied for the purpose of restoring social justice, as well as correcting the convicted person and preventing the commission of new criminal offenses by both the convicted person and others. Punishment is not intended to cause physical suffering or humiliate human dignity” (Criminal Code, 2014).

Although earlier, namely, Article 20 of the Criminal Code of the Kazakh SSR, which was in force before the adoption of the Criminal Code of the Republic of Kazakhstan in 1997, stated that punishment is not only a punishment for a crime committed, but also aims to correct and re-educate convicts in the spirit of an honest attitude to work, strict enforcement of laws, respect for the rules of the socialist community, as well as the prevention of new crimes committed by both convicted and other persons. Punishment is not intended to cause physical suffering or humiliate human dignity (Criminal Code, 1959).

According to Altman (2023), the imposition of lawful, reasonable and fair punishment is the most important means of combating crime and strengthening law and order, provides the necessary punitive impact, promotes the restoration of social justice, the correction of convicts, as well as the prevention of crimes committed by both convicts and other persons.

In our opinion, punishment, in its essence, is a criminal punitive measure of the state. However, punishment (causing suffering and deprivation to a criminal) cannot be considered as the purpose of punishment. The most

important goal of punishment is the correction or re-education of the convicted person based on the principles of legality, humanity, justice and individualization of punishment. At the same time, the correction of a convicted person while serving a sentence imposed by a court verdict, as one of the main conditions, gives him the right and a chance for early release from punishment.

Moreover, history convincingly proves that in the fight against crime and the preservation of public order, it is impossible to achieve serious success only by applying criminal penalties to criminals, including strict and cruel ones. Not only preventive measures, preventive measures in this fight bring more success, but also, in our opinion, the rehabilitation of convicts. The Concept of Legal Policy of the Republic of Kazakhstan (2021) draws special attention to this and states that “Re-socialization in the penal system is of paramount importance in maintaining public order in the state.” Only comprehensive measures in this matter will ensure proper protection of the rights, freedoms, benefits and interests of all its citizens protected by the State. The institution of exemption from criminal punishment occupies a significant place in the system of ensuring and implementing these measures, as a measure of the manifestation of humanism, justice and expediency of the correctional system.

As Tokubaev Z. S. (2007) notes, the operation of the correctional system presupposes the achievement of the goal of general crime prevention.

A general warning is implemented through the content of a criminal law measure, legally established restrictions on the legal status of a convicted person, which are imposed on him as part of early release from serving a sentence under certain conditions. These include:

- conditional early release from serving a sentence;
- replacement of the unserved part of the punishment with a milder type of punishment;
- early release by an act of amnesty or pardon;
- due to the state of health;
- other grounds provided by law.

Thus, in a number of cases stipulated by law, when the goals of punishment have been achieved or, due to some newly arisen circumstances, the person has ceased to be dangerous to society, probation is used more often than other types of early release (art. 72 of the Criminal Code of the Republic of Kazakhstan).

It applies only to persons serving restriction of liberty or deprivation of liberty, that is, to those convicted after they have actually served their sentence:

- 1) at least one third of the term of punishment imposed for a minor or moderate crime;
- 2) at least half of the term of punishment imposed for a serious crime;
- 3) not less than two thirds of the term of punishment imposed for a particularly serious crime;
- 3-1) not less than two thirds of the remaining unserved term of punishment in the event that the previously applied parole was revoked on the grounds provided for in paragraphs 1 and 2 of part seven of this Article;
- 4) not less than three quarters of the term of punishment, if the previously applied conditional early release was canceled on the grounds provided for in paragraph 3 of part seven of this Article;
- 5) at least one third of the term of punishment imposed for a serious crime, or at least half of the term of punishment imposed for a particularly serious crime, if the convicted person fulfills all the conditions of the procedural agreement.

Conditional early release from serving a sentence may be applied to pregnant women, women with young children, men raising young children alone, women aged fifty-eight and over, men aged sixty-three and over, and persons with disabilities of the first or second group after actual service:

- 1) at least one-fourth of the term of punishment imposed by a court for a crime of minor or moderate gravity;
- 2) at least one third of the sentence imposed by the court for a serious crime;
- 3) not less than half of the term of punishment imposed by the court for a particularly serious crime not involving an attempt on human life, as well as if the previously applied parole was revoked on the grounds provided for in paragraphs 1) and 2) of part seven of this Article;
- 4) not less than two thirds of the term of punishment imposed by a court for a particularly serious crime involving an attempt on human life, as well as if the previously applied conditional early release was canceled on the grounds provided for in paragraph 3 of part seven of this Article;
- 5) at least one-fourth of the term of punishment imposed for a serious crime, or at least one-third of the term of punishment imposed for a particularly serious crime, if the convicted person fulfills all the conditions of the procedural agreement.

The actual term of imprisonment served by the convicted person may not be less than six months.

At the same time, it is also necessary to fully compensate the convicted person for the damage caused by the crime and to ensure that he does not commit any serious violations of the established procedure for serving his sentence.

Probation is applied to minors sentenced to imprisonment or restriction of liberty, or correctional labor, provided that they do not have serious violations, as well as after they have actually served or executed (Part 1 of Article 86 of the Criminal Code of the Republic of Kazakhstan):

- at least one-fourth of the term or amount of punishment imposed by the court for a crime of small or moderate severity;
- at least one third of the term or amount of punishment imposed by the court for a serious crime;
- at least half of the sentence imposed by the court for a particularly serious crime that does not involve an attempt on human life.;
- at least two thirds of the sentence imposed by the court for a particularly serious crime involving an attempt on human life.

The possibility of parole from serving a sentence is a powerful incentive for convicts to behave positively. People who stumble have hope and a desire to change for the better in order to return to a normal life.

However, in order to give a clear definition of the concept of parole, which, unfortunately, is not included in domestic legislation, it is necessary to reveal its essence.

It is well known that upon parole, the further execution of a criminal sentence is terminated until the sentence imposed on the convicted person is served and his goals of correction are achieved. At the same time, a kind of probation period is established for the released person, during which he must confirm his correction, namely, not to commit new crimes or violate public order, for which administrative penalties may be imposed on him, and not to evade the duties assigned by the court. Violation of the conditions of the probation period leads to the resumption of the execution of the imposed punishment.

2. Controversial issues of parole from punishment

Conditional early release from punishment may be complete or partial. Upon full release, the convicted person is released from both basic and additional punishment, if it was imposed. Upon partial release, the execution of the additional punishment continues.

The issue of the legal nature of parole is controversial.

According to the first point of view, parole is one of the stages of execution of punishment. For example, in the progressive system of serving imprisonment that existed in Australia in the first half of the 19th century, a legal regime similar to parole was established for the last stage of serving a sentence, preceded by solitary confinement and joint imprisonment. This last

stage was characterized by significant restrictions on the rights and freedoms of convicts and increased supervision over them. In such a system, parole actually served as a continuation of the prescribed punishment (Babette Smith, 2010).

According to another point of view, parole actually represented an amendment to the verdict of the court. Hritz, Amelia (2021) notes that a court verdict can only be changed in a special procedural order and by a higher court, and the issue of parole is decided by a court of the same level as the verdict, and that “parole does not shake the stability of the sentence.” According to her opinion, conditional early release from punishment “consists in early termination of serving a sentence, provided that the released person complies with the requirements restored by law during the probation period” (Hritz, 2021).

Conditional early release from punishment can also be considered as a subjective right of the convicted person, or as one of the types of criminal law encouragement, or is the most effective intersectoral measure to stimulate law-abiding behavior of convicts in the process of serving a criminal sentence.

The closest and most acceptable definition is that conditional early release from punishment is release from serving a sentence on condition that a new crime is not committed during the unserved part of the punishment and that the duties imposed on the person by the court are fulfilled.

According to the Annex to Recommendation No. Rec (2003) 22 of the Committee of Ministers of the Council of Europe “On parole”, which was adopted on September 24, 2003 at the 853rd meeting of the Cabinet of Ministers, parole is a public measure – it is “the release of a person serving a custodial sentence earlier than the appointed time with the imposition of a person, taking into account the specifics of his personality, has duties that he must fulfill after his release.” Its application is covered by the European Rules on Public Sanctions and Measures contained in Recommendation No. R (92) 16, as well as Recommendation Rec (2000) 22 “On improving the effectiveness of the application of European Penitentiary Rules in public sanctions and measures”.

The opinion of Domestic scientists is interesting. For example, A. I. Ashirbekov (2008) considers conditional early release to be a commutation of punishment, that is, to the imposition of a milder type of punishment than is provided for this crime. He notes that the term “substitution” is used to characterize phenomena (processes) that are different in nature. In one case, “replace” means to become equivalent to some phenomenon, object (for example: a book replaced all his pleasures), in another it means that one phenomenon replaces another, previously functioning, used (for example:

replace the secretary with a new one). In criminal law, the term “substitution” is used mainly in its second meaning. With regard to the institution of punishment, this means that instead of the punishment previously imposed by the court verdict, a different type of punishment is imposed on the convicted person. Thus, the substitution of punishment under criminal law covers only cases where the court replaces a previously imposed sentence with a different type of criminal punishment.

A distinctive feature of the substitution of punishment under criminal law is that as a result of the substitution of punishment for a convicted person, another, milder or more severe type of criminal punishment is determined.

According to research by scientists such as Low, A., & Rogers, P. (2019), parole is not only a form of punishment, but also an important element of rehabilitation that allows convicts to return to society under certain conditions, which contributes to their social recovery. They emphasize that parole should be based on the principle of individualization of punishment, which is also confirmed by the concept proposed by John Bennett (2021). He argues that each convict has unique circumstances that must be taken into account when deciding on his early release.

As noted by A. B. Skakov (2004): “parole (of course, it is from serving imprisonment) can be considered an element of a progressive system of serving this type of punishment.” He also points out that the specifics of parole, as an element of a progressive system, is that its implementation goes beyond the actual punishment, but does not go beyond the implementation of criminal responsibility as an integral part of social control (Skakov, 2004).

3. Correction of the convicted person as one of the grounds for the application of conditional early release from punishment

Parole is a comprehensive criminal law institution, as it is regulated by the criminal law norms of the criminal code (articles 72, 73, 86 and 87), penal enforcement (articles 161, 162 and 169) and criminal procedure (articles 476, 477, 478 and 480) of the legislation of the Republic of Kazakhstan and international regulatory legal acts. This is also indicated by the Normative Resolution of the Supreme Court of the Republic of Kazakhstan (2015) "On judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the sentence with a milder type of punishment and reduction of the term of the imposed punishment, and our analysis of scientific and specialized literature.

I. S. Borchashvili (2021) and G. S. Dzhumashev (2017) also write about this. The latter adds that “Formal and material grounds are necessary for the

application of parole (Dzhumashev, 2017). The formal reason is that the probation period has been reduced. The material basis for parole is the correction of the convicted person. The correction of a convicted person is a complex psychological, pedagogical and socio-legal category. In modern criminal law and penitentiary science, two main approaches to the concept of correction have been preserved – the moral correction of convicts and the legal correction of convicts. When we talk about correcting a convicted person, we mean moral correction. The moral correction of a convicted person should be understood as changes in the spiritual, moral, emotional, volitional, and motivational-need spheres of the convicted person's personality that occurred as a result of a comprehensive educational impact on him during the period of serving his sentence, as a result of which the behavior of the convicted person becomes socially adaptive.”

The legal correction of a convicted person, as the goal of criminal punishment, is considered achieved if the convicted person does not allow criminal recidivism, which is the legal nature of the purpose of punishment provided for in Part 2 of Article 39 of the Criminal Code of the Republic of Kazakhstan, namely, the correction of the convicted person. Thus, the purpose of punishment in the form of correction is considered achieved if the convicted person ceases to pose a public danger to society or the degree of this danger is so low that the actual execution or continuation of serving the sentence is impractical. Penal correction is a means of achieving this goal. Research shows that the most important factor in correcting a convict is his attitude to punishment.

The process of convict correction takes place in two stages. The first one begins during the preliminary investigation, but it takes place more intensively during the court session. The second begins when a specific type of punishment is imposed and proceeds during its execution, that is, for example, when serving such a type of punishment as imprisonment, the main means of correction are the regime of serving imprisonment, socially useful work, education, and educational work. Other means of corrective action provided for by the penal enforcement legislation are also used.

The purpose of correcting a convicted person is closely related to the purpose of restoring social justice. If the punishment imposed is excessively harsh or undeservedly lenient, this will not only hinder the restoration of social justice, but also harm the process of correcting the convicted person, since undeservedly harsh punishment will make him tougher, and excessively lenient punishment will give him confidence that he can continue to commit crimes, circumvent the deservedly harsh punishment. punishment.

Thus, the correction of a convicted person is the most important goal of criminal punishment and is important both socially and in the criminal law

sense. Its social significance is expressed, first of all, in the recognition of the possibilities of society and the state to carry out real correction of the offender, and the criminal law value is expressed in the fact that a number of articles of the criminal law as a prerequisite (condition) for their application provide for the achievement of this goal. Thus, in accordance with art. 72 of the Criminal Code of the Republic of Kazakhstan, which regulates the procedure for parole from serving a sentence, the conditions for its application are precisely the purpose of correcting a convicted person, based on the fact that in order to achieve it, a person serving a sentence for a committed crime does not need to serve it completely.

The normative resolution of the Supreme Court of the Republic of Kazakhstan No. 6 “On judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the sentence with a milder type of punishment and reduction of the term of the imposed punishment” dated October 2, 2015 does not give a specific concept of what is meant by the correction of a convicted person, although some explanations are given regarding this concept (2015).

Thus, paragraph 2 states that the court determines whether the convicted person had serious violations of the regime of serving his sentence and fully compensated for the damage caused by the crime, “then in accordance with the second paragraph of the first part of Article 72 of the Criminal Code, he is subject to parole without any additional conditions.” At the same time, we are confused by the word “malicious”. That is, if the convicted person still has a violation of the regime of serving, then he has a chance, if there are additional conditions for parole. Moreover, according to art. 72 of the Criminal Code of the Republic of Kazakhstan, it is only the court that recognizes whether or not a convicted person needs to fully serve his sentence in order to correct himself.

According to V. F. Lapshin (2015): “Correction is expressed in the fact that the convict does not allow violations of the regime of the correctional institution, takes an active part in public life, acquires a new specialty, improves his qualifications, etc. In the presence of such circumstances, the process of correcting a convicted person can be completed outside the prison, which is a significant incentive for the law-abiding behavior of the person who committed the crime.” And in this we agree with him that the essence of correcting all of the above, including we want to focus specifically on the prevention of violations of the regime of serving sentences, and not on their malicious violation.

When deciding on parole, the court must check, among other things, the data characterizing the behavior of the convicted person, his attitude to work

and education during the entire time of serving his sentence, that is, “evaluate positive changes in the behavior of the convicted person.”

When assessing the behavior of a convicted person, the courts must take into account: compliance with internal regulations, compliance with the requirements of the administration of the institution of the penitentiary system, participation in educational activities and in the public life of the institution, encouragement, punishment, maintaining relations with relatives and convicts, positive or negative attitude towards studies, compensation for damages, transfer to facilitated conditions of detention and other circumstances that may indicate the correction of the convicted person.

The court's conclusion on the correction of a convicted person should be based on a comprehensive accounting of data on his behavior not only for the time immediately preceding the consideration of the petition, but also for the entire period of his stay in the institution, including the time in custody before sentencing.

However, it is not considered what the correction includes. Correction is, first of all, law – abiding behavior, which includes the execution and observance of not only legal norms, rules of the dormitory, but also norms of morality and ethics of behavior, compliance with internal regulations, requirements of the regime of serving a sentence, high-quality performance of assigned work, active participation in all public events of institutions of the penal correction system, improvement of general education. There are other things, as well as, first of all, sincere repentance not only for committing a specific crime, but also for committing other illegal acts. Moreover, in our opinion, sincere repentance indicates a change in the convict's inner world, his views on life, in which he is aware of his behavior and attitude to his actions. And if the regime of serving a sentence is violated again, it is unlikely that the convicted person can say that he realized his behavior, attitude to life, to his actions, repented of committing illegal actions.

Thus, we propose to include the concept of correction in paragraph 9 of the Normative Resolution "On the judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the sentence with a milder type of punishment and reduction of the term of the imposed punishment" and give it in the following wording: "Correction is considered law-abiding behavior of a convicted person, which includes the execution and observance not only of legal norms, rules of the dormitory, but also and the norms of morality and ethics of behavior, compliance with the rules of internal order, the requirements of the regime of serving a sentence, high-quality performance of the assigned work, active participation in all public events of institutions of the penal correction system, improvement of

the general education level and other circumstances that may indicate the correction of the convicted person, as well as, first of all, sincere repentance not only for committing a specific crime, but also for committing other illegal acts” (Normative decision, 2015).

We consider it necessary to exclude the word “malicious” from paragraph 2 of this Regulatory Resolution, because a violation is already an act or omission that contradicts the requirements of legal norms, in this case the requirements of the regime of serving a sentence, and give it in the following wording: “If the court finds that, along with the actual serving of the term of punishment provided for by law, the convicted person had no violations of the regime of serving a sentence and fully compensated for the damage caused by the crime, then in accordance with In the first paragraph of the first part of Article 72 of the Criminal Code, he is subject to parole without any additional conditions.”

In connection with the above, we propose to amend Article 72 of the Criminal Code of the Republic of Kazakhstan, combining paragraphs 1 and 2, and to give the following wording: “A person serving a restriction of liberty or imprisonment, after actually serving the terms specified in parts three, four and five of this article, may be released by a court on parole, in in case of complete correction and compensation for the damage caused by the crime, without any additional conditions.”

At the same time, in domestic legislation, as mentioned above, parole is applied to persons serving restriction of liberty or imprisonment for crimes, including serious and especially serious corruption crimes, and for terrorist or extremist crimes (Part 1 of art. 72 of the Criminal Code of the Republic of Kazakhstan). According to the latest crimes, it should also be taken into account that they did not result in the death of people and were not committed with a particularly serious crime, as well as if the convicted person actively assists in the prevention, disclosure or investigation of terrorist or extremist crimes, exposing members of a terrorist or extremist group. Persons serving prison sentences for grave and especially grave corruption offenses must comply with all the conditions of the procedural cooperation agreement, and only in this case can they be released by the court on parole after actually serving the specified terms.

According to Part 1 of Article 44 of the Criminal Code, restriction of freedom is imposed on those convicted of crimes without isolation from society at their place of residence, with probation supervision for a period of six months to seven years and forced labor for one hundred hours annually during the entire term of serving their sentence. However, the legislation does not specify for which specific types of crimes restriction of freedom is imposed. Most likely, for any socially dangerous act (action or omission) that

is prohibited by this Code (Part 2 of Article 10 of the Criminal Code of the Republic of Kazakhstan).

In our opinion, restriction of freedom is already a kind of exemption from punishment for a committed crime, although it is a kind of punishment. This is also confirmed by the fact that this measure has its own regime in the form of a probation period involving forced labor, the imposition of certain duties that restrict a person's rights (not to change their place of residence, work, study, not to visit certain places, undergo medical treatment, provide financial support to the family, and so on). In this aspect, conditional early release is a substitution of punishment (changing the previously imposed criminal punishment by a court verdict to another type), with the same assigned duties, with the exception of forced labor.

In turn, according to Part 5 of Article 46 of the Criminal Code of the Republic of Kazakhstan, imprisonment is imposed:

- persons convicted of crimes committed through negligence; persons convicted of crimes not related to the use of violence provided for in Chapters 7, 8, 9, 12 and 13 of the Criminal Code; persons convicted of crimes provided for in Chapter 15 of the Criminal Code, in case of full compensation for the damage caused by the crime; persons who for the first time convicted of committing an intentional crime for which a sentence of up to two years' imprisonment has been imposed;
- persons sentenced to imprisonment for a term of more than two years for committing intentional crimes of minor, moderate gravity or serious crimes who had not previously served their sentence; women who have committed a particularly serious crime, as well as in case of recidivism; persons to whom fines, correctional labor, community service, restriction of liberty have been replaced by imprisonment persons sentenced to imprisonment for committing crimes provided for in parts 1-1, 2 and 3 of Article 366, parts 2 and 3 of Article 367, part 2 of Article 368 of the Criminal Code;
- men who have been sentenced to imprisonment for the first time for committing particularly serious crimes; persons who have been sentenced to imprisonment for crimes against the sexual integrity of minors, with the exception of persons who have committed a crime under the age of a minor, as well as men with a dangerous relapse of crimes or sentenced to life imprisonment; persons sentenced to imprisonment who previously served imprisonment for committing an intentional crime, with the exception of persons convicted of non-violent crimes provided for in Chapters 7, 8, 9, 12 and 13 of the Criminal Code, as well as persons convicted of crimes provided for in Chapter 15 of the Criminal Code, in

- case of full compensation of the damage caused by the crime; men convicted of recidivism; women – in case of dangerous recidivism;
- for dangerous recidivism of crimes, as well as for persons sentenced to life imprisonment.

In case of life imprisonment, a person may be released on parole if the court finds that he does not need to continue serving this sentence after serving at least twenty-five years of imprisonment. If a person serving a life sentence has fulfilled all the conditions of the procedural agreement, then he is released on parole after actually serving at least fifteen years of imprisonment.

We also note the fact that imprisonment upon the conclusion of a court on the possibility of correcting a convicted person without serving a sentence may also be a suspended sentence (Part 1 of Article 63 of the Criminal Code of the Republic of Kazakhstan). In this case, the punishment is imposed, but it is not actually executed, being a kind of release from punishment, but not from serving the appointed punishment.

Thus, taking into account the above opinions of scientists, the analysis of normative legal acts regulating the application and execution of sentencing and measures for release from serving a sentence should define the concept of conditional early release from serving a sentence as a criminal law institution.

We believe that conditional early release from serving a sentence is a measure of state encouragement for the early release of a person from serving a sentence on the basis of a court, taking into account his correction, full compensation for the damage caused by the crime, who fulfilled all the conditions of the procedural cooperation agreement, after actually serving the terms specified in the law, as well as with the condition of non-fulfillment of new violations and the prevention of malicious evasion from fulfilling the duties imposed by the court during the probation period (the unserved part of the punishment). It is advisable to include this definition in Article 3 of the Criminal Code of the Republic of Kazakhstan “Clarification of certain concepts contained in this Code”.

In addition, we would like to note that the majority of law enforcement officers (61.8%), judges (71.4%) and prosecutors (75%) surveyed by us support this definition. Of these, 42.8% of judges surveyed, 46.7% of prosecutors, and 38.7% of law enforcement officials believe that the legal nature of parole is actually release from serving a sentence on the basis of a court, provided that the released person complies with the requirements established by law during the probation period, as well as as a form of state criminal law encouragement (respectively, 28.6% of judges, 28.3% of prosecutors, 23.1% of law enforcement officers). The fact that the institution

of parole is an element of a progressive system of execution of punishment is considered by 14.3% of judges, 8.3% of prosecutors and 9% of law enforcement officers, and 14.3%, 10% and 21.6%, respectively, is a way of serving a sentence, that is, one of the stages of execution of punishment. Only 7.6% of police officers noted otherwise, without specifying what exactly.

58.1% of police officers, 100% of judges and 71.7% of prosecutors believe that the institution of parole is very necessary, it plays a big role, the rest – that it is not needed, its importance is not great. However, 66.8% of police officers, 78.6% of judges and 90% of prosecutors believe that the institution of parole needs to be reformed, namely, to adjust regulations. For example, to take stricter measures in case of repeated commission of a crime by a person released on parole, to introduce a strict ban on the use of alcoholic beverages and narcotic drugs by persons released on parole.

In addition, 6.5% (117) of district police inspectors believe that it is necessary to cancel parole altogether, others – to cancel only for particularly serious crimes (murder, sexual crimes, fraud on a large scale), every second polled police officer suggests tightening parole, especially control, and transferring it completely to the probation service, unloading the precinct officers. police inspectors. There have also been proposals to increase the staff of supervision officers, or to introduce a specific contractor into the system – an inspector for the supervision of parolees or additional control by specialized specialists, transfer everything to the penal enforcement system or create adaptation centers for parole with the involvement of specialized specialists who will provide various assistance, including to improve the financial situation of persons who have been released on parole, employment, or the right to choose a profession.

Moreover, such proposals have been made to reform the institution of parole:

1. Strengthen the restrictions and obligations of parole officers, in terms of leaving their homes only for work or study, or 100% to issue electronic tracking devices.
2. To introduce a separate article in the Code of Administrative Offences of the Republic of Kazakhstan for violation of restrictions.
3. Enter data into the Berkut database upon release from prison by employees of institutions.
4. Specify the number and list of articles of the Code of Administrative Offences of the Republic of Kazakhstan for which the cancellation of parole is possible.
5. Prohibit the use of conditional early release in relation to persons who have already had their parole revoked once.

6. Transfer preventive control over persons on parole to the probation service, since in fact the person released on parole has not served his sentence.
7. When released on parole from serving a sentence, the term of stay at liberty should be calculated as 2 days at liberty for 1 day not served in a correctional institution.
8. To introduce an electronic control file for the convenience of management and control by the supervising departments.

At the same time, it was noted that parole is the most effective measure to stimulate the law-abiding behavior of convicts in the process of serving a criminal sentence. As indicated by:

- 100% of judges, noting the average level – 92.8%, high – 7.2%;
- 66.7% of prosecutors, indicating the average level – 56.7%, high – 10%. 33.3% indicated a low and extremely low level;
- 77.9 % of employees of the internal affairs bodies, the average level is 47.5%, the highest is 30.4%. 22.1% indicated a low and extremely low level;
- 97.2% of the parolees surveyed, where 66% (1196) noted a high level of efficiency of parole and 31.2% - an average level of efficiency. Only 2.8% indicated a low and extremely low level of effectiveness of parole

The surveyed respondents are mostly men (judges – 78.6%, prosecutors – 86%, police officers – 97.3%), with higher legal education (judges – 96.4%, prosecutors – 96.5%, police officers – 90.6%). Higher non-legal education – 3.5% are prosecutors and 2.8% are police officers, the rest have secondary specialized education (1 assistant judge and 6.6% or 118 police officers). The prevailing average age among prosecutors and police officers is from 31 to 40 years – 43% and 48.5%, respectively. Judges aged 40 to 50 years – 42.8% and over 50 years – 42.8%, 3.6% – less than 25 years and 10.8% – 31-40 years. Also, the age of the interviewed prosecutors is less than 25 years for 2 people, from 26 to 30 years – 27 (31.4%), from 40 to 50 years – 20 (23.2%). 194 people (10.8%) are under 25 years old, 21.6% are 26-30 years old, 18.4% are 40-50 years old, and 12 people (0.7%) are over 50 years old.

50% of judges, 2.3% of prosecutors and 1.7% of police officers have a total work experience of more than 25 years. Also, judges have a work experience of 20-25 years – 14.3%, 15-20 years – 28.6%, from 1 to 5 years – 7.1%. And 7.1% have less than 1 year of judicial experience, 28.6% have 5-10 years, 21.4% have 10-15 years, 28.6% have 15-20 years, and 14.3% have more than 25 years.

The total work experience of prosecutors is 20-25 years -14%, 15-20 years – 12.8%, 10-15 years – 25.6%, 5-10 years – 30.2%, from 1 to 5 years

– 25.6%, less than 1 year – 2.3%. 27.9% have work experience in office less than 1 year, from 1 year under 5 years – 25.6%, 5-10 years – 24.4%, 10-15 years – 9.3%, 15-20 years – 9.3%, 20-25 years – 2.3%, over 25 years – 1.2 %.

The total work experience of ATS employees is 20-25 years – 8.2%, 15-20 years – 19.5%, 10-15 years – 26.5%, 5-10 years – 24.9%, from 1 to 5 years – 14.4%, less than 1 year – 4.9%. 14% have less than 1 year of work experience, from 1 year to 5 years – 32.8%, 5-10 years – 24.7%, 10-15 years – 16.5%, 15-20 years – 8.4%, 20-25 years – 3%, over 25 years – 0.5% (9 people).

District judges, regional judges, investigative judges, juvenile judges, judges of inter-district courts and 1 assistant judge took part in the survey. The survey included heads of departments, deputy heads of departments, district, regional and city prosecutors, senior prosecutors, prosecutors and assistant prosecutors. 84.6% of district police inspectors (1,513), 5 investigators, 30 heads of administrative police and probation service departments, 50 assistant district police inspectors, as well as 190 other police and probation service officers participated in the survey.

4. Conclusion

Thus, based on all of the above, in conclusion, we come to the following conclusions and suggestions:

1. The institution of parole occupies an important place in the system of criminal law punishment, since the main basis of a person's parole is his correction and, consequently, re-education. In addition, an important goal of punishment is the correction or re-education of the defendant based on the principles of legality, morality, justice and individualization of punishment.
2. We propose to amend the Regulatory Resolution “On the judicial practice of conditional early release from serving a sentence, replacing the unserved part of the sentence with a milder type of punishment and reducing the term of the imposed punishment”:
 - include the concept of correction in the paragraph 9 and give it in the following wording: “Correction is considered to be the law-abiding behavior of a convicted person, which includes the execution and observance of not only legal norms, rules of the dormitory, but also norms of morality and ethics of behavior, compliance with internal regulations, requirements of the regime of serving a sentence, high-quality performance of assigned work, active participation in all public

events, institutions of the penal enforcement system, improvement of the general education level and other circumstances that may indicate the correction of the convicted person., and also, first of all, sincere repentance not only for committing a specific crime, but also for committing other illegal acts”;

- in paragraph 2, delete the word “malicious”, since a violation is already an act or omission that contradicts the requirements of legal norms, in this case, the requirements of the regime of serving a sentence, and give it in the following wording: “If the court establishes that, along with the actual serving of the term of punishment provided for by law, the convicted person had no violations of the regime of serving a sentence. if he has fully compensated for the damage caused by the crime, then in accordance with the first paragraph of the first part of Article 72 of the Criminal Code, he is subject to parole without any additional conditions.”
3. Combine the 1st and 2nd paragraphs of Part 1 of Article 72 of the Criminal Code of the Republic of Kazakhstan and give the following wording: “A person serving a restriction of liberty or imprisonment, after actually serving the terms specified in parts three, four and five of this Article, may be released by a court on parole, in case of full correction and compensation damage caused by a crime, without any additional conditions.”
 4. The definition of “conditional early release from serving a sentence” should be included in art. 3 of the Criminal Code of the Republic of Kazakhstan “Clarification of certain concepts contained in this Code” in the following wording: “conditional early release from serving a sentence – This is a measure of state encouragement for the early release of a person from serving a sentence on the basis of a court, taking into account his correction, full compensation for the damage caused by the crime, who fulfilled all the conditions of the procedural cooperation agreement, after actually serving the terms specified in the law, as well as on condition of non-commission of new offenses and prevention of malicious evasion from fulfilling the duties assigned by the court., during the probation period (the unserved portion of the sentence).”

References

- Altman M.C. (2023). Introduction: Punishment, Its Meaning and Justification. In: Altman M.C. (eds). *The Palgrave Handbook on the Philosophy of Punishment*.

- Palgrave Handbooks in the Philosophy of Law*. Palgrave Macmillan, Cham. DOI: 10.1007/978-3-031-11874-6_1.
- Ashirbekov A.I. (2008). *The appointment of a more lenient punishment than is provided for this crime: Dis. ... kand. jurid. sciences.* – Karaganda, pp. 194-205.
- Borchashvili I. S. (2021). *Commentary to the Criminal Code of the Republic of Kazakhstan. The general part. Vol. 1*. Almaty: Zhety Jargy, pp. 836-850.
- Council of Europe Publications (2002). *Improving the Implementation of the European Rules on Community Sanctions and Measures*. Text available at the website: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/improving-implementation-european-rules-community-sanctions-and?utm>.
- Criminal Code of the Kazakh SSR (1959). -- Text available at the website: <https://online.zakon.kz>.
- Dzhumashev G. S. (2017). The mechanism of application of parole in the Republic of Kazakhstan: the state and problems of improvement. *Bulletin of KazNU named after Al-Farabi. The series is legal*, 2(82): 113-116.
- Hritz A. (2021). Parole Board Decision Making and Constitutional Rights. In: *Annual Review of Law and Social Science*, Vol. 17, pp. 335-351, 2021, -- Available at SSRN: <https://ssrn.com/abstract=3946923> or DOI: 10.1146/annurev-lawsocsci-051121-070621.
- Lapshin V. F. (2015). Parole as an integral part of the institution of release from criminal punishment. Differentiation and individualization of responsibility in criminal and penal enforcement law. In: *Proceedings of the International Scientific and Practical Conference dedicated to the 75th anniversary of L. L. Kruglikov*. Ryazan: Academy of the Federal Penitentiary Service of Russia, pp. 118-126.
- Low A., & Rogers P. (2019). *The role of parole in modern criminal justice systems*. Cambridge University Press, 25(1): 112-120.
- Normative decision of the Supreme Court of the Republic of Kazakhstan (2015). On the judicial practice of parole from serving of sentence, replacing the unserved part of sentence with more lenient punishment and reducing the term of the inflicted penalty. -- Text available at the website: <https://adilet.zan.kz/eng/docs/P150000006S>.
- Recommendation Rec (2003). 22 of the Committee of Ministers to member states on conditional release (parole). -- Text available at the website: https://rm.coe.int/16800ccb5d?utm_source.
- Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan (2015). On judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the sentence with a lighter type of punishment and reduction of the term of the imposed punishment. Text available at the website: https://online.zakon.kz/Document/?doc_id=33291078#activate_doc=2.
- Smith B. (2010). Chronology of the Prisoner Movement in Australia -- <https://justiceaction.org.au/chronology-of-the-prisoner-movement-in-australia>.

- Skakov A. B. (2004). *Progressive system of execution of imprisonment and its reflection in the new legislation of the Republic of Kazakhstan*. Almaty, pp. 152-162.
- Sungmoon K. (2018). *State Coercion and Criminal Punishment, Democracy after Virtue: Toward Pragmatic Confucian Democracy, Studies in Comparative Political Theory* (New York, online edn, OxfordAcademic, DOI: 10.1093/oso/9780190671235.003.0005.
- The concept of legal policy until 2030 (2021). Decree of the President of the Republic of Kazakhstan. -- Text available at the website: <https://adilet.zan.kz/kaz/docs/U2100000674>.
- The Criminal Code of the Republic of Kazakhstan (2014) -- <https://online.zakon.kz>.
- Tokubaev Z. S. (2007). The type of punishment in the form of imprisonment and its impact on convicts. In: *10 years of the Criminal Code and the Penal Code of the Republic of Kazakhstan: achievements and prospects: international mater. scientific and practical. conf.*. Karaganda: B. Beisenov of the Ministry of internal affairs of the Republic of Kazakhstan, 1, pp. 121-125.