



THE NEED FOR A SCIENTIFIC ANALYSIS OF THE CONCEPT, ESSENCE, AND THEORETICAL AND LEGAL ASPECTS OF CONDITIONAL PREMATURE RELEASE

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Annotation: in this article, the author illuminates the legal nature of the institution of parole, the opinions of legal scholars, as well as the author's legal distinction from the institution of incentivizing the institution of parole.

Keywords: parole, incentives, credits, scientists' opinions, commitments.

The fundamental reforms being carried out in all spheres of society during the period of building a new Uzbekistan to glorify human dignity and ensure human rights also relate to the exemption from criminal punishment. The institute of early conditional release of persons from serving a positive sentence of a criminal nature is based on humanism in the field of combating crime in the Republic of Uzbekistan and is in accordance with international standards.

Understanding the legal essence of any institution includes defining the necessary conditions for its emergence, analyzing its legal content, defining the place and role of other legal institutions in the system, their similarities, differences, and relationships. The solution of these issues has not only theoretical but also practical significance, predetermining the limits and procedure for legislative regulation of the rules of its application.

The fact that the term "preterm parole" is interpreted differently in legal literature creates difficulties in illuminating the legal nature of this institution. Scholars such as Yu.M. Tkachevsky and I.D. Perlov propose considering early parole as part of this punishment, explaining that it retains important features of criminal punishment, that is, the state's coercive measure remains lightened. Others view this institution as a type of exemption from punishment.[1]

Studying the issue from the perspective of the institution's development process makes it even more interesting and significant. Of course, as social relations change, along with the advancement of the institution of parole, approaches to defining its essence are also changing.

In particular, N.S. Tagansev considered early parole as a punitive activity of the state and, at the same time, as an amendment to the court verdict.[2] A.A. Piontkovsky also believes that early parole is part of the punishment system and a transitional stage aimed at the final cessation of the impact of this punishment.[3] S.K. Gogel, disagreeing with the above, believes that parole has nothing to do with the punitive system, as an action aimed at influencing the moral correction of convicts.[4]

An active debate among scholars on the concept of parole took place in the 20th century, primarily due to the formation and development of this institution in the national legislation of different countries, as well as the need for its improvement.

In particular, M.Kh. Rustambaev believes that early parole is an exemption from serving a sentence, provided that the defendant fulfills the duties assigned to him by the court

during the unexpired term of the sentence and maintains social order and does not commit a new crime.[5] E.O. Turgunbayev argues that early parole is the early termination of the sentence.[6] V.M. Trubnikov suggests considering this institution as one of the types of exemption from punishment.[7] Early parole is also recognized as a private and conditional form of exemption from punishment.[8]

Based on the above, in our opinion, early parole is a type of exemption from serving a sentence. Because, according to Article 73 of the Criminal Code of the Republic of Uzbekistan, the fact that a certain type of coercive measure is not imposed on persons who have been conditionally released from serving their sentence means that it is not accepted as a type of punishment. Moreover, in accordance with the criminal and criminal-executive legislation of the Republic of Uzbekistan, early parole is a type of exemption from serving a sentence.

Although the criminal legislation of some foreign countries considers parole as a form of exemption from serving a sentence, a certain obligation is imposed on persons who have been conditionally released from serving a sentence.

In particular, Article 79 of the Criminal Code of the Russian Federation, Article 72 of the Criminal Code of Georgia, Article 76 of the Criminal Code of the Republic of Armenia, Article 72 of the Criminal Code of the Republic of Kazakhstan, Article 91 of the Criminal Code of the Republic of Moldova, Article 74 of the Criminal Code of the Republic of Turkmenistan, Article 76 of the Criminal Code of the Republic of Azerbaijan, Article 90 of the Criminal Code of the Republic of Belarus, Article 90 of the Criminal Code of the Republic of Belarus is called "conditional early release from serving, imposes on the person the obligation to fulfill certain conditions during the unexpired part of the sentence and threatens the convicted person with a special threat to return to the penal institution. Therefore, A.A. Piontkovsky argues that this is the final stage of serving a sentence of deprivation of liberty, in which the punishment regime is abolished and replaced by psychological punishment.[9]

In our view, even if the obligation to fulfill certain conditions is imposed on a person during parole, the essence of this institution remains unchanged, that is, it is assessed as a type of exemption from serving a sentence. The reason is that the conditionally released person has the opportunity to move freely and has the right to choose the profession he wants and work, that is, the rights that he lost during the actual serving of the sentence are restored.

Furthermore, it is inadmissible to continue the influence of punishment on a person released during the unexpired part of the sentence and does not comply with the current legislation, but this does not prevent the released prisoner from needing any educational influence or strengthening his moral correction, continuing social adaptation to the life of society.

Analyzing scientific works on this institute, the lack of a unified view on defining the legal essence of parole, the diversity of statements made by scholars about the institution of parole, and the complexity of differences in opinions are justified by the fact that they are regulated by three branches of law: criminal, criminal procedural, and criminal enforcement. Because conditional early release from serving a sentence is a unified systemic legal complex. Inactivity of one of the components of the complex leads to the failure of the institute. The process begins with the imposition of punishment and is valid for the duration of the punishment. It follows that while criminal law defines the essence of conditional release, the procedure for releasing a convicted person to probation and considering this institution by



the court is regulated by criminal procedural law, while the preparation for it and control over those released are regulated by criminal-executive legislation.

The institution of parole is a means of rewarding convicts who have succeeded in proving their moral correction among convicts, as this institution significantly represents the criminal motivation of positive behavior enshrined in law and serves as a stimulus measure of a criminal-legal nature.[10]

Our observations indicate that most imprisoned prisoners, after serving a long sentence, do not change their behavior even when the time comes for their conditional early release from prison, because they do not strive for freedom due to the loss of their socially useful connections in society. This may also be due to the fact that they will not be expected in freedom and will not have a home to live in freedom. However, if they hope for freedom from someone, they can find the strength to improve themselves morally, and they will definitely change, but this is observed in a few cases.

Scientists have different views on which stage of punishment conditional early release from serving a sentence is. In particular, N.A. Belyaev,[11] M.A. Efimov[12] considers one of the methods of serving a sentence and the final part of the process of deprivation of liberty, A.A. Piontkovsky considers a special form of changing the sentence and reducing the term of punishment,[13] A.F. Siziy considers the subjective right of the convicted person, that is, actions aimed at achieving the goals and satisfying the interests of the person provided for by law.[14]

Partially agreeing with the opinions of the aforementioned scholars, the institution of parole includes, first and foremost, the method of coercion and persuasion, thereby expressing the principle of humanism. At the same time, the convicted person has a subjective right, which forces him to behave positively, and as a reward for this action, he is conditionally released from serving the sentence.

A conditional early release of the part of the sentence that has not been served by the convicted person frees the actual serving of the sentence on certain conditions. If the convicted person commits a new crime during the unexpired term, the punishment will move to the final stage that is, in accordance with part 5 of Article 73 of the Criminal Code of the Republic of Uzbekistan, a person who has been conditionally released from serving a sentence and has committed a new intentional crime during the unexpired part of the sentence, the court assigns a punishment by adding the full or partial term of the previously unexpired sentence to the term of punishment imposed by the new sentence. In this regard, lawyer A.A. Sichev said that conditional early release from serving a sentence is a "credit of trust" for the convict for a certain period of time, during which he is given the opportunity to determine his fate by his actions, that is, the convict can be completely released from punishment or serve an unexpired term.[15]

Of course, the part of the sentence not served by the convicted person, firstly, becomes a probationary period; secondly, the punishment loses its force not from the day the person is released from punishment, but from the day the probationary period ends. It is from this moment that the threat of actual execution of the unspent punishment ceases to be valid. Because if a person who has been conditionally released from serving a sentence successfully passes the test period, he will not serve the unexpired part of the sentence. This leads to the formation of a humanistic attitude towards the convicted person, a legal culture that influences their behavior and is based on their actions in accordance with the law. Scientists

A.M. Nosenko,[16] A.F. Sisy,[17] consider conditional early release from serving a sentence to be a subjective right of the convicted person, as a result of a person's behavior aimed at using or not using this opportunity provided for by law. S.Ya. Ulitsky, on the other hand, assesses premature parole as a right of the convicted person, arising from the factors of moral correction and serving the part of the sentence prescribed by law.

I.I. Yevtushenko describes "conditional early release of a convicted person from serving a sentence" as a condition for not committing a crime again during the unexpired part of the sentence after serving the prescribed part of the sentence imposed by the court and achieving the purpose of the sentence.[18] N.A. Struchkov considers "premature release from serving a sentence" to be an improved system of punishment,[19] while D.P. Vodyanikov and L.V. Kuznetsova consider it to be its final part.[20]

In our view, conditional early release from serving a sentence is the transfer of the convicted person to the final stage, without fully serving his sentence, in connection with the loss of his social danger, based on certain requirements that is, when the stated purpose of punishment is achieved, it means that the convicted person is released without serving the full term of punishment specified in the sentence, and it means that it is carried out based on the principles of humanity and differentiation and individualization in the legislation, the rational use of coercive means and the encouragement of law-abiding behavior of convicts.

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