

Comparative Legal Analysis of the Institution of Parole from Serving a Sentence in the Criminal Legislation of the Republic of Kazakhstan and Foreign Countries

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Abstract

The purpose of the article is to conduct a comparative study of the institute of parole in the Republic of Kazakhstan with the current foreign legislation, identify positive experiences and their implementation in the current criminal legislation of the Republic of Kazakhstan. The institution of parole from serving a sentence is widely used in the practice of foreign countries, which gives reason to assume its common features. At the same time, the procedure for the application and cancellation of parole from serving a sentence differs significantly in the criminal legislation of different States. All this made it necessary to conduct a comparative legal study of the institute of parole from serving a sentence and compare the relevant norms of the Criminal Code of a number of foreign countries. The positive experience of the application of the legislation on parole, conflicts and problems of the current legislation of Kazakhstan on parole are described.

Keywords: Parole from serving a sentence, imprisonment, convicts, social adaptation, foreign experience

Introduction

The institution of parole is not a novelty for our state and has a long history of its application. However, at present there is a need to consider it in connection with the change in the criminal policy of our state in general and the updating of the legal regulation of this institution in particular.

The beginning of the change in the criminal policy of the state was laid by

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the adoption of the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020. This document defines that "the most important link in the legal policy of the state is the criminal policy, the improvement of which is carried out through a comprehensive, interrelated correction of criminal, criminal procedure and penal enforcement law, as well as law enforcement.

The most important direction in the development of criminal law is to determine the possibilities of gradually reducing the scope of criminal repression by expanding the conditions for exemption from criminal punishment, primarily in relation to persons who do not pose a great public danger (minors, persons who have committed reckless crimes, to other persons - in the presence of mitigating circumstances)"(Decree of the President, 2009).

One of the directions of the state's criminal policy is the improvement of institutions for exemption from criminal liability, serving a sentence, and parole from serving a sentence. As part of the implementation of the provisions of this Concept, new criminal, criminal procedure and penal enforcement codes were adopted in 2014, the provisions of which regulate relations in the field of parole from serving a criminal sentence.

A cardinal innovation for our state was the adoption of the Law of the Republic of Kazakhstan "On Probation" on December 30, 2016. The said law states that the legislation on probation is formed, in addition to this law itself, by the Constitution of the Republic of Kazakhstan, the Criminal, Criminal Procedure and Criminal Executive Codes of the Republic of Kazakhstan and other regulatory legal acts of the Republic of Kazakhstan (Law, 2016).

It should be noted that the institution of conditional early release from punishment is regulated by a completely updated legal complex. This circumstance in itself actualizes the topic of our research. Taking into account the novelty and importance of the probation institute, which also includes the institute of parole, Decree No. 387 of the President of the Republic of Kazakhstan dated December 8, 2016 approved a comprehensive strategy for the social rehabilitation of citizens released from prison and registered with the probation service in the Republic of Kazakhstan for 2017-2019 (Decree, 2016).

As stated in the comment of the Department of Law Enforcement System of the Administration of the President of the Republic of Kazakhstan, "the purpose of the Integrated Strategy is to create a national system of comprehensive re-socialization of persons released from prison and registered by the probation service, conditions for its effective implementation, contributing to reducing the level of repeat crime.

Resolution of the Government of the Republic of Kazakhstan dated December 29, 2016 No. 912 approved an Action Plan for the implementation of a

comprehensive strategy for the social rehabilitation of citizens released from prison and registered with the probation service in the Republic of Kazakhstan for 2017-2019 (Resolution, 2016).

By order of the Minister of Internal Affairs dated November 27, 2018, the "Methodological recommendations for the use of the risk assessment tool for committing criminal offenses" were approved, which were sent to the Ministry of Internal Affairs for use in daily work and providing monthly information on their application (Order, 2018).

To date, the updated criminal policy of the state offers a new look not only at the institution of parole from punishment, but also at the institution of criminal punishment itself. Priority is given more to re-education, correction of the convicted person in order to preserve his personality as a full member of society, than to force him to undergo the negative consequences of this punishment. In this regard, the issues of his successful re-socialization into the family and society are brought to the fore.

It is also relevant to study the position of a person who becomes involved in the probation process. Parole is the main tool in correcting a convicted person, as it represents a powerful motivational incentive to correct his own behavior by this person. The Probation Institute is called upon to provide all possible assistance to the successful completion of the correction of a person who has violated the law and his return to society.

Currently, there is a need to study how effective the above-mentioned state measures were to implement the updated legal framework for regulating parole from punishment. There is a need to identify the weaknesses and strengths of this legislative regulation in the course of practical application of legal novelties based on a comparative legal analysis of the current legislation of the Republic of Kazakhstan with similar laws of foreign countries.

Materials and Methods

The following methods were used in the research process: system-theoretical and logical analysis of the problem; expert assessment of the relevant norms of national legislation and the practice of its application; constructive and critical analysis of conceptual approaches to parole reform, modeling of risks and costs on parole issues, comparative legal research.

Results and Discussion

According to the legislation of most foreign countries, the institution of conditional early release from punishment is an independent criminal law norm of an incentive nature. Currently, Kazakhstan scientists engaged in the development

of issues of parole from serving a sentence very often turn to foreign legislation and practical experience in regulating and applying parole. Studying the experience of parole in foreign countries gives us an understanding of the advantages and disadvantages of domestic criminal law.

As the French lawyer Marc Ansel noted, "... the study of foreign law opens up new horizons for a lawyer, allows him to better learn the law of his country, because the specific features of this law are especially clearly revealed in comparison with other systems. A comparison can equip a lawyer with ideas and arguments that cannot be obtained even with a very good knowledge of their own law" (Ansel M., 1981).

One of the countries where the rules on parole have been developed in detail and carefully is England. The progressive system of serving sentences in this country is the basis for the execution of custodial sentences and consists of solitary confinement with gradual transfer to a common cell, in which the regime of detention of convicts has four stages. Prisoners are divided into certain categories in order to isolate the bulk of persons characterized by law-abiding behavior from the influence of persons with illegal, negative behavior on them. Currently, in England, depending on the type of prison, four convict detention regimes are provided: for category A prisons, the maximum security level is provided, category B — high, category C — medium and category D — minimum security level, respectively (Fumm, Alexandra M, 2011).

With law-abiding behavior, prisoners can improve their legal situation by moving to another level of security, thereby reducing the minimum mandatory period required for the application of parole. The possibility of changing the status of persons deprived of liberty, with exemplary behavior, positively stimulates the law-abiding behavior of those sentenced to imprisonment and contributes to the gradual correction of prisoners, preparing them for life in freedom. The English progressive system remains the benchmark for penitentiary systems around the world and deserves attention and recognition.

In England, the possibility of applying parole in relation to those sentenced to life imprisonment is related to:

- the sentence actually served;
- the gravity of the crime committed;
- the behavior of this convict while serving his sentence.

Depending on the personality of the prisoner and the circumstances of the committed act, a person sentenced to life imprisonment may be released on parole after serving from 9 to 12 years of the sentence (Gorbach, 2011).

Conducting a comparative analysis of the UK and Kazakh criminal legislation, we see the following distinctive features of parole: first, there are two types of early release: unconditional and under certain conditions, violation of which leads to the cancellation of parole; Secondly, a differentiated approach is provided for the early release of persons sentenced to life imprisonment, while establishing a category of persons sentenced to life imprisonment, in respect of whom parole is not applied under any circumstances.

In our opinion, the procedure for applying the institution of parole from punishment in the German Criminal Code contains a number of successful provisions.

German criminal law provides for the appointment of the institution of conditional early release from punishment in the form of imprisonment for a certain period of time, subject to the following conditions:

- 1) Serving at least two thirds of the appointed term of imprisonment, but not less than two months;
- 2) The convicted person may be held responsible, taking into account the interests of public safety;
- 3) With the consent of the convicted person.

In solving this issue, it is necessary to take into account, in particular, the personality of the convicted person, his previous life, the circumstances of the act committed by him, his behavior while serving his sentence, his living conditions and the consequences that can be expected from him in case of parole (German Criminal law, 2011).

In the presence of certain conditions, such as a conviction to imprisonment for the first time, for a period of no more than two years, in the presence of special circumstances related to the act and personality of the convicted person identified during the serving of punishment, and other prerequisites mentioned earlier, a person may be conditionally released from punishment in the form of imprisonment and while serving half of the sentence in the form of imprisonment, but not less than six months (Criminal law of Foreign countries, 2011). Conditional early release from punishment in the form of life imprisonment also has its own specifics.

In addition to the conditions listed above, which are necessary for parole from a sentence of imprisonment for a certain period, serving at least 15 years of imprisonment, unless further serving of life imprisonment is required, taking into account the guilt of the convicted person.

In the criminal legislation of Germany, a completely different approach has been formed to serving sentences of those sentenced to life imprisonment, unlike in Kazakhstan, the essence of which is the thorough preparation of the convict for life in freedom and his re-socialization. For the first time, the term "resocialization" in the German legal literature was used by Karl Liebknecht in his work "Against Deprivation of Liberty" (Liebknecht, 1919). He stressed that deprivation of liberty in itself does not contribute to the socialization and correction of the convict; correctional and educational effects on the prisoner will bear fruit only in the case of subsequent re-socialization of this person and his inclusion in society. The term "resocialization" is also mentioned in American documents. Thus, the social psychologist D. B. Kennedy understood it as "the secondary entry of indie species into the socio-cultural environment as a result of "defects" in socialization or a change in the socio-cultural environment" (Kennedy, 1973.).

Over the past decade, special large-scale projects have been implemented in Germany, mainly aimed at the social adaptation of those sentenced to imprisonment while still serving their sentences, such as JustuS in Hamburg, Chance ("Chance") in Baden-Württemberg, RESI in Cologne (Hilfe für Ex-Häftlinge, 2013). Open prisons have been established in this country, to which life prisoners are transferred a year before their expected early release. The decision on parole is significantly influenced by the following factors:

- the identity of the convicted person;
- the circumstances under which the convicted person committed a socially dangerous act;
- the behavior of the convicted person during the period of serving his sentence;
- the life of a convict before his conviction;
- the significance of the object of the crime (interests and benefits protected by law, which, in the case of a repeat crime, may be harmed or in respect of which there may be a threat of harm);
- the consequences of early release for the convicted person, his living conditions (Section 57 of the German Criminal Code) (Criminal Code of the Federal Republic of Germany, 1998).

With regard to life prisoners, when considering the issue of parole, the expert's opinion on the degree of further danger of this person to society is of great importance. A probation period is assigned to a convicted person after parole, and a specially authorized person supervises him for five years.

In accordance with paragraph 10 of the Recommendations of the Committee of Ministers of the Council of Europe No. Rec (2003) "On the implementation of the execution of sentences in the form of life imprisonment and other long terms of imprisonment by the administrations of places of deprivation of liberty", it is necessary to consistently and gradually move the convicted person through the prison system — from stricter to less strict conditions of serving punishment, and at the final stage — transfer to open conditions of detention (Recommendations, 2003).

In Kazakhstan, one of the grounds for early release of a life convict is the mandatory serving of 15 years of the prescribed sentence, and in our opinion, this provision of legislation is consistent with research, according to which, after serving a long sentence, this person, taking into account his age on parole, later has difficulties in adapting to life at large, the prisoner's attitude to corrective action it acquires a passive character. In France, the use of the institute of parole is regulated in the Code of Criminal Procedure of 1958, according to which the grounds for parole are:

"the presence of "significant information about the social readaptation" of the convicted person; Readaptation is the process of re-including a person in the social context and the formation of compensatory social skills that were violated while serving a sentence, then the level of correction that the convicted person must achieve is not precisely defined. Serving at least one second of the term of imprisonment (for repeat offenders, at least two thirds for those sentenced to life imprisonment for at least 15 years).

The decision on parole may be revoked "in the event of a conviction of known misconduct", violations of the conditions of release specifically established by the decision on parole. If a person on parole commits a new crime, then the punishment for this crime is joined by the unserved term of the previous conviction. The release is considered final if the parole has not been revoked during the unserved period (Golovanova, 2017).

The difference between domestic and French legislation is: - firstly, in the Criminal Procedure Code of France, the right of parole belongs to the judge and the Minister of Justice, and according to the Criminal Code of the Republic of Kazakhstan, only the court decides; - secondly, the opinion of the perfect department is taken into account, to which the convict intends to go after release, there is no such provision in our legislation. The Criminal Procedure Code of

France establishes the existence of mandatory conditions for early release; in French legislation, the duration of probation is determined upon parole from punishment in the form of life imprisonment, in Kazakh legislation, the actual term is at least 25 years in prison (Italian criminal law, 2017).

Consider early release from punishment in Italy. Part 1 of Article 176 of the Italian Criminal Code states that a person sentenced to imprisonment who, while serving his sentence, has proven his correction by his behavior, may be released early after serving at least 30 months and at least half of the term imposed, provided that the unserved part of the sentence does not exceed five years (Criminal Code of Italy, 1993).

"A person recognized by a court as a repeat offender may be released from punishment early after serving at least four years and at least three quarters of the sentence imposed." (Part 2 of Article 176 of the Italian Criminal Code).

A person sentenced to life imprisonment may be released from punishment early after serving at least 26 years of imprisonment (Part 3 of Article 176 of the Italian Criminal Code). Early release is possible only if the convicted person returns the damage caused by the criminal act, except in cases when the convicted person proves the impossibility of such compensation (Part 4 of Article 176 of the Italian Criminal Code). In the text of Article 176 of the Italian Criminal Code, we can see that early release can be applied to any convicted person released early.

"For the application of early release, it is not enough that the convicted person simply follows the rules of conduct in places of detention, since all convicted persons are obliged to comply with these rules. For early release, it is necessary that the convict completely repents of the crime and rejects the criminal past, which should be expressed in active work in places of detention, professional training, maintaining correct relations with staff and other convicts." (Criminal Code of Italy, 1993).

Early release from punishment under the Italian Criminal Code applies to persons actually serving prison sentences, therefore early release does not apply to conditionally convicted persons.

The Italian Criminal Code provides for the possibility of revoking early release from punishment. In accordance with part 1 of Article 177 of the Italian Criminal Code, early release is canceled if a person commits a crime or a criminal offense of the same kind or violates his duties related to being free under supervision. In this case, the time during which the person being released early was at liberty is not counted towards the term of the sentence served. After the cancellation of early release, this institution cannot be re-applied to a person.

In Italian legislation, in contrast to domestic criminal law, there are also differences and are as follows: firstly, a convicted person may be released early after serving thirty months and at least half of the term imposed, provided that the unserved part of the sentence does not exceed five years, and in the Criminal Code of the Republic of Kazakhstan the actual term of imprisonment served freedom cannot be less than six months; secondly, a person sentenced to life imprisonment may be released from punishment prematurely after serving at least 26 years of imprisonment, in our legislation at least twenty-five years.

In Japan, parole means discretionary release with mandatory parole supervision. The practice of making decisions on parole in Japan has not undergone significant changes since the post-war period. The parole rate, or the proportion of prisoners released on parole from the total number of released prisoners, has been stable, with slight fluctuations, about 50-60% over the past half century (Japan..., 2022).

Parole in Japan is generally understood as a system that promotes rehabilitation and reintegration, provides hope in prison, and provides support and supervision in society (Hayashi, 2015).

Chapter 5 of the Japanese Criminal Code is devoted to the institution of parole from punishment. This chapter states that parole may be granted to a person serving life or term imprisonment with or without forced labor (Penal Code of Japan, 1907).

The grounds for granting parole are, firstly, the behavior of the convicted person, which indicates his genuine correction, and secondly, the serving of a certain sentence. If a person is sentenced to imprisonment for a certain period, he must serve at least one third of the sentence imposed. If he was sentenced to life imprisonment, at least 10 years of imprisonment must be served for parole. The conditions of parole are not to commit a new crime during the period of conditional release and to perform a number of duties specifically assigned to the parole.

The Japanese Criminal Code provides for the possibility of parole from the detention and workhouse (Article 30). So, as a person sentenced to criminal arrest, taking into account the circumstances, at any time, by decision of the administrative authorities, conditional early release from the house of arrest can be presented.

This provision also applies to persons who are in the workhouse due to the inability to pay either a monetary or a small fine. In Japan, the issues of parole are considered not by the court, but by the administrative authorities of the State.

In Japan, the legislator takes a more humane approach to those sentenced to life imprisonment, for parole it is necessary to serve at least 10 years in prison. Of great interest is the fact that a person can be released on parole from the house of arrest. The main conditions of parole are not to commit a new crime during the period of conditional release and to perform a number of duties specifically assigned to the parolee.

Conclusions

Thus, parole is one of the important and effective incentive institutions of penal enforcement law and an effective means of positively stimulating law-abiding behavior of convicts. The above proposals for improving this institution, taking into account the analysis of foreign experience, will contribute to the successful correctional effect on convicts, as well as the speedy achievement of the goals of penal enforcement legislation.

Having studied the criminal legislation of the studied states, we come to the conclusion that a prerequisite for granting parole to a convicted person is the correction of a person who does not need further punishment. The main task is that a person released on parole does not pose a potential threat to both society and the state itself. Therefore, a comparative legal analysis of the countries of the near and far abroad allows us to determine the prospect of further development of Kazakh law and the effective formation of the institution of parole.

To increase the effectiveness of the application of parole, it is not enough that the convicted person simply follows the rules of conduct in places of deprivation of liberty, since all convicted persons, without exception, are obliged to comply with these rules. For parole, it is necessary that the convicted person completely repents of committing a crime and renounces his criminal past, and this should be reflected in active work in places of detention, professional training, as well as maintaining correct relations with correctional officers and other convicts.

In order to increase the effectiveness of parole from serving a sentence, it is necessary to use the experience of foreign countries in which the institute we are studying is successfully functioning. Conditional early release from punishment demonstrates its principle of humanism towards convicts who are firmly on the path of correction in the criminal legislation of foreign countries and the Republic of Kazakhstan.

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