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## CONDITIONAL RELEASE OF MINORS FROM SERVING THE SENTENCE

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### ABSTRACT

In this article, conditional release of minors from serving the sentence, the essence of this legal institution, the history of development, the experience of foreign countries, as well as the scientific approaches of scientists who have conducted scientific research in this field are analyzed. In addition, on the basis of statistical data, today in the Republic of Uzbekistan, the level of conditional release of minors from serving the sentence by the courts and examples of court sentences are given.

### KEYWORDS

Punishment, conditional release, the penal institution, minor, sentence.

### INTRODUCTION

The sentence will not be applied in case of reaching the target point of parole from the time elapsed. It is the grounds that indicate that the danger of parole assistance has been lost before the sentence is served and that the court has recovered without serving the full sentence. The essence of this legal institution is that it is expressed in the conditional release of the convict from serving a future sentence. Its conditional character is that it is carried out on the basis of the conditions specified in the law. Failure to comply with

the terms of parole before serving the sentence will result in full or partial serving of the prescribed sentence. The first condition for its application is the existence of circumstances established by the court regarding the recovery of the sentenced convict and the fact that the convict has served a certain part of the sentence. According to articles 73 and 89 of the Criminal Code of the Republic of Uzbekistan, conditional release may be applied to persons serving certain types of punishment [1]. Conditional release

may also be released from an unexecuted additional sentence. The provision of parole in the criminal law is the practical application of an important humanitarian principle of the criminal law. In practice, there are cases of reoffending of a person who has been released from punishment on this basis. This is primarily due to the imperfection of the legal norm regulating parole. Disagreements remain in the jurisprudence regarding the understanding of what factors and how the parole decision is affected. This situation not only leads to judicial errors in the implementation of the specified norm, but also has a negative impact on compliance with the principles of legality, justice, humanity, has a negative impact on the fate of prisoners, and also hinders the process of their re-socialization. At the same time, the convicts themselves should have a clearer idea of the requirements imposed on them for early parole by law. It plays an important role in motivating individuals to engage in law-abiding behavior. In addition, the ineffectiveness of parole is related to the lack of appropriate control over the actions of persons to whom the above-mentioned institution of criminal law is applied by the state body, which also negatively affects the safety of the entire society.

In addition to the above, there are other problems that need to be solved in the application of the institution of parole. Currently, there is still no consensus on the nature of parole, which makes it difficult to understand its place and role in criminal law, and also causes problems with the application of this type of release. In addition, the issue of grounds for parole is controversial. The criminal law does not disclose the criteria by which a sentence can be issued that a person does not have to complete the sentence imposed by the court for recovery. In addition, the concept of "honest attitude" in the Criminal Code itself is evaluative, which allows the courts to make mistakes in applying a conditional sentence. We should not

forget that another peculiarity of this institution is that it is simultaneously regulated by three areas of law: criminal, criminal executive and criminal procedural law.

According to M.K. Rustamboev, conditional release from serving the sentence is the release of the defendant from continuing to serve the sentence on the condition that the defendant fulfills the obligations assigned to him/her by the court and maintains social order and does not commit a new crime [2]. According to Neilya. X. N, parole is an interdisciplinary institution that regulates the early release of a wide range of prisoners, and as an incentive measure applied to them, it is manifested in the fact that, according to the grounds provided by law, the court will release the person from the sentence before serving the sentence [3]. The Russian scientist D.A. Sherba said that the given opportunity contributes to the early return of the convict to society, ensures a gradual transition from serving the sentence to a law-abiding lifestyle. At the same time, it emphasizes that not only the negative impact of the punishment on the prisoner, but also the negative consequences that he experiences will be mitigated [4]. Continuing the scientist's opinion, according to the Russian criminal law, conditional release from serving a sentence is applied to any category of persons. However, it seems appropriate to limit this possibility. This restriction should not be applied to persons whose personality and criminal behavior show that they are a danger to society and require isolation for the entire term of the sentence.

In our opinion, parole is an institution that encourages convicts to quickly transition to an honest way of life, and is important for the formation of skills to comply with the procedures and requirements of serving the sentence, work and study honestly. According to the content of part 1 of Article 73 of the Criminal Code, imprisonment, sending to a disciplinary unit, restriction

on service or correctional punishment can be applied only after completing the part of this punishment specified by the law. In Article 89, the unserved part of the sentence against the person sentenced to imprisonment, restriction of freedom or correctional work may be replaced by a lighter punishment. Parole does not apply to those serving other types of punishment, and it is not appropriate to do so. Parole is recognized as one of the effective institutions in criminal law. The Criminal Codes of the Republic of Uzbekistan adopted in 1926 and 1959 also provided for this type of impunity, and this institution has been continuously developed. The Criminal Code adopted in 1959 (Article 50) required that the prisoner prove his recovery by exemplary behavior and honest work to be eligible for parole. The current Criminal Code, adopted on September 22, 1994, does not require the convict to prove his recovery, but the law stipulates certain conditions, the existence of which is the basis for parole. In order to be paroled from serving the sentence, it is enough to fulfill the requirements of the established procedure for serving the types of punishment provided for in the first part of Article 89 of the Criminal Code and to have an honest attitude to work or study. For parole of persons who have not reached the age of eighteen at the time of committing a crime, the following are the grounds for parole, applied only to those who are serving deprivation of liberty, restriction of liberty and correctional work:

- 1) fulfilled the requirements of established procedures;
- 2) that he/she had an honest attitude to work or study while serving these punishments;
- 3) having served the part of the punishment specified by law.

Only the presence of all these conditions at the same time is the basis for the conditional release of a person

from punishment. Absence of any of these conditions excludes parole. The procedure for early conditional release from punishment is defined in Article 536 of the Criminal Code of the Republic of Uzbekistan and is applied by the judge based on the submission of the administration of the penal institution. It is used by the judge on the basis of the joint submission of the administration of the penal institution and the National Commission on Children's Issues against persons who have committed a crime under the age of eighteen, or on the basis of the petition of the prisoner or his defender. One of the grounds for early parole is the completion of the statutory portion of the sentence imposed by the court. According to the third part of Article 89 of the Criminal Code, the convicted person must have actually served the following part of the sentence: a) at least a quarter of the term of the sentence imposed by the court for a crime with a low or low social risk; b) for a serious crime, as well as one third of the term of punishment for a crime committed intentionally; c) for a serious crime, as well as for a crime committed with intent, if the person was previously sentenced to imprisonment for a crime committed with intent, shall be applied after actually serving at least half of the term of the prescribed sentence. In connection with the liberalization of criminal punishments of the Republic of Uzbekistan, amendments were made to Articles 73 and 89 of the Criminal Code with the Law on Amendments and Supplements to the Code of Criminal Procedure and Code of Administrative Responsibility of the Republic of Uzbekistan. Prior to these changes, the unserved portion of a sentence eligible for parole was much longer. For example, in the case of minors at the time of committing a crime, it was required that they had passed one-third, one-half, two-thirds. Amendments made to Articles 73 and 89 of the Criminal Code made it possible to release parole before the term of the sentence for those who have passed the path of

recovery. In Article 73 of the current Criminal Code, it is sufficient to have the grounds provided for in the second and third parts of this article, without the requirement that the prisoner is strictly cured. However, Criminal Code does not provide that these persons may be imposed any obligations or any obligations limiting their legal status during the conditional release from punishment. Persons released on parole before the term, if they do not commit a new crime, are held responsible for any offense on other general grounds (disciplinary, administrative). Article 93 of the Criminal Code of the Russian Federation provides for the establishment of special conditions for conditional release of minors from serving a sentence. This is related to the individual approach to determining the rules of criminal responsibility of minors. It is recognized by some scientists that the most optimal periods were determined based on international standards. The Beijing Rules recommend that "relevant authorities should apply parole as widely as possible and as soon as possible". In the criminal code of some countries of the Commonwealth of Independent States, special bodies have been established to monitor the behavior of persons who have been paroled. During parole, the court imposes certain obligations on the prisoner. If a person who has been released on parole before the term does not fulfill these obligations imposed by the court, or if an administrative punishment has been applied to a suspended sentence for violation of public order, the court shall cancel the parole and send him to actually serve the sentence with the submission of the body entrusted with the supervision of the parolee. The Criminal Code of Uzbekistan does not provide for such provisions. It would be useful to include similar norms in the Criminal Code of Uzbekistan. Because a person kept in conditions of deprivation of liberty for a long time may have lost his previous job, some even lost his family, forgotten his profession or knowledge, serious

changes may have occurred in the society during his sentence. In the conditions of the market economy system, deepening of conflicts, high unemployment, difficulties in finding a job for convicted persons, etc., can cause serious problems for persons who have been paroled, and the person cannot solve these problems on his own, and as a result, he may go back to the path of crime [5]. If a minor in Article 89 of the current Criminal Code is not required to prove his recovery in order to be released on parole, then the process of educating him will be continued during the period of parole. But according to the law, who or which body is responsible for educational work with them, who helps them in solving problems in work, study, and marriage? A person who has been released on parole before the term of the sentence is fully released from serving the rest of the sentence without any conditions. When paroling a person early, the court must take into account the living conditions of the person after the release from the sentence, family situation, support and attitude of close relatives, opportunities to get a job or study. Article 563 of the Code of Criminal Procedure of the Republic of Uzbekistan states that "when sentencing a minor defendant, the court, in addition to the issues specified in Article 457 of this Code, shall discuss the necessity of appointing a public educator to the minor, if the minor is given a conditional sentence and is sentenced to a punishment not related to deprivation of liberty. forced to do". In most judgements, the chairman of the NCM (Neighborhood Citizens Meeting) is appointed as a community educator. We believe that having Juvenile Probation fully regulate this process will have positive results. The fact that the probation service helps to regulate the child's future life, studies, work, and life activities based on a clearly developed program has a positive effect on the child's protection from external influences and his avoidance of criminal behavior. The draft law "On Probation Service" has been developed,



but these issues are not included in the draft law. Courts do not have the right to refuse to accept an application for parole on grounds not provided by the law, for example, the lightness of the sentence, the fact that the part of the sentence served corresponds to the requirement of the term established by the law, but only a small part of it has been served, or the fact that he spent a short time in a correctional (educational) colony [6]. He is obliged to consider the application for parole before the term of the sentence. Only if there are insufficient grounds for parole, the case can be returned until the grounds are sufficient.

Conditional release of minors before serving the sentence has features related to partial limitation of some general rules governing the order of release from punishment.

Parole has the following features:

- 1) allows a person to adapt to social life;
- 2) ensures that he is controlled so that he does not commit a crime again;
- 3) removes the negative influence in the prison.

Parole for minors, provided for in Article 89 of the Criminal Code, is similar in many ways to parole for adults (Article 73 of the Criminal Code). At the same time, according to the principle of humanitarianism, the law establishes preferential conditions for the early release of persons who have committed crimes under the age of 18. In other words, Article 89 of the Criminal Code deals with early parole, which is applied to persons who have committed a crime under the age of eighteen. The provisions of this article should be considered as a special norm in relation to Article 73 of the Criminal Code, which regulates the general issues of parole before serving the sentence. In accordance with Article 89 of the Criminal Code, the following are

the grounds for applying conditional early release from serving the sentence:

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Parole may be used if the court is satisfied that the person has morally improved and that it is not necessary to have a corrective effect by means of coercive measures. The fact that such recovery is taking place in a person may be evidenced by the fact that he is fulfilling the requirements of the established regime of deprivation of liberty or correctional work and is conscientiously working or studying [7].

According to the statistics at this point will clarify the situation. Statistics on the use of conditional release of minors who committed crime show that in 2018, 98 people were used in 2019, 133 people in 2020, 236 people in 2021, and 378 people in 2022. This indicator is the number of persons who committed crimes under the age of 18 in 2018, 677 in 2019, 728 in 2020, 1688 in 2021, and 1947 in 2022. The share of parolees is 7.9%, 14.5% in 2019, 18.2% in 2020, 14% in 2021, 19.4% in 2022. The court may release the minor from serving the sentence on parole only if the grounds and conditions

for the application of this type of punishment are present together.

Early parole is applied to persons who have committed a crime under the age of eighteen, based on a joint submission of the administration of the penal institution and the National Commission on Children's Affairs, or based on the request of the convict or his defense attorney. It should be noted as additional information that when a motion for early parole is denied, a new motion may be filed 6 months after the first motion is filed. It is desirable to shorten this term for minors, because the term on general grounds is for adults, and for minors, doubling it will contribute to the child's early release from punishment and return to social life [8].

An example of the features of the conditional release of minors from serving a sentence can be seen in the example of the decision of the Zangiota District Court on criminal cases. In the decision, the court discussed the petition of the prisoner A. Inamova, listened to the petition of the prisoner for early parole from the unserved sentence, the opinions of the assistant special prosecutor of Tashkent and the head of the colony on the satisfaction of the petition, and the prisoner A. Inamova fulfilled the requirements of the established procedure and had an honest attitude to work. and taking into account the fact that the appropriate part of the sentence imposed by the court has passed and that it was positively described by the colony administration, it is necessary to satisfy the request and to release the prisoner A. Inamova from the sentence of deprivation of liberty that has not yet been served. These cases indicate that the person has recovered. In some rulings, the fact that a disciplinary measure was not applied to the convict, and that an incentive measure was applied, is also cited as a reason. According to Article 88 of the Criminal Code of

Kyrgyzstan, conditional release is applied to a prisoner if all the following conditions are met:

- 1) achieved positive results of recovery and resocialization;
- 2) compensated at least half of the damage caused as a result of the crime;
- 3) not subject to disciplinary punishment;
- 4) had a conscientious attitude to work and studies while serving the sentence;
- 5) it is required to be treated for alcoholism, drug addiction, psychotropic or toxic addiction.

In this Code, Article 90 is called the appointment of a probationary period in the case of conditional release before serving the sentence, according to which the court assigns a probationary period to a person who has been released on parole before serving the sentence, within the unexpired part of the sentence, but not more than three years. The court makes a decision on the supervision of parolees during the probationary period.

During the supervision of the prisoner, the court imposes supervision requirements on him during the probationary period [9]. If the convict does not comply with the prescribed control requirements and obligations imposed on him during the probationary period, the court may make a decision on the cancellation of parole and the execution of the rest of the sentence imposed on him based on the submission of the probation authority. It is worth noting that the probation service is a responsible organization and staff that helps prevent a person from committing a new crime, helps him adapt to society, and obey the requirements of supervision [10].

In our opinion, there are cases of misunderstandings related to the application of this institution, in particular, there are cases of refusal of early release from serving the sentence by the courts for reasons not specified in the law (for example, the lightness of the imposed sentence, the lack of time in the institution for the execution of the sentence, etc.). But in these situations, there should be no cases of denying parole to convicts who have proven that they have changed. In another interpretation, it is impossible to refuse to solve the issue of unjustified release of a convict from serving his sentence when there are circumstances proving that he has recovered [11]. If a person who has been released on parole before serving the sentence commits a new crime on purpose during the unserved part of the sentence, he will be punished based on several sentences (Article 60 of the Criminal Code) and on the basis of the general rules for imposing punishment on minors defined in Article 86. The current Code does not specify the conditions for early release from serving the sentence, and the procedure for controlling the behavior of a juvenile convict in case of parole is not specified. In order to eliminate this gap, it is proposed to establish a probation service and improve this institution. For example, on October 19, 2022, the Zangiota district court on criminal cases explained that if a person who was released on parole before the term of the sentence to A. Inamova commits a new crime during the unserved part of the sentence, it should be explained that the punishment will be imposed on him based on Article 60 of the Criminal Code, only this the condition is set.

The Beijing Rules provide for a wide range of measures to address the legal impact on minors. In particular, paragraph 18.1 of the Beijing Rules states: "In order to provide as much flexibility as possible and to avoid placement in correctional institutions as much as possible, the competent authority should be able to

use a wide range of measures of influence in the case. Such measures, which can be applied in conjunction with each other, are the following: a) a decision on guardianship, leadership and control; b) probation; c) decisions on working for the welfare of society; g) decisions on participation in group psychotherapy and other similar activities; d) decisions on giving a place of residence for education and other educational measures" and others. In the Republic, there are no special programs aimed at facilitating the reconciliation of juvenile offenders with victims, public supervision of released juveniles, although their necessity is overlooked in paragraph 11.4 of the Beijing Rules: "Temporary supervision within the community to help ensure the discretionary content of juvenile proceedings" it is necessary to implement certain programs that provide for making and managing, restitution and compensation of the victim". State authorities often consider crime prevention to be the sole responsibility of law enforcement agencies and therefore do not pay enough attention to this work.

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