PAROLE AND EARLY RELEASE FROM PUNISHMENT: PROBLEMS OF IMPROVING APPLICATION MECHANISMS IN THE REPUBLIC OF KAZAKHSTAN AND FOREIGN EXPERIENCE

a Sandugash Nuridin, b Erkin Ongarabaev, c Meruert Muratkhanova, d Bagila Tleulessova, e Dina Kalmaganbetova, f Aigul Yessentemirova

ABSTRACT

Objective: The article provides a comparative study of the institution of parole in the Republic of Kazakhstan with current foreign legislation. The positive experience of the legislation on parole is outlined, conflicts and problems of the current legislation of the Republic of Kazakhstan on parole are identified, and recommendations are offered for further improvement of the institution of parole.

Theoretical framework: During the study, statistical material presented on the website of the Prosecutor General’s Office of the Republic of Kazakhstan, other scientific works on the presented topic, as well as foreign experience of other countries were studied.

Method: 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 reforming the institution of parole.

Results and conclusion: Based on the current legislative acts of the Republic of Kazakhstan and foreign countries, as well as scientific literature, the article analyzes the conditions for the abolition of parole, on the basis of which proposals are made for the wording of Part 7 of Art. 72 of the Criminal Code of the Republic of Kazakhstan. Also, the practice of applying preventive measures by government, law enforcement agencies, and public groups does not always properly demonstrate their effectiveness. Therefore, from our point of view, the legislation should provide for measures to improve them. Which indicate the advisability of developing a large comprehensive plan for the reintegration of parolees into life in society, which relate to all spheres of life. And regarding the principle of work of district inspectors and probation inspectors, which is identical, de-bureaucratization effect.

a PhD Student in Law, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: nuridin2019@list.ru, Orcid: https://orcid.org/0009-0000-3399-9947
b Doctor of Law sciences, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: ongarbayev_eya@enu.kz, Orcid: https://orcid.org/0000-0001-9166-0677
c Candidate of PhD in Law Sciences, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: m.muratkanova@yandex.ru, Orcid: https://orcid.org/0000-0001-9371-8270
d PhD in Law, K. Zhabanov Aktobe Regional University, Kazakhstan, E-mail: tleussova1983@mail.ru, Orcid: https://orcid.org/0000-0003-2798-783X
e PhD in Law, Faculty of Law, L.N. Gumilyov Eurasian National University, Kazakhstan, E-mail: dina_zhaustikova@mail.ru, Orcid: https://orcid.org/0000-0002-5377-4486
f PhD in Law, Faculty of Law, Alikhan Bokeikhan University Kazakhstan, E-mail: Bam051289@inbox.ru, Orcid: https://orcid.org/ 0000-0002-2935-0034
**Originality and value: Issues related to the theory and practice of applying parole to convicted persons or the non-application of certain types of punishment to a certain category of persons are quite often discussed in the scientific literature both in Kazakhstan and in foreign countries. However, taking into account the changes made to Kazakhstan's regulatory legal acts (criminal, criminal procedural, criminal executive legislation, regulatory decisions of the Supreme Court of the Republic of Kazakhstan) on issues of parole, in our opinion, some rough edges are revealed that require resolution. At the same time, the practice of applying the institution of parole shows that there are still issues that are subject to additional legislative regulation in order to eliminate any doubts in the interpretation of the law, which indicates the relevance of their research. Since frequent changes in legislation have caused and continue to cause difficulties for individual courts in the correct application of the above regulations. For example, issues related to the revocation of parole, or the reversal of an application for parole. The latter is what happens most often in practice.**

**Keywords:** punishment, parole, foreign experience, correction of a convicted person.

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**LIBERTAÇÃO CONDICIONAL E ANTECIPADA DA PUNIÇÃO: PROBLEMAS DE MELHORAR OS MECANISMOS DE APLICAÇÃO NA REPÚBLICA DO CAZAQUISTÃO E EXPERIÊNCIA ESTRANGEIRA**

**RESUMO**

**Objetivo:** O artigo fornece um estudo comparativo da instituição da liberdade condicional na República do Cazaquistão com a legislação estrangeira atual. A experiência positiva da legislação sobre liberdade condicional é descrita, conflitos e problemas da legislação atual da República do Cazaquistão sobre liberdade condicional são identificados, e são oferecidas recomendações para melhorar ainda mais a instituição da liberdade condicional.

**Estrutura teórica:** Durante o estudo, material estatístico apresentado no site da Procuradoria Geral da República do Cazaquistão, outros trabalhos científicos sobre o tema apresentado, bem como a experiência estrangeira de outros países foram estudados.

**Método:** Os seguintes métodos foram utilizados no processo de pesquisa: análise teórica e lógica do sistema do problema; avaliação especializada das normas relevantes da legislação nacional e da prática de sua aplicação; análise construtiva e crítica das abordagens conceituais para a reforma da instituição da liberdade condicional.

**Resultados e conclusão:** Com base nos atuais atos legislativos da República do Cazaquistão e de países estrangeiros, bem como na literatura científica, o artigo analisa as condições para a abolição da liberdade condicional, com base nas quais são feitas propostas para a redação da Parte 7 do Artigo 72 do Código Penal da República do Cazaquistão. Além disso, a prática de aplicar medidas preventivas por parte do governo, agências de aplicação da lei e grupos públicos nem sempre demonstra adequadamente a sua eficácia. Por conseguinte, do nosso ponto de vista, a legislação deve prever medidas para as melhorar. O que indica a conveniência de desenvolver um grande plano abrangente para a reintegração das ilhas na vida em sociedade, que se relaciona com todas as esferas da vida. E quanto ao princípio do trabalho dos inspetores distritais e dos inspetores de inspeção, que é idêntico, efeito de desburocratização.

**Originalidade e valor:** Questões relacionadas à teoria e prática de aplicar liberdade condicional a pessoas condenadas ou a não aplicação de certos tipos de punição a uma determinada categoria de pessoas são frequentemente discutidas na literatura científica, tanto no Cazaquistão como em países estrangeiros. No entanto, tendo em conta as alterações feitas aos
Parole and Early Release from Punishment: Problems of Improving Application Mechanisms in the Republic of Kazakhstan and Foreign Experience

1 INTRODUCTION

The Criminal Code of the Republic of Kazakhstan dated July 3, 2014 (hereinafter referred to as the Criminal Code of the Republic of Kazakhstan), having punitive potential, along with punishment for the crime committed, in some cases establishes the possibility of exemption from it on the grounds provided for in the law. One of the types of release from punishment during its serving is conditional early release from serving the sentence (Article 72 of the Criminal Code of the Republic of Kazakhstan). The institution of parole (hereinafter referred to as parole) has long caused and still causes serious discussions regarding the grounds for its application. In the theory of national and foreign criminal law, discussions about the legal nature of parole do not stop, which significantly affects the determination of the role of this institution and its place in the system of related institutions of criminal and penitentiary legislation. In the end, indicated

Taking into account the study of the problem in legislation and the practice of developing proposals for resolving controversial and complex issues regarding the application of norms on parole, the main task of writing the article is to highlight problematic aspects of legislative regulation and the practice of implementing norms on parole in the Republic of Kazakhstan.

Methods of comparative jurisprudence play an important role in the study of this topic. In particular, we agree with Ilchyshyn and others who argue that these tools play a crucial role in facilitating cross-border cooperation and improving the effectiveness of criminal justice systems around the world (Ilchyshyn et al., 2023).

One of the effective areas for improvement is comparative analysis, which helps to borrow positive experience. As the French lawyer Marc Ancel rightly noted, “... the study of foreign law opens up new horizons for a lawyer, allowing him to better know the
law of his country, because the specific features of this law are especially clearly revealed in comparison with other systems. Comparison can equip a lawyer with ideas and arguments that cannot be obtained even with a very good knowledge of only one’s own law” (Ansel, 1981).

We propose to analyze the institution of parole from punishment (hereinafter - parole) from serving a sentence, provided for in domestic criminal legislation in comparison with the legislation of a number of foreign countries regulating a similar institution.

The analysis of the criminal legislation of a number of foreign countries indicates that parole from serving a sentence has similarities in regulation, at the same time, there are differences in its content, namely the conditions for the application of this measure, the grounds leading to its abolition, the scope of rights and obligations of parole released early.

2 THEORETICAL FRAMEWORK

Scientific works on the study of parole contain different approaches of scientists to the interpretation of the legal regulation of parole from punishment.

Russian scientist D.A. Sherba notes that: “Parole allows the convicted person to independently reduce the time he serves his sentence in a correctional institution compared to the period assigned by the court verdict” (Sherba, 2007). Some scientists, pointing to disputes about the legal nature of parole, state that “the institution of parole should be made a measure, a sanction that transforms a previously imposed punishment of imprisonment into a punishment not associated with isolation from society, taking into account the social adaptation of those released and control over their behavior by the relevant authorities” (Plyusnin, 2007). O.A. rightly points out. Pilipenko: “this institution, combining methods of persuasion and coercion, expresses humanity and socio-political rationality as principles of organization, a social system for influencing crime in a developed civil society” (Pilipenko, 2009).

In a number of foreign countries, the institution of parole is widely used for the purpose of returning a convicted person to society. Indian scholars point out: “Parole is the early, conditional, temporary release of a prisoner on conditions of compliance with certain requirements, along with compliance with established restrictions, in order to enjoy the privilege of returning to society and socializing with family and friends, within
the framework of a correctional program with readiness return to public life” (Sherba, 2007)

The Criminal Code of Ukraine also contains provisions on parole. Thus, the Ukrainian scientist D.V. Kaznacheeva classifies it as a type of release from punishment and notes: “Parole is one of the types of release from punishment, which reflects the principles of humanism of criminal and penal law, individualization and differentiation of the execution of punishment, rational use of coercive measures, means correction and stimulation of law-abiding behavior of the convicted person” (Kaznacheeva, 2014).

The name of the specified criminal law measure provided for in the Criminal Code of Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, does not differ in name, which indicates a common understanding of the legal nature of the institution we are studying in the legislation of these countries.

At the same time, a similar institution to parole, provided for in the criminal legislation of non-CIS countries, has differences both in name and in its legislative regulation. The similarity of these institutions with parole is manifested in the grounds, procedure and consequences of their use.

For example, in the United States, an institution similar to parole is called “parole,” which implies unconditional release from serving a sentence. The Austrian Criminal Code, along with parole for the unserved part of the sentence, provides for conditional release from punishment in the form of imprisonment for a term of no more than two years or a fine (Article 43 of the Austrian Criminal Code) (Austrian Criminal Code).

The closest and most similar institution to parole in France is the deferment of execution of punishment with the placement of a convicted individual in a probationary regime (Article 132-40 of the French Criminal Code) (French Criminal Code). The German Criminal Code provides for such measure of influence, such as suspension of punishment with probation (Criminal German code). In the Criminal Code of the Republic of Poland, this type of release is called conditional release from punishment (Articles 77-84 of the Criminal Code of Poland) (Criminal Code of Poland).

The next distinctive feature of the institution of parole in foreign countries is the type of punishment served by the convicted person. It should be noted that in all the foreign countries we are considering, parole is provided for persons serving a sentence. At the same time, in some countries, imprisonment is the only type of
punishment for which parole is applied (Criminal Code of Moldova, USA, France, France, etc.), and in some countries, along with other types of punishment (Criminal Code of the Azerbaijan Republic, Criminal Code of the Republic of Armenia, Criminal Code RB, Criminal Code of the Republic of Kazakhstan, Criminal Code of the Kyrgyz Republic, Criminal Code of the Republic of Kazakhstan, etc.).

One of the European countries with the most positive practice of parole is Sweden. In Sweden, parole refers to the compulsory release of offenders and community supervision after serving 2/3 of their prison sentence (Basset 2016). The Swedish parole system is structured in such a way that the guards themselves contribute to the correction of the offender by providing comprehensive social support on a weekly basis.

Research has shown that the Swedish justice system aims to address future socio-political change by maintaining long-term approaches to rehabilitation and detention (Basset 2016). It is important to note that parole does not mean that a person is completely free; Part of the sentence for a crime is still to ensure that the person returns to society as a law-abiding citizen.

Therefore, supervision and monitoring are carried out to ensure that the offender complies with the law and does not reoffend. Sweden, like other countries, uses electronic monitoring to track offenders and ensure they comply with parole conditions.

In terms of the use of technology, Sweden as a country has demonstrated evidence that electronic monitoring of offenders serves the ultimate purpose of parole, which is to ensure the offender's reintegration into society as they are deemed to have been rehabilitated (Basset 2016). Every effort made to ensure that parolees are well supervised in the community is aimed at reducing recidivism and keeping the community safe. Bassett (2016) also notes that Sweden is far ahead of many countries in electronic monitoring of offenders and has achieved better results in minimizing the problem of recidivism. The impact of the positive approach in Sweden has been phenomenal, resulting in a reduction in crime since 2004.

And according to analysts, the newly adopted laws in Sweden aimed at combating terrorism and crime in general will bring positive changes (Salim, 2020).

Turning to the CIS countries, the use of parole for persons sentenced to punishment in the form of restriction of freedom is provided for in the Republic of Belarus, the Kyrgyz Republic and the Republic of Kazakhstan.

Some countries provide for parole for such types of punishment as

With the exception of the Criminal Code of the Republic of Kazakhstan, some CIS countries provide for the parole of convicted military personnel - restrictions on military service (Criminal Code of the AR, Criminal Code of the Republic of Belarus), detention in a disciplinary military unit (Criminal Code of the AR, Criminal Code of the Kyrgyz Republic, Criminal Code of the Russian Federation), detention in a disciplinary battalion (CC RA). The Criminal Code of the Republic of Kazakhstan, unlike other countries, does not provide for the use of parole for such types of punishment as correctional labor and community service.

For the sake of fairness, it should be noted that while the names of some types of punishments provided for by the criminal legislation of a number of foreign countries differ, they have similar legal restrictions imposed on convicted persons. For example, by changes made to the Criminal Code of the Republic of Kazakhstan in 2009, the punishment of detention in a disciplinary military unit was replaced by administrative arrest and excluded as a type of criminal punishment. And, in turn, the adopted Criminal Code of the Republic of Kazakhstan in 2014 excluded such types of military punishments as restrictions on military service and detention in a guardhouse; now the entire range of criminal penalties provided for civilians is applied to military personnel. In addition, according to the Criminal Code of the Republic of Kazakhstan of 2014, public works are now assigned only for criminal offenses (Criminal Code of the Republic of Kazakhstan).

The next mandatory condition for the use of parole from serving a sentence, which has certain differences between the laws of foreign countries, is the actual serving by the convicted person of the legally established part of the sentence imposed by the court. There are certain differences in the criminal law regarding the established part of the imposed sentence.

So, in Art. 76.3 of the Criminal Code of the Republic of Azerbaijan establishes that parole from serving a sentence can be applied only after the convicted person has
actually served:

"76.3.1. not less than half the term of punishment imposed for a crime that does not pose a great public danger or is less serious;
76.3.3. at least three quarters of the sentence imposed for committing a grave or especially grave crime, as well as at least three quarters of the sentence imposed on a person previously released on parole, if the parole was canceled on the grounds provided for in Article 76.6 of the Criminal Code of the Republic of Azerbaijan, or the person who previously served a sentence of imprisonment was re-convicted to punishment in the form of imprisonment for recidivism" (Criminal Code of the Azerbaijan Republic).

Part 3 Art. 72 of the RA Criminal Code establishes that the application of parole from serving a sentence only after the convicted person has actually served:

"1) at least one third of the punishment imposed for a crime of minor or medium gravity;
2) at least half of the punishment imposed for a serious crime;
3) at least two-thirds of the punishment imposed for a particularly serious crime, as well as the punishment assigned to a person previously released on parole (if parole was revoked on the grounds provided for in part six of this article)" (Criminal Code of the Republic of Armenia).

The position of the Belarusian legislator on the use of parole from serving a sentence is more strict and provides for much longer terms that a convicted person must be sentenced to apply to him on parole. So, in accordance with Part 3-1 of Art. 90 of the Criminal Code of the Republic of Belarus, conditional early release from serving a sentence is provided after the actual service of:

"1) at least half of the sentence imposed by the court for a crime that does not pose a great public danger, or a less serious crime;
2) at least two thirds of the sentence punishment imposed by the court for a serious crime, as well as if the person was previously sentenced to imprisonment for an intentional crime or was previously released on parole;
3) at least three quarters of the sentence imposed by the court for a particularly serious crime, as well as the punishment imposed on a person who was previously released on parole or previously released from punishment with the unserved part of the punishment replaced by a more lenient punishment and who committed a new crime during the unserved part of the sentence » (Criminal Code of the Republic of Belarus).

In accordance with Part 3 of Art. 72 of the Criminal Code of the Republic of Kazakhstan Parole from serving a sentence can be applied only after the convicted person has actually served:

"1) at least one third of the sentence imposed for a crime of minor or medium gravity;
2) at least half the term of punishment imposed for a serious crime;
3) at least two-thirds of the sentence imposed for a particularly serious crime, as well as if the previously applied parole was canceled on the grounds provided for in paragraphs 1) and 2) of part seven of Art. 72 of the Criminal Code of the Republic of Kazakhstan;
4) at least three quarters of the sentence, if the previously applied parole was canceled on the grounds provided for in paragraph 3) of part seven of Art. 72 of the Criminal Code of the Republic of Kazakhstan;
5) not less than one third of the term of punishment imposed for a serious crime, or not less than half of the term of punishment assigned for a particularly serious crime, if the convicted person fulfills all the conditions of the procedural agreement” (Criminal Code of the Republic of Kazakhstan).

The Criminal Code of the Kyrgyz Republic enshrines in part (3) of Art. 69 that parole from serving a sentence can be applied only after the convicted person has actually served:

“1) at least one third of the sentence imposed for a crime of minor gravity and a less serious crime, and in the case of reconciliation with the victim and compensation for the harm caused - after serving at least one quarter of the sentence;
2) at least half the term of punishment imposed for a serious crime, and in the case of reconciliation with the victim and compensation for the harm caused - after serving at least two-fifths of the sentence; at least three quarters of the sentence imposed for a particularly serious crime;
3) at least four-fifths of the sentence for committing a crime in case of especially dangerous recidivism;
4) at least five-sixths of the sentence by which life imprisonment is replaced by pardon with imprisonment” (Criminal Code Kyrgyz Republic).

The Criminal Code of the Republic of Moldova establishes a provision according to which parole from serving a sentence can be applied only after the convicted person, who at the time of committing the crime has reached 18 years of age, has actually served:

“a) at least 1/2 of the sentence imposed for committing a minor crime or a crime of average gravity;
c) at least 2/3 of the sentence imposed for committing a serious crime;
c) at least 3/4 of the sentence imposed for committing a particularly serious or extremely serious crime, as well as at least 3/4 of the sentence imposed on a person previously released on parole if parole was revoked on the grounds provided for in Part 1 (8) (part (4) 91 of the Criminal Code)”(Criminal Code of the Republic of Moldova).

The most important condition for the use of parole from serving a sentence under Art. 79 of the Criminal Code of the Russian Federation is the actual serving by the convicted person of a certain part of the sentence imposed by the court, that is:

“a) at least one third of the sentence imposed for a crime of minor or
medium gravity;
b) at least half the term of punishment imposed for a serious crime;
c) at least two-thirds of the term of punishment imposed for a particularly serious crime, as well as two-thirds of the term of punishment assigned to a person previously released on parole, if parole was canceled on the grounds provided for in part seven of Art. 79 CC;
d) at least three quarters of the sentence imposed for crimes against the sexual integrity of minors, as well as for grave and especially grave crimes related to the illicit trafficking of narcotic drugs, psychotropic substances and their precursors, as well as for crimes provided for in Article 205, 205.1, 205.2, 205.3, 205.4, 205.5, 210 and 361 CC;
e) at least four-fifths of the sentence imposed for crimes against the sexual integrity of minors under fourteen years of age” (Criminal Code of the Russian Federation).

The Criminal Code of the Republic of Tajikistan provides for the use of parole from serving a sentence only after the convicted person has actually served:
“a) at least 1/2 of the sentence imposed for a crime of minor and medium gravity;
b) at least 2/3 of the sentence imposed for a serious crime;
c) at least 3/4 of the sentence imposed for a particularly serious crime, as well as the punishment imposed on a person previously released on parole if parole was revoked on the grounds provided for in Part 6 of Art. 76” (Part 3 of Article 76 of the Criminal Code of the Republic of Tajikistan)” (Criminal Code of the Republic of Tajikistan).

According to the US Criminal Code, to apply parole to a convicted person, either the minimum term for an indeterminate sentence or 6/7 of the term for a definite sentence must be served. After the expiration of the specified periods, parole may be granted at any time at the discretion of the special board (US Criminal Code).

In France, the use of parole is possible when the convicted person has served at least 1/2 of the term of imprisonment (for repeat offenders - at least 2/3, for those sentenced to life imprisonment - at least 15 years). However, in some cases, the period required for parole may be reduced (French Criminal Code).

In Germany, parole from serving imprisonment can be granted by the court if the convicted person has served 2/3 of the sentence (in any case, at least two months). In some cases, the court has the right to apply parole even when serving a shorter term - half of the sentence (serving a sentence for the first time, when the punishment does not exceed two years, or there are other circumstances characterizing the personality of the convicted person and the criminal offense committed by him)(German Criminal Code).

The Austrian Criminal Code, when assigning parole, requires serving half of
the term of imprisonment imposed in a court verdict or established by pardon, but not less than three months (432 of the Austrian Criminal Code) (Austrian Criminal Code).

According to the Swiss Criminal Code, parole from serving a sentence can be granted when the convicted person has served at least two-thirds of the sentence in the form of hard labor prison or imprisonment, and in prison for at least three months (Swiss Criminal Code).

3 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.

4 DISCUSSIONS

Thus, a comparative legal analysis of the grounds for parole from serving a sentence shows that the Criminal Code of the Republic of Kazakhstan provides for shorter terms for the application of parole than the Criminal Code of the Republic of Armenia, the Criminal Code of the Republic of Belarus, the Criminal Code of the Kyrgyz Republic, and the Criminal Code of the Russian Federation. The legislation of a number of foreign countries does not contain any restrictions on the terms of the imposed sentence in the form of imprisonment (for example, the Criminal Code of the Republic of Kazakhstan and the Criminal Code of the Azerbaijan Republic).

In the criminal legislation of a number of foreign countries indicate categories of convicts for whom parole is not applied.

So, in paragraph 8 of Art. 72 of the Criminal Code of the Republic of Kazakhstan states that parole from serving a sentence is not applied to a person for whom the death penalty has been replaced by imprisonment by way of pardon, a person convicted of a terrorist or extremist crime that resulted in the death of people or involved the commission of a particularly serious crime, a person convicted of a crime against the sexual integrity of minors.

The criminal legislation of Kyrgyzstan also contains categories of convicts for whom parole from serving their sentence is not applied. So, in part (8-1) of Art. 69
of the Criminal Code of the Kyrgyz Republic states that “parole cannot be applied to a person serving a sentence in connection with the commission of a crime against sexual integrity and sexual freedom of the individual in relation to a minor.” The same article, but in part (9), contains a provision according to which parole “does not apply to persons who have committed crimes as part of an organized criminal group, criminal community (criminal organization), armed group (gang), as well as to persons who have committed crimes provided for in Articles 226-226-6, 227, 232, 294, 295-1, 299-299-3 and 375, except for the cases provided for in part five of Art. 69”.

In Part 7 of Art. 76 of the Criminal Code of the Republic of Tajikistan states that parole is impossible in relation to a convicted person day, by which the death penalty is replaced by life imprisonment; to convicts who have committed a crime with a particularly dangerous recidivism; to organizers, participants of an organized group or criminal community (criminal organization); to persons convicted of crimes against the peace and security of mankind.

The US Criminal Code does not provide for the use of parole for persons sentenced to life imprisonment for capital murder, rape, or for those convicted who attempted to escape while serving their sentence.


Of significant interest are the reasons for using parole from serving a sentence. Providing correction of convicts as a basis for parole from serving a sentence, legislators in a number of foreign countries took a completely different approach to its implementation in specific legal norms.

Thus, the RA Criminal Code contains a provision according to which the court must come to the conclusion that the person does not need to serve the full sentence, and on what basis this court conclusion is formulated is not specified, that is, the criteria that will underlie correction of the convicted person.

In the Criminal Code of the Republic of Belarus in Part 2 of Art. 90 states that
parole from serving a sentence can be applied to a convicted person only if he exhibits exemplary behavior that proves the person’s correction. In this regard, proof of correction is necessary, which is not specified in the Criminal Code of the Russian Federation. Similar norms also in the Criminal Code of the Republic of Tajikistan, that is, proof of correction is also required, which is based on two components: exemplary behavior and a conscientious attitude to work (Part 1 of Article 76 of the Criminal Code of the Republic of Tajikistan).

In the Criminal Code of the Republic of Belarus in Part 2 of Art. 90 states that parole “may be applied to a convicted person only if he exhibits exemplary behavior that proves the person’s reformation.”

Part (1) Art. 69 of the Criminal Code of the Kyrgyz Republic contains wording similar to Russian legislation, in particular it is presented as follows, if the court recognizes that for his correction the convicted person does not need to fully serve the sentence imposed by the court. It should be noted that the Criminal Code of the Republic of Moldova, in terms of the issue concerning the material basis, differs from a number of Criminal Codes of the CIS countries. So, part (1) of Art. 91 establishes the criteria on the basis of which parole is granted from serving a sentence, namely, the person must fully compensate for the damage caused by the crime, take part in paid or unpaid work to clean or improve the penitentiary institution and its territory, to improve public utilities and health care conditions of detention. Also, in part (1) of the same article it is stated.

Thus, the court must come to the conclusion that the person does not need to serve the full sentence, and on the basis of which this conclusion of the court is formulated is not specified, that is, the criteria that will form the basis for determining the degree of correction of the convicted person are not specified. The criminal legislation of Armenia, Kazakhstan, Kyrgyzstan and Russia completely left the decision on the correction of a convicted person to the courts - “if the court recognizes that for his correction, he does not need to fully serve the assigned sentence” (Part 1 of Article 72 of the Criminal Code of the Republic of Kazakhstan). A similar norm with kept in part 1 tbsp. 76 RA Criminal Code, Part 1, Art. 79 of the Criminal Code of the Russian Federation and part (1) of Art. 69 of the Criminal Code of the Kyrgyz Republic. According to the Criminal Code of the Republic of Uzbekistan, parole can be applied to a convicted person if he fulfills the requirements of the established regime and
has a conscientious attitude to work.

In the above examples, the incentive function of the parole institution is clearly demonstrated. In addition, it is fundamental. What is new is the provision enshrined in the criminal legislations of some countries, which gives the court the right, in case of parole from serving a sentence, to impose on the convicted person certain duties that must be fulfilled by him during the remaining unserved part of the sentence.

Cancellation of parole means the return of the convicted person to the place of serving the same type of punishment from which he was released on parole, for further serving of the remaining unserved part of the sentence.

The grounds for revoking parole from serving a sentence can be divided into optional and mandatory.

Thus, according to the Criminal Code of the Republic of Kazakhstan, optional grounds include 1) committing two or more administrative offenses for which administrative penalties were imposed on him; 1) evading without good reason more than two times from fulfilling the duties assigned to him when applying parole; 3) failure to appear without a valid reason for registration at the chosen place of residence within five working days after release from prison; 4) commission of a crime through negligence, as well as in cases of committing a criminal offense, an intentional crime of minor gravity, by a pregnant woman, a woman with young children, a man raising young children alone, a woman aged fifty-eight or over, a man aged sixty-three and over years, disabled person of the first or second group (clause 1) and clause 2) part 7 art. 72 of the Criminal Code of the Republic of Kazakhstan). Mandatory grounds for revoking parole from serving a sentence include the commission of an intentional crime by the convicted person (clause 3) of Part 7 of Art. 72 of the Criminal Code of the Republic of Kazakhstan).

The RA Criminal Code also contains optional and mandatory grounds for canceling parole from serving a sentence. So, the first ones include committing offenses two or more times, which led to the imposition of administrative arrest; malicious evasion of duties; committing a new crime through negligence. A mandatory basis for revoking parole from serving a sentence is the commission of a new intentional crime (Part 6 of Article 76 of the Criminal Code of the Republic of Armenia).

The Criminal Code of the Republic of Belarus also divides the grounds for cancellation into optional and mandatory. In particular, the optional grounds for
revoking parole from serving a sentence include failure to fulfill assigned duties (despite an official warning) or repeated violation of public order, for which administrative penalties were applied twice (Clause 1, Part 6, Article 90), and the mandatory grounds cancellation of parole from serving a sentence - committing an intentional crime or a crime through negligence, for which a person is sentenced to imprisonment (clause 2, part 6, article 90).

Optional grounds for canceling parole from serving a sentence under the Criminal Code of the Kyrgyz Republic include violation of public order, for which an administrative penalty was imposed; malicious evasion of duties; committing a reckless crime. The commission of an intentional crime is a mandatory basis for revoking parole from serving a sentence (7) Art. 69 of the Criminal Code of the Kyrgyz Republic).

of the Criminal Code of the Russian Federation in Part 7 of Art. 79 contains a provision according to which if during the remaining unserved part of the sentence:
   a) the convicted person committed a violation of public order, for which an administrative penalty was imposed on him, or maliciously evaded the fulfillment of the duties assigned to him by the court when applying parole OS release, as well as from compulsory medical measures prescribed by the court; b) the convicted person committed a crime through negligence or an intentional crime of minor or medium gravity; c) the convicted person has committed a grave or especially grave crime.

5 RESULTS

Thus, according to the results of the analysis, not all provisions enshrined in the criminal legislation of foreign countries deserve a positive assessment; moreover, in some aspects, the domestic model seems more progressive than a number of similar institutions in foreign countries. At the same time, we cannot ignore the experience of these states in the application of the institution we are studying.

The rules on parole from serving a sentence in the criminal legislation of our country require further reform in order to improve the mechanisms for applying this institution. It is necessary to amend both the provisions of the criminal law itself and the regulatory resolution of the Supreme Court of the Republic of Kazakhstan on the application of parole from serving a sentence.

Firstly, it is proposed to exclude the possibility of parole (Part 1 of Article 72 of the Criminal Code of the Republic of Kazakhstan) in relation to persons who, by a court
verdict, have been sentenced to restriction of freedom, since this punishment does not imply isolation from society, and contains restrictions similar to parole from serving punishments. When freedom is restricted (Article 44 of the Criminal Code of the Republic of Kazakhstan), the convicted person is under probation control at the place of residence without isolation from society, that is, he can maintain social connections, is relatively free to move and does not bear the “burden of isolation from society.” Taking this into account, it is proposed to apply parole only to persons sentenced exclusively to imprisonment. Secondly, part 1 of Article 72 of the Criminal Code of the Republic of Kazakhstan establishes, upon parole, the possibility of release from serving an additional type of punishment (full or partial).

This provision of the law should not be applied to additional punishments imposed for life (deprivation of the right to hold a certain position or engage in certain activities). We believe that in Article 72 of the Criminal Code of the Republic of Kazakhstan it is necessary to consolidate the provision that occurs in part 1 of Article 73 of the Criminal Code of the Republic of Kazakhstan (Replacement of the unserved part of the punishment with a more lenient type of punishment or reduction of the term of the imposed punishment), and accordingly state the last paragraph of part 1 of Article 72 of the Criminal Code of the Republic of Kazakhstan in as follows: “In this case, the person may be fully or partially released from serving an additional type of punishment, with the exception of sentences imposed for life.” Thirdly, part 7 of article 72 of the Criminal Code of the Republic of Kazakhstan establishes the grounds for revoking parole. Regarding this provision, the experience of the Russian legislator is interesting (Article 79 of the Criminal Code of the Russian Federation), who, in our opinion, it should be taken into account and provided for in domestic legislation as one of the grounds for the possible revocation of parole, namely the commission of one administrative offense for which an administrative penalty was imposed, or one case of evasion of assigned duties, as well as in the case of evasion of assigned by a court of compulsory medical measures, when such measures are prescribed during parole. Taking into account the Russian experience, it is advisable to state paragraph 1) of part 7 of Article 72 of the Criminal Code of the Republic of Kazakhstan in the following wording: “1) an administrative offense for which an administrative penalty was imposed on him, or he evaded without good reason from fulfilling the duties assigned to him when applying probation - early release, as well as from compulsory medical measures prescribed by the court, or without good reason did
not appear for registration at the chosen place of residence within five working days after release from prison, the court, upon the proposal of the authorized government body, may decide to cancel the parole and execute the remaining unserved part of the sentence”. The proposed amendments will significantly improve the practice of applying the rules on parole from serving a sentence and eliminate conflicts when applying Article 72 of the Criminal Code of the Republic of Kazakhstan. The current Criminal Code of the Republic of Kazakhstan recognized the regulatory decisions of the Supreme Court of the Republic of Kazakhstan as “an integral part of the criminal legislation of the Republic of Kazakhstan” (Regulatory Resolution, 2015). However, not all issues of the application of parole in this resolution were clarified by the Supreme Court of the Republic. When explaining the application of the rules on parole, the provisions seem interesting Resolution of the Plenum of the Supreme Court of the Russian Federation dated April 21, 2009 No. 8 “On the judicial practice of parole from serving a sentence, replacing the unserved part of the sentence with a more lenient type of punishment”, which covers in some detail certain issues regarding the use of parole from punishment (Resolution of the Plenum). Firstly, Article 72 of the Criminal Code of the Republic of Kazakhstan does not prohibit the repeated use of parole. In order to uniformly apply the criminal law, it is proposed to provide an appropriate explanation in the normative resolution of the Supreme Court, adding the third paragraph to paragraph 6: “Cancellation of parole for a convicted person in accordance with Part 7 of Article 72 of the Criminal Code of the Republic of Kazakhstan cannot in itself serve as a basis for refusal to re-apply to him parole from serving his sentence. In such cases, the court should proceed not only from the fact that the convict’s parole was revoked, but also take into account in aggregate all the data about his personality, the time spent in the institution of the penal system after returning to this institution, his behavior, attitude to work, etc.”.

Secondly, we propose to add paragraph 9 of the normative resolution of the Supreme Court with the following provision: “Courts should not unreasonably refuse parole from serving sentences for convicts who do not need to fully serve the sentence imposed by the court, and also not allow unreasonable release from serving the sentence. Courts do not have the right to refuse conditional early release from serving a sentence or replacing the unserved part of a sentence with a milder type of punishment based on grounds not specified in the law (the presence of a previous criminal record, the leniency of the imposed punishment, the convict’s non-admission of guilt, the short duration of his
stay in one of the institutions, etc.)”. These cases of unjustified refusal do occur. So, for example, 16-year-old A., On January 15, 2019, he was sentenced under paragraph 2) of part 3 of Article 293 of the Criminal Code of the Republic of Kazakhstan to a sentence of imprisonment for 3 years. During the period of serving his sentence in an institution of a medium-security penal system for the detention of minors, he was characterized positively and after 1 year 7 months he applied to the administration of the institution with a request for parole from serving his sentence. The administration of the institution sent a petition to the court with attached materials. The court, having examined the materials regarding A., decided to refuse parole from punishment, citing the fact that A. at the time of conviction in 2019 had a criminal record under paragraph 1) of part 3 of article 188 of the Criminal Code of the Republic of Kazakhstan. When making a decision, the court had to take into account the age of the offender, the category of the act he committed, as well as the provisions of Article 54 of the Criminal Code of the Republic of Kazakhstan. At the same time, in accordance with part three of this article: “When imposing a sentence, the court cannot recognize as aggravating circumstances not specified in part one of this article”6, and a criminal record is not indicated as an aggravating circumstance in part 1 of Article 54 of the Criminal Code of the Republic of Kazakhstan. Thirdly, it is proposed to supplement paragraph 10 of the normative resolution of the Supreme Court with the following provision: “When it is established at the court hearing that measures have been taken by the convicted person to compensate for the damage caused by the crime (moral damage and/or material damage), and for objective reasons, convicts were compensated for the harm in an insignificant amount, then the court does not have the right to refuse parole from serving the sentence or to replace the unserved part of the sentence with a more lenient type of punishment only on this basis.” Thus, the rules on parole from punishment, are a serious tool for stimulating law-abiding behavior of convicted persons and an effective mechanism for their return to society. These proposals for further improvement of the criminal legislation of the Republic of Kazakhstan in this direction will help to increase the effectiveness of the application of Article 72 of the Criminal Code of the Republic of Kazakhstan.
REFERENCES


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 milder type of punishment and reduction of the term of the imposed punishment // https://adilet.zan.kz/rus/docs/P150000006S


The Criminal Code of Poland // https://prawnikpoznanski.pl/ru

The Criminal Code of the USA // https://constitutions.ru/?p=5849