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## ON THE ISSUE OF EARLY PAROLE FROM SERVING A SENTENCE IN THE KYRGYZ REPUBLIC

## К ВОПРОСУ ОБ УСЛОВНО-ДОСРОЧНОГО ОСВОБОЖДЕНИИ ОТ ОТБЫВАНИЯ НАКАЗАНИЯ В КЫРГЫЗСКОЙ РЕСПУБЛИКЕ

**Abstract.** The article is devoted to the grounds and conditions for parole from serving a criminal sentence. The article considers the legislative and law enforcement problems that arise when applying the rules governing the procedure for evaluating the behavior of a convicted person during the period of serving a sentence. On January 1, 2019, the new legislation of the Kyrgyz Republic of the criminal law block came into force, which significantly changed the procedure for parole from criminal punishment. At present, it is only possible in relation to persons sentenced to punishments related to isolation from society. In addition, the provision on parole application in relation to additional punishment is excluded from the criminal law. However, the new law eased the situation of a convict for damages compensation, extended the circle of persons entitled to apply for considering the case on parole (abolished in accordance with the rules of parole was possible only after full compensation of the material damage caused by the crime). The legislator also reduced the number of circumstances prohibiting the use of parole from serving a sentence, and showed humanity in relation to certain categories of convicts (the norm on the application of p from serving a sentence in relation to persons sentenced to life imprisonment). The issue of creating a specialized authorized state body that carries out the execution of criminal penalties that are not related to isolation from society, compulsory measures of criminal legal influence, supervision of persons released on parole from correctional institutions, with the performance of social and legal functions of the probation body, was resolved. However, despite all the positive changes, the study allowed the author to conclude that there are actual problems of legal regulation and practical application of the provisions on the conditions and grounds for parole. In particular, the law does not reflect who exactly should act as a person who compensates for damages. In practice, there are often cases when the convicted person did not work, and the damage was paid by relatives. At the same time, the court has no grounds for refusing to apply for parole. In such circumstances, it is doubtful that the goals of the convicted person's correction have been achieved. In addition, currently the law stipulates the same rules for the application of parole for persons who have committed crimes for the first time, as well as for persons convicted for a set of crimes and a set of sentences.

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**Keywords:** Kyrgyz Republic, parole from punishment, convicted person, penalties related to deprivation of liberty, humanization, probation authority.

**Аннотация.** В статье проанализированы основания и условия условно-досрочного освобождения от отбывания уголовного наказания. Рассмотрены законодательные и правоприменительные проблемы, возникающие при применении норм, регулирующих порядок оценки поведения осужденного в период отбывания наказания. С 1 января 2019 г. вступило в действие новое законодательство Кыргызской Республики уголовно-правового блока, которое существенно изменило порядок условно-досрочного освобождения от уголовного наказания. В настоящее время оно возможно только в отношении лиц, осужденных к наказаниям, связанным с изоляцией от общества. Кроме того, из уголовного закона исключена норма о применении условно-досрочного освобождения в отношении дополнительного наказания. Вместе с тем новый закон облегчил положение осужденного при возмещении ущерба и расширил круг лиц, имеющих право подавать заявление о рассмотрении дела об условно-досрочном освобождении (согласно отмененным нормам условно-досрочное освобождение лица было возможно только после полного возмещения материального ущерба, причиненного преступлением). Законодатель также сократил число обстоятельств, запрещающих применение условно-досрочного освобождения от отбывания наказания, и проявил гуманность в отношении некоторых категорий осужденных (норма о применении условно-досрочного освобождения от отбывания наказания в отношении лиц, осужденных к пожизненному лишению свободы). Решен вопрос о создании специализированного уполномоченного государственного органа, осуществляющего исполнение уголовных наказаний, не связанных с изоляцией от общества, принудительных мер уголовно-правового воздействия, надзор за лицами, условно-досрочно освобожденными из исправительных учреждений, с выполнением социально-правовых функций органа пробации. Однако несмотря на все положительные изменения проведенное исследование позволило автору сделать вывод о наличии актуальных проблем правовой регламентации и практического применения положений об условиях и основаниях условно-досрочного освобождения от наказания. В частности, в законе не отражено, кто именно должен выступать в качестве лица, возмещающего ущерб. На практике нередко имеют место случаи, когда осужденный не трудился, а ущерб выплачивался родственниками. При этом у суда нет оснований для отказа в применении условно-досрочного освобождения. При таких обстоятельствах вызывает сомнения факт достижения целей исправления осужденного. Кроме того, в настоящее время законом предусмотрены одинаковые правила для применения условно-досрочного освобождения как для лиц, впервые совершившие преступления, так и для лиц, осужденных по совокупности преступлений и по совокупности приговоров.

**Ключевые слова:** Кыргызская Республика, условно-досрочное освобождение от наказания, осужденный, наказания связанные с лишением свободы, гуманизация, орган пробации.

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At the present stage, problematic issues of applying the institution of parole from serving a sentence remain relevant. On January 1, 2019, the new Criminal Code of the Kyrgyz Republic, the Code of Misconduct of the Kyrgyz Republic, the Code of Violations of the Kyrgyz Republic, the Criminal-procedural Code of the Kyrgyz Republic, the Penal Code of the Kyrgyz Republic and other related laws came into force. This criminal-legal legislation is of a strategic nature in the field of protection ensuring of human rights and plays an important role in the development of a viable state system and a modern economy. With the adoption of the new legislation, criminal proceedings were humanized, decriminalized and depenalized, national legislation came closer to international standards in the field of human rights protection and access to justice, and the transition from the old legal culture was marked.

We agree with the opinion of I. D. Badamshin (2005) that establishment in law and implementation in practice the grounds for exemption from serving a sentence is one of the fundamental problems of criminal policy, since the differentiation of criminal responsibility implies not only an increase in punishment as the public danger or recidivism increases, but also a reduction or complete exemption from it, depending on the achievement of the goals of punishment.

The Criminal Code of the Kyrgyz Republic (adopted on 02.02.2017), introduced by the Law of the Kyrgyz Republic (adopted on 21.01.2017) No. 10 from 01.01.2019 stipulates that persons sentenced to imprisonment or detention in a disciplinary military unit may be released from serving their sentence on parole by the court. The concept of parole from punishment in various sources is given as the termination of a criminal sentence execution, related to the achievement of its goals, before serving the sentence assigned to the convicted person, with the establishment of a probation period for the released person, during which he must prove his correction. Violation of the probation period leads to the resumption of a

sentence execution. For the first time, parole appeared in France in 1885. Since then, this institution has been adopted by legal systems (criminal or criminal-procedural legislation) in almost all countries of the world. Its use is a manifestation of humanism and is aimed at encouraging prisoners to correction and reeducation, as well as maintaining order in correctional institutions (Chernenko, T. G. & Masalitina, I. V. 2019, p. 69). In most countries of the world, parole is applied only to persons sentenced to custodial sentences. However, in some national legal systems, it is also possible to apply it to convicts serving correctional labor, restrictions on military service, and other non-custodial punishments. From the practice of foreign countries, it can be noted that parole from punishment can be full or partial. Upon full release the convicted person is released from both the main and additional punishment, if it was imposed by the court. In case of partial release, the convicted person is released conditionally from the main sentence, and the execution of the additional sentence continues.

According to the Criminal Code of the Kyrgyz Republic (1997) which is repealed on 01.01.2019 in accordance with the Law of the Kyrgyz Republic (adopted on 24.01.2017) No. 10 parole from punishment applied to persons serving the penalty of imprisonment, detention in a disciplinary military unit, corrective labor or restriction of liberty, if the court has recognized that they do not need to complete the sentence imposed by the court in order to correct their situation. In this case, the person could be fully or partially released from additional punishment. With the adoption of the new Criminal Code in Kyrgyzstan on 01.01.2019, parole from serving a sentence became possible only for persons sentenced to penalties related to isolation from society. It should be noted that the new Criminal Code does not contain a provision on the application of parole in relation to additional punishment.

Part 2 of Article 88 of the Criminal Code of the Kyrgyz Republic (adopted on 02.02.2017),

introduced by the law of the Kyrgyz Republic (adopted on 24.01.2017) No. 10 from 01.01.2019, establishes the circumstances of applying probation to a convicted person: achieving positive results of correction and resocialization and compensation for at least half of the damage caused by the crime, the absence of outstanding disciplinary penalties, conscientious attitude to work and training while serving the sentence, and consent to undergo treatment for alcoholism, drug, psychotropic or toxic addiction, if such dependence exists. It should be noted that parole is applied when all the above conditions are combined.

Let's pay attention to some positive aspects. First, the wording of the new law "reimbursing at least half of the damage" facilitates the situation of the convicted person in compensation for damage and expands the range of persons who have the right to apply for consideration of the case for parole (according to the Norms of the Criminal Code of the Kyrgyz Republic (adopted on 01.10.1997), which became invalid on 01.01.2019 in accordance with the Law of the Kyrgyz Republic (adopted on 24.01.2017) No. 10 parole of a person was possible only after full compensation for material damage caused by a crime). Secondly, in Article 89 of the Criminal Code of the Kyrgyz Republic (adopted on 02.02.2017), the legislator reduced the number of circumstances prohibiting the use of parole from serving a sentence, and showed humanity in relation to certain categories of convicts – the introduction of a new norm on the application of parole from serving a sentence in relation to persons sentenced to life imprisonment.

Prior to the adoption of new criminal laws in the Kyrgyz Republic, the issues of legislative regulation of the material basis for parole, as well as the subsequent social adaptation of parolees, remained relevant. There were problems with identifying a specific specialized body that monitors the behavior of parolees. The control measures provided for by law on social adaptation and

resocialization of parolees were ineffective and needed to be reformed. On 01.01.2019 this issue was resolved by the adoption of the Law of the Kyrgyz Republic on probation No. 34 (adopted on 24.02.2017), and by the creation of an authorized specialized state body that performs the execution of criminal penalties not related to isolation from society, compulsory measures of criminal legal influence, supervision of persons released on parole from correctional institutions, with the performance of social and legal functions of the probation body.

Despite all these positive changes in the legal framework for regulating the issue of parole, there are still some controversial issues. The law does not specify who exactly should act as the person reimbursed the damages. In practice, there are often cases when the convicted person did not work, and the damage was paid by relatives. At the same time, the court has no grounds for refusing to apply for parole. In such circumstances, it is doubtful that the goals of correction of the convicted person have been achieved. It should be noted that one of the means of convicts' correction and a condition for applying parole from punishment is a conscientious attitude to work. In addition, currently the law stipulates the same rules for the application of parole for first-time offenders and persons convicted for a combination of crimes and sentences. Persons who have a set of crimes present an increased risk, which is especially typical for persons who have committed new crimes with outstanding criminal records for previous ones. In our opinion, such persons should be subject to stricter requirements than other categories of convicts when they are granted the possibility of parole.

Thus, despite the fact that the country has taken measures to implement judicial reform and improve legislation, as well as a number of measures aimed at protecting the rights, freedoms and legitimate interests of individuals and citizens, some issues of legal regulation

and practical application of the conditions and grounds for parole remain relevant.

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