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Conditional Release: an Analysis of Regulations and Case Law, with a Special Focus on the Situation in the Republic of Serbia

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Abstract. One of the key mechanisms in modern penal systems, which allows the release of a convict before the expiration of the full prison sentence, provided that he meets certain conditions, as well as adheres to certain rules after release, is conditional release. The development of this institution is a response to the growing need for a balance between the protection of society from crime and the need for the rehabilitation of convicts in the community. It is also an opportunity for convicts to reintegrate into society under supervision, reducing the risk of recidivism. The aim of this paper is to investigate the regulations and standards governing conditional release, both internationally and in Serbia, to what extent the human rights of prisoners are respected during and after the conditional release process, and to draw on examples from case law. This includes the right to a fair trial when deciding on conditional release, the right to humane conditions during the sentence, as well as the right to rehabilitation and reintegration into society. These rights can often be jeopardized due to procedural shortcomings, prejudice or insufficient support for prisoners after release.

Keywords: prison sentence, conditional release, legislative framework, reintegration, case law

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Условное освобождение: анализ нормативных актов и прецедентного права с особым акцентом на ситуацию в Республике Сербия

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Аннотация. Одним из ключевых механизмов в современной пенитенциарной системе, позволяющим освободить осужденного до истечения полного срока тюремного заключения при условии соблюдения им определенных условий, а также соблюдения определенных правил после освобождения, является условно-досрочное освобождение. Развитие этого института является ответом на растущую потребность в балансе между защитой общества от преступности и необходимостью реабилитации осужденных в обществе. Это также возможность для осужденных реинтегрироваться в общество под надзором, снижая риск рецидива. Целью данной статьи является изучение правил и стандартов, регулирующих условное освобождение, как на международном уровне, так и в Сербии, в какой степени права человека заключенных соблюдаются вовремя и после процесса условного освобождения, а также на примерах из прецедентного права. Это включает право на справедливое судебное разбирательство при принятии решения об условно-досрочном освобождении, право на гуманные условия во время отбывания наказания, а также право на реабилитацию и реинтеграцию в общество. Эти права часто могут быть поставлены под угрозу из-за процессуальных недостатков, предубеждений или недостаточной поддержки заключенных после освобождения.

Ключевые слова: тюремное заключение, условно-досрочное освобождение, законодательная база, реинтеграция, прецедентное право

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1. Introduction

Prisons have, in history, most effectively fulfilled the function of isolating perpetrators of criminal acts from society [7]. It can be said that prison sentences acted as a general prevention, warning potential perpetrators that if they commit a crime they will end up in prison, and the level of correction of the behavior of convicts during their prison sentence, their change and resocialization, yielded the most modest results [10, p. 339–352]. In step with the changes taking place in the world, a different attitude towards punishing perpetrators of criminal acts, as well as towards punishment [4, p. 519–530]. The problem is primarily reflected in the fact that a person serving a prison sentence faces numerous deprivations, criminal infection, prison overcrowding, being subject to the law of the stronger, work disengagement, as well as other similar problems [5]. In the conditions of globalization, digitalization and international legal harmonization, the system of execution of criminal sanctions requires a high degree of common international rules that define and regulate executive criminal legislation [2, p. 316–327].

Practice shows that the effects of punishment by imprisonment are very modest, precisely because the level of recidivism has been increasing in recent decades. The structure of committed criminal offenses is moving in the direction of committing a greater number of the most serious criminal offenses with elements of violence [5]. In addition, the number of people addicted to psychoactive substances is increasing, the material situation of the prison and its employees is very poor, inadequate staff potential, unmotivated employees, etc. [3, p. 112–124]. International law stipulates that prisoners, although they lose their freedom while serving their sentence, must not lose other rights [1]. European Union recommendations and other international treaties stipulate that prison sentences should aim to facilitate the reintegration of offenders into society (Recommendation CM/Rec (2010)1).

The institution of conditional release was developed in response to the growing need to strike a balance between the protection of society from crime and the need for rehabilitation and reintegration of prisoners into the community. At the same time, it is often perceived as an opportunity for prisoners to reintegrate into society under supervision, reducing the risk of recidivism [8], as it represents not only a measure tat encourages good, exemplary behavior of convicted persons, but also a corrective measure that allows the release of those whose continued stay in a penal institution would be unjustified given the purpose of punishment. This means that conditional release is based on the idea correction as the purpose of punishment [6, p. 316].

2. International Standards and Human Rights

For over 50 years, the United Nations has been exploring ways in which criminal justice systems can function more effectively and humanely [9]. The United Nations Standard Minimum Rules for the Treatment of Prisoners, the first legal instrument in a vast body of standards and norms in crime prevention and criminal justice, were adopted in 1955. After World War II, a large number of international conventions were adopted in the field of human rights protection. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, better known as the European Convention on Human Rights (European Convention), is one of the most important instruments in the field of human rights protection. Also, the recommendations of the Committee of Ministers of the Council of Europe (CM/Rec(2003)22) provide guidelines for the conditions and procedures of conditional release, emphasizing the importance of transparency, fairness and rehabilitation.[1] These recommendations set standards for the treatment of prisoners on conditional release, including risk assessment, release planning and the obligation to provide support in the community after release. Particular care should be taken to respect the general principles in the treatment of life and long-term prisoners, in order to avoid their segregation from other prisoners. However, despite the numerous documents regulating the field

[1] European Convention for the Protection of Human Rights and Fundamental Freedoms // Official Gazette of the SC — International Treaties. No. 9/2003, 5/2005 and 7/2005 — corr. and Official Gazette of the RS-International Treaties. No. 12/ 2010 and 10/2015.

of conditional release, practice has shown that shortcomings and disregard for human rights are possible. Namely, in the case of Winter and Others v. the United Kingdom [GC] — 66069/09, 130/10 3896/10, there was a violation of Article 3 of the Convention (Degrading and inhuman treatment).

In England and Wales, the mandatory sentence for murder is life imprisonment. Before the 2003 Crime Act came into force, the Secretary of State had the power to set the minimum sentence that prisoners sentenced to life imprisonment must serve before they were eligible for early release by special permission. When the Act came into force, this power was exercised by the competent judge. Prisoners whose minimum sentence had been set by the Secretary of State before the Act came into force could apply to the High Court for a review. All three applicants were given a "order to serve life imprisonment without the possibility of reduction" after convictions for murder. Such an order means that their offences are considered so serious that they must remain in prison for the rest of their lives, unless the Secretary of State exercises his discretion to order their release in exceptional circumstances — in practice, terminal illness and severe incapacity.

In the case of the first applicant, Mr. Winter, the order to serve a life sentence without the possibility of reduction was made by the competent judge under the 2003 Act and was upheld by the Court of Appeal on the basis of Mr. Winter's earlier conviction for murder.[1] In the cases of the second and third applicants, the order to serve a life sentence without the possibility of reduction was made by the Secretary of State under previous practice, but was upheld on review by the High Court under the 2003 Act in a decision which was subsequently upheld on appeal. In the case of the second applicant, Mr. Bamber, it was found that the murders were committed with premeditation and that there were multiple victims; the same factors, with the element of sexual intercourse, were also present in the case of the third applicant, Mr. Moore. In their submissions to the European Court, the applicants complained that the decision to serve life sentences without the possibility of reduction meant that their sentences could in fact not be reduced at all, which constituted a violation of Article 3 of the Convention. In a judgment of 17 January 2012, the Chamber of the Court found, by four votes to three, that there had been no violation of Article 3 of the Convention since the applicants' sentences did not amount to inhuman or degrading treatment. In particular, the applicants had not shown that their continuous deprivation of liberty did not serve a legitimate penological purpose.

The Chamber also stressed the fact that the situation with the decisions to serve life sentences without the possibility of reduction was such that they had either been recently handed down by the competent judge (in the case of Mr. Winter) or had recently been subject to review by the High Court (in the cases of Mr. Bamber and Mr. Moore).

Law — Art. 3: The Grand Chamber agreed with and confirmed the Chamber's finding that a grossly disproportionate sentence would constitute a violation of Article 3 of the Convention, even though that condition would be met only in rare and unique situations. In the present case, the applicants had not alleged that their decisions to serve life sentences without the possibility of reduction were grossly disproportionate; they submitted, instead, that the absence of a procedural possibility for review constituted an abuse not only, as the Chamber had found, when legitimate penological conditions to justify continued deprivation of liberty ceased to exist, but also from the moment the decision was taken. The Court reiterated that the Contracting Parties must be given a margin of appreciation in deciding on the appropriate length of prison sentences for certain particular offences and that they must be free to impose life sentences on adult offenders for particularly serious offences. However, imposing a life sentence that could not be reduced on an adult could be problematic under Article 3. In determining whether the life sentence in the present case could be considered to be such that it could not be reduced, the Court sought to determine whether it could be said that the convicts had any prospect of release. If domestic

[1] Winter and Others v. the United Kingdom [GC] — 66069/09, 130/10 3896/10.

law provides for the possibility of reviewing a life sentence with a view to its commutation, reduction, termination or conditional release, this is sufficient to satisfy the requirement of Article 3. There were a number of reasons why, in order for a life sentence to remain compatible with Article 3, there had to be both possibilities for release and possibilities for review. First of all, it is clear that a prisoner cannot be deprived of his liberty unless there are legitimate penological grounds for doing so. The balance between the justifications for deprivation of liberty is not necessarily static and may change during the course of the sentence. Only by carrying out a review at an appropriate point in the sentence can these factors and changes be properly assessed.

Secondly, deprivation of liberty without any prospect of release or review carries with it the risk that the convicted person will never be able to atone for his crime, regardless of how he behaved in prison and regardless of how exceptional his progress towards rehabilitation may be.

And thirdly, it would be incompatible with human dignity for a State to forcibly deprive a person of his liberty without at least giving him the opportunity to regain his liberty one day. Furthermore, European and international law now clearly upholds the principle that all prisoners, including those serving life sentences, should be given the opportunity for rehabilitation and the prospect of release if they are rehabilitated. Accordingly, Article 3 had to be interpreted as requiring that there should be a possibility of reducing life sentences, in the sense of a review enabling the domestic authorities to consider whether any changes in the prisoner's life are so significant, and the progress towards rehabilitation so great, that continued detention can no longer be justified on legitimate penological grounds. Although it was not the Court's task to prescribe the form (executive or judicial) that such a review should take, nor to determine when it should take place, the comparative and international law material before this Court has made it clear that a mechanism for guaranteeing review should be introduced no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter. A life sentence without possibility of reduction is not in conformity with the standards of Article 3 if domestic law does not provide for the possibility of such a review. Finally, even if the review sought was only likely to be available after serving part of the sentence, prisoners serving a life sentence without possibility of reduction should not be obliged to wait and serve an unspecified number of years of their sentence before being given the opportunity to complain that the legal conditions attached to their sentence do not meet the requirements of Article 3. 3. Prisoners serving life sentences without the possibility of reduction have the right to know at the beginning of their sentence what they have to do to be considered for release and under what conditions, including the question of when their sentence will be reviewed or when it may be sought. Therefore, where domestic law does not provide for any mechanism or possibility of review of a life sentence without the possibility of reduction, the question of incompatibility with Article 3 on that ground may arise already at the time of the imposition of the sentence, and not only at a later stage of the deprivation of liberty. The Government submitted before the Court that the aim of the 2003 Act was to remove the executive from the process of deciding on life sentences, and that this was the reason for abolishing the review by the Secretary of State which had previously taken place after 25 years of the sentence had been served. However, the Court considers that it would be more consistent with the aim of the law to provide that the review after 25 years of imprisonment should be carried out within the judicial framework, rather than abolishing it altogether. The Court also found that the applicable law on the possibility of releasing prisoners serving life sentences in England and Wales was unclear. Although section 30 of the 1997 Act gives the Secretary of State the power to release any prisoner, including prisoners serving life sentences without the possibility of reduction, the relevant Prison Service Rules provide that release may be ordered only if the prisoner is terminally ill or physically incapacitated. Conclusion: a violation was found (sixteen votes to one). The finding of a violation constituted sufficient just satisfaction, under section 41, for any non-pecuniary damage suffered by the first applicant.

The other applicants did not submit claims for compensation".

3. The Institute of Parole in the Positive Legislation of the Republic of Serbia

The development of the criminal justice system has crystallized the understanding that parole goes beyond the penological function and has a primarily criminal dimension, because it suspends the sentence determined by a court decision [11, p. 275–290].

In Serbia, parole is regulated by the Criminal Code[1] which provides for the possibility of release after the convict has served two-thirds of the prison sentence. Namely, the current Criminal Code in Art. 46 paragraph 1. it is imperative that the court shall conditionally release a convicted person who has served two-thirds of his prison sentence from serving his sentence, if he has improved so much during the serving of his sentence that it can be reasonably expected that he will behave well in freedom, and in particular that he will not commit a new criminal offense until the expiration of the term for which the sentence was pronounced. When assessing whether a convicted person will be conditionally released, his conduct while serving his sentence, the performance of work obligations, taking into account his working capacity, as well as other circumstances indicating that the convicted person will not commit a new criminal offense while on conditional release, shall be taken into account. A convicted person who has been punished twice for serious disciplinary offenses during the serving of his sentence and who has been deprived of the benefits granted may not be conditionally released. If he meets the conditions set out in paragraph 1 of this Article, the court may conditionally release a convicted person:

1. Who has been sentenced to life imprisonment, if he has served twenty-seven years.

2. Who has been convicted of criminal offences against humanity and other goods protected by international law (Articles 370 to 393a), criminal offences against sexual freedom (Articles 178 to 185b), criminal offence of domestic violence (Article 194, paragraphs 2 to 4), criminal offence of unauthorized production and distribution of narcotic drugs (Article 246, paragraph 4), criminal offences against the constitutional order and security of the Republic of Serbia (Articles 305 to 321), criminal offence of accepting a bribe (Article 367) and criminal offence of giving a bribe (Article 368).

3. Who has been convicted by the competent courts, or their special departments, in proceedings conducted in accordance with the jurisdiction determined by the Law on the Organization and Competence of State Bodies in Suppression of Organized Crime, Corruption and Other Serious Criminal Offenses.

4. Who has been legally sentenced to an unconditional prison sentence more than three times, and the sentence has not been expunged or there are no conditions for the expungement of any of the sentences.[2]

The court may determine in the decision on conditional release that the convicted person is obliged to fulfill the obligations stipulated by criminal law provisions. In the case referred to in paragraphs 1 and 2 of this Article, if the conditional release is not revoked, the convicted person shall be deemed to have served the sentence.[3]

However, the provision of Art. 46, paragraph 2, item 1 of the Criminal Code[4] is in some way contradictory to Art. 46, paragraph 5 of the Criminal Code, because on the one hand it allows conditional release even when a life sentence has been imposed, and on the other hand it prohibits conditional release for persons convicted of certain criminal offenses for which a life sentence can be imposed. The existence of life imprisonment without the possibility of conditional release is contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[5] [12, p. 243–274].

[1] Criminal Code // Official Gazette of RS. No. 35/2019 and 94/2024.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] European Convention for the Protection of Human Rights and Fundamental Freedoms // Official Gazette of the SC — International Treaties. No. 9/2003, 5/2005 and 7/2005 — corr. and Official Gazette of the RS-International Treaties. No. 12/ 2010 and 10/2015.

4. Criminal Procedure Requirements

Previous amendments to the provisions of the Criminal Procedure Code[1] on the procedure for conditional release have not been amended, and are still applied today from Art. 563 to Art. 568 of the Criminal Procedure Code adopted by the National Assembly of the Republic of Serbia in 2019. The procedure for conditional release is initiated by a request for conditional release submitted to the court that issued the judgment according to which the convicted person is serving a prison sentence.[2] After receiving the request, the pre-trial panel (the panel referred to in Article 21, paragraph 4 of the Code of Criminal Procedure (CCP)) will examine whether the legal conditions for submitting the request have been met (whether the request was submitted by an authorized person, whether the convicted person has served two-thirds of the sentence imposed prison sentence and whether the convict attempted to escape or escaped from the institution during the prison sentence). If the panel does not reach any decision during the preliminary examination, the panel will request a report from the institution where the convict is serving his prison sentence on his behavior and other circumstances that show whether the purpose of the punishment has been achieved, as well as a report from the commissioner of the administrative body responsible for the execution of criminal sanctions, if the institution has not submitted all the information necessary for the decision and if it considers that the report is not entirely clear. It is also important to note the provision of Art. 47, paragraph 2 of the Law on the Execution of Criminal Sanctions[3] which stipulates that in the procedure for deciding on conditional release, the institution is obliged to provide the court with an opinion in its report on the degree of fulfillment of the treatment program and the justification of conditional release. In this sense, it is useful for the court, when requesting a report from the institution, to emphasize that the institution is obliged to act in accordance with this article.

The institution of conditional release also includes the application of conditional release to minors, which is regulated by Art. 144 of the Law on Juvenile Offenders and Criminal Protection of Minors,[4] and it is stipulated that the application for conditional release submitted by a person who was sentenced to a juvenile prison sentence is decided by the panel for juveniles of the court that tried in the first instance, i.e. a panel composed of judges who have acquired special knowledge in the field of child rights and juvenile delinquency. Art. 144 stipulates that before making a decision, the president of the juvenile court shall, if necessary, orally hear the juvenile, his parents, representatives of the guardianship authority and other persons and obtain a report and opinion from the penitentiary institution on the justification of conditional release.[5] An oral hearing of the juvenile is mandatory if a decision is made on conditional release after two-thirds of the sentence has been served, unless the juvenile court, based on available documentation, assesses that the conditions for conditional release have been met. This means that if the court rejects the application of a juvenile who has served two-thirds of the sentence without hearing him, it will commit a significant violation of the provisions of criminal procedure.

5. Case law in the Republic of Serbia

The examples that we will cite in the text clearly indicate that the criteria for conditional release are evaluated differently, both by first-instance courts and second-instance courts, from case to case, and should be determined more precisely.

I — In the case[6] "The Court of Appeal in Kragujevac, an appeal was filed by the convicted person V. B. and the decision of the Higher Court in Kraljevo Kuo-40/24 of 26.06.2024 was revoked and the case was sent to the first-instance court for a re-decision, by which

[1] Criminal Procedure Code (CPC) // Official Gazette of the RS. No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 — decision of the US and 62/2021 — US decision.

[2] Ibid.

[3] Law on Execution of Criminal Sanctions, ZIKS // Official Gazette of the RS. No. 55/2014 and 35/2019.

[4] Law on Juvenile Offenders and Criminal Protection of Minors (Official Gazette of the Republic of Serbia, No. 85/2005).

[5] Ibid.

[6] Decision of the Appellate Court in Kragujevac Kžuo-137/24 of 15.07.2024.

decision the request of the convicted person V. B. for his conditional release from serving his prison sentence pursuant to the legally binding decision of the Higher Court in Kraljevo K-41/19 of 02.04.2020 was rejected as unfounded" (Kžuo-137/24 of 15.07.2024).

The explanation of the aforementioned decision of the Court of Appeal in Kragujevac stated, among other things, that "the reasons for the contested decision are completely unclear regarding the conclusion that in the specific case the sentence did not affect the convicted person in such a way that it can be expected that he will behave well in freedom and that he will not commit criminal offenses until the expiration of the time for which the sentence was imposed, because "the resocialization process has not been completed", since the institution did not state in its report at all about the degree of fulfillment of the treatment program and the justification of conditional release, in accordance with the obligation under Art. 47, paragraph 2 of the Law on the Execution of Criminal Sanctions[1], and therefore, due to all of the above, the first-instance decision is affected by a significant violation of the provisions of criminal procedure under Art. 438. para. 2. item 2. CPC".[2]

II — In the case[3] "The Court of Appeal in Kragujevac Kžuo-112/24 of 18.06.2024 the appeal of the defense counsel of the convicted N. T. was upheld and the decision of the Higher Court in Kraljevo Kžuo-42/24 of 05.06.2024 was quashed and the case was sent to the first instance court for a new decision, by which decision the application for conditional release of the convicted N. T. from serving a prison sentence, for a period of 1 (one) year, pursuant to the final judgment of the Higher Court in Kraljevo K-45/21 of 30.12.2022, for the criminal offense of participating in a fight under Art. 123. CC".[4]

The explanation of the aforementioned decision states, among other things, that the first instance court appreciated the positive report of the Penitentiary in Ćuprija on the behavior of the convict, but given that the convict did not make maximum progress in treatment, then that the same sentence was planned for the end of September this year (which, considering that he was sentenced to one year, is not a short period), and the consequence of the criminal offense, the aforementioned circumstances create the court's belief that the conditions for the convict to be released on parole have not been met. In this regard, according to the Court of Appeal, the appeal of the defense attorney essentially indicates that the reasons for the first-instance decision are completely unclear, since when deciding on a request for conditional release, the length of the unserved part of the sentence is not assessed, but when the convict has served 2/3 of it, nor the severity of the consequences of the criminal offense, and it is unclear from the institution's report whether the convict has made maximum progress in treatment or whether there is room for further progress in that regard, and therefore the conclusion of the first-instance court that the convict has not made such progress is also unclear.

III — In the decision[5] of the Court of Appeal in Kragujevac Kžpo1 uo-7/21 of 21.04.2021 "The appeal of the Higher Public Prosecutor in Kraljevo — Special Department for the Suppression of Corruption filed against the decision of the Higher Court in Kraljevo — Special Department for the Suppression of Corruption Kuo-po 4-11/21 of 07.04.2021 was rejected as unfounded", by which decision the application for conditional release of the convicted M. K., who was sentenced to 6 months in prison by the final judgment of the Higher Court in Kraljevo — Special Department for the Suppression of Corruption K-Po4-9/20 of 16.07.2020, confirmed by the judgment of the Court of Appeal in Kragujevac Kž1-Po1-19/20 of 06.10.2020, for the criminal offense of abuse of position of a responsible person under Art. 227, para. 1. Criminal Code,[6]

[1] Law on Execution of Criminal Sanctions, ZIKS // Official Gazette of the RS. No. 55/2014 and 35/2019.

[2] Criminal Procedure Code (CPC) // Official Gazette of the RS. No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 — decision of the US and 62/2021 — US decision.

[3] Decision of the Appellate Court in Kragujevac Kžuo-112/24 of 18.06.2024.

[4] Criminal Code // Official Gazette of RS. No. 35/2019 and 94/2024.

[5] Decision of the Appellate Court in Kragujevac Kžuo-7/21 of 21.04.2021.

[6] Criminal Code // Official Gazette of RS. No. 35/2019 and 94/2024.

so the convicted person will not be sent to serve a prison sentence, provided that the conditional release lasts until the expiration of the sentence, i.e. 1 (one) month and 8 (eight) days of the decision becoming legally effective. If the convicted person, while on conditional release, commits one or more criminal offenses for which a prison sentence of more than one year has been imposed, the court shall, in accordance with the provisions of Art. 47. Paragraph 1. Criminal Code,[1] revoke his conditional release.

The explanation of the decision of the Court of Appeal in Kragujevac states, among other things, that "in the opinion of the Court of Appeal, the fact that the convict is currently in treatment group B1 and the public prosecutor's appeal, which essentially indicates that there was room for further progress by the convict, are not of such importance as to influence a different decision of the court on the submitted application, especially when it is taken into account that the convict was assessed to have a low level of risk, that the treatment program has been implemented to a sufficient extent, which is why the institution proposes its adoption, and that his overall behavior during the serving of his sentence so far shows that it can be reasonably expected that he will behave well while at liberty, and in particular that he will not commit a new criminal offense until the expiration of the term for which the sentence was imposed." The appeals' allegations that the convict had previously been convicted, according to this court, are unfounded, since he had no previous convictions when he began serving his prison sentence pursuant to the judgment of the Higher Court in Kraljevo, which then lost its independence by merging it with the sentence imposed pursuant to a later judgment and imposing a single sentence that he is currently serving.

It is not uncommon in court practice for courts to act differently when deciding on a request by convicted persons for conditional release. The opinion of the institution in which the convict is serving his prison sentence, as well as the opinion of the public prosecutor, is not binding when the courts decide on a request by a convicted person for conditional release. The decision of the first-instance court and the second-instance court when deciding on an appeal is a factual issue and is assessed differently in relation to each case, which sometimes leads to uneven judicial practice, and thus to inequality of convicted persons before the law.

6. Conclusion

The aim of this paper is to point out the importance of parole as a legal institution that traces its roots back to the mid-19th century. Its application is very important for the successful resocialization of a convicted person. Prohibiting parole for certain criminal offenses will certainly not reduce the crime rate.Parole should aim to help convicts make the transition from life in prison to life in the community, where they respect the law, by determining conditions after release, as well as supervision, all with the aim of reducing the harmful effects of imprisonment, reducing crime in the community and improving resocialization.

The issue of human rights becomes central in the context of parole, because convicts, even when under supervision, have rights guaranteed to them by both international and national legal frameworks. This includes the right to a fair trial in the decision-making process on parole, the right to humane conditions during the sentence, and the right to rehabilitation and reintegration into society. These rights can often be undermined by procedural shortcomings, bias, or insufficient support for prisoners after release. Research shows that parole criteria are often applied unevenly, which can result in discrimination against certain categories of prisoners, such as minority groups, prisoners of lower socioeconomic status, or those with mental illness.

Risk assessment is a key element in parole decisions, but there are serious criticisms of the accuracy and fairness of these assessments. Risk assessment tools often rely on statistical models that take into account factors such as prior criminal records, age, and behavior during their time in prison. These risk assessments are often unreliable because they do not take into account all individual characteristics of the convict, such as motivation for rehabilitation, social support after release. Too much attention is paid to preventive

[1] Criminal Code // Official Gazette of RS. No. 35/2019and 94/2024.

measures in terms of avoiding potential risks, and too little support is provided to convicts who are ready to re-integrate into society. This situation leads to an overreliance on statistical indicators, without sufficient focus on the real individual needs of convicts and their capacities for change. Although conditional release is an important step in the reintegration of convicts into society, the lack of adequate support after release poses a significant challenge. Many convicts face serious problems, including finding work, housing and reintegration into family life, which further complicates their reintegration, and due to inadequate post-penal assistance, we have an increased number of returnees.

We believe that a comprehensive reform of the parole system would not only reduce recidivism, but would also contribute to the creation of a more humane and just justice system. To achieve this, cooperation between judicial, social and health institutions is necessary, as well as continuous evaluation of existing practices to ensure that parole fulfills its dual purpose — the reintegration of convicts and the preservation of social security.

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