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## Release on Parole: Current Problems of Legal Regulation and Solution Ways

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### Abstract

*Introduction:* the article is devoted to comprehensive analysis of the institution of parole as a key tool for individualizing criminal punishment and achieving goals of correction, rehabilitation of convicts and prevention of recidivism. *Purpose:* to identify problems of legal regulation and enforcement of the institution of parole in the context of modern criminal policy, as well as to substantiate proposals for its improvement, taking into account foreign experience. *Methods:* formal legal, comparative legal and statistical analysis; theoretical methods of formal and dialectical logic; method of interpretation of legal norms. *Results:* based on the analysis of the dynamics of satisfying applications for parole in 2001–2024, as well as specific examples from judicial practice, there is a tendency to tighten the requirements for convicts when deciding on parole, taking into account the criteria of stability of behavior, disciplinary penalties and compensation for damages. Particular attention is paid to a lack of uniform, clearly formulated criteria for assessing the degree of correction of a convicted person, as well as the “sufficiency” of partial compensation for damage caused by a crime for a positive solution to the issue under consideration. *Conclusion:* the legislative consolidation of the main and additional criteria is proposed, taking into account the positive experience of using the point system for assessing the behavior of convicts while serving their sentences in the People’s Republic of China and the Republic of Korea. Taking into account the positive experience of applying the institution of parole in the Republic of Kazakhstan, the author discusses an issue of the expediency of differentiating terms of repeated application of this measure in relation to persons whose parole has been canceled on the grounds provided for in Part 7 of Article 79 of the Criminal Code of the Russian Federation. It is concluded that a systemic reform of the institution in question is necessary, aimed at increasing the transparency and fairness of judicial decisions, developing the stimulating potential of punishment and strengthening trust in this incentive institution among society and victims.

**Key words:** release on parole; criteria for the degree of correction; promotion of law-abiding behavior; compensation for the harm caused; judicial practice of applying release on parole; grounds for applying release on parole; individualization of punishment; achievement of punishment goals.

### 5.1.4. Criminal law sciences.

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Release on parole is one of the key institutions in the system of penal legislation that play a significant role in achieving the goals of punishment. Its application is aimed at ensuring real correction of the convicted person and creating conditions for successful social adaptation after release. In modern law enforcement practice, parole is considered as the most effective mechanism of positive impact, contributing to the formation of a stable attitude towards law-abiding behavior among convicts and reducing risks of recidivism. The institution in question assumes the possibility of terminating the actual serving of a sentence before the expiration of the prescribed period subject to the conditions stipulated by Article 79 of the Criminal Code of the Russian Federation, which sets out both material and formal criteria. The court recognizes that for the convicted person to be corrected it is not necessary to fully serve the sentence imposed by the court. Besides, the convict has compensated for the damage caused by the crime in the amount determined

by the court decision fully or partially. The formal basis is the actual serving of a certain part of the sentence, the amount of which varies depending on the category of the crime committed: from one third to four fifths, but not less than six months, and in the case of life imprisonment – not less than 25 years.

Over time, the institution of parole has undergone significant changes, turning from a general legal norm into a detailed and flexibly regulated mechanism for individualizing the execution of punishment. The evolution of Article 79 of the Criminal Code of the Russian Federation reflects the legislator's desire to take into account not only the degree of correction and law-abiding behavior of convicts, but also their potential public danger. This institution plays an important role in ensuring a balance between the principles of humanism and the need to protect society from repeat crime.

It seems advisable to provide statistical data on the dynamics of the use of parole from 2001 to 2024 (Table 1) [1].

Table 1

*Dynamics of the use of parole in 2001–2024*

Year	Number of applications for parole submitted	Number of applications for parole granted	Percentage of applications for parole granted
1	2	3	4
2001	138 320	131 484	95.1
2002	158 213	151 349	95.6
2003	166 645	154 693	92.8
2004	207 208	176 735	85.3
2005	173 144	133 420	77.1
2006	181 391	129 589	71.4
2007	194 176	132 880	68.4
2008	193 736	124 718	64.4
2009	205 473	121 616	59.2
2010	207 383	118 625	57.2
2011	190 822	107 543	56.4
2012	174 854	89 907	51.4
2013	142 128	65 237	45.9
2014	132 358	54 504	41.2
2015	117 197	46 331	39.5
2016	122 552	55 217	45.1
2017	112 581	53 804	47.8
2018	99 646	49 292	49.5
2019	92 545	45 387	49.0

1	2	3	4
2020	83 147	38 912	46.0
2021	69 302	29 759	42.0
2022	65 911	27 002	40.0
2023	51 279	20 703	40.0
2024	37 562	14 590	38.0

The analysis of statistical data shows a steady downward trend in both the total number of applications and the percentage of those granted. This trend represents not only a quantitative change, but also has significant legal significance, since it allows us to identify the specifics of implementing a legal institution in modern law enforcement practice, and also reveals the nature of the grounds underlying decisions on parole.

The recorded decrease is due to a combination of objective and subjective factors. Objective factors include reduction in the number of convicts, general decrease in criminal activity, as well as improvement of criminal and penal legislation. Subjective factors include changes in the law enforcement approaches of the courts themselves, in particular formalizing requirements for the correction of convicts, focusing on the availability of disciplinary penalties, as well as strengthening the requirements for the completeness of compensation for damage caused by a crime.

What is more, a downward trend in the number of granted petitions is associated with changes in the procedure for their submission in accordance with the federal law No. 161-FZ

of December 8, 2003 (Part 1 of Article 175 of the Criminal Code of the Russian Federation), as well as the continuing high rate of recidivism among those on parole, which has a direct impact on judicial practice and determines a more cautious approach by courts to the application of release on parole [2, p. 78].

Thus, the revealed statistical dynamics indicates not only quantitative changes, but also significant qualitative changes in approaches to the implementation of the incentive institution. The decrease in the proportion of satisfied petitions reflects a general trend towards stricter requirements for evidence of the correction of convicts. Under the current conditions, there is an objective need for a systematic review of the criteria and conditions for the application of parole in order to effectively achieve the goals of punishment.

The analysis of statistical data on the number of persons previously released on parole from serving their sentences and brought back to criminal liability in 2020 and the first half of 2025 demonstrates a steady downward trend in both the absolute number of such persons and their share in the total number of convicts (Table 2) [3].

Table 2

*Recidivism among those on parole (2020 – 1st half of 2025)*

Year	Total number of convicted persons	Of them	
		Those previously released on parole	% of the total number of convicts
2020	530 998	15 947	3 %
2021	565 317	15 064	2.7 %
2022	578 774	13 036	2.3 %
2023	555 742	11 013	2 %
2024	512 845	8 361	1.6 %
1st half of 2025	215 749	3 047	1.4 %

It should be noted that in accordance with Article 79 of the Criminal Code of the Russian Federation, the fundamental criterion for ap-

plying parole is the court's conclusion that the convicted person does not need to continue serving his/her sentence. At the same time, a

stable list of factual circumstances has been formed in law enforcement practice for the courts to substantiate conclusions about correction: absence of penalties, availability of incentives, participation of the convicted person in labor, training, full or partial compensation for damages, as well as positive characteristics from the administration of the correctional institution. However, the analysis of recent judicial practice shows that even with these positive characteristics, courts often refuse to satisfy petitions referring to the “instability” of behavior or its “unstable” nature, and sometimes the “prematurity” of parole.

Here is an example from judicial practice. Thus, when considering the application for parole, the court took into account the positive personality characteristics of the convicted person, including the presence of incentives and the actual serving of more than two thirds of the appointed term of imprisonment. Despite this, the application was refused on the basis of the argument that the institution of parole was premature, motivated by the fact that the goals of social justice had not been achieved, and there were no sufficient grounds to believe that the convicted person did not need to continue serving his sentence. However, in making this conclusion, the court did not refer to specific circumstances indicating recidivism risks, thus violating the requirements of Part 4 of Article 7 of the Criminal Procedure Code of the Russian Federation. Subsequently, the Fifth General Jurisdiction Court of Cassation, in its judgment No. 77-1092/2024 of August 19, 2024, annulled the judicial acts of the first and appellate instances, pointing out the unreasonableness of the refusal to apply parole in respect of K., which underlines the need to comply with the principles of legality, reasonableness and an individual approach when making decisions on parole.

Judicial practice illustrates the complexity of approaches to assessing the degree of correction of a convicted person when considering petitions. For example, the convicted person's foreclosure, which has been paid off in accordance with the established procedure, cannot in itself indicate the need for him/her to continue serving his/her sentence. When deciding on the application of parole, it is necessary to take into account the totality of circumstances, such

as severity and nature of the violation, uniqueness or systematic nature of the offense, the time past since the punishment, behavior of the convicted person for the entire period of serving the sentence.

Thus, the court refused to satisfy N.'s request for parole, relying on the psychologist's conclusion about “low probability of relapse”, which was interpreted as a manifestation of “some behavioral instability”, as well as the fact of a previously imposed penalty in the form of a reprimand. At the same time, the court did not take into account positive characteristics of the convict, confirmed by 13 rewards for conscientious attitude to work and active participation in the public life of the correctional institution. There also were no data objectively indicating his negative qualities or the absence of signs of re-socialization. Despite positive characterization of N. and a lack of concrete evidence of his public danger, the court came to an unreasonable conclusion about the insufficient degree of correction. The General Jurisdiction Court of Cassation, in its ruling No. 77-3061/2021 of August 19, 2021, overturned the decisions of the lower courts, pointing out incomplete assessment of the circumstances relevant to the consideration of the petition. The situation confirms the need to ensure uniformity of judicial practice and to develop clear criteria for assessing correction of convicts when applying parole.

In the context of modern development of the penal system, the practice of introducing a point system for assessing convicts' behavior implemented in the People's Republic of China and the Republic of Korea deserves special attention. This system functions as a tool to ensure transparency and objectivity in making decisions on parole [4, p. 526]. It involves a comprehensive analysis of the behavior of convicts, covering both positive manifestations (participation in labor and educational activities, compliance with the regime) and negative (disciplinary offenses).

It should be noted that Amendments No. 8 to the Criminal Code of the People's Republic of China of February 25, 2011 significantly expanded the legal content of the institution of parole, establishing the need to take into account the potential impact of a parolee on society, and also provided for strengthening public supervision measures as an element of post-

penitentiary control [5, p. 135]. In this context, Chinese criminal law pays special attention to the prevention of recidivism. The possibility of applying parole is excluded in relation to repeat offenders, persons sentenced to life imprisonment, those committed serious violent crimes involving the death of victims, as well as in the absence of compensation for damage caused by the crime.

Since October 1, 2021, a new scoring model has been introduced in China, regulated by the Regulation on the Prison Assessment System for Convicts [6, p. 523]. This normative provision establishes a system for comprehensive assessment of behavior during the period of serving a sentence based on a set of both legal and moral criteria. These include compliance with the internal regime, discipline, submission to the requirements of the administration, participation in rehabilitation programs, expression of remorse and readiness for correction. Labor activity remains an important element of the system: it takes into account both the volume and quality of labor and the degree of convict's involvement in the production process, the development of professional skills and compliance with labor discipline standards.

In addition, the points system covers a wide range of additional aspects, including active citizenship (crime prevention, cooperation with the administration), participation in cultural, educational, sports and educational events, respect for the community and family, compliance with sanitary and hygienic standards, and even initiative in the field of technological development. Thus, not just lawful behavior is assessed, but a holistic portrait of a personality focused on observing social values, discipline and social usefulness is formed.

The current practice in the Russian Federation of applying the institution of parole in the activities of courts and correctional institution administrations faces a number of methodological and law enforcement problems. One of the key difficulties lies in the absence of legally fixed, clearly structured and universal criteria on the basis of which it can be objectively established that a convicted person has achieved a degree of correction that allows him/her not to serve his/her sentence in full. This state of affairs creates significant variability in judicial practice, reduces transparency and predict-

ability of decisions, and weakens incentive capacities of the institution under analysis.

In this regard, the positive experience of the People's Republic of China deserves attention, where a comprehensive scoring system is used to assess the behavior of convicts based on a set of certain criteria. Considering this approach, it is advisable to establish in Russian penal legislation a list of criteria that are mandatory for assessing the degree of correction of a person applying for parole. It is proposed to differentiate these grounds into two groups: basic and additional criteria.

The main criteria to be considered include:

- convict's compliance with the established regime and order of serving the sentence, including the absence of discipline violations;
- full or partial compensation for the damage caused by the crime, which indicates the recognition of responsibility for the committed act and the desire to restore social justice.

Additional criteria are the following:

- positive dynamics in the convict's attitude towards re-socialization, social adaptation and social rehabilitation: active participation in work and educational activities, restoration or maintenance of socially significant relationships, involvement in educational activities and other forms of constructive behavior;

- expressed remorse for the crime committed, admission of guilt and acceptance of the justice of the punishment imposed by the court;

- a convict's attitude to psychophysical correction of his/her personality (passing psychological testing);

- an attitude towards the treatment of convicts suffering from socially dangerous diseases (sexually transmitted diseases, tuberculosis, drug addiction, alcoholism, etc.), disorder of sexual preference (pedophilia), which does not exclude sanity;

- reporting, suppressing or exposing illegal (criminal) actions of other persons or other assistance in solving escapes and other crimes.

The above criteria should be fixed in the Penal Code of the Russian Federation by adding Part 2.1 "Criteria for assessing the degree of correction of a convicted person" in Article 9.

Based on the above, as well as taking into account the foreign experience of applying release on parole, specifying and expanding the criteria for the material basis of parole will in-

crease the validity of decisions, ensure their fairness and will contribute to the effective functioning of the institution in question as an element of individualization of punishment and the means of re-socialization of convicts.

In May 2014, Part 1 of Article 79 of the Criminal Code of the Russian Federation introduced the requirement of full or partial compensation for damage upon parole. E.N. Karabanova rightly notes that this innovation is aimed at restoring social justice and mitigating consequences of the crime for the victim, including reducing moral suffering [6, p. 92]. Previously, this condition was only a guideline and was not mandatory. The legislative consolidation of compensation for damage has given the norm a mandatory, imperative status, eliminating the possibility of arbitrary interpretation by courts and other bodies. Otherwise, the legislative goal of ensuring the priority of the interests of the victim over the interests of the convicted person in the application of parole will lose its real content and will be reduced to a formality [7, p. 132].

While supporting the opinion of A.I. Drozdov and A.V. Orlov on the importance of securing this condition as an effective incentive to compensation for harm, it should be noted that law enforcement practice still faces a number of unresolved issues. First, there is no clear criterion for the sufficiency of partial compensation for damage, and second, it is unclear from what point a convicted person can apply for parole with partial compensation. The possibility of a subjective refusal by the court is also of concern, especially if the victim has a negative attitude towards the early release of the convicted person [8, p. 143].

According to paragraphs 1 and 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 (as amended on June 25, 2024) "On judicial practice of release on parole, replacing the unserved part of the sentence with a milder type of punishment", when considering a petition for parole, the court must apply an individual approach and take into account objective circumstances confirming the desire to compensate harm. At the same time, even partial repayment of damages for objective reasons should not automatically prevent the application of parole.

The analysis of the above provisions allows us to conclude that uncertainty persists both at the level of legislative regulation and in law enforcement practice regarding the establishment of criteria for the sufficiency of partial compensation for damage caused by a crime, as well as the assessment of measures taken by the convicted person to compensate it. A typical situation is when the court of first instance, referring to a small amount of compensation for the damage caused, does not give a proper legal assessment of the fact that the enforcement proceedings have been completed by the bailiff and the writ of execution has been returned to the recoverer. At the same time, there are no reasoned conclusions in the court decision on how these circumstances can prevent the application of release on parole. At the same time, it should be emphasized that neither the opinion of the prosecutor nor the position of the victim by themselves can qualify as independent grounds for refusing to grant the convicted person the right to parole. This conclusion is also confirmed by the position of the Third General Jurisdiction Court of Cassation, set out in the ruling of May 25, 2021 in case No. 77-10891/2021, which annulled the relevant judicial acts of the first and appellate instances. The ruling of the cassation instance underlines the absence of a proper assessment to the arguments presented about the state of health, the admission of guilt, and the intention to continue paying off moral damage in case of release on the part of the court of lower instance. In addition, the court did not substantiate the reasons why these circumstances, combined with other positive personality characteristics of the convicted person, could not be considered sufficient to make a decision on the application of parole.

Another example from judicial practice is also indicative. When rejecting convicted B.'s request for parole, the court referred to partial compensation for the damage caused by the crime, ignoring the circumstances confirming that the convicted person had taken measures to pay damage to the victims. Meanwhile, Sub-Paragraph 2 of Paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 states that if during the trial it was established that the convicted person made efforts to compensate

for the damage, but for objective reasons the damage was only partially compensated, this circumstance cannot serve as an independent basis for refusing to grant a request for release on parole or commutation of punishment to a more lenient one. At the same time, the court of first instance not only ignored these explanations, but also did not provide reasoned conclusions in the decision on the reasons for recognizing these circumstances as insufficient. Subsequently, these judicial acts were annulled by the decision of the Sixth General Jurisdiction Court of Cassation No. 77-3282/2021 of August 3, 2023, which explicitly stated that the court of first instance had no reasoned judgments about the measures taken by convicted B., as well as convincing arguments explaining why these circumstances could not be taken into account in favor of the application of parole.

Special attention should be paid to one of the key circumstances directly related to the issue of compensation for harm as an element of assessing the validity of the application of parole. It is crucial to take into account that compensation should be directly related to the damage that was caused to the victim as a result of the crime committed. The fact that the convict has other debt obligations unrelated to the crime cannot be regarded as evidence of his evasion from fulfilling obligations to the victim.

This approach is clearly confirmed by a concrete example from judicial practice. Thus, the basis for the cancellation of judicial acts of the first and appellate instances was, among other things, the conclusion that a convicted person found guilty of murder had enforcement proceedings initiated in connection with the non-fulfillment of alimony obligations. However, the cassation instance reasonably pointed out that non-payment of alimony cannot be considered as a factor indicating non-fulfillment of obligations to compensate for damage caused by the crime for which the person was serving a sentence. In this regard, the First General Jurisdiction Court of Cassation, in its resolution No. 77-951/2023 of March 2, 2023, annulled the earlier judicial acts and sent the case for a new hearing.

The above-mentioned legal gap causes discussion in the scientific literature regarding criteria for assessing the sufficiency of partial compensation for damage caused by

a crime for the purposes of parole. The problem of uncertainty is particularly acute in cases of economic crimes, where the material damage caused is often many times higher than in cases of serious and especially serious crimes against the person, including terrorism-related crimes.

Thus, the analysis of current judicial practice and legislation reveals a significant problem related to a lack of clear criteria for assessing the sufficiency of partial compensation for damage caused by a crime when considering applications for parole. Article 79 of the Criminal Code of the Russian Federation establishes only a general requirement for full or partial compensation for damage leaving the assessment of the sufficiency of this condition at the discretion of the court. However, the heterogeneity of the courts' approaches to this issue has been repeatedly noted both in law enforcement practice and in the scientific literature.

To overcome this uncertainty, it is advisable to make amendments to the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 by adding the following provision to Paragraph 7: "When deciding on the application of parole, the court must proceed from the totality of circumstances confirming the convicted person's desire to compensate for the harm caused by the crime. In this case, the sufficiency of partial compensation for damage is determined taking into account the following criteria:

- a ratio of the amount of damage actually compensated to the total amount of damage established by the court decision;
- objective reasons for the impossibility of full compensation at the time of consideration of the application (for example, difficult financial situation, disability);
- presence or absence of actions indicating the intention of the convicted person to evade the obligation to compensate for harm;
- regularity and systematic nature of payments, as well as the voluntary nature of the compensation measures proposed by the convicted person (for example, the conclusion of an agreement with the victim on a repayment schedule);
- availability of official data on the closure of enforcement proceedings for reasons beyond the control of the convicted person.

In case there is confirmed information about the adoption of reasonable measures by the convicted person to fulfill the obligation to compensate for damage, incomplete compensation for damage caused by objective reasons cannot serve as a basis for refusing application for parole”.

The introduction of such an explanation will help to achieve one of the goals of the institution of parole - to encourage convicts to actively participate in compensation for harm to the victim and, in general, to achieve the goals of punishment. In addition, the consolidation of these criteria in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 will reduce the likelihood of arbitrary refusal to satisfy petitions based on the subjective assessment by the courts of the sufficiency of partial compensation for harm.

Thus, the formulation and consolidation of unified approaches to assessing the performance of a convicted person's obligation to compensate for damage will improve the quality and predictability of court decisions and will contribute to the implementation of the principles of justice, humanism, and individualization of criminal punishment.

In order to further improve a mechanism for the application of parole, special attention should be paid to the problem of setting time limits for the re-application of this institution in relation to convicts who had been previously refused this measure in the period of serving the remaining unserved part of the sentence on the grounds provided for in Part 7 of Article 79 of the Criminal Code of the Russian Federation. So, according to paragraph “b” of Part 3 of Article 79 of the Criminal Code of the Russian Federation, release on parole may be applied only after the convicted person has actually served at least two-thirds of the sentence imposed for a particularly serious crime, as well as two-thirds of the sentence imposed on a person who has been previously released on parole, if the parole has been revoked on the grounds provided for in Part 7 of this Article.

However, the current version of Article 79 of the Criminal Code of the Russian Federation does not contain the necessary degree of differentiation in setting the terms of repeated application depending on the nature and severity of the violation that has led to the cancellation

of parole. Such regulation reduces the effectiveness of implementing the punishment individualization principle and prevents the implementation of the stimulating function of the institution in question.

The experience of the Republic of Kazakhstan is of considerable interest in studying this issue, since it provides for a differentiated procedure for the reapplication of parole depending on the specific grounds for its cancellation. Thus, according to sub-paragraphs 3, 4 of Part 3 of Article 72 of the Criminal Code of the Republic of Kazakhstan [9], repeated parole can be applied only after the actual serving of at least two thirds or three quarters of the imposed sentence, while the specific amount of the sentence served directly depends on the grounds for the cancellation of the previous one. This model demonstrates a high degree of logical consistency and legal certainty, reflecting a reasonable relationship between the degree of public danger of a convicted person's behavior and the application of criminal law measures.

Taking into account the positive experience of the Republic of Kazakhstan, as well as the need to implement principles of punishment individualization, encouragement of law-abiding behavior and, in general, prevention of new crimes, it seems reasonable to make similar amendments to Russian criminal legislation. We propose to amend Part 3 of Article 79 of the Criminal Code as follows: in paragraph “c” of Part 3 of Article 79 to replace the words “provided for in Part 7 of this article” with “provided for in paragraphs “a” and “b” of Part 7 of this article”, thereby specifying the grounds for applying an increased minimum term of punishment. In turn, Paragraph “d” of the specified part should be supplemented as follows: “as well as to a person previously released on parole if the parole was revoked on the grounds provided for in Paragraph “c” of Part 7 of this article” [10, p. 95].

The implementation of this approach will eliminate existing gaps in legal regulation, increase the predictability and validity of court decisions, and will also contribute to achieving the goals of punishment, primarily correction of the convicted person and prevention of repeated crimes. Legal differentiation of parole application terms, depending on the grounds for its cancellation, will ensure an appropriate bal-

ance between protecting the interests of society and implementing the humanistic principles of criminal law.

Thus, the current system of grounds for applying release on parole requires theoretical and normative refinement with regard to posi-

tive foreign experience. It should be focused on increasing the degree of individualization of criminal punishment, ensuring its fairness and achieving key punishment goals of correcting the convicted person, preventing repeat crime and restoring social justice.

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