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Ways to Improve the Application of Early Release from Serving a Sentence

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Abstract

Introduction: the article discusses and analyzes ways to improve the complex institution of long-term release from serving a sentence as an important means to promote law-abiding behavior of convicts. A large number of petitions for the application of such types of release from further serving of punishment as parole and commutation indicates their practical significance. The relevance of the topic under study is determined by the Concept for the development of the penal system of the Russian Federation up to 2030, one of the directions of which is to improve the penal policy in order to humanize it, including through the use of various means of incentive influence. *Purpose:* to substantiate the need for the development of a comprehensive institution of release from serving a sentence, as well as to formulate specific proposals for improving the use of various types of release from serving a sentence and to argue their expediency. *Methods:* statistical, comparative legal, method of interpretation of legal norms, theoretical methods of formal and dialectical logic. *Results:* it seems that the institution of early release from serving a sentence occupies a special place in the system of mechanisms for achieving the goals of correcting convicts and preventing them from committing new crimes and contains significant potential, the implementation of which will improve and boost effectiveness of the execution of criminal penalties. The analysis of the current regulation of this institution has revealed a number of problems and difficulties in law enforcement in terms of the use of various types of early release from serving a sentence. Their resolution is an important task of the science of criminal and penal law and contributes to further humanization of the modern penal policy of Russia. *Conclusions:* as a result of the conducted research, the need for the development of a comprehensive institution of release from serving a sentence is substantiated and ways of improving it through amendments to criminal and penal legislation are proposed.

Keywords: institution of release from serving a sentence, parole; commutation; control over parolees; convicts serving imprisonment; convicts serving restriction of liberty.

5.1.4. Criminal law sciences.

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Introduction

The Concept for the development of the penal system of the Russian Federation up to 2030 stipulates strengthening the rule of law and order in penal institutions and improving the procedure for individual prevention of offenses among convicts, which implies the effective use of means of positive stimulation of law-abiding behavior of convicts, in order to ensure safe activities of the penal system. Early release from further serving of punishment is one of the means of promoting positive behavior of convicts.

It is important to note that the concept "release from punishment" includes the following legal consequences: 1) non-appointment of punishment to the convicted person; 2) appointment of punishment to the convicted person, but release from his actual serving; 3) release from further serving of punishment after partial serving of the appointed penalty [1, p. 20]. So, according to these criteria, various types of release from punishment can be classified: release from sentencing; release from actual serving of punishment; and release from further serving of punishment.

Release from further serving of punishment is an institution implementing the principle of humanism and, as a rule, aimed at improving the legal status of convicts, which stimulates their law-abiding behavior [2, p. 309]. This institution is of great social importance, since it gives the opportunity to adjust the amount of criminal repression applied to a convicted person, depending on the achievement of punishment goals or other circumstances [3, p. 5]. The specifics of criminal legal encouragement lies in the state's approving assessment of positive post-criminal behavior [4, p. 11, 16]. Due to the fact that the norms on release from further serving of punishment are also included in the penal and criminal procedure law, this institution has an intersectoral and complex character.

The article discusses ways to improve the application of early release from serving a sentence, as well as the feasibility of optimizing the implementation of other means to encourage law-abiding behavior of convicts serving restriction of liberty as the main punishment.

Parole: statistical aspect and grounds for application

Parole is one of the types of a complex institution of release from further serving of punishment. Parole is the main incentive for convicts' correction and a means of preventing offenses

and crimes in places of deprivation of liberty. It is obvious that parole is a complex intersectoral incentive institution of criminal, criminal procedure and penal law, regulating convicts' legitimate interests for early release from further serving of punishment and aimed at positively stimulating their law-abiding behavior. Issues of its practical implementation and improvement are widely discussed by representatives of not only domestic doctrines of criminal and penal law, but also foreign researchers [5; 6].

According to judicial statistics presented by the Supreme Court of the Russian Federation, in 2016, 122,552 petitions for parole were submitted to the court, with 55,217 (45%) being approved and 52,580 (42%) being rejected. The rest were returned, including due to the fact that they were filed in violation of the mandatory terms of serving the sentence required to submit these materials to the court. In 2021, 69,302 petitions for parole were filed, while the courts granted 29,759 (42.9%) and rejected 26,312 (37.9%) petitions; in 2022, 65,911 petitions for parole were filed, of which 27,002 (40%) were satisfied, and 25,472 (38%) – rejected [7]. Thus, the number of persons released on parole has decreased by 48.9% for the period under consideration, which may be due to the reduction in the prison population, widespread imposition of criminal penalties alternative to imprisonment, and greater demand for the institution of commutation.

Courts address the problem of granting parole to convicts, to whom the unserved part of imprisonment has been commuted to forced labor. In 2020, judicial practice developed an ambiguous approach to understanding Part 3 of Article 79 of the Criminal Code of the Russian Federation in relation to this category of convicts. Some courts determined that these convicts had the right to parole after actually serving a certain part of the entire sentence imposed by the court verdict, and not a new punishment. Other courts considered that the terms for parole had to be counted from the moment the punishment had been replaced with forced labor, i.e. the terms were calculated from the remaining term of the new punishment, and not the punishment imposed by the court verdict. To ensure the unity of judicial practice, paragraph 4.1. of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 introduced by the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 32 of October 28, 2021, states that criminal legislation does not prohibit

parole for convicts serving forced labor, in case it was appointed in accordance with Article 80 of the Criminal Code of the Russian Federation. In this case, the terms established in Article 79 of the Criminal Code of the Russian Federation, upon the actual serving of which conditional early release from serving a sentence is possible, are calculated from the moment of serving forced labor in accordance with Article 80 of the Criminal Code of the Russian Federation, and not the punishment imposed by the court verdict.

It is worth mentioning that the Definition of the Constitutional Court of the Russian Federation No. 2099-O of September 28, 2021 “On refusal to accept for consideration the complaint of citizen Il’ya N. Erekhinskii for violation of his constitutional rights by paragraph “v” of Part 3 of Article 79 and Part 2 of Article 80 of the Criminal Code of the Russian Federation” clarifies the following: having a fairly wide discretion in establishing both conditional and unconditional types of release from punishment, the federal legislator, within the framework of the discretion granted to it, has introduced such regulation, in which the release of a positively characterized convict from further serving of his/her sentence by replacing the remaining part with a milder type of punishment cancels the unserved part of the previous penalty. It is further stated that with the adoption of the resolution on commutation in accordance with Article 80 of the Criminal Code of the Russian Federation, serving of the sentence imposed by the court verdict is terminated, and the punishment chosen as a replacement is subject to execution. Thus, the Constitutional Court of the Russian Federation indicates that the application of the specified substitution of punishment cancels the previously served term, which gave the right to parole.

But at present, this provision of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 of April 21, 2009 does not comply with the norm of Part 3.2 of the Criminal Code of the Russian Federation, introduced by Federal Law No. 200-FZ of June 28, 2022, in which it is noted that the term of punishment, after the actual serving of which parole can be applied to a convict whose unserved part of the penalty has been commuted, is calculated from the beginning of the term of the sentence imposed by the court verdict. It seems that in this case, these changes improve the legal status of convicts and in accordance with Part 1 of Article 10 of the Criminal Code of the Russian Federation are retroactive.

However, after the introduction of Part 3.2. of Article 79 of the Criminal Code of the Russian Federation there may arise certain difficulties, since the term of punishment, after the actual serving of which parole can be applied, will be applied only if terms of the unserved part of imprisonment will be equal to terms of the substitute punishment in the form of forced labor (according to the law, determination of these terms depends on judicial discretion). Currently, such equality of the terms of the substituted and the substitute punishment does not follow from the law.

In addition, for convicts to whom forced labor has been applied in accordance with Article 80 of the Criminal Code of the Russian Federation, the term of application of parole becomes due earlier than the term of application of the incentive institution of punishment substitution. This is due to the fact that the term of punishment for the occurrence of this substitution of punishment is calculated from the moment of serving forced labor.

If the legislator, in order to stimulate convicts’ law-abiding behavior and successful adaptation in society after being released from serving a sentence, introduces the norm regarding “preferential” calculation of the beginning of parole, then why there is no similar mechanism for calculating the beginning of commutation. At the same time, taking into account the principle of consistent and gradual application of incentive measures, a possible term of punishment commutation becomes due earlier than the beginning of parole.

In this regard, in our opinion, it is also necessary to add a provision to Article 80 of the Criminal Code of the Russian Federation similar to the norm of Part 3.2. of Article 79 of the Criminal Code of the Russian Federation in order to establish the same terms of the beginning of parole and punishment substitution for this category of convicts. In this case, a convict serving a forced labor is denied parole, he/she may apply to the court with a petition to replace the unserved part of the penalty with a milder type of punishment in accordance with Part 11 of Article 175 of the Penal Code of the Russian Federation.

It is known that the material basis for the application of norms of the institution of parole is the court’s recognition that a convicted person does not need to serve the whole sentence imposed by the court for his/her correction, and has also compensated for the damage (fully or partially) caused by the crime. It seems appropriate that

even after parole the released person compensates for the damage or otherwise makes up losses caused to the victim. Therefore, it is reasonable to fix the provision in the law that if a convicted person has not compensated for the damage or has not otherwise made up losses for the real harm caused to a victim, then the court imposes such an obligation on the convict. It should be noted that such a norm is fixed in Part 2 of Article 76 of the Criminal Code of the Republic of Armenia. Thus, the court in this case will be obliged to assign such a function to the released person. In addition, it would be reasonable for the court to impose an obligation to find a job on the convicted person, taking into account the possibility of applying Part 5 of Article 73 of the Criminal Code of the Russian Federation.

Control over behavior of a parolee

In accordance with Part 6 of Article 79 of the Criminal Code of the Russian Federation, control over behavior of a person released on parole is carried out by an authorized specialized state body. By Decree of the President of the Russian Federation No. 119 of March 2, 2021 "On amendments to the Regulations on the Federal Penitentiary Service, approved by Decree of the President of the Russian Federation No. 1,314 of October 13, 2004", the function of monitoring parolees was transferred to criminal executive inspections. Nevertheless, after this function was transferred, there appeared problems to apply legal norms concerning the control of parolees. The Federal Penitentiary Service, in order to organize the performance of the assigned function and successfully prevent recidivism, sent an instruction to territorial bodies of the Federal Penitentiary Service for criminal executive inspections No. iskh-011-18643 of March 23, 2021 "Procedure for monitoring behavior of persons released on parole from serving their sentences". Nevertheless, this instruction of the Federal Penitentiary Service does not have the force of law and does not regulate the responsibility of a parolee for violating the duties imposed by the court and violating the requirements specified in the law.

In this regard, it seems appropriate to fix a concept of "malicious evasion from fulfilling the duties assigned to a parolee by the court" in the Penal Code of the Russian Federation. Therefore, Section VIII of the Penal Code of the Russian Federation should be presented in the following wording: "Control over conditionally convicted persons and persons released on parole from serving a sentence", and also sup-

plement this section of the Penal Code of the Russian Federation with Chapter 24.1 "Control over persons released on parole from serving a sentence" stipulating that malicious evasion of the duties imposed by the court on a parolee, which are provided for by Part 7 of Article 79 of the Criminal Code of the Russian Federation, is a repeated failure to fulfill such duties after a specialized state body controlling behavior of a convicted person has issued a written warning about the possibility of canceling parole.

In addition, according to L.I. Razbirina, adjudgement into the wanted list and detention of a parolee who has fled from his/her place of residence and whose whereabouts are unknown should be regulated [8, p. 56]. In this regard, we consider it possible to amend Article 18.1 of the Penal Code of the Russian Federation "Adjudgement into the wanted list and conduct of law enforcement intelligence operations when executing punishments not related to the isolation of convicts from society" by adding parolees to the above list.

Parole for convicts sentenced to life imprisonment

In accordance with Part 5 of Article 79 of the Criminal Code of the Russian Federation, parole is also applied to persons serving a life sentence only after they have served at least 25 years of imprisonment, in the absence of malicious violations of the established procedure for serving a sentence during 3 years previous to parole and the absence of a new grave or especially grave crime committed while serving a life sentence. Although legislation provides for the possibility of parole for persons serving life imprisonment, in reality none of them has been released on parole yet.

After serving such a long sentence, those sentenced to life imprisonment experience apathy and a sharp decrease in aspirations and interests, which leads to their passive attitude to correction. Taking into account their age, they may experience difficulties in social adaptation to the conditions of life in freedom. It seems interesting that in foreign countries, small mandatory deadlines are fixed in legislation for the beginning of parole for those sentenced to life imprisonment [9]. According to K.A. Sych, one of the factors in the formation of prospective motivation of those sentenced to life imprisonment is providing them with the opportunity to transfer to semi-open conditions after serving at least 15 years of life imprisonment, and providing the possibility of parole after serving at

least 20 years of life imprisonment [10, p. 35]. E.N. Kazakova believes that it is enough for this category of convicts to serve no more than 15 years of imprisonment to be granted parole [11, p. 43]. V.A. Utkin and A.P. Detkov note the unjustifiability of non-application of commutation to persons serving life imprisonment [12, p. 68].

Besides, it is worth mentioning that, according to Part 4 of Article 58 of the Criminal Code of the Republic of Belarus, a person sentenced to life imprisonment, or a person to whom the death penalty has been commuted to life imprisonment, after serving twenty years of imprisonment can be granted the substitution of further serving of life imprisonment by imprisonment for a certain term, but not more than five years. Convict's behavior, his health condition or age are taken into account.

In this regard, it is important to fix a provision in penal legislation that a person sentenced to life imprisonment, after serving 15 years of the sentence, may be transferred from a correctional facility for convicts serving life imprisonment to an isolated area functioning as a strict regime correctional facility at the same facility, and then after five years – from an isolated area functioning as a strict regime correctional facility at the same facility to an isolated area functioning as a panel settlement. So, parole, in our opinion, should be applied only to those convicts of this category who have been transferred to a panel settlement and served at least five years of imprisonment there. In addition, it is advisable to provide the possibility of applying the substitution of punishment in the form of deprivation of liberty with a milder type of punishment in the form of forced labor for a period of five years, but only after they have served at least three years of imprisonment in an isolated area functioning as a panel settlement. Thus, social adaptation to the conditions of life in society will be carried out in relation to those sentenced to life imprisonment through the consistent and gradual application of incentive norms and institutions, which will contribute to the effective corrective effect and prevention of crimes, as well as offenses on their part after parole from serving their sentence.

It also seems necessary to regulate the implementation of electronic supervision of persons released on parole, especially in relation to those sentenced to life imprisonment. Therefore, in order to reduce recidivism rates among this category of citizens, it seems sensible to specify in

Part 2 of Article 79 of the Criminal Code of the Russian Federation that the court is entitled to impose on a parolee the fulfillment of obligations to comply with the conditions of monitoring him/her with the help of electronic and other technical means of supervision and control during the remaining unserved part of the sentence for a period of 2 months to one year inclusive [13, p. 282].

Commutation: statistical aspect

Commutation is one of the important incentive institutions that promote law-abiding behavior of convicts. This institution objectively helps convicts in social adaptation to the conditions of life in society and performs an important task of restoring and maintaining socially useful ties. Moreover, this substitution of punishment is quite popular in practice. In 2016, 41,183 petitions were sent to the court to replace the unserved part of the sentence of imprisonment with a milder type of punishment, of which 13,411 petitions (32% of the total number of petitions) were satisfied by the courts, while 19,441 (47%) – rejected. Accordingly, in 2021, 62,997 petitions were filed, of which 21,487 petitions (34.1%) were satisfied by the courts, while 25,646 (40.7%) – rejected. And in 2022, 59,111 petitions were sent to replace the unserved part of the sentence in the form of imprisonment with a milder type of punishment (except forced labor), of which 18,873 (31%) petitions were satisfied by the courts and 25,646 (40.7%) – rejected. At the same time, in 2022, respectively, 5,053 petitions were sent to the courts to replace the unserved part of the penalty with a milder type of punishment in the form of forced labor, of which 2,332 (46%) petitions were satisfied and 1,314 (26%) – rejected. Thus, the number of persons to whom commutation has been applied has increased by 58% over seven years, which is probably due to the fact that many convicts apply to the court with a petition for release in accordance with Article 80 of the Criminal Code of the Russian Federation, since the formal basis for possible replacement of the unserved sentence with a milder type of punishment in the form of forced labor, according to Part 2 of Article 80 of the Criminal Code of the Russian Federation, becomes due earlier than the term of possible parole.

Conditional nature of applying commutation

In accordance with the current legislative regulation, the replacement of the unserved part of the penalty with a milder type of punishment has an unconditional, final character. However, it should be noted that some scientists point to the

need to introduce a conditional nature of the application of punishment substitution [14].

According to Part 3 of Article 80 of the Criminal Code of the Russian Federation and paragraph 4 of the Resolution of the Plenum of the Supreme Court No. 8 of April 21, 2009 (as amended October 28, 2021) "On judicial practice of conditional early release from serving a sentence, replacement of the unserved part of the punishment with a milder type of punishment" when determining the term or amount of the substitute punishment, the court takes into account that it cannot be greater than the maximum the term or amount of punishment provided for by the General Part of the Criminal Code of the Russian Federation for this type of punishment (with the exception of forced labor) and the upper limit of the substitute punishment should be established taking into account the provisions of Part 1 of Article 71 of the Criminal Code of the Russian Federation. Accordingly, the court may replace the unserved part of the sentence according to the ratio of terms at its discretion. At the same time, as a rule, the courts replace the unserved part of the punishment at the rate of one day for one day. So, in case the unserved part of the penalty is substituted for a convict with a milder type of punishment in the form of 2 years of correctional labor and he/she maliciously evades serving the sentence, then, in accordance with Part 4 of Article 50 of the Criminal Code of the Russian Federation, the punishment in the form of correctional labor is replaced with a more severe type of punishment, for example, in the form of imprisonment at the rate of one day of imprisonment for three days of correctional labor. Thus, 2 years of correctional labor for the convicted person will be replaced by 8 months of imprisonment, which leads to the fact that he finds himself in a "preferential" position due to this recalculation of the sentence.

It is obvious that such a decision does not promote law-abiding behavior of convicts. In this regard, it is proposed to introduce a conditional nature of applying commutation. With such legal regulation, in case a convicted person maliciously evades serving a substitute sentence (for example, in the form of correctional labor), the court, on the recommendation of the body executing punishment, may decide to cancel the specified substitution of punishment and the execution of the remaining part of the sentence not served by the court verdict.

For example, two years of imprisonment were replaced by two years of correctional labor for a convicted person in accordance with Article 80 of the Criminal Code of the Russian Federation. He served one year of correctional labor, and then began to maliciously evade serving the sentence. In case of conditional application of replacement of the unserved part of the sentence with a milder type of punishment, one year of correctional labor served by the convicted person must be transferred to imprisonment at the rate of one day of imprisonment for three days of correctional labor, i.e. one year of correctional labor served by the convicted person will be equal to four months of imprisonment. Then it is necessary to deduct received four months from two years of imprisonment, which were replaced by two years of correctional labor. Thus, the convicted person will have to serve one year and eight months of imprisonment.

It seems that this model of legal regulation corresponds to the principle of justice and will help prevent the commission of malicious violations by convicts who, after applying Article 80 of the Criminal Code of the Russian Federation against them, maliciously evade serving a substitute sentence.

Commutation in relation to minors

It should be noted that Article 93 of the Criminal Code of the Russian Federation stipulates a conditional early release from serving a sentence for minors sentenced to imprisonment. Nevertheless, there is no separate provision for replacing the unserved part of the penalty with a milder type of punishment for this category of convicts in criminal legislation.

Sub-paragraph 2 of paragraph 41 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 1 of February 1, 2011 "On judicial practice of the application of legislation regulating the specifics of criminal liability and punishment of minors" states that the provisions of Article 80 of the Criminal Code of the Russian Federation may be applied to persons under the age of 18. It seems more reasonable to include in the Criminal Code of the Russian Federation a separate article regulating commutation in relation to minors, which will correspond to Part 1 of Article 93 of the Criminal Code of the Russian Federation. This article will stipulate that if a minor has committed crimes of small and medium gravity or a serious crime, commutation can be applied to him/her after serving at least one-third of the

sentence, a particularly serious crime – after serving at least half of the sentence (on parole – at least two-thirds of the term punishments). Such a formal basis for punishment substitution will correspond to the legitimate and justified application of this incentive institution and contribute to improving effectiveness of correctional impact on these convicts.

Positive stimulation of law-abiding behavior of convicts serving sentences in the form of restriction of freedom

An important feature of penal legislation is the existence of norms providing for incentive measures applied to convicts serving restriction of liberty. According to the statistics of the Federal Penitentiary Service, in 2018, only 515 persons sentenced to restriction of freedom were given incentives, which is 1.34% of the total number of persons sentenced to restriction of freedom registered with criminal executive inspections. Similar figures were recorded in 2019: 549 convicts (1.41%); in 2020 – 601 convicts (1.56%); and in 2021 – 590 (1.6 %) [7].

At the same time, according to the statistics of the Federal Penitentiary Service, in 2018, 23,541 persons sentenced to restriction of liberty violated the order and conditions of serving a sentence, which is 61.35% of the total number of convicts in this category; in 2019 – 24,825 convicts (64.04%); in 2020 – 24,343 convicts (63.13%); and in 2021 – 24,014 convicts (64.95%). In addition, in 2018, 22,412 persons sentenced to restriction of liberty had a warning or an official warning; in 2019 – 23,536 convicts, in 2020 – 23,143 convicts, in 2021 – 22,795 convicts [7]. Thus, there is an imbalance in the application of measures of incentives and penalties to this category of convicts. In this regard, it may be necessary to determine the ratio of the volume of incentives and penalties applied to these convicts, which will contribute to increasing effectiveness of correctional impact on them.

Besides, in order to promote law-abiding behavior of convicts serving sentences in the form of restriction of liberty as the main punishment and to increase the amount of incentive measures applied to them, it is rational to provide for them the possibility of conditional early release from serving their sentence. On the basis of Part 1 of Article 74 of the Criminal Code of the Russian Federation, the court is entitled to apply to a conditionally convicted person an incentive norm in the form of cancellation of a suspended sentence and removal from a criminal record,

but there are no such incentives for early release for convicts serving restriction of liberty. Meanwhile, conditionally convicted people and those sentenced to restriction of liberty are almost in the same conditions. The legal restrictions and obligations fixed in Part 5 of Article 73 of the Criminal Code of the Russian Federation in relation to a conditionally convicted person and in Part 1 of Article 53 of the Criminal Code in relation to those sentenced to restriction of liberty are similar in their nature and scope [15, p. 45].

In this context, the research conducted by foreign specialists is of interest. Thus, a correlation was established between convicts' behavior and the presence of a powerful and significant incentive in the form of parole. When such stimuli are absent or eliminated, the desire for correction decreases and the level of deviant behavior increases [16].

In addition, penal legislation contains a principle of rational application of measures of coercion, means of correction of convicts and stimulation of their law-abiding behavior. According to the conducted research, more than half of the employees of criminal executive inspections (67%) support the idea of applying parole to convicts serving restriction of freedom as the main type of punishment [9, p. 206]. It is also important to note that in the Republic of Belarus, the institution of conditional early release is applied to persons serving sentences in the form of deprivation of the right to hold certain positions or engage in certain activities, forced labor, restrictions on military service, restrictions on freedom or imprisonment [17, p. 203].

It would be logical to apply parole to convicts serving restriction of liberty as the main type of punishment after they have actually served at least half of the sentence imposed by the court, and to minors – at least one third of the punishment period, due to their individual psychological characteristics of personality development.

By the way, in accordance with criminal legislation of the Republic of Belarus and the Republic of Uzbekistan, the replacement of the unserved part of the penalty with a milder type of punishment is applied to those sentenced to restriction of liberty. In order to positively stimulate law-abiding behavior of convicts serving restriction of liberty and increase the volume of incentive measures applied to them, it also seems appropriate to fix the possibility of applying commutation to this category of convicts in domestic criminal legislation.

Conclusions

Thus, it should be concluded that the improvement of criminal and penal legislation in the field of legal regulation of parole and commutation, as well as positive stimulation of law-abiding behavior of persons serving sentences in the form of restriction of liberty, will enhance effectiveness of correctional impact on convicts and prevent crimes and offenses on their part. Based on our research, we can identify the following ways to improve the application of early release from serving a sentence:

- to fix in Article 80 of the Criminal Code of the Russian Federation a provision similar to the norm of Part 3.2. of Article 79 of the Criminal Code of the Russian Federation for establishing the same terms for the beginning of parole and commutation. In this case, a person sentenced to forced labor, if he/she is refused parole, may apply to the court with a petition to replace the unserved part of the penalty with a milder type of punishment in accordance with Part 11 of Article 175 of the Criminal Code of the Russian Federation;

- to provide in the law that if a convicted person released on parole has not compensated for the damage or has not otherwise made amends for the real harm caused to the victim, then the court imposes such an obligation on this convicted person;

- it seems appropriate to fix the concept “malicious evasion from fulfilling the duties assigned to a parolee by the court” in the Penal Code of the Russian Federation. Therefore, Section VIII of the Criminal Code of the Russian Federation should be presented in the following wording: “Control over conditionally convicted persons and persons released on parole from serving a sentence”, and also supplement this section of Chapter 24.1 “Control over persons released on parole from serving a sentence”. In this chapter, it is necessary to regulate that malicious evasion from fulfilling the duties assigned by the court to a parolee, which are provided for in Part 7 of Article 79 of the Criminal Code of the Russian Federation, is a repeated failure to fulfill such duties after a specialized state body controlling behavior of a convicted person issues a written warning about the possibility of canceling parole;

- in order to resolve the issue of adjudgement into the wanted list and detention of a parolee, who has disappeared from his/her place of residence and whose whereabouts are unknown, we consider it possible to amend Article 18.1 of the Penal Code of the Russian Federation “Ad-

judgement into the wanted list and conduct of law enforcement intelligence operations when executing punishments not related to the isolation of convicts from society” by adding parolees to the above list;

- for successful social adaptation of those sentenced to life imprisonment to living conditions in the society, it seems justified to provide a mechanism based on the consistent and gradual application of incentive norms and institutions. Thus, it is proposed that a person sentenced to life imprisonment, after serving 15 years of the sentence, may be transferred from a correctional facility for convicts serving life imprisonment to an isolated area functioning as a strict regime correctional facility at the same facility, and then after five years – from an isolated area functioning as a strict regime correctional facility at the same facility to an isolated area functioning as a panel settlement. We believe it reasonable to substitute the penalty in the form of imprisonment with a milder form of punishment in the form of forced labor for a five-year period, but only after a convict has been held in the isolated area functioning as a panel settlement for at least three years. Accordingly, parole, in our opinion, should be applied only to those convicts of this category who have been transferred to the isolated area functioning as a panel settlement and served at least five years of imprisonment there;

- in order to reduce the level of recidivism among parolees, it seems appropriate to indicate in Part 2 of Article 79 of the Criminal Code of the Russian Federation that the court has the right to assign to a parolee the fulfillment of obligations to comply with the conditions of monitoring him/her with the help of electronic and other technical means of supervision and control during the remaining unserved part of the sentence for a period of two months to one year inclusive;

- it is proposed to introduce a conditional nature of the application of the replacement of the unserved part of the penalty with a milder type of punishment. With such legal regulation, in case of malicious evasion of the convicted person from serving a substitute sentence (for example, in the form of correctional labor) the court, on the recommendation of the body executing the penalty, may decide to cancel the specified substitution of punishment and impose the execution of the unserved part of the sentence imposed by the court with credit for time served according to the norms stipulated by Part 1 of Article 71 of the Criminal Code of the Russian Federation;

– to include in the Criminal Code of the Russian Federation a separate article regulating commutation in relation to minors. This article should stipulate that when committing crimes of small and medium gravity or a serious crime, the replacement of the unserved part of the penalty with a milder type of punishment should be applied after the convicted person has served at least one third of the sentence, when committing a particularly serious crime – after

– serving at least half of the sentence (on parole – at least two three thirds of the sentence);

– in order to positively stimulate law-abiding behavior of convicts sentenced to restriction of freedom and increase the scope of application of incentive measures to them, it seems advisable to provide the possibility of applying parole and commutation to these convicts in domestic criminal legislation.

REFERENCES

1. Kurganov S.I. *Naznachenie nakazaniya i osvobozhdenie ot nakazaniya: kurs lektsii* [Sentencing and release from punishment: a course of lectures]. Moscow, 2014. 174 p.
2. Babayan S.L. Release from punishment: problems and ways of improvement. *Ugolovno-isspolnitel'noe pravo = Penal Law*, 2018, vol. 13(1–4), no. 3, pp. 309–314. (In Russ.).
3. Yakovleva L.V. *Institut osvobozhdeniya ot nakazaniya v rossiiskom prave: avtoreferat dis. ... d-ra yurid. nauk* [Institute of release from punishment in Russian law: Doctor of Sciences (Law) dissertation abstract]. Moscow, 2003. 54 p.
4. Tarkhanov I.A. *Pooshchrenie pozitivnogo povedeniya v ugolovnom prave* [Encouragement of positive behavior in criminal law]. Kazan, 2001. 329 p.
5. Rhine E.E., Petersilia J, Reitz K.R. *The future of parole release. Crime and Justice*, 2017, vol. 46, pp. 279–338.
6. Doyle C. *Supervised release (parole): an overview of federal law*. Washington, 2021. 38 p.
7. *Sudebnaya statistika RF* [Judicial statistics]. Available at: <https://stat.xn----7sbqk8achja.xn--p1ai/stats/ug/t/15/s/13> (accessed June 21, 2023).
8. Razbirina L.I. Problems in the implementation of control over parolees released from punishment on parole. *Vestnik Kuzbasskogo instituta = Bulletin of the Kuzbass Institute*, 2021, no. 3 (48), pp. 49–57. (In Russ.).
9. Vanina A.A. Features of the application and execution of life imprisonment in Russia and foreign countries. *Byulleten' nauki i praktiki = Bulletin of Science and Practice*, 2018, no. 1, pp. 297–303. (In Russ.).
10. Sych K.A. Perspective motivation of convicts serving life imprisonment as an element of a progressive system of execution of punishments. *Vedomosti ugolovno-isspolnitel'noi sistemy = News of the Penal System*, 2012, no. 7(122), pp. 31–36. (In Russ.).
11. Kazakova E.N. Conditional early release from serving life imprisonment: problems and ways to solve them. *Vestnik Vladimirskogo yuridicheskogo instituta = Bulletin of Vladimir Law Institute*, 2008, no. 3, pp. 40–49. (In Russ.).
12. Utkin V.A., Detkov A.P. *Pozhiznennoe lishenie svobody: uchebnoe posobie* [Life imprisonment: textbook]. Tomsk, 1997. 136 p.
13. Babayan S.L. *Pooshchritel'nye instituty ugolovno-isspolnitel'nogo prava (teoriya i praktika primeneniya): dis. ... d-ra yurid. nauk* [Incentive institutes of penal law (theory and practice of application): Doctor of Sciences (Law) dissertation]. Moscow, 2014. 592 p.
14. Urusov A.A. Problems of criminal law regulation of the unserved part of the sentence with a milder type of punishment. *Vestnik Kuzbasskogo instituta = Bulletin of the Kuzbass Institute*, 2020, no. 2 (43), pp. 122–133. (In Russ.).
15. Babayan S.L., Kokhman D.V. Improving disciplinary measures against persons sentenced to restriction of liberty and suspended sentence. *Penitentsiarnaya nauka = Penitentiary Science*, 2023, vol. 17, no. 1(61), pp. 39–51. (In Russ.).
16. Kuziemko I. *Going off parole: how the elimination of discretionary prison release affects the social cost of crime*. Cambridge, 2007. 57 p.
17. Tit A.A. The legal nature of parole in the criminal legislation of the Russian Federation and the Republic of Belarus. *Vestnik Moskovskogo universiteta MVD Rossii = Vestnik of Moscow University of the Ministry of Internal Affairs of Russia*, 2017, no. 5, pp. 202–206. (In Russ.).

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