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## PRECONDITIONS FOR A LENIENT TYPE OF PUNISHMENT ON PAROLE INTERNATIONAL EXPERIENCE

The article describes the international experience of the type of punishment and restraint for the early release of prisoners. The experience of various world powers is considered. Who practice early release, commutation of sentences in general. International experience with criminal early release shows different practices. Let's consider some of them, and how it is applied or sees its reflection in Kazakhstan practice. They also talk about the prospect of parole, which is the most effective incentive for a convict to positive behavior in places of detention, since it is impossible to achieve correction without encouraging measures. Every convicted person, after sentencing and arriving at the place of serving the sentence, knows when he must be released from places of imprisonment after the expiration of the sentence. At the same time, he knows not only the year, month and day, but even the hours of such release, which is directly provided for by law. Knows the procedure for parole, which allows you to be released much earlier than the end of the sentence established by the court, subject to proper behavior.

**Key words:** criminal early release, code, criminal code, international experience, mitigation.

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### Халықаралық тәжірибе бойынша жазаның жеңіл түрінің алғышарттары

Мақалада жазасын өтеушілерді мерзімінен бұрын босату үшін жазалау мен шектеу түрінің халықаралық тәжірибесі сипатталған. Әр түрлі әлемдік державалардың тәжірибесі қарастырылады. Жалпы жазаны мерзімінен бұрын босатуды, жазаны жеңілдетуді кім қолданады. Қылмыстық мерзімінен бұрын босатудың халықаралық тәжірибесі әртүрлі тәжірибелерді көрсетеді. Олардың кейбіреулерін және оның қазақстандық тәжірибеде қалай қолданылатынын немесе оның көрінісін қарастырайық. Олар сотталушыны қамау орындарында оң мінез-құлыққа итермелейтін ең тиімді ынталандыру болып табылатын шартты түрде мерзімінен бұрын босату перспективасы туралы айтады, өйткені көтермелеу шараларынсыз түзетуге қол жеткізу мүмкін емес. Әрбір сотталған адам, үкім шығарғаннан кейін және жазасын өтейтін жерге келгеннен кейін, жаза мерзімі аяқталғаннан кейін бас бостандығынан айыру орындарынан қашан босатылуы керектігін біледі. Сонымен бірге, ол заңмен тікелей қарастырылған жыл, ай мен күнді ғана емес, сонымен қатар осындай босату сағаттарын да біледі. Шартты түрде босату тәртібін біледі, бұл сотта белгіленген тәртіптегі жаза мерзімінен әлдеқайда ертерек босатылуға мүмкіндік береді, өзін-өзі ұстай алады.

**Түйін сөздер:** қылмыстық мерзімінен бұрын босату, кодекс, қылмыстық кодекс, халықаралық тәжірибе, жеңілдету.

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### Предпосылки для более легкого вида наказания в соответствии с международной практикой

В статье описан международный опыт применения видов наказания и меры пресечения к досрочному освобождению заключенных. Рассмотрен опыт различных мировых держав. Сейчас практикуют досрочное освобождение, смягчение наказания в целом. Международный опыт досрочного освобождения преступников показывает разные практики. Давайте рассмотрим

некоторые из них и то, как они применяются или видят свое отражение в казахстанской практике. Также говорится о перспективе условно-досрочного освобождения, что является наиболее эффективным стимулом для осужденного к позитивному поведению в местах лишения свободы, поскольку без поощрительных мер добиться исправления невозможно. Каждый осужденный после вынесения приговора и по прибытии к месту отбывания наказания знает, когда он должен быть освобожден из мест лишения свободы по истечении срока наказания. При этом он знает не только год, месяц и день, но даже часы такого освобождения, что прямо предусмотрено законом. Знает процедуру условно-досрочного освобождения, которая позволяет освободить вас намного раньше окончания срока наказания, установленного судом, при условии надлежащего поведения.

**Ключевые слова:** досрочное освобождение от уголовного преследования, кодекс, уголовный кодекс, международный опыт, смягчение наказания.

## Introduction

Each intricate plot process has its own idea, order of action and its second side of the coin. So from generation to generation passed on legal acts, solutions to the problem, and its institutional components.

One such situational legal measure is the criminal award measure and its early release process.

International experience with criminal early release shows different practices. Let's consider some of them, and how it is applied or sees its reflection in Kazakhstani practice.

By means of coercion it is impossible to maintain order in the correctional institution, to achieve the main goal of criminal punishment – to correct the convicted person. “Correction is such a change in a person’s behavior based on positive shifts in his consciousness, life experience, skills and culture, which would ensure his law-abiding life after release. That is why the system of coercive measures cannot exist without a well-thought-out and effective system of measures to encourage convicts while serving their sentences”. (Rossiyskiy Prison Zhurnal / No. 2 -2009 – issues of parole “actual problems of conditional early release of convicts from criminal punishment” as amended and supplemented by Andrey Mayakov, acting Deputy Chairman of the Committee for Civil Rights). The prospect of parole is for a convict the most effective stimulus for positive behavior in places of deprivation of liberty, since it is impossible to achieve correction without encouraging measures. Every convicted person, after sentencing and arriving at the place of serving the sentence, knows when he must be released from places of imprisonment after the expiration of the sentence. At the same time, he knows not only the year, month and day, but even the hours of such release, which is directly provided for by law. Knows the procedure for parole, which allows you to be released much earlier than the end of the term

of punishment established by the court, subject to proper behavior.

## Legal basis

International standards.

In the international standards adopted within the UN and the Council of Europe and must be observed by the participating States, there is a provision on granting convicts the opportunity to be released before the end of the sentence established by the court, which is important in the development of this institution of early release from punishment, especially in relation to vulnerable categories of prisoners. ...

Thus, the United Nations Standard Minimum Rules for Non-custodial Measures [Tokyo Rules], adopted by General Assembly resolution 45/110 of 14 December 1990, establish fundamental objectives, including (1.1), a set of basic principles to promote the use of non-custodial measures, as well as minimum guarantees for persons to whom alternatives to imprisonment apply, obliging

In accordance with rules (1.5), Member States are obliged to develop non-custodial measures within their legal systems in order to provide other options, thereby reducing the use of imprisonment, and with a view to rationalizing criminal justice policies, taking into account the need to respect human rights, the requirements of social justice and the needs of the offender in relation to the return to normal life in society.

Rule (3.2) – The choice of a non-custodial measure is based on an assessment of established criteria with respect to both the nature and severity of the offense, as well as the personality, biography of the offender, the purpose of the sentence and the rights of the victims.

Rule (8.1) states – The Judicial Authority, having a choice of non-custodial measures at its disposal, should take into account the offender’s

needs in terms of his return to normal life in society, the interests of protecting the community and the interests of the victim in making its decision, which should be consulted where appropriate.

Under rule (8.2), the sentencing authorities may provide for sanctions in cases, which include (h) conditional release from custody and judicial review.

In (9.1), the Competent Authority has a wide range of post-conviction alternatives to avoid imprisonment and to assist offenders to quickly return to normal life in society.

In this part (9.2), the post-conviction provisions may include sanctions, including (c) various forms of parole; (d) shortening the time limit; Rule (9.4) Any kind of release from custody for the implementation of a non-custodial program shall be considered as early as possible.

Rule (11.2) may provide for early termination of the measure applied if it has had a beneficial effect on the offender.

Rule (12.2) states that the conditions to be met should be practical, precise and as few as possible, and should be aimed at reducing the likelihood of the offender returning to criminal activity and increasing the likelihood of the offender returning to normal life in society, taking into account the interests of the victim.

The post-conviction provisions in the listed Tokyo Rules include parole and parole programs, parole and judicial review, which are de facto forms of parole and are considered one of the most effective ways to promote the social reintegration of prisoners by ensuring their systematic and gradual return to society, which must be accompanied by adequate support from institutions responsible for assisting former prisoners during their release (for example, probation services), other social institutions, families and the public ... Parole means the early release of convicted prisoners on individual terms that must be respected during the post-release period. Parole is always accompanied by a general condition that the prisoner must refrain from unlawful behavior. However, this is far from the only condition imposed. Release can only be defined as "parole" if the prisoner may also be required to comply with additional conditions to the extent that they are appropriate and necessary for his / her successful reintegration.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 17.1 subparagraph c aims at avoiding the imprisonment

of minors, except where when there is no other appropriate measure that would ensure the safety of the community.

Rule 19.1 The placement of a juvenile in a correctional institution should always be a last resort, applied for the minimum period necessary. This is especially true for minors who are subject to negative influences. In addition, the negative consequences associated not only with imprisonment, but also with isolation from society, affect the minor to a greater extent than the adult, since they affect the minor at the initial stage of his development.

The purpose of Rule 19 is to limit detention in prisons in two respects: quantitative ("last resort") and temporal ("minimum length"). A juvenile offender should not be imprisoned unless other appropriate measures are in place. Therefore, this rule calls for that in cases where a juvenile should be placed in a correctional institution, imprisonment should be limited to the minimum necessary period and at the same time special organizational measures should be taken to support the juvenile and various types of offenders, offenses should be taken into account. and institutions.

Rule 28.1 applies to minors. Conditional release from a correctional institution is applied by the relevant authorities on the widest possible scale and at the earliest possible date.

Rule 28.2 Juveniles on parole from a correctional institution are assisted and supervised by an appropriate authority and must be supported by the community. Where circumstances permit, preference should be given to conditional release rather than forcing the young offender to serve his full sentence. If there is evidence of a satisfactory re-education process, even offenders who were deemed dangerous at the time of their admission to a correctional facility can be conditionally released, if circumstances permit. Similar to the imposition of a probationary period, such release may be conditional on the fulfillment of conditions imposed by the relevant authorities for the period specified in the decision, for example, conditions for the offender's "good behavior", participation in community activities, living in a reduced security facility, etc.

- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), adopted by General Assembly resolution 65/229 of 21 December 2010, for women prisoners serving punishment, in rule 41, contains a gender-sensitive risk assessment and classification of prisoners: (a) Consider generally the lesser danger women

prisoners pose to those around them, as well as the particularly adverse impact that strict security measures and increased levels of isolation can render to female prisoners; (c) Ensure that women's sentencing plans include rehabilitation programs and services that take into account their specific gender-specific needs.

Rule 46 requires prison administrations, in collaboration with parole and welfare services, local community groups and non-governmental organizations, to develop and implement comprehensive pre- and post-release reintegration programs that take into account the specific gender-specific needs of women.

In accordance with Rule 56, the relevant authorities recognize that women are at particular risk of abuse during pre-trial detention and take appropriate policy and practice measures to ensure the safety of women during this period.

Rule 57 provides that legal systems of member states develop gender-sensitive options for replacing the criminal sentence of imprisonment with other forms of correction, and alternatives to pre-trial detention and punishment by court, taking into account the history of victimization. many women offenders and their care responsibilities.

Rule 58 provides that, as appropriate and possible, alternatives to women who have committed offenses, such as measures to replace the criminal sentence of imprisonment with other forms of remedial action, and alternatives to pre-trial detention and imposition of verdict by the court.

Rule 61 provides that courts, when sentencing women offenders, have the right to take into account extenuating circumstances such as the absence of a criminal record and the relatively harmless nature and nature of the wrongful act, taking into account the women's caregiving responsibilities and their usual behavior, and action is taken to improve the implementation of gender-sensitive, stress-sensitive, women-only drug and substance abuse treatment programs in communities and women's access to such treatment in order to prevent crime, and to replace the criminal sentence of imprisonment with other forms of correctional impact and development of alternatives to court sentencing.

Rule 63- When deciding on parole, the care responsibilities of women prisoners are taken into account, as well as their special needs related to social reintegration.

Rule 64 – As far as possible and appropriate, preference shall be given to the non-custodial punishment of pregnant women and women with dependent children, with the issue of imposition of

a custodial sentence being considered if the crime is serious or violent or if a woman poses a constant danger to society, taking into account the best interests of the child or children and the organization of appropriate care for such children.

Legislation of the Republic of Kazakhstan.

Criminal Code of the Republic of Kazakhstan:

Article 72. Conditional early release from serving a sentence provides for conditionally early release from serving a sentence of persons serving a restriction of liberty or imprisonment, after the actual serving of the terms specified in parts three, four and five of this article, if the court recognizes that that for its correction it does not need full serving of the assigned punishment, in case of full compensation for the damage caused by the crime, and the absence of any malicious violations of the established procedure and serving the sentence, with the establishment of probationary control during the remaining unserved part of the sentence by the court according to the rules of part two article 44 of the Criminal Code. At the same time, the terms of the convicted person's actual serving of the sentence have been established, giving rise to conditional early release, depending on the category of the severity of the crime committed.

At the same time, this article of the criminal law provides for the vulnerable categories of those sentenced to imprisonment for reduced terms of actual serving of the sentence for the application of parole.

It should be noted that parole can be applied to pregnant women, women with young children, men raising young children alone, women aged fifty-eight and over, men aged sixty-three and over the years, invalids of the first or second group after the actual departure:

- not less than one fourth of the sentence imposed by the court for a crime of little or medium gravity;

- at least one third of the sentence imposed by the court for a serious crime;

- not less than half of the term of punishment imposed by the court for an especially grave crime not associated with encroachment on human life, as well as if the previously applied parole was canceled on the grounds provided for in paragraphs 1) and 2) of part seven of this article;

- not less than two-thirds of the sentence imposed by the court for an especially grave crime involving encroachment on human life, or crimes provided for in paragraphs 3) and 5) of part three of Article 120 and paragraphs 3) and 5) of part three of Article 121 of this Code, and also if the previously applied conditional early release was canceled on

the grounds provided for in paragraph 3) of part seven of this article;

- not less than one fourth of the term of punishment assigned for a grave crime, or not less than one third of the term of punishment assigned for an especially grave crime, if the convicted person fulfills all the conditions of the procedural agreement.

The term of imprisonment actually served by the convicted person cannot be less than six months.

A person serving a life imprisonment imposed by the court may be released on parole if the court recognizes that he does not need to continue serving this punishment and has actually served at least twenty-five years of imprisonment. If a person serving a life imprisonment appointed by the court has fulfilled all the conditions of the procedural agreement, he may be released on parole after actually serving at least fifteen years of imprisonment.

Article 73. Replacing the unserved part of the punishment with a more lenient type of punishment or reducing the term of the imposed punishment provides that a person serving imprisonment for crimes of minor, medium gravity or serious crimes, in the event of full compensation for the damage caused by the crime, or the absence of malicious

violations of the established order of serving the sentence, the remaining unserved part of the sentence may be replaced by the court with a milder type of punishment.

At the same time, the terms of the unserved part of the punishment have been established, which allow, depending on the category of the crime, to make a replacement.

Also, the law allows, when replacing the unserved part of the sentence, the court choose a fine at the rate of one monthly calculation index for four days of imprisonment or restriction of liberty at the rate of one day of restriction of liberty for one day of imprisonment. The condition for replacing with a fine is full compensation for the damage caused by the crime.

Thus, a person serving imprisonment for crimes of minor, medium gravity, grave or especially grave crimes, if during the period of serving the sentence, he contributed to the disclosure and investigation of crimes committed by a criminal group, or fulfilled all the conditions of the procedural agreement, the remaining unserved part punishment may be reduced by a court of no more than half.

Therefore, from the above, we see that the Criminal Procedure Code of the Republic of Kazakhstan provides for early release.

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The Criminal Code of the Republic of Kazakhstan.