

## COMPARATION OF CONDITIONAL RELEASE FROM IMPRISONMENT IN HUNGARY AND THE SLOVAK REPUBLIC\*

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Every modern criminal code also regulates the institute of conditional release from imprisonment. Many criminals with undisturbed social ties are also able to remedy themselves by serving a shorter sentence. Institute of conditional release from imprisonment is manifestation of criminal policy of each country and is also important for combating overcrowding of prisons.

**Keywords:** *conditional release, probationary period, reintegration, prison overcrowding, electronic monitoring*

Minden modern büntető törvénykönyv a feltételes szabadon bocsátás intézményét is szabályozza. Az elítéltek egy része a rövidebb tartamú szabadságvesztés-büntetés végrehajtásával is képes reintegrálódni. A büntetés-végrehajtási intézetből való feltételes szabadon bocsátás intézménye az egyes országok büntetőpolitikájának megnyilvánulása, és szintén fontos a börtönök túlszűfolttsága elleni küzdelemben.

**Kulcsszavak:** *feltételes szabadon bocsátás, próbaidő, reintegráció, börtönök túlszűfolttsága, reintegrációs őrizet*

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## **Introducing**

The aim of this study is to analyze and to compare legal conditions of conditional release from imprisonment in Hungary and the Slovak Republic. Legislation dealing with conditional release from imprisonment always depends on criminal policy of the country and are related to realistic conditions for the execution of imprisonment, for example prison overcrowding. The publication contains information about conditions of conditional release and the court procedure. The authors examine two different countries and their legislation in selected materia.

### **1. Conditional release in the Slovak Republic**

The institute of conditional release from imprisonment in the Slovak Republic is regulated in Sections 66 to 68 of the Criminal Code. The essence of this institute is to decrease the imposed unconditional sentence of imprisonment, because the sentenced person is released earlier and the rest of his sentence is forgiven on condition that the sentenced in probationary period proves that he is able to lead a proper life.

The reduced effect of imprisonment is therefore accompanied by the threat of continuing if the sentenced person fails to comply with the conditions attached to the conditional release from imprisonment. Conditional release from imprisonment can also be considered as an important educational tool.

Conditional release from imprisonment is a facultative institute where the court can decide on its application. Sentenced has no legal entitlement to be conditional released, he can only demand to be released. On conditional release, cumulative material and formal conditions must be met.

#### *1.1. Conditions*

The material conditions are that:

- a) the sentenced in prison has performed his duties and he has shown improvement in behavior and
- b) the sentenced person can be expected to lead a proper life in the future.<sup>1</sup>

From a practical point of view, the examination of material conditions consists of the evaluation of prison committee, which members are mainly psychologists and pedagogues. However, this evaluation has only a recommendation character and is not binding on the court. Important is the sentenced attitude to his failure and committing the criminal offense, whether he regrets it, as well as following the regime in the prison, whether he is involved in cultural-social activities, sport activities, whether he is involved in work, if he contacts with family members, through visits, by phone, or by email and so on. It is particularly positive when the sentenced was disciplinarily rewarded for exemplary behavior, or an extraordinary act

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<sup>1</sup> Sergej ROMZA: *S. Alternatívne spôsoby výkonu trestov*. Košice, Univerzita Pavla Jozefa Šafárika v Košiciach, 2018, 211–215.

of rescue, or assistance to another sentenced or prison guard. The decision shall also count with the nature of the committed criminal offense and the character of prison facility.

The formal conditions consist in the need to serve a certain part of the imprisonment by its duration. Conditional release may not be requested at any time, but only after the statutory part of the sentence has been served. The length of the sentence served usually depends on the category of the criminal offense committed by the criminal.

If the criminal was sentenced for misdemeanor, he may apply for conditional release after serving *half of the unconditional imprisonment* imposed.

If the criminal was sentenced for crime, he may apply for conditional release after serving *two-thirds of the unconditional imprisonment* imposed.

In the case of sentencing for particularly serious crime, sentenced may apply for conditional release after serving *three-quarters of the unconditional imprisonment* imposed.

A person sentenced to life imprisonment may be conditionally released not earlier than after *twenty-five years of imprisonment*, unless the possibility of conditional release is directly excluded in the judgment.

A relative news in the Slovak legal system is the possibility of conditional release of a person sentenced for a crime even after the serving of *one half of the unconditional imprisonment with the simultaneous obligatory imposition of control by technical means – electronic monitoring*. In the case of conditional release, the sentenced person is monitored and personal identification device is placed on his leg. The monitored person is obliged to tolerate the attachment of this device to his body throughout the duration of the enforcement of the decision by technical means. Any attempts to interfere with this device or to damage or destroy it are evaluated as security incidents.<sup>2</sup> It is undoubtedly an important news especially applicable to many forms of economic criminality, where the sentenced stay in freedom is not dangerous, such as violent criminality.<sup>3</sup> When using this news, it is also necessary that the sentenced did not serve imprisonment before committing a criminal offense, sentenced is practically the first time in unconditional imprisonment.

### 1.2. Consequences and procedure

When conditional release from the imprisonment is granted, the court shall simultaneously determine the *probationary period*, which begins with the conditional

<sup>2</sup> Simona FERENCIKOVA: Možnosti využitia technických prostriedkov pri výkone tencie. In: *Nové horizonty v práve 2019*. Zborník príspevkov z medzinárodnej vedeckej konferencie. Banská Bystrica, Vydavateľstvo Univerzity Mateja Bela v Banskej Bystrici, Belianum, 2019, 301–315.

<sup>3</sup> Veronika TÓTHOVÁ – Simona FERENCIKOVA: Innovation in criminal policy of imposing alterantive sanctions in Slovak republic. In: *CBU International Conference Proceedings 2019. Innovations in Science and Education*, March 20–22, 2019, Prague, Czech Republic, Praha, CBU Research Institute, 2019, 661–670.

release of the sentenced person. The probationary period is used to monitor a sentenced whether he leads a proper life or not. The probationary period serves to complete the sentenced person's remedy, which has started by the actual serving of the unconditional imprisonment, and to verify whether the purpose of the sentence was in the particular case already achieved by its partial serving. The probationary period is in duration one to seven years. In the case of a conditional release from imprisonment of twenty-five years or life imprisonment, the court shall determine a probationary period of ten years.

At the same time, the court may order probation supervision of the sentenced within three years, respectively five years. Sentenced can also may be imposed appropriate restrictions or obligations, such as a ban on participating in specified public events, a ban on the use of alcoholic beverages and other addictive substances, a ban on gambling, gaming and betting, a ban on contact with a designated person in any form including contact via electronic communication service or other similar means, obligation to apologize personally or publicly to the victim of a crime, obligation to acquire a certain work qualification or to attend a retraining course in probationary period, obligation to cooperate with probation and mediation officer or other social program professionals training or other educational program and so on.

The court may also, in any one case of conditional release, impose control by technical means, except where the court must to do so.<sup>4</sup>

If the conditionally released person has led a proper life during the probationary period and fulfilled the imposed restrictions and obligations, the court declares that he has „proved himself“. Otherwise, court may decide, even during the probationary period, to execute the rest of the sentence. Thus, the court can decide in two ways:

- (a) the court decides that the sentenced has “proven himself”, on the condition that the probationary period stated by the court has expired and sentenced has led a proper life during the probationary period and at the same time he complied with the imposed restrictions and obligations;
- (b) the court decides to execute the rest of the sentence (if it is necessary not only after the expiration of probationary period, but also during the probationary period), when the court declares that the sentenced person “has failed”, if the sentenced has not led proper life or has not fulfilled imposed restrictions and obligations in probationary period. Sentenced is obliged to serve the rest of the suspended imprisonment in the same prison in which he served his unconditional imprisonment prior to the conditional release.

If the court has not decided within one year after the expiration of probationary period that the rest of imprisonment will be executed, there is a legal fiction that

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<sup>4</sup> Conditional release of a person sentenced for a crime after the serving of one half of the unconditional imprisonment with the simultaneous obligatory imposition of control by technical means – electronic monitoring.

sentenced has “proved himself”, if this happen without the sentenced being to blame. The court may thus decide up to two years after expiration of the probationary period if the sentenced is being prosecuted for an intentional criminal offense committed during the probationary period of conditional release.

If the court decides that sentenced has “proved himself”, it is presumed that the all imprisonment has been served, when the sentenced was conditionally released from imprisonment.

Multiple conditional release from the same imprisonment is not possible.

A conditional release from the imprisonment is decided by the court in whose district the imprisonment is executed and is obliged to do so within 60 days of the date of delivery of the application. It is interesting that not only the convicted person and his attorney, but also the prosecutor, the director of a prison, an interest group of citizens, can apply for the conditional release of sentenced.

If the court has not granted the conditional release, the sentenced may repeat his application after one year, and if the sentenced was imposed twenty-five years or life imprisonment, after three years, unless the application was rejected merely because sentenced had applied it prematurely.

Prior to the decision on conditional release, the convicted person must be heard. Decision on conditional release, respectively on rejection of the application for conditional release is always reviewable by a court of appeal.

With regard to the problem of prisons overcrowding, it can be expected that the conditions of conditional release will also be easier in the future, with an emphasis on control of the sentenced after conditional release, in particular by electronic monitoring.

## 2. Conditional release in Hungary

As of the original idea behind it, one of the most effective tools of changing the attitudes of the convicts is granting *conditional release*.<sup>5</sup> The essence of parole<sup>6</sup> is that after serving a determined part of the punishment it renders the possibility for the convict to reintegrate into the society. Hungary has a discretionary early release system. Early release is regulated in two legal regimes: one applies for fixed term prison sentences, the other for indeterminate life sentences (Criminal Code, Art 38 and 42).<sup>7</sup>

Early release in Hungary is based on discretionary decision-making and is always conditional. The basic provision governing the early release of prisoners is

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<sup>5</sup> PALLO József: A büntetőpolitika és a börtönügy kodifikációs tanulságai (1945–2013). In: Jámor Orsolya Ilona – Lénárt Máté Gábor – Tarján G. Gábor (szerk.): *A rendőrákadémiától az egyetemig*. Rendőrség Tudományos Tanácsa, 2019, 300–355.

<sup>6</sup> The term ‘conditional early release’ reflects best the essence of this legal institution, the term ‘parole’ is used as a synonym for the same institution. Under conditional early release/parole so-called penitentiary probation officers may assist the prisoners as described in detail below.

<sup>7</sup> Act C of 2012 on the Criminal Code Art 38.

Article 38 (1) of the Criminal Code. According to this provision, prisoners can be conditionally released from determinate prison sentences after they have served two thirds of their sentence. Multiple recidivists must serve at least three-fourth of their sentence. A minimum of three months must be served since the 1998 amendment of the Code. Several groups of offenders are excluded from conditional early release, such as multiple recidivists, who serve their sentence in the strictest regime, violent multiple recidivist criminal history and those who committed the offence in an organized crime group [Criminal Code, Art 38 (4) para].<sup>8</sup>

### 2.1. Conditions<sup>9</sup>

The conditional release aims at a possibly effective re-socialization of well-behaving prisoners, in whose case the aim of punishment can be achieved without serving the complete term of imprisonment. The decision to release a certain inmate on parole falls within the competence of the penitentiary judge. There are certain objective and subjective criteria of granting parole.

- a) The objective criterion for release on parole is that a certain proportion (two thirds) of the sentence must have already been served. When the court imposes a term of imprisonment of no longer than five years, the court may, in circumstances deserving special consideration, grant conditional release after half of the sentence has been served. This option is not available in the case of multiple recidivists [Criminal Code Art 38 (3) para].
- b) The subjective criterion is a particularly good prognosis for the future life of the convict. The penitentiary judge must be convinced that there is no danger of the offender committing further crimes. The penitentiary judge may primarily take into account the opinion of the penal institution, while concerning the prospects of the future he shall examine the statement of the convict and also other objective circumstances, such as the family circumstances of the convict, the possibilities of his/her employment and other sources for leading a law-abiding life. In practice, if the prisoner has a large amount of rewards, the penal institution will support the proposal for parole.

If the prisoner had been sentenced to an indeterminate/life sentence, the sentencing judge orders either that the prisoner shall not be eligible for parole,<sup>10</sup> or sets the earliest date when conditional early release may be granted, between 25 and 40 years of imprisonment. The Criminal Code gives the discretionary power to the judge to order that the prisoner is not eligible for conditional early release in case of exceptionally grave crimes including crimes against humanity, aggravated cases

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<sup>8</sup> Act C of 2012 on the Criminal Code Art 38.

<sup>9</sup> Anita NAGY: Release from prison. *Zbornik radova Pravnog fakulteta*. Novi Sad, 2015, vol. 49, br. 4, str. 2011–2021.

<sup>10</sup> This means Life without parole (LWOP) or actual life sentence (TÉSZ) as the Hungarian terminology puts it.

of homicide, kidnapping or human trafficking [Criminal Code, Art 44 (1) para]. Furthermore, the Criminal Code stipulates that recidivists with a violent criminal history and those who committed exceptionally grave crimes in an organization shall not be eligible for parole in the case of a life sentence [Criminal Code, Art 44 (2) para]. As of 2016, 52 prisoners were sentenced to actual life sentence, which is 0,35 per cent of the total prison population.<sup>11</sup>

## 2.2. *Consequences and procedure*

The competent authority for the decision on the conditional early release is always the penitentiary judge. Penitentiary judges belong to the regional courts. During the process the penitentiary judge acts as a single judge. The penitentiary judge conducts the hearing of offenders, in case of presentation of evidence he/she holds trial. The prosecutor and the defender are permitted to be present at the hearing. The penitentiary judge conducts the hearing and holds the trial within the premises of the penal institution. The notary of the penitentiary judge must immediately write down the record on the hearing and the decision made. The decision of the penitentiary judge is appealable.

If the penitentiary judge has not released the prisoner on parole, he/she may review the possibility for release on a later occasion. The penitentiary judge terminates the procedure if the motion has been withdrawn by the prosecution on the grounds of justifiable reason. In the 2014 SPACE report Hungary reported 5,657 conditional releases which constituted 36.8 per cent of all releases in that year. At the time of writing this report, there are no other, more recent or detailed data publicly available.

With regards to the procedure and the preparation of the decision of the penitentiary judge, the penitentiary institutions have significant functions as they propose the conditional early release. In addition, the institutions prepare the background documents about the behaviour of the inmate during detention. Some of the practical problems regarding this procedure are long known, for example, that there is the risk of these proposals becoming rather formal and superficial due to the administrative burdens and workload on the responsible prison staff. If proposals are not in-depth in their analyses, the penitentiary judge has limited information on the facts and circumstances of the case. We are not aware of any recent Hungarian study in this respect, but research from other countries has shown, that judges may respond to media pressure and the emerging punitive climate by imposing longer sentences or refraining from releasing offenders see e.g. with regards to England Millie, Jacobson, and Hough 2013. Also, apparently one of the main factors when the decision is made on early release, is the inmate's behaviour which is assessed by the number of so-called rewards and penalties that were gained throughout the prison term. Yet, the chances of collecting such rewards is significantly different from institution to institution. For instance, in

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<sup>11</sup> See BVOP: *Börtönstatisztikai Szemle* 2016/2., 23.

county jails there is high fluctuation of prisoners and the staff has limited opportunities to get to know someone meaningfully, hence the chance of rewarding is much lower than in other prisons. Also, if prisoners are segregated from other inmates for their own protection, the staff has limited opportunities to engage with them, hence the chance of rewarding is lower. On the other hand, there are similar issues regarding the disciplinary penalties as well. Recent research found major differences in the use of such penalties and in particular with regards to the length of the most severe penalty (solitary confinement) among Hungarian prisons (see Bárdits et al. 2014). This was explained with the different atmosphere of these institutions. Furthermore, the research found that even though there was no significant difference between the number of penalties imposed between Roma and non-Roma inmates, the length of solitary confinement was significantly longer in case of Roma inmates for the same or similar rule-breakings which may influence their chance to be released early.

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