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**CONDITIONAL RELEASE (PAROLE) IN THE SYSTEM OF
EXECUTION OF SANCTIONS IN THE REPUBLIC OF
MACEDONIA: IS IT IN ACCORDANCE WITH THE
RECOMMENDATION REC (2003) 22 ON CONDITIONAL
RELEASE (PAROLE)?**

Abstract

The author considers the Macedonian legal regime on conditional release and compares it with the principles of the Recommendation Rec(2003)22 on conditional release (parole) and the Appendix to Recommendation Rec(2003)22. The author argues that the Macedonian parole system needs certain improvements, especially regarding procedural safeguards in the decision-making process. In a separate chapter, the author of the paper analyses the data on the requests and proposals submitted by the directors of penitentiary institutions for conditional release and their acceptance and refusals in the Republic of Macedonia. According to the data on application of the conditional release (parole) in our penitentiary practice, the author concludes that it is very rarely imposed. In cases where the request is accepted, the parole is usually granted to prisoners sentenced to short sentences and it is mostly approved for up to 3 months. Hence, it turns out that the main objective of the institute conditional release is not realized. This main objective is to motivate inmates to engage actively in their own re-socialization process, to stimulate exemplary behaviour and to participate actively in the work engagement in the institution. The data prove that conditional release should be monitored and studied further in terms of its application for special categories of inmates and types of crimes. The study should facilitate setting criteria ensuring wider application of this institute.

Key words: conditional release, parole, prison sentence, principles, procedural safeguards, revocation, re-offending.

Introduction

In the Republic of Macedonia there are four grounds for releasing prisoners from prison after serving a prison sentence, namely, 1. after he/she has served the entire sentence, 2. upon decision for remission of the rest of the sentence by an act of a competent authority (an act of amnesty or pardon), 3. under decision for

conditional release (parole) or 4. when there is a decision from the director of the penitentiary institution on early release from serving the sentence.¹

According to the criminal law, criminological and penological research, conditional release (parole) is particularly important in the realization of the process of re-socialization of prisoners. Conditional release should allow reducing unnecessary retention of the convict in the penitentiary institution when the goals of the punishment and certain effects in the re-education of the convicted person are achieved, so that the convict will not be unnecessarily exposed to the adverse effects of the prison environment. Conditional release aims to stimulate the convict to an active and engaged attitude toward his re-socialization during serving the prison sentence, so that he can be released from the penitentiary institution before the completion of the prison sentence.²

Conditional release allows the convicted person to be released from the penitentiary institution prior to the expiry of the duration of the sentence, if the conditions provided by the law are met. The penological importance of this institute is increased by the fact that it stimulates the inmates to a greater commitment, exemplary behaviour and personal effort in re-education. The manner and extent of the application of the conditional release humanize the penitentiary system. It enriches the treatment of inmates and increases the direct personal involvement of inmates in correctional facilities and freedom.

Realizing the positive effects of the conditional release (parole) and in order to establish the common principles regarding the enforcement of custodial sentences, as well as in order to strengthen international co-operation in this field, the Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe enacted the Recommendation Rec (2003)22 of the Committee of Ministers to member states on conditional release (parole).³

¹See: LES, Article 192.

² Арнаудовски, Љупчо, *Пенологија, наука за извршување на кривичните санкции*, Правен факултет, Скопје, 1988. [Arnaudovski, Ljupcho, *Penology: Science on the Execution of Criminal Sanctions*, Law Faculty, Skopje, 1988].

³ The Recommendation Rec(2003)22 was enacted bearing in mind the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 51) and recognizing the importance of:

- Resolution (65) 1 on suspended sentence, probation and other alternatives to imprisonment;
- Resolution (70) 1 on the practical organisation of measures for the supervision and after-care of conditionally sentenced or conditionally released offenders;
- Resolution (76) 2 on the treatment of long-term prisoners;
- Resolution (76) 10 on certain alternative penal measures to imprisonment;
- Recommendation No. R (82) 16 on prison leave;
- Recommendation No. R (87) 3 on the European Prison Rules;
- Recommendation No R (89) 12 on education in prison;
- Recommendation No. R (92) 16 on the European rules on community sanctions and measures;
- Recommendation No. R (92) 17 concerning consistency in sentencing;

According to this Recommendation, conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community. It should be used in ways that are adapted to the individual circumstances and consistent with the principles of justice and fairness.⁴

Other positive effects of the conditional release are as follows: it is desirable to reduce the length of the prison sentences as much as possible; the conditional release before the full sentence has been served is an important means to that end. Next, considering that the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders.⁵

Hence, bearing in mind the positive aspects of conditional release (parole), the Committee of Ministers recommends that governments of member states: 1. introduce conditional release in their legislation if it does not already provide for this measure; 2. be guided in their legislation, policies and practice on conditional release by the principles contained in the appendix to this recommendation; 3. ensure that this recommendation on conditional release and its explanatory memorandum are disseminated as widely as possible.⁶

Conditional release in the Macedonian penitentiary system exists since its introduction in our criminal law. Today, conditional release is an institute of the general part of the Criminal Code of Macedonia (CCM)⁷. The basic elements of the conditional release as a criminal justice institute are defined in the CCM⁸ and its closer execution (application) is regulated by the Law on Execution of Sanctions (LES).⁹

Concerning the nature of conditional release, both in theory and in practice there are some issues defining its essence and influence its application. Conditional release alters the execution of the prison sentence. Hence, the question of the nature of the amendment of the prison sentence which introduces conditional release is raised.

There are different opinions about the concept and the legal nature of the conditional release. According to some authors, it is a special criminal-policy measure that aims to encourage good behavior

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- Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures;
 - Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation;
 - Recommendation [Rec\(2000\)22](#) on improving the implementation of the European Rules on community sanctions and measures.

⁴See: Recommendation Rec(2003)22, Preamble.

⁵*Ibid.*, Preamble.

⁶*Ibid.*, Preamble.

⁷Кривичен законик (*Службен весник на РМ*, 37/96, 80/99, 4/02, 4/03, 19/04, 81/05, 60/06, 73/06, 7/08, 114/09, 51/2011 и 135/2011). [Criminal Code, *Official Gazette of the Republic of Macedonia*, No. 37/96, 80/99, 4/02, 4/03, 19/04, 81/05, 60/06, 73/06, 7/08, 114/09, 51/2011 and 135/2011.].

⁸See: CCM, Articles 36-37.

⁹See: LES, Articles 199-205.

of inmates in prison; according to others, it is a criminal legal institute that modifies the sentence; and according to the third opinion, it is a penological institute concerning the highest stage in the progressive system of serving the prison sentence.¹⁰

There are opinions according to which the conditional release is a modification of the court's decision regarding the sentence.¹¹ However, conditional release is a penological institute whose essence is the possibility for the convict to stay in the penitentiary institution for a shorter time than the length of the prison sentence, under conditions determined by law and in this sense it does not mean reducing the sentence. If conditional release does not mean reducing the sentence, it also means that it does not infringe and it does not make any changes and corrections in the judicial decision that determines a prison sentence in a particular case. Conditional release means only changing the conditions under which the convicted person serves the rest of the sentence that is conditioned.¹² The positive effects of the conditional release concern the fact that by applying the conditional release the harmful effects of long prison sentences and the criminal infection of the convict are avoided; also, it encourages the convict to a good behavior and participation in the process of re-socialization.¹³

This institute also introduces ambiguity, as some theorists determine the conditional release as “forgiving” part of the prison sentence. However, it neither implies forgiving part of the prison sentence, nor deletion of the sentence, but it concerns change of the conditions under which the prison sentence is being served. By serving part of the prison sentence in a penitentiary institution, it is demonstrated that this process has played its role. It is not necessary to keep the convict further in the penitentiary institution and he is released from prison to serve the rest of the sentence under other, favourable conditions, because his behaviour in the penitentiary institution showed that it is justified to leave the penitentiary institution earlier. If convicted person violates the conditions under which he is released on parole and he shows that he is not re-socialized, he commits a new crime act. The substitution is ceased and the prison sentence in duration according to the court decision is in

¹⁰See: Крстановски, Миладин, *Условниот отпуст како пенолошки институт*, Скопје: Студентски збор, 1996. [Krstanovski, Miladin, *Conditional Release as a Penological Institute*, Skopje: Studentski Zbor, 1996].

¹¹See: Камбовски, Владо *Коментар на Кривичниот законик на Република Македонија*, Скопје: Матица, 2011. [Kambovski, Vlado *Comments to the Criminal Code of the Republic of Macedonia*, Skopje: Matica, 2011].

¹²See: Арнаудовски, Љупчо, *Пенологија, наука за извршување на кривичните санкции*, Правен факултет, Скопје, 1988. [Arnaudovski, Ljupcho, *Penology: Science on the Execution of Criminal Sanctions*, Law Faculty, Skopje, 1988].

¹³See: Каневчев, Методија, ‘Условен отпуст’ во *Зборник на трудови: Развитокот на политичкиот и правниот систем на Република Македонија*, Скопје, 2000. [Kanevchev, Metodija, ‘Conditional release’ in *Collection of Papers: The Development of the Political and Legal System in the Republic of Macedonia*, Skopje, 2000.].

force and is fully executed. Hence, it is clear that the substitution of the sentence is determined on penological grounds.

Next, in this paper we compare the provisions on conditional release in the Macedonian penal legislation (Criminal Code of Macedonia and the Law on Execution of Sanction) with the principles of the Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) and the Appendix to Recommendation Rec(2003)22, in order to determine whether they meet the principles of the Recommendation. On this ground, the author gives suggestions on what has to be amended in the present Macedonian penal legislation regarding the conditional release (parole). Also, in a separate chapter, the author of the paper analyses the data on the requests and proposals submitted by the directors of penitentiary institutions for conditional release and their acceptance and refusals in the Republic of Macedonia.

1. Comparison of the Macedonian legal regime on conditional release (Criminal Code of Macedonia¹⁴ and the Law on Execution of Sanction¹⁵) with the principles of the Recommendation Rec(2003)22 on conditional release (parole)¹⁶ and the Appendix to Recommendation Rec(2003)22

For the purposes of the Recommendation Rec(2003)22, conditional release means early release of sentenced prisoners under individualized post-release conditions. Amnesties and pardons are not included in this definition.¹⁷

Similarly, according to the Macedonian legislation, conditional release is an early release from serving a prison sentence with a condition that the convict does not commit new crime until the end of the full term of the prison sentence.¹⁸ The convict is released from serving the sentence on the day when the release is determined by the decision on parole.¹⁹

¹⁴ Кривичен законик (*Службен весник на РМ*, 37/96, 80/99, 4/02, 4/03, 19/04, 81/05, 60/06, 73/06, 7/08, 114/09, 51/2011 и 135/2011). [Criminal Code, *Official Gazette of the Republic of Macedonia*, No. 37/96, 80/99, 4/02, 4/03, 19/04, 81/05, 60/06, 73/06, 7/08, 114/09, 51/2011 and 135/2011.].

¹⁵ Закон за извршување на санкциите, *Службен весник на Република Македонија* бр.2/2006 и 57/2010. [Law on Execution of Sanctions, *Official Gazette of the Republic of Macedonia*, No.2/2006 and 57/2010.].

¹⁶ Council of Europe, Committee of Ministers, Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) (Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies).

¹⁷ See: Appendix to Recommendation Rec(2003)22, Paragraph 1.

¹⁸ See: Камбовски, Владо *Коментар на Кривичниот законик на Република Македонија*, Скопје: Матица, 2011. [Kambovski, Vlado, *Comments to the Criminal Code of the Republic of Macedonia*, Skopje: Matica, 2011].

¹⁹ See: LES, Article 199.

Conditional release should aim at assisting prisoners to make a transition from life in prison to a law-abiding life in the community through post-release conditions and supervision that promote this end and contribute to public safety and the reduction of crime in the community.²⁰

In order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that guarantee the safety of the outside community, the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.²¹ This is a principle that the Macedonian legislation also provides. Namely, according to the provisions of the Criminal Code of Macedonia, each convicted person to prison sentence may be granted conditional release, including the juvenile convicts, as well as life-sentence prisoners.

If prison sentences are so short that conditional release is not possible, other ways of achieving these aims should be looked for.²² In this sense, our Law on Execution of Sanctions provides that the prisoner can be released upon a decision of the director. Namely, the director of the institution may also release the convict earlier if he served at least three quarters of the prison sentence and if he was not granted conditional release, maximum 30 days before the expiration of a sentence for a prison sentence up to 1 year, up to 90 days for a prison sentence of up to 5 years and up to 120 days for a prison sentence over 5 years.²³ However, following the example of other penal practices, other ways should be looked for.

When starting to serve their sentence, prisoners should know either when they will become eligible for release by virtue of having served a minimum period (defined in absolute terms and/or by reference to a proportion of the sentence) and the criteria that will be applied to determine whether they will be granted release (“discretionary release system”) or when they become entitled to release as of right by virtue of having served a fixed period defined in absolute terms and/or by reference to a proportion of the sentence (“mandatory release system”).²⁴ This principle of the Recommendation needs to find common application in our penitentiary practice. Namely, at the very beginning of serving their prison sentence, prisoners should be informed of the right to parole and the conditions under which they can be granted the right to be released on parole. This would stimulate the prisoners to respect the order and discipline in the penitentiary institution, to have an active attitude toward their own re-socialization process and so on.

Granting of conditional release. The Recommendation provides two systems of conditional release. The first one is the *discretionary release system* and the other one is the *mandatory release system*.

In brief, the *discretionary release system* “is the system in force in most European countries which practice conditional release.

²⁰See: Appendix to Recommendation Rec(2003)22, Paragraph 3.

²¹*Ibid*, Paragraph 4.a.

²²*Ibid*, Paragraph 4.b.

²³See: LES, Article 206.

²⁴See: Appendix to Recommendation Rec(2003)22, Paragraph 5.

This is the case in France, where “first-time” sentenced prisoners may be granted conditional release halfway through their sentence, whereas recidivists must wait to have served at least 2/3 of their prison sentence before being allowed to do the rest in the community under the authority of a sentence-enforcement judge (SEJ) and under the surveillance of an integration and probation adviser (IPA). This is a necessary but not a sufficient prerequisite. Actually, only a small minority receives the benefit of this measure. This system is mostly aptly described by the word *individualization*”.²⁵

In discretionary systems, “individualization—or personalization—of the decision works at no less than three levels. Level 1 – decision to grant conditional release: an offender sentenced to time in prison may very well leave without having been released on parole (*leaving at end of sentence*). Level 2 – choice of the date of conditional release, once the minimum period of detention has been served (defined in absolute terms and/or as a proportion of the sentence). Level 3 – choice of the conditions imposed on the person following release, during the period of monitoring within the community”.²⁶

In the mandatory release system,²⁷ “individualization only applies at level 3 (choice of post-release conditions). Its advocates emphasize the difficulty in defining scientific criteria for determining when an inmate should be granted conditional release. To avoid arbitrary and highly diversified decisions depending on who makes them, it is preferable to prescribe the same treatment for all. Efforts should then be focused on personalizing supervision (control and care measures), and defining the conditions to be imposed on the offender following prison-leaving. These conditions must be strictly necessary. In some cases they may even be considered perfectly useless. Release is then granted with no supervision whatsoever. Despite the difference in treatment with respect to control conditions within the community, the mandatory release system claims to be essentially *egalitarian*”.²⁸

“Alongside of these two systems, based on radically different options, mixed release systems have developed in recent years. These combine the discretionary system, for long sentences, and a

²⁵ Pierre V. Tournier, “Systems of Conditional Release (Parole) in the Member States of the Council of Europe”, *Champ pénal/ Penal field* [En ligne], Vol. I | 2004, mis en ligne le 28 janvier 2006, Consulté le 04 février 2012. URL : <http://champpenal.revues.org/378> ; DOI : 10.4000/champpenal.378.

²⁶ *Ibid.*

²⁷ *Ibid.* The mandatory (or at set period) release system is in existence in Sweden since 1998 (enforced since January 1, 1999). Our colleague, Norman Bishop, describes it as follows: 20 inmates who are sentenced to time in prison must be given conditional release once they have served two thirds of their sentence, with a minimum prison stay of one month. Conditional release may be delayed for a set number of days as a disciplinary measure. Conditional release is not applicable in case of a short prison sentence combined with a probationary measure, or in case of life imprisonment. A sentence to life can be converted into a sentence to time by a pardon, in which case the rule of release when two-thirds of the sentence has been served may apply.

²⁸ *Ibid.*

mandatory release system for short sentences. They may be depicted as essentially *pragmatic*. It is a fact that for short sentences, the existence, or not, of early release hardly has any practical effect, since it only advances release by a few days, at best by several weeks. So why spend precious resources on numerous cumbersome, individual a priori, non-egalitarian proceedings when they could be put to better use? Thus, the selection process is reserved for the fewer cases (long sentences) for which the decision is fraught with consequences for the offender and for society in case of re-offending”.²⁹

This is the case for the system in use in England and Wales. A general overhauling of the system was introduced in 1991, calling for mandatory release for sentences to less than four years, with the possibility of supervision, whereas the discretionary system was maintained for sentences to four years or more.³⁰ Today’s prison system in England was introduced in 1992. According to the system, the perpetrators sentenced to prison are divided into three groups. Those sentenced to prison for less than 12 months are released automatically after they have served half of the sentence. They are not monitored after release, but may be returned to prison if they are convicted of another offence, punishable by personal restraint before the complete expiry of the sentence. Offenders sentenced to imprisonment from 12 months to 4 years are also automatically released on parole after they serve half of the sentence and are subjected to a regime of follow-up and authorization, with specific conditions except home confinement, with compulsory curfews, until the three-fourths point. And finally, those who have been sentenced to imprisonment for 4 years or more may be released after serving half of the prison sentence, but under a decision of the Parole Board. Inmates for whom the parole is refused are automatically released once they have served two-thirds of their sentence³¹

According to the Recommendation, consideration should be given to the savings of resources that can be made by applying the *mandatory release system* in respect of sentences where the negative individualized assessment would only make a small difference to the date of release.³² In a mandatory release system, the period that prisoners must serve in order to become entitled to release should be fixed by law.³³ Only in exceptional circumstances defined by law should it be possible to postpone release.³⁴ The decision to postpone release should set a new date for release.³⁵

The other system of conditional release (parole) - the *discretionary release system* is adopted in the Macedonian penal legislation. The principles of this system according to the Recommendation are as follows. The minimum period that prisoners

²⁹*Ibid.*

³⁰*Ibid.*

³¹QC, David Thomas, (2002), ‘The Sentencing Process’, in McConville, M. & Wilson, G. (Eds.), *The Handbook of The Criminal Justice Process*, New York: Oxford University Press Inc. See also: Criminal Justice Act 1991.

³²*Ibid*, Paragraph 7.

³³*Ibid*, Paragraph 22.

³⁴*Ibid*, Paragraph 23.

³⁵*Ibid*, Paragraph 24.

have to serve to become eligible for conditional release should be fixed in accordance with the law.³⁶

The Recommendation does not set the minimum or the fixed period the prisoner has to serve before becoming eligible for granting conditional release (parole), but recommends that the minimum or fixed period should not be so long that the purpose of conditional release cannot be achieved.³⁷

The relevant authorities should initiate the necessary procedure to ensure that the decision on conditional release is taken as soon as the prisoner has served the minimum period.³⁸ The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. They should also be realistic in the sense that they should take into account the prisoners' personalities, their social and economic circumstances, as well as the availability of resettlement programmes.³⁹ The lack of possibilities for work on release should not constitute ground for refusing or postponing conditional release. Efforts should be made to find other forms of occupation. The absence of regular accommodation should not constitute ground for refusing or postponing conditional release and in such cases temporary accommodation should be arranged.⁴⁰

The criteria for granting conditional release should be applied so as to grant conditional release to all prisoners who are considered as meeting the minimum level of safeguards for becoming law-abiding citizens. It should be incumbent on the authorities to show that the prisoner has not fulfilled the criteria.⁴¹

If the decision-making authority decides not to grant conditional release, it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.⁴²

On the other hand, the requirements and the procedure for granting conditional release according to the Macedonian Penal law and Law on execution on sanctions are following.

Conditions of determining parole according to the Macedonian penal legislation. Conditional release is not a right, but a possibility that a convict may obtain under certain conditions while serving his prison sentence. Conditions under which conditional release can be obtained are *formal and material*. Their acquisition should be cumulative.

Formal legal condition. Formal legal condition under which a convict may be conditionally released is that he has served half of the prison sentence. As an exception, the convict who has served one third of a prison sentence may also be released on parole. Convict

³⁶*Ibid*, Paragraph 16.

³⁷*Ibid*, Paragraph 6.

³⁸*Ibid*, Paragraph 17.

³⁹*Ibid*, Paragraph 18.

⁴⁰*Ibid*, Paragraph 19.

⁴¹*Ibid*, Paragraph 20.

⁴²*Ibid*, Paragraph 21.

sentenced to life imprisonment may not be released on parole before he serves at least 15 years imprisonment.⁴³

A juvenile may be conditionally released from serving the sentence of juvenile imprisonment if he/she has served one third of the sentence, but not before he/she spends a year of the duration of the imprisonment.⁴⁴ However, the Law on Juvenile Justice (LJJ)⁴⁵ provides that a juvenile who is serving the sentence of juvenile imprisonment may be released on parole if he/she has served at least one-third, but not before he/she spends six months of the duration of the imprisonment.⁴⁶

These formal legal requirements are consistent with the Recommendation that determines that the minimum period the prisoner has to serve before becoming eligible for granting conditional release (parole) should not be so long that the purpose of conditional release cannot be achieved. Namely, one half of the prison sentence and, in exceptional cases, one third of the prison sentence is a reasonable time which does not compromise the essence of the institute conditional release (parole).

Material legal condition. Material legal condition for the convict to be released from serving a prison sentence is: that until the expiration of the period for which the punishment was pronounced he does not perpetrate a new crime; if he has corrected himself so that it can be expected with justification that he would behave well in freedom, and especially that he would not commit crimes. The evaluation whether the condemned shall be set free on parole shall take into consideration his conduct during the serving of his sentence, his performance in the work duties considering his work capability and other circumstances which show that the aim of the punishment has been achieved.⁴⁷ It is estimated that serving half of the sentence is a sufficient time for the convict to be able to re-socialize and to show positive results to meet these conditions.

If the convicted person is conditionally released as an exception after he/she has served only one-third of the sentence, the above conditions should be met, as well as special circumstances concerning the personality of the convict that evidently show that the aim of the punishment has been attained.⁴⁸

A juvenile may be conditionally released from serving the sentence of juvenile imprisonment if he has served one third of the sentence, but not before he spends a year of the duration of the imprisonment (formal legal condition) and if grounds exist to expect that, according to the results achieved in correction and re-education, he would behave well in freedom, continue his education and work,

⁴³See: CCM, Article 36, Paragraph 2-4.

⁴⁴*Ibid*, Article 36, paragraph 6.

⁴⁵Закон за малолетничка правда, *Службен весник на Република Македонија* бр.87/07, 103/08, 161/08 и 145/10. [Law on Juvenile Justice *Official Gazette of the Republic of Macedonia*, No. 87/07, 103/08, 161/08 и 145/10.].

⁴⁶See: LJJ, Article 46, Paragraph 1.

⁴⁷See: CCM, Article 36 Paragraph 1.

⁴⁸*Ibid*, Article 36, Paragraph 3.

and would not commit crimes in the future. In other words, if the process of re-socialization is successful (material legal condition).⁴⁹

Additional conditions. For the conditionally released, the court may specify protective supervision which shall comprise special measures of assistance, care, supervision or protection to be implemented by the social authority.⁵⁰ According to the LES, in the decision for parole the court may determine protective supervision for the convict, which is composed by special measures for aid, care, supervision or protection and which are accomplished by the social body.⁵¹

During the parole, the court may determine the juvenile a measure of intensified supervision by the Centre for social affairs in a given period, which may be shorter than the rest of the un-served juvenile imprisonment. The court may prolong the duration of the intensive supervision for maximum one year after the termination of the sentence, but until the convict reaches the age of 21 years.⁵²

These provisions on additional requirements/ conditions for granting conditional release need clarification, since the Macedonian legislation does not specify exactly these special measures of assistance, care, supervision or protection.

On the other hand, the Recommendation pays serious attention to the *imposition of conditions*.

According to the Recommendation on reducing the risk of recidivism of conditionally released prisoners, it should be possible to impose on them individualized conditions, such as:

- the payment of compensation or the making of reparation to victims;
- entering into treatment for drug or alcohol misuse or any other treatable condition manifestly associated with the commission of crime;
- working or following some other approved occupational activity, for instance, education or vocational training;
- participation in personal development programmes;
- prohibition on residing in, or visiting, certain places.⁵³

In principle, conditional release should also be accompanied by supervision consisting of help and control measures. The nature, duration and intensity of supervision should be adapted to each individual case. Adjustments should be possible throughout the period of conditional release.⁵⁴

Conditions or supervision measures should be imposed for a period of time that is not out of proportion to the part of the prison sentence that has not been served.⁵⁵ Conditions and supervision measures of indeterminate duration should only be applied when this is absolutely necessary for the protection of society and in accordance

⁴⁹See: CCM Article 36 Paragraph 6 and see: LJJ, Article 46, Paragraph 1.

⁵⁰See: CCM, Article 36, Paragraph 5.

⁵¹See: LES, Article 204.

⁵²See: CCM Article 36 Paragraph 6 and see: LJJ, Article 46, Paragraph 2.

⁵³See: Appendix to Recommendation Rec(2003)22, Paragraph 8.

⁵⁴*Ibid*, Paragraph 9.

⁵⁵*Ibid*, Paragraph 10.

with the safeguards laid down in Rule 5⁵⁶ of the European rules on community sanctions and measures, as revised in Recommendation Rec(2000) 22.⁵⁷

When considering the conditions to be imposed and whether supervision is necessary, the decision-making authority should have at its disposal reports, including oral statements, from personnel working in prison who are familiar with the prisoners and their personal circumstances. Professionals involved in post-release supervision or other persons knowledgeable about the prisoners' social circumstances should also make information available.⁵⁸ The decision-making authority should make sure that prisoners understand the imposed conditions, the help that can be given, the requirements of control and the possible consequences of failure to comply with the conditions.⁵⁹

To conclude, regarding the additional terms, namely the possibility that the conditionally released obtain protective supervision which shall comprise special measures of assistance, care, supervision or protection to be implemented by the social authority, the Macedonian legislation needs amendments. In this sense, the principles of the Recommendation should be followed. Or, these additional conditions should comprise the obligations set in the Criminal Code for the probation with protective supervision.⁶⁰ Also,

⁵⁶See: European rules on community sanctions and measures, as revised in Recommendation Rec(2000) 22, Rule 5. The dimension of duration is an essential element of any community sanction or measure, since it allows a quantitative relation to be established between the offence and the penal reaction, as well as a link between the means employed (control and all appropriate forms of help) and the aim pursued (the integration of the offender in society). The rule begins with a general statement expressed, having regard to its absolute character, in negative form. Unlike certain forms of imprisonment, no community sanction or measure is to be of indeterminate duration. There are two arguments against indeterminacy. First, the notion of indeterminacy is incompatible with the principle of proportionality. Second, indeterminate sanctions and measures run the risk of maintaining the offender in a state of dependency which is contrary to the purpose pursued - the development of the offender's autonomy in society. Furthermore, the rule requires that the legality principle is observed with regard to the duration of community sanctions and measures, since they must not exceed the maximum legally provided for, nor be less than the minimum where such a minimum is laid down in law. This double requirement is to be observed both by the authority empowered to impose such a sanction or measure, as well as by that empowered to implement it. Hence, the implementing authority may not prolong any control of the offender beyond the point in time fixed by the decision to impose the sanction or measure.

⁵⁷See: Appendix to Recommendation Rec(2003)22, Paragraph 11.

⁵⁸*Ibid*, Paragraph 25.

⁵⁹*Ibid*, Paragraph 26.

⁶⁰See: CCM, Article 56: Obligations in protective supervision: (1) When the court pronounces protective supervision, it may determine one or more of the following obligations for the convicted person:

- 1) training, specialization and learning a new trade, so that the condemned may retain the job he already has, or to create preconditions for employment;
- 2) acceptance of an employment which corresponds to the capabilities and affinity of the condemned;
- 3) attendance of a program for work with convicted persons who committed crimes in cases of domestic violence;
- 4) execution of the obligations for maintaining a family, raising children and

the judge for execution of sanctions should have an active role in determining whether a convicted person follows the additional conditions of the parole. Hence, it requires an active cooperation, communication between the court and the social authority.

Procedure for conditional release (parole).

Persons who may submit a request for release on the bases of parole. Under the conditions stipulated by law, either the convict or a member of his closer family may submit a request for release on the bases of parole. A proposal for releasing a convict on the bases of parole may also be submitted by the director of institution.⁶¹

Authority that decides on parole. The parole of the convict shall be decided by the court having taken the judgment in first instance, in a council composed of three judges who shall decide beyond the main hearing. In the decision on conditional release the date of release of the convict is stated. Also, it is necessary to take into account the deadline of the appeal procedure.⁶²

Procedure. Before deciding on the parole, the first instance court shall request data from the institution. Also, the convict may be interrogated and an opinion may be required from the judge for execution of sanctions and the institution's official persons about the circumstances pertaining the convict's personality, his behaviour during serving the sentence, carrying out of his labour duties and about other circumstances. Thus, it may be concluded whether the aim of punishment was achieved and, especially, whether the convict is likely to commit further criminal acts in future. The proposal of the director of the institution shall be represented and justified by a representative of the institution where the convict serves the sentence.⁶³

In the opinion of the author of this paper, the procedure for granting conditional release in the Macedonian legislation and practice

other family obligations; 5) enabling insight and counseling in connection with the distribution and spending of salary income and other revenues which he earns; 6) not visiting certain types of premises or other places where alcoholic drinks are served and where gambling exists; 7) prohibition of using alcoholic drinks, narcotics or other similar psychotropic substances; 8) using the free time according to the opinion of the social agency; 9) avoiding and not being together with persons that have a negative influence upon the condemned; and 10) submitting to medical treatment or social rehabilitation in appropriate specialized institutions; (2) When it selects the type of obligation, the court shall take into consideration first of all the offender's personality, his health situation and psychological characteristics, the age, the financial and family conditions, the circumstances under which he committed the crime, the offender's conduct after the crime was committed, the motives for committing the crime, and other circumstances regarding the offender's personality, which are of significance for the selection of the type of obligation, taking care not to damage the human dignity, nor to cause unnecessary difficulties in his re-education. (3) During the time of conditional postponing of the execution of the determined punishment, the court may substitute the determined obligation with some other one, or it may revoke it, upon the suggestion from the social agency or from the condemned person.

⁶¹See: LES, Article 200.

⁶²*Ibid*, Article 201.

⁶³*Ibid*, Article 202.

is complex. Thus, the criteria that prisoners have to fulfil in order to be conditionally released are not clear and explicit, except for the formal one.

Hence, the data on accepted and refused requests for granting conditional release in the Republic of Macedonia, as can be seen in the next chapter of the paper, shows that conditional release is very rarely imposed. Also, in cases where the requests would be accepted, usually parole is granted to prisoners sentenced to short sentences and it is approved for up to 3 months. In this way, it turns out that the main objective of the institute conditional release is not realized. Hence, the principles of the Recommendation should be followed. Namely, as set in the Recommendation, the relevant authorities should initiate the necessary procedure to ensure that the decision on conditional release is taken as soon as the prisoner has served the minimum period. The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. Also, they should be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances, as well as the availability of resettlement programmes. Namely, availability of resettlement programmes is something that the Macedonian penal practice lacks.

Next, in case the decision-making authority decides not to grant conditional release, the request or the proposal for parole may be submitted again after the expiration of 6 months (when the imprisonment concerned is longer than 1 year) or 3 months (when the imprisonment concerned is up to 1 year) from the legal efficiency of the decision on refusing the previous request of the convict or the proposal of the director. The decision which the court has taken on the parole shall be sent to the convict, the family member having submitted a request for parole, the institution where the convict serves a sentence, the competent public prosecutor, as well as to the Administration for internal affairs, according to the place of permanent residence that is the temporary residence of the convict, if the decision is positive one.⁶⁴

Failure to comply with imposed conditions. According to the Recommendation, minor failures to observe imposed conditions should be dealt with by the implementing authority by way of advice or warning. Any significant failure should be promptly reported to the authority deciding on possible revocation. This authority should, however, consider whether further advice, a further warning, stricter conditions or temporary revocation would constitute a sufficient penalty.⁶⁵

In general, the failure to observe imposed conditions should be dealt with in accordance with Rule 85⁶⁶ of the European rules on

⁶⁴*Ibid*, Article 203.

⁶⁵See: Appendix to Recommendation Rec(2003)22, Paragraph 30.

⁶⁶See: European rules on community sanctions and measures as revised in Recommendation Rec(2000) 22, Rule 85. The initiation of the procedure for revocation should be the occasion for an evaluation of the implementation of the sanction or measure. The negative aspects should be studied as well as, in fairness, the positive aspects. Thus, even a partial implementation of the sanction or measure (as occurs, for instance, when only a proportion of the hours of work in community service have been carried out) or a deficient

community sanctions and measures, as well as with the remaining relevant provisions of Chapter X⁶⁷ of the rules.⁶⁸

Revocation of conditional release in the Republic of Macedonia. The court shall revoke the parole if during the time the convict is under parole he commits one or more crimes for which a sentence has been pronounced of imprisonment or of juvenile imprisonment longer than two years. The court may revoke the parole if the person on parole commits one or more crimes for which a sentence of imprisonment or juvenile imprisonment of up to two years has been pronounced. In the evaluation whether it shall revoke the parole, the court shall especially take into consideration the similarity of the perpetrated crimes, their significance, the motives why they were perpetrated and other circumstances that justify revoking the parole or if, after two written warnings from the competent authority, he fails to fulfil the obligation pertaining to the protective supervision. When the court revokes the parole, it shall pronounce a punishment with applying the provisions on concurrence of crimes and provisions on determining punishment,⁶⁹ taking the previously pronounced punishment as already confirmed. The part of the punishment that the convict has already served according to the previous sentence is calculated into the new punishment and the time passed on parole is not considered. The same shall be applied also when the person under parole is tried for a crime that he perpetrated before being put on parole. If the person on parole is sentenced to a punishment of imprisonment or to a juvenile imprisonment of up to two years and the court does not revoke the parole, the parole is extended for the time which the convict has passed in serving the punishment of imprisonment, respectively of juvenile imprisonment.⁷⁰

The court shall revoke the conditional release if convicted juvenile fails to meet the obligations of the intensive supervision or if he commits one or more criminal offenses while on parole for which he is sentenced juvenile imprisonment for more than two years. If the juvenile has committed a crime for which he is sentenced up to two years juvenile imprisonment or a fine, the court may revoke the conditional release, taking into consideration the similarity of the perpetrated crimes, their significance, the motives why they were perpetrated, and other circumstances that show the justification for revoking the parole. When the court revokes the parole, it shall pronounce a punishment taking the earlier sentence as already determined. When the court does not revoke conditional release, the parole is extended for the time which the convicted juvenile has

implementation (as occurs, for instance, when efforts have been made to compensate a victim even if incompletely) can constitute indications which illuminate the way in which implementation has been carried out and thereby give reason to weigh the decision on revocation.

⁶⁷See: European rules on community sanctions and measures as revised in Recommendation Rec(2000) 22, Chapter X – Operation of the sanction or measure and consequences of non-compliance, Rule 76-88.

⁶⁸See: Appendix to Recommendation Rec(2003)22, Paragraph 31.

⁶⁹See: CCM, Article 44 and Article 46, Paragraph 2.

⁷⁰*Ibid*, Article 37.

passed in serving the punishment of juvenile imprisonment imposed for the new offense.⁷¹

Implementation of conditional release. The Recommendation pays attention to the *implementation of conditional release*⁷² in a particular section. The preparation for conditional release should be organized in close collaboration with all relevant personnel working in prison and those involved in post-release supervision, and it should be concluded before the end of the minimum or fixed period.⁷³

Prison services should ensure that prisoners can participate in appropriate pre-release programmes and that they are encouraged to take part in educational and training courses that prepare them for life in the community. Specific modalities for the enforcement of prison sentences such as semi-liberty, open regimes or extra-mural placements, should be used as much as possible with a view to preparing the prisoners' resettlement in the community.⁷⁴

The preparation for conditional release should also include the possibility of the prisoners' maintaining, establishing or re-establishing links with their family and close relations, and forging contacts with services, organisations and voluntary associations that can assist conditionally released prisoners in adjusting to life in the community. To this end, various forms of prison leave should be granted.⁷⁵

Early consideration of appropriate post-release conditions and supervision measures should be encouraged. The possible conditions, the help that can be given, the requirements of control and the possible consequences of failure should be carefully explained to and discussed with the prisoners.⁷⁶

If the implementation of conditional release has to be postponed, prisoners awaiting release should be kept in conditions as close as possible to those they would be likely to enjoy in the community.⁷⁷

Procedural safeguards. In a particular section the Recommendation deals with the issue on *Procedural safeguards*. Decisions on granting, postponing or revoking conditional release, as well as on imposing or modifying conditions and measures attached to it, should be taken by authorities established by law in accordance with procedures covered by the following safeguards:

⁷¹See: LJJ, Article 46, Paragraphs 3-5.

⁷²See: Appendix to Recommendation Rec(2003)22, Chapter VI, Paragraph 28: The implementation of conditional release and supervision measures should be the responsibility of an implementing authority in compliance with Rules 7, 8 and 11 of the European rules on community sanctions and measures and Paragraph 29. Implementation should be organised and dealt with in compliance with Rules 37 to 75 of the European Rules on community sanctions and measures, and with the basic requirements for effectiveness set out in the relevant provisions of principles 9 to 13 of Recommendation [Rec\(2000\)22](#) on improving the implementation of the European rules on community sanctions and measures.

⁷³See: Appendix to Recommendation Rec(2003)22, Paragraph 12.

⁷⁴*Ibid*, Paragraph 13.

⁷⁵*Ibid*, Paragraph 14.

⁷⁶*Ibid*, Paragraph 15.

⁷⁷*Ibid*, Paragraph 27.

- a. convicted persons should have the right to be heard in person and to be assisted according to the law;
- b. the decision-making authority should give careful consideration to any elements, including statements, presented by convicted persons in support of their case;
- c. convicted persons should have adequate access to their file;
- d. decisions should state the underlying reasons and be notified in writing.⁷⁸

The Macedonian Law on Execution of Sanctions stipulates that before deciding on the parole, the first instance court shall request a data from the institution, the convict may also be interrogated and the opinion of a judge for execution of sanctions and the institution's official persons may be demanded. Still, in the future amendment of LES these procedural safeguards from the Recommendation should be implemented. Thus, they will strengthen the position of the convicted person when requesting conditional release.

According to the principles of the Recommendation, convicted persons should be able to make a complaint to a higher independent and impartial decision-making authority established by law against the substance of the decision, as well as against non-respect of the procedural guarantees.⁷⁹ Complaints procedures should also be available concerning the implementation of conditional release.⁸⁰

The Macedonian LES also provides that against the decision on refusing the request or the proposal for parole, the convict and the authorized public prosecutor have the right of complaint to the higher court within a term of 8 days.⁸¹

Methods to improve decision-making. Something that the Macedonian penal practice would benefit from are the methods to improve decision-making, principles set by the Recommendation in a particular section (section IX). According to the Recommendation, the use and development of reliable risk and needs assessment instruments which would, in conjunction with other methods, assist decision-making should be encouraged.⁸² Information sessions and/or training programmes should be arranged for decision-makers, with contributions from specialists in law, social sciences and all other profiles involved in the resettlement of conditionally released prisoners.⁸³ Steps should be taken to ensure a reasonable degree of consistency in decision-making.⁸⁴ This is something that the Macedonian judicial and penal practice lacks.

⁷⁸*Ibid*, Paragraph 32.

⁷⁹*Ibid*, Paragraph 33.

⁸⁰*Ibid*, Paragraph 34. See: Paragraph 35. All complaints procedures should comply with the guarantees set out in Rules 13 to 19 of the European rules on community sanctions and measures. See Paragraph 36. Nothing in paragraphs 32 to 35 should be construed as limiting or derogating from any of the rights that may be guaranteed in this connection by the European Convention on Human Rights.

⁸¹See: LES, Article 205.

⁸²See: Appendix to Recommendation Rec(2003)22, Paragraph 37.

⁸³*Ibid*, Paragraph 38.

⁸⁴*Ibid*, Paragraph 39.

Information and consultation on conditional release. In order to ensure that the conditional release is used more frequently, information and consultation on conditional release should be strengthened, as stipulated in the Recommendation. Politicians, judicial authorities, decision-making and implementing authorities, community leaders, associations providing help to victims and to prisoners, as well as university teachers and researchers interested in the subject should receive information and be consulted on the functioning of conditional release, as well as on the introduction of new legislation or practice in this field.⁸⁵

Decision-making authorities should receive information about the numbers of prisoners to whom conditional release has been applied successfully and unsuccessfully, as well as on the circumstances of success or failure.⁸⁶

Media and other campaigns should be organized to keep the general public informed on the functioning and new developments in the use of conditional release and its role within the criminal justice system. Such information should be made speedily available in the event of any dramatic and publicized failure occurring during a prisoner's conditional release period. Since such events tend to capture media interest, the purpose and positive effects of conditional release should also be emphasized.⁸⁷

Research and statistics. Finally, but not least, as suggested in the Recommendation, in the Republic of Macedonia there is a pressing need for research and statistical data. As stated in the Recommendation, in order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.⁸⁸

In addition to the evaluations recommended above, research into the functioning of conditional release systems should be encouraged. Such research should include the views, attitudes and perceptions on conditional release of judicial and decision-making authorities, implementing authorities, victims, members of the public and prisoners. Other aspects that should be considered include whether conditional release is cost-effective, whether it produces a reduction in reoffending rates, the extent to which conditionally released prisoners adjust satisfactorily to life in the community and the impact the development of a conditional release scheme might have on the imposition of sanctions and measures, and the enforcement of sentences. The nature of release preparation programmes should also be subject to research scrutiny.⁸⁹

Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of

⁸⁵ *Ibid*, Paragraph 40.

⁸⁶ *Ibid*, Paragraph 41.

⁸⁷ *Ibid*, Paragraph 42.

⁸⁸ *Ibid*, Paragraph 43.

⁸⁹ *Ibid*, Paragraph 44.

time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.⁹⁰

To conclude, the Macedonian legislation on conditional release (parole) is consistent with the Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) and the Appendix to Recommendation Rec(2003)22. Hence, our legislation needs further amendments and incorporation of the principles of the Recommendation. As we have analyzed in the previous section, in order to improve the use of conditional release (parole), the provisions on parole need clarification.

The principle of the Recommendation according to which “when starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period and the criteria that will be applied to determine whether they will be granted release”, needs to find common application in our penitentiary practice. Namely, at the very beginning of serving their prison sentence, prisoners should be informed of the right to parole and the conditions under which they can be granted the right to be released on parole. This will stimulate the prisoners to respect the order and discipline in the penitentiary institution, to have an active attitude toward their own re-socialization process and so on.

Next, regarding the additional terms, namely the possibility that the conditionally released obtain a protective supervision which shall comprise special measures of assistance, care, supervision or protection, implemented by the social authority, the Macedonian legislation needs amendments. These provisions on additional requirements/conditions for granting conditional release need clarification, since the Macedonian legislation does not specify exactly these special measures of assistance, care, supervision or protection. In this sense, the principles of the Recommendation should be followed. Or, these additional conditions should comprise the obligations set in the Criminal Code for the probation with protective supervision.

Since, in the opinion of the author of the paper, the procedure for granting conditional release in the Macedonian legislation and practice is complex, the criteria that prisoners have to fulfil in order to be conditionally released are not clear and explicit, except for the formal one, hence, the principles of the Recommendation should be followed. The criteria that prisoners have to fulfil in order to be conditionally released should be “clear and explicit; also they should be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances, as well as the availability of resettlement programmes”. Namely, availability of resettlement programmes is something that the Macedonian penal practice lacks.

In a future amendment of LES, the procedural safeguards from the Recommendation should be implemented. These would strengthen the position of the convicted person when requesting conditional release.

⁹⁰*Ibid*, Paragraph 45.

Something that the Macedonian penal practice would benefit from are the methods to improve decision-making, principles set by the Recommendation in a particular section.

In order that the conditional release is more frequently used, there is a need for information and consultation on conditional release, as stipulated in the Recommendation.

Finally, but not least, as suggested in the Recommendation, there is a pressing need for research and statistics on conditional release (parole) in the Republic of Macedonia, since, as it can be seen in the next chapter, the data on conditional release (parole) in the Republic of Macedonia are very scarce.

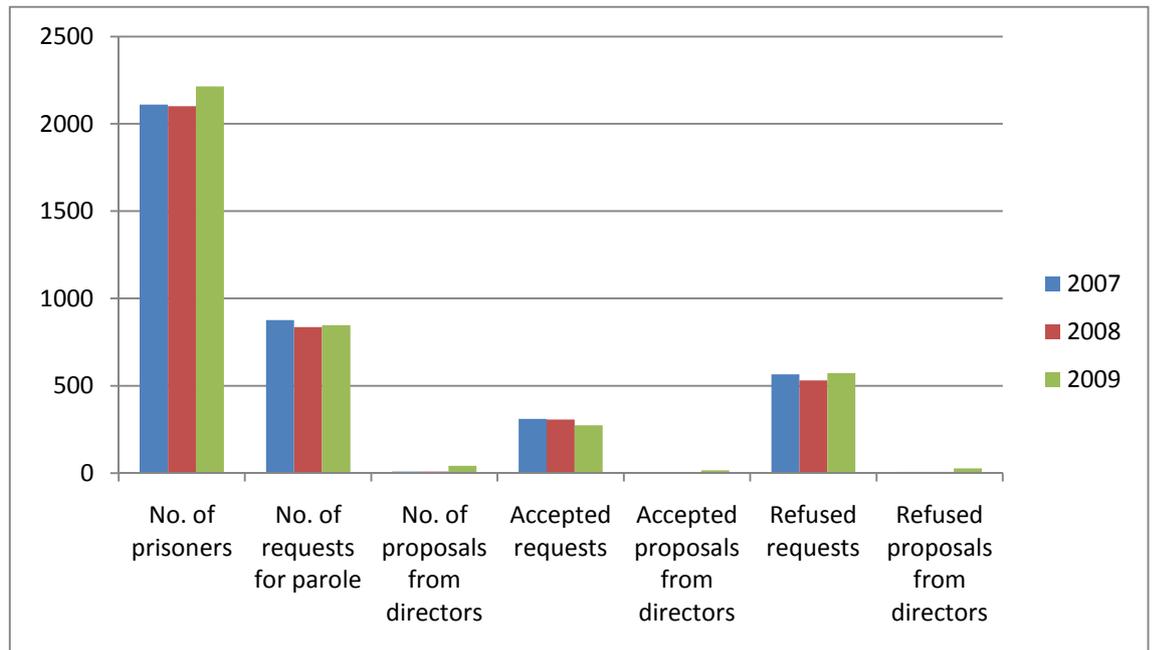
2. The application of the conditional release (parole) in the Republic of Macedonia

The data on conditional release (parole) in the Republic of Macedonia are very scarce. In the next section, the data on conditional release are analysed for the period of three years (2007, 2008 and 2009). The data are obtained from the Directorate for Execution of Sanctions of the Republic of Macedonia.

According to data from the Directorate for Execution of Sanctions, prisoners use the right to submit requests for conditional release (parole).⁹¹

⁹¹See: Годишни извештаи на Управата за извршување на санкциите на Република Македонија за работењето и состојбата во казнено-поправните и воспитно-поправните установи во Република Македонија за 2007, 2008 и 2009 година. [Annual reports of the Directorate for Execution of Sanctions of the Republic of Macedonia in the performance and state of the penal and correctional institutions in the Republic of Macedonia for 2007, 2008 and 2009]. (<http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv>).

Chart 1. Number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal (2007-2009)



Namely, in the analyzed period (2007-2009), on average, 39,8% of the prisoners used their right to submit request for conditional release. On average 34,8% of the requests were accepted and 65,2% were refused. The directors of the penitentiary institutions used the right to submit proposal for conditional release of prisoners for, on average, only 0,9%. From the submitted proposals by directors, on average, 34,4% were accepted and 65,6% were refused.

It can be concluded that the prisoners use their right to submit requests for conditional release when the formal criteria are met, mostly after serving one half of their sentence, but the courts does not grant them very often. It is a question on what basis does the courts refuse, on average, 65,2% of the submitted requests. One can assume that the prisoners do not meet the material requirements such as: their conduct during the serving of his sentence, their performance in the work duties considering the work capability and other circumstances which show that the aim of the punishment has been achieved. Hence, the estimation that serving half of the sentence is enough time for the convict to re-socialize and to show positive results to meet these conditions does not prove to be correct, taking into account these figures on greater amount of refused requests for conditional release.

Another conclusion is that, as the number of prisoners per year is growing or reducing, the number of submitted request for parole follows the same trend. But, it is evident that, although the number of prisoners and number of submitted requests for parole are increasing, the number of accepted request for parole are decreasing in 2009, 11,6% decrease compared to 2007 or 10% decrease compared to 2008.

On the other hand, the number of submitted proposals from directors of penitentiary institutions increased in 2009.

The data are presented in Table 1.

Table 1. Number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal (2007-2009)

2007-2009	2007	%	2008	%	2009	%	Average
No. of prisoners	2111		2101		2215		
No. of requests for parole	876	41,5	836	39,8	846	38,2	39,8
Index	100		95		101		
No. of proposals from directors	9	0,4	9	0,4	41	1,9	0,9
Index	100		100		456		
Accepted requests	310	35,4	306	36,6	274	32,4	34,8
Index	100		99		90		
Accepted proposals from directors	3	33,3	3	33,3	15	36,6	34,4
Index	100		100		500		
Refused requests	566	64,6	530	63,4	572	67,6	65,2
Index	100		94		127		
Refused proposals from directors	6	66,7	6	66,7	26	63,4	65,6
Index	100		100		433		

Source: Directorate for Execution of Sanctions

Next, the data on the number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal for the period 2007-2009 in relation to particular penitentiary institutions/prisons are analyzed for each year particularly.

Namely, in 2007, 876 requests were submitted of which 310 (35.4%) were accepted, and 566 (64.6%) were rejected. In the same year the directors of the penitentiaries submitted nine proposals for parole, three of which (33.3%) were accepted and 6 (66.7%) were rejected.

As expected, most of the requests (273 or 31,2%) were submitted by the prisoners serving their sentence in the Penitentiary institution Idrizovo, which is the largest in the Republic of Macedonia and approximately 60% of all persons sentenced to prison sentence are serving their sentence in this institution. But, only 21,2% of the submitted requests were accepted.

Next, 162 or 18,5% of the prisoners serving their prison sentence in the penitentiary institution Shtip submitted request and 36% were accepted.

The data are presented in Table 2.

Table 2. Number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal in 2007.

Penitentiary institution (2007)	No. of requests for parole	%	No. of proposals from directors	%	Accepted requests	%	Accepted proposals from directors	%	Refu requests
PI Idrizovo	273	31,2	0	0	58	18,7	0	0	21
PI Stip	162	18,5	3	33,3	58	18,7	2	66,7	10
PI Struga	51	5,8	2	22,2	26	8,4	0	0	2
Prison Skopje	133	15,2	2	22,2	45	14,5	0	0	8
Prison	13	1,5	1	11,1	13	4,2	1	33,3	0

Prilep									
Prison Kumanovo/ Kriva Palanka	28	3,2	0	0	17	5,5	0	0	1
Prison Bitola	28	3,2	0	0	21	6,8	0	0	7
Prison Strumica	76	8,7	0	0	20	6,5	0	0	5
Prison Gevgelija	44	5,0	0	0	21	6,8	0	0	2
Prison Tetovo	49	5,6	1	11,1	28	9,0	0	0	2
Prison Ohrid	19	2,2	0	0	3	1,0	0	0	1
Total	876	100,0	9	100,0	310	100,0	3	100,00	56

Source: Directorate for Execution of Sanctions

In 2008, the situation was as follows. 836 requests were submitted, out of which 306 (36.6%) were accepted, and 530 (63.4%) were rejected. In the same year, the directors of the penitentiaries submitted nine requests for parole, three of which (33.3%) were accepted, and 6 (66.7%) were rejected.

The complete data are presented in Table 3.

Table 3. Number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal in 2008.

Penitentiary institution (2008)	No. of requests for parole	%	No. of proposals from directors	%	Accepted requests	%	Accepted proposals from directors	%	Refu requests
PI Idrizovo	206	24,6	3	33,3	52	17,0	0	0	15
PI Stip	113	13,5	2	22,2	41	13,4	1	33,3	7
PI Struga	44	5,3	0	0,0	17	5,6	0	0	2
Prison Skopje	188	22,5	1	11,1	66	21,6	0	0	12
Prison Prilep	20	2,4	2	22,2	20	6,5	2	66,7	0
Prison Kumanovo/ Kriva Palanka	22	2,6	0	0,0	15	4,9	0	0	7
Prison Bitola	31	3,7	0	0,0	20	6,5	0	0	1
Prison Strumica	90	10,8	0	0,0	24	7,8	0	0	6
Prison Gevgelija	43	5,1	0	0,0	22	7,2	0	0	2
Prison Tetovo	53	6,3	1	11,1	29	9,5	0	0	2
Prison Ohrid	26	3,1	0	0,0	0	0,0	0	0	2

Total	836	100,0	9	100,0	306	100,0	3	100,0	53
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Source: Directorate for Execution of Sanctions

In 2009, the state of implementation of conditional release was similar with the previous years, that is, there is neither increase in the number of submitted proposals for parole of convicts from directors of penitentiary institutions, nor is the number of approved requests for probation of inmates increased by the courts.

Out of all submitted requests for parole in 2009 (846), only 274 (32,4%) of the requests were accepted by the court and 572 (67,6%) were rejected. In 2009, there was an increase in the number of submitted requests for conditional release by the directors of the penitentiaries; 41 request of which 15 (36.6%) were accepted and 26 (63.4%) were rejected. This is a notable increase, compared to 2007 and 2008, although the number of proposals submitted by the directors of the penitentiary correctional institutions for parole is still extremely small. Most of the proposals were submitted by the Director of the PI Stip (14 proposals), 9 (60%) of which were approved. It is remarkable that in 2009 the director of Idrizovo which is the largest penal institution in the Republic of Macedonia, and approximately 60% of all persons sentenced to prison sentence serve their sentence in this institution, has filed only four proposals for conditional release of convicts. Also, the director of Prison Ohrid submitted 15 proposals for parole, but only one was accepted (6,6%).

The data are presented in Table 4.

Table 4. Number of requests and proposals from directors of penitentiary institutions and their acceptance or refusal in 2009.

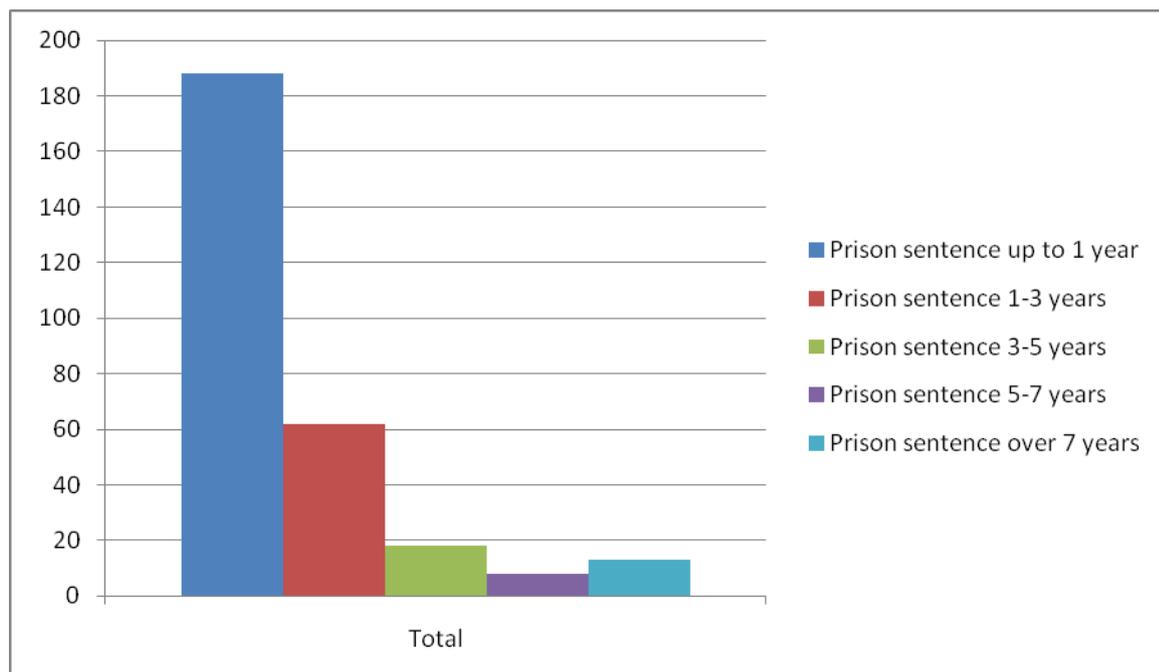
Penitentiary institution (2008)	No. of requests for parole	%	No. of proposals from directors	%	Accepted requests	%	Accepted proposals from directors	%	Refused requests	%	Refused proposals from directors	%
PI Idrizovo	204	24,1	4	9,8	53	19,3	0	0	151	26,4	4	15,4
PI Stip	91	10,8	14	34,1	21	7,7	9	60,0	70	12,2	5	19,2
PI Struga	42	5,0	1	2,4	11	4,0	0	0	31	5,4	1	3,8
Prison Skopje	213	25,2	1	2,4	82	29,9	1	6,7	131	22,9	0	0,0

Prison Prilep	31	3,7	3	7,3	18	6,6	2	13,3	13	2,3	1	3,8
Prison Kumanovo/Krivapalanka	24	2,8	0	0,0	17	6,2	0	0	7	1,2	0	0,0
Prison Bitola	34	4,0	0	0,0	13	4,7	0	0	21	3,7	0	0,0
Prison Strumica	71	8,4	2	4,9	18	6,6	2	13,3	53	9,3	0	0,0
Prison Gevgelija	55	6,5	0	0,0	19	6,9	0	0	36	6,3	0	0,0
Prison Tetovo	61	7,2	1	2,4	20	7,3	0	0	41	7,2	1	3,8
Prison Ohrid	20	2,4	15	36,6	2	0,7	1	6,7	18	3,1	14	53,8
Total	846	10,0	41	10,0	274	10,0	15	10,0	572	10,0	26	10,0

Source: Directorate for Execution of Sanctions

In most cases, the conditional release was granted to prisoners serving short sentences. Namely, in 2009 out of the total of 289 inmates who were granted a conditional release, 188 (65%) were serving prison sentences of up to 1 year and 62 prisoners (21,5%) were serving prison sentences of 1 to 3 years; 18 inmates (6.2%) were serving prison sentences of 3 to 5 years; 8 (2.8%) were serving prison sentences of 5 to 7 years and 13 (4.5%) were serving prison sentences for over 7 years.

Chart 2. Length of prison sentence for which convicted persons were granted conditional release (2009)



It can be concluded that courts grant conditional release mostly to prisoners serving short sentences, namely prison sentences of up to 1 year and prison sentences of 1-3 years.

The data are presented in Table 5.

Table 5. Length of prison sentence for which convicted persons were granted conditional release

Penitentiary institution (2009)	Prison sentence up to 1 year	%	Prison sentence 1-3 years	%	Prison sentence 3-5 years	%	Prison sentence 5-7 years	%	Prison sentence over 7 years	%
PI Idrizovo	20	10,6	10	16,1	10	55,6	4	50,0	9	69,2
PI Stip	18	9,6	9	14,5	2	11,1	0	0	2	15,4
PI Struga	7	3,7	1	1,6	1	5,6	1	12,5	1	7,7
Prison Skopje	64	34,0	18	29,0	0	0,0	0	0	0	0
Prison Prilep	6	3,2	10	16,1	4	22,2	0	0	0	0
Prison Kumanovo/ Kriva Palanka	13	6,9	4	6,5	0	0,0	0	0	0	0
Prison Bitola	9	4,8	3	4,8	0	0,0	1	12,5	0	0
Prison Strumica	15	8,0	4	6,5	0	0,0	0	0	1	7,7
Prison Gevgelija	17	9,0	1	1,6	1	5,6	0	0	0	0
Prison Tetovo	19	10,1	1	1,6	0	0,0	0	0	0	0

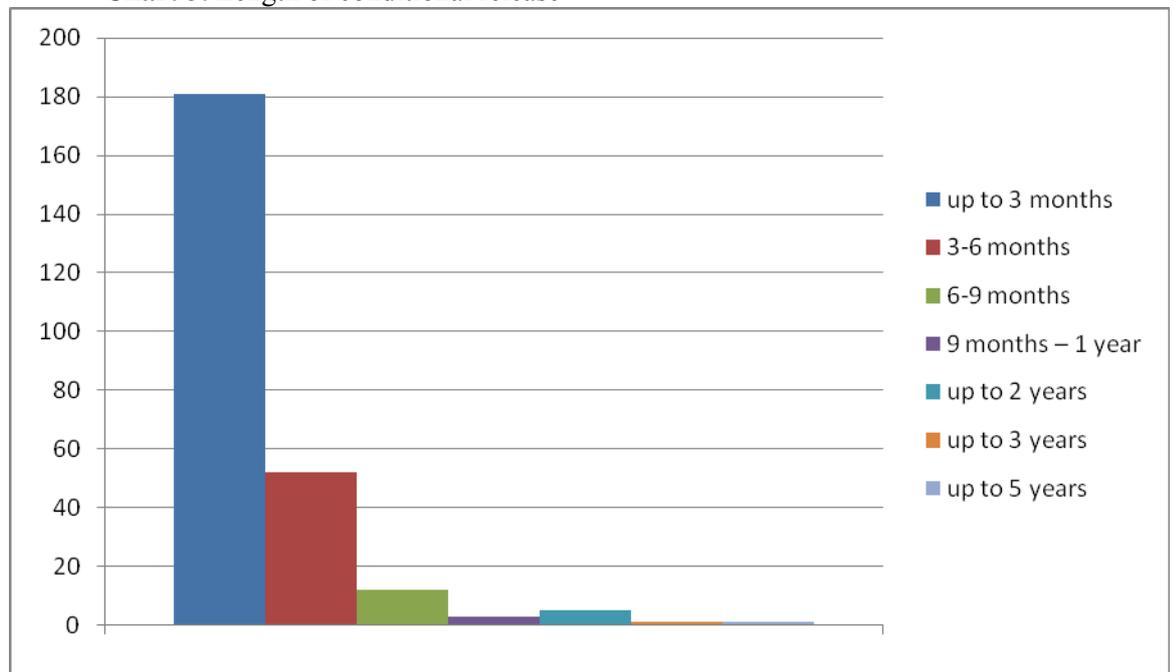
Prison Ohrid	0	0,0	1	1,6	0	0,0	2	25,0	0	0
Total	188	100,0	62	100,0	18	100,0	8	100,0	13	100,0

Source: Directorate for Execution of Sanctions

Conditional release was usually approved within a short period of time, i.e. in 181 case (62,6%) it was approved only up to 3 months, in 52 cases (18%) it was approved 3 to 6 months, in 12 cases (4,2%) it was approved for 6 to 9 months, in three cases (1%) - from 9 months to 1 year, in 5 cases (1,7%) it was approved for up to 2 years, and in one case (0,3%) it was approved up to 3 and in one case (0,3%) up to 5 years.

The data are presented in Table 6.

Chart 3. Length of conditional release



It can be concluded that courts grant prisoners conditional release only within a short period of time, mostly up to 3 months and 3-6 months earlier than the expiration of the prison sentence. This dilutes the essence of the conditional release. Namely, the prisoner can be released upon a decision of the director, as the director of an institution may also release the convict earlier if he has served at least three quarters of the prison sentence and if he was not granted conditional release, maximum 30 days before the expiration of a sentence for a prison sentence up to 1 year, up to 90 days for a prison sentence of up to 5 years and up to 120 days for a prison sentence over 5 years.⁹²

Table 6. Length of conditional release

⁹²See: LES, Article 206.

Penitentiary institution (2009)	up to 3 months	%	3-6 months	%	6-9 months	%	9 months – 1 year	%	up to 2 years	%	up to 3 years	%	up to 5 years	%
PI Idrizovo	23	12,7	19	36,5	7	58,3	-	-	2	40,0	-	-	1	100,0
PI Stip	14	7,7	12	23,1	-	-	3	100,0	-	-	-	-	-	-
PI Struga	9	5,0	1	1,9	-	-	-	-	1	20,0	-	-	-	-
Prison Skopje	73	40,3	7	13,5	2	16,7	-	-	-	-	-	-	-	-
Prison Prilep	17	9,4	3	5,8	-	-	-	-	-	-	-	-	-	-
Prison Strumica	11	6,1	5	9,6	1	8,3	-	-	2	40,0	-	-	-	-
Prison Gevgelija	17	9,4	2	3,8	-	-	-	-	-	-	-	-	-	-
Prison Tetovo	17	9,4	2	3,8	1	8,3	-	-	-	-	-	-	-	-
Prison Ohrid	-	-	1	1,9	1	8,3	-	-	-	-	1	100	-	-
Total	181	100,0	52	100,0	12	100,0	3	100,0	5	100,0	1	100	1	100,0

Source: Directorate for Execution of Sanctions

To conclude, the data on the application of conditional release in our penitentiary practice show that it is very rarely imposed. In cases where the request for parole is accepted, usually the parole is granted to prisoners sentenced to short sentences and it is mostly approved for up to 3 months. Hence, it turns out that the main objective of the institute conditional release is not realized. This objective is to motivate the inmates to engage actively in their own re-socialization process, to stimulate exemplary behaviour and actively participate in the work engagement in the institution.

According to the research conducted by Gruevska-Drakulevski in the Penitentiary Institution Idrizovo, first offenders are more likely to be released on parole than recidivists. Namely, 20,7% of male first offenders were granted conditional release, compared to 7,7% male recidivists. Also, 35% of female first offenders were granted conditional release, compared to 16,7% female recidivists.⁹³

The data prove that conditional release should be further monitored and studied in terms of its application for special categories of inmates and types of crimes. The study should allow setting criteria which will ensure the conditions for wider application of this institute, even more so as the practice indicates a negligible number of revocation of conditional release (parole) on one hand, but, on the other hand, it indicates a high rate of recidivism, especially among prisoners (57-65%)⁹⁴. In this regard, of particular importance is to

⁹³See: Груевска-Дракулевски, А. (2010) „Влијанието на казната затвор врз рецидивизмот“ (докторска дисертација), Правен факултет „Јустинијан Први“ - Скопје. [Gruevska-Drakulevski, A., The Effects of Imprisonment on Recidivism, PhD thesis, Law Faculty “Iustinianus Primus” – Skopje, 2010].

⁹⁴*Ibid.*

follow and study the penological practice among certain categories of inmates and certain types of crimes.

Conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement. It provides the prisoner with planned, assisted and supervised reintegration into the community. Also, the financial cost of imprisonment places a severe burden on society. Research has shown that detention often has adverse effects and fails to rehabilitate offenders. Thus, the judges should be more prone to approve the requests for parole and grant the convicted persons conditional release to a greater extent, when the conditions are met.

Conclusion

In the Recommendation Rec (2003) 22 on Conditional Release (Parole), the Committee of Ministers recognizes that conditional release is one of the most effective and constructive means of preventing re-offending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.⁹⁵ Hence, it recommends that governments and member states introduce conditional release in their legislation, if it does not already provide for this measure.⁹⁶ “But it clearly refrains from asserting that one system is better than another, even if members of the drafting group had their own preferences. The text simply indicates the advantages and disadvantages of each system”.⁹⁷

The legal regime of the conditional release (parole) in the Republic of Macedonia is based on the discretionary release system. The potential weaknesses for discretionary release systems, as explained in the explanatory memorandum appended to the recommendation, “is an absence of explicit criteria for granting conditional release rendering decision-making erratic; next, assessments of the likelihood of relapse into crime, made without the assistance of scientific risk instruments, may prove to be unreliable; uncertainty about the date of release making it difficult to make practical release arrangements for prisoners; the possibility that the foregoing factors lead to reduced confidence in the system and reduced motivation on the part of prisoners to co-operate in the observance of conditions and the requirements of supervision”.⁹⁸

As can be concluded from the studies, “those European countries in which the discretionary system is applied are often faced with a decline in the granting of conditional release in recent years. The reasons for this have been analyzed in the Council of Europe

⁹⁵See: Recommendation Rec(2003)22, Preamble.

⁹⁶*Ibid.*, Preamble.

⁹⁷Pierre V. Tournier, “Systems of Conditional Release (Parole) in the Member States of the Council of Europe”, *Champ pénal/ Penal field* [En ligne], Vol. I | 2004, mis en ligne le 28 janvier 2006, Consulté le 04 février 2012. URL : <http://champpenal.revues.org/378> ; DOI : 10.4000/champpenal.378.

⁹⁸*Ibid.*

recommendation on prison overcrowding and prison population inflation. There are many reasons”.⁹⁹

The Macedonia penal practice indeed faces all these weaknesses of the discretionary release system. These are empirically proven. Namely, as concluded previously in the paper, the data for the application of conditional release in our penitentiary practice shows that conditional release (parole) is very rarely imposed, and in cases where the request for parole is accepted, usually the parole is granted to prisoners sentenced to short sentences and it is mostly approved for up to 3 months. Hence, it turns out that the main objective of the institute conditional release is not realized. This objective is to motivate the inmates to engage actively in their own re-socialization process, to stimulate exemplary behaviour and actively participate in the work engagement in the institution. The data prove that conditional release should be further monitored and studied, in terms of its application for special categories of inmates and types of crimes. The study should allow setting criteria which will aim to ensure the conditions for a wider application of this institute.

On the other hand, explanatory memorandum appended to the Recommendation, also points to the weaknesses of the mandatory release system.¹⁰⁰ Hence, it would be a rushed solution to propose introducing the mandatory release system penal regime on conditional release (parole) in the Republic of Macedonia as a better solution than the discretionary release system.

⁹⁹*Ibid.* “**Public opinion:** generally very badly informed about the issues involved in the execution of sentences, it views measures for early release as a sign of "being soft on crime". **The social and economic context:** the conditions for being released on parole are often unattainable for population groups that are increasingly marginalised. In addition, there is the difficulty of finding reasonably stable accommodation and especially employment on leaving prison. Change in the structure of prison populations according to the types of offence for which prosecutions are brought or sentences pronounced: in many countries, the growing numbers sent to prison for sexual violence or drug trafficking do not help to increase the rates of early release, since the decision to be taken may have serious consequences if considered in terms of recidivism. **Competition from non-individualised adjustment measures:** some countries make use of amnesties and/or collective pardons, sentence reductions for which the conditions are exclusively linked to behaviour during imprisonment (positive criterion) or the absence of any serious incident during imprisonment (negative criterion); granting conditional release then becomes almost systematic and the measure therefore loses any individual character. These procedures, designed purely to deal with the shortage of places and maintain discipline are far removed from the true spirit of parole.

¹⁰⁰See: Pierre V. Tournier, op. cit.: “Mandatory release systems, on the other hand, risk presenting the following weaknesses: Knowing with certainty the date for conditional release reduces motivation on the part of prisoners to take part in programmes and courses designed to enable them to lead crime and drug-free lives after release from prison; Knowing for certain the date of release leads to worsened behaviour by prisoners during their stay in prison; The lack of the possibility to withhold conditional release leads to a marked increase in crime in the community being committed by conditionally released prisoners; The mandatory release will lead judicial authorities to impose longer custodial sentences”.

Furthermore, there is a need to develop research on the different systems and to evaluate the advantages and disadvantages of the systems and the implication of their implementation in our country. Also, there is a need to communicate the findings to political officials, as well as to the criminal justice system actors and to all citizens involved. Conditional release measures require the support of political leaders, administrative officials, judges, public prosecutors, advocates and the public. Therefore, they need a detailed explanation as to the reasons for adapting prison sentences. The present data on conditional release (parole) in the Republic of Macedonia are very scarce. Hence, we should strive toward a solution incorporating the best of each of the release systems, so that the enforcement of the prison sentence will be more convincingly committed to respecting human rights.

Other conclusions that we may draw are as follows.

The principle of the Recommendation according to which “when starting to serve their sentence, prisoners should know either when they become eligible for release by virtue of having served a minimum period and the criteria that will be applied to determine whether they will be granted release”, needs to find common application in our penitentiary practice. Namely, at the very beginning of serving their prison sentence, prisoners should be informed of the right to parole and the conditions under which they can be granted the right to be released on parole. This will stimulate the prisoners to respect the order and discipline in the penitentiary institution, to have an active attitude toward their own re-socialization process and so on.

Next, regarding the additional terms, namely the possibility that the conditionally released are specified with a protective supervision comprising special measures of assistance, care, supervision or protection, implemented by the social authority, the Macedonian legislation needs amendments. These provisions on additional requirements/ conditions for granting conditional release need clarification, since the Macedonian legislation does not specify exactly the special measures of assistance, care, supervision or protection. In this sense, the principles of the Recommendation should be followed. Or, these additional conditions should comprise the obligations set in the Criminal Code for the probation with protective supervision.

In the opinion of the author of the paper, the procedure for granting conditional release in the Macedonian legislation and practice is complex, the criteria that prisoners have to fulfil in order to be conditionally released are not clear and explicit, except for the formal one. Thus, the principles of the Recommendation should be followed. The criteria that prisoners have to fulfil in order to be conditionally released should be clear and explicit. Also, they should be realistic in the sense that they should take into account the prisoners' personalities and social and economic circumstances, as well as the availability of resettlement programmes. Namely, availability of resettlement programmes is something that the Macedonian penal practice lacks.

In a future amendment of LES the procedural safeguards from the Recommendation should be implemented. These would strengthen the position of the convicted person when requesting conditional release.

Something that the Macedonian penal practice would benefit from are the methods to improve decision-making, principles set by the Recommendation in a particular section.

In order that the conditional release is more frequently used, there is a need for information and consultation on conditional release, as stipulated in the Recommendation.

Finally but not least, as suggested in the Recommendation, there is a pressing need for research and statistics on conditional release (parole) in the Republic of Macedonia, since, as can be seen in the previous chapter, the data on conditional release (parole) in the Republic of Macedonia are very scarce.

To sum, “bearing in mind that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community and that the financial cost of imprisonment places a severe burden on society and that research has shown that detention often has adverse effects and fails to rehabilitate offenders”,¹⁰¹ the judges should be more prone to approve the requests for parole and grant convicted persons conditional release to a greater extent, when the conditions are met.

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¹⁰¹See: Recommendation Rec(2003)22, Preamble.

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