

# Legal Regulation on Early Release from Imprisonment: Comparative Experience of Selected Foreign Countries

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## ABSTRACT

Each year, the majority of individuals released from correctional institutions on legally prescribed grounds are released on the basis of early release. Since early release from imprisonment produces both positive and negative social effects, it has been considered necessary to study this issue, which is why this topic was selected.

The institution of early release from imprisonment was first codified in the French Criminal Code in 1855, and because most countries in the world have incorporated it into their criminal legislation, it may be regarded as a universally recognized legal institution.

The institution of early release is grounded in the principle of humanity, reflecting the idea that once the objectives of punishment have been achieved prior to the full expiry of the sentence, continuing the imprisonment is no longer necessary.

The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) provide that “...before the release of a prisoner, measures shall be taken to ensure his or her gradual reintegration into society.” In pursuit of this objective, the Rules emphasize that “individual characteristics of each prisoner shall be taken into account; special regimes and conditions shall be established for prisoners who have been released or are close to release; and a period of supervision after release may be imposed, during which supervision shall not be exercised by the police but shall involve the provision of social welfare services and assistance...”<sup>1</sup>

The central substance of this standard under the Mandela Rules is probationary supervision, under which individuals released from correctional institutions and undergoing reintegration into society are provided with social welfare services, psychological assistance, and other forms of support.

There are two essential grounds for applying the institution of early release from imprisonment:

Material ground — the objectives of punishment have been fulfilled;

Temporal ground — the offender has served a specified portion of the sentence.

In the nineteenth and twentieth centuries, many countries abolished forms of punishment involving torture and, in some jurisdictions, completely abolished the death penalty by removing it from their criminal codes. In its place, most jurisdictions began to apply early release from imprisonment more widely. This development enabled courts to impose more humane forms of punishment, and the humanitarian principle came to be expressed through the mechanism of early release.

In foreign countries, the most common form of early release is release under supervision, meaning that the released individual remains subject to oversight. The essence of this system is that the prisoner is released before the full expiry of the sentence but is placed under supervision during the period of regained liberty. In most Western and Eastern European countries, prisoners are permitted to apply for supervised release after serving a portion of their sentence.

A shared feature among these countries is the existence of strict mechanisms governing both the supervision of individuals released early and the work of the officers responsible for supervision at all stages. These stages include consideration of the early-release application, the supervision phase, and the provision of post-release assistance.

**Keywords:** imprisonment, criminal legislation of selected foreign countries, probation period, early release from

imprisonment

### **The United Kingdom**

In the United Kingdom, only those offenders who have been sentenced to imprisonment for four years or more, as well as prisoners sentenced to life imprisonment, may be released before the expiry of their sentence, provided that they have served 9 to 12 years of their term. Offenders who have not fully served their custodial sentence are subject to supervision by probation officers for the remainder of the sentence.

One of the important features of the United Kingdom is that the Criminal Justice Act 1997 introduced what may be regarded as fundamental changes to the legal framework governing early release. For example, Section 10 of the Act provides that the Secretary of State for the Home Department may order the release of a prisoner at any time if he considers that circumstances relating to the prisoner's family justify such release.

In addition, under this Act, even prisoners sentenced to life imprisonment may be released before the expiry of their sentence with the authorization of the Secretary of State. However, it should be emphasized that this arrangement applies only to offenders who were under the age of 18, where the law does not specify the term of imprisonment for the offence committed, and where the court judgment allows the possibility of release after serving a certain portion of the sentence. These offenders may also be released early when exceptional family circumstances arise. Release under this ground is always subject to specific mandatory conditions.

The Secretary of State has the authority to revoke or annul the early release decision of a life-sentenced prisoner. In such a case, the prisoner is returned to a correctional institution to serve the remainder of the sentence.

In the United Kingdom, the body that plays the central role in early release proceedings is the Parole Board. Under the Criminal Justice Act 1991, the Board consists of a chairperson—who is a judge—and three members. Depending on the nature of the case under review, the composition of the Board may change, in consultation with the Secretary of State for the Home Department.

If the Board is considering the early release of a prisoner sentenced to life imprisonment for offences related to terrorism, murder, causing serious bodily harm to a police officer or prison officer, attempted sexual offences against minors, rape, or manslaughter committed accidentally while on supervised early release from a previous sentence, the Board must be chaired by a judge of the High Court of Justice. In all other cases, the Board is chaired by a judge of the local criminal court.

Under its rules, one member of the Board must be a psychologist, and in some cases, a psychologist or a probation officer may serve on the Board. Another member may be a criminologist, psychologist, or probation officer.

### **France**

In France, a person sentenced to imprisonment may be released early if he or she has demonstrated rehabilitation, compensated the victim for the harm caused, and if sufficient grounds exist to support reintegration into society. For prisoners sentenced to life imprisonment, the question of early release may be considered after serving fifteen years of the sentence.

(Article 729 of the French Code of Criminal Procedure)

In France, the authority empowered to grant early release is the Minister of Justice. The decision on early release is transmitted to the Minister for approval. The resolution must include the opinions of the head of the correctional institution where the prisoner is serving the sentence, the judge responsible for sentence enforcement, the prosecutor, the head of the administrative unit where the prisoner intends to reside after release, and the head of the administrative unit in which the correctional institution is located.

(Article 730 of the French Code of Criminal Procedure)

A prisoner sentenced to life imprisonment who is released early is subject to supervision for a period of five to ten years.

### **The United States of America**

In the United States, decisions on early release are made by the State Parole Boards. Depending on the seriousness of the offense committed, a prisoner becomes eligible for early release after serving six-sevenths, two-thirds, or one-half of the imposed term of imprisonment. Under the New York Penal Law, prisoners convicted of first-degree serious offenses, including murder, are prohibited from being released early. Prisoners sentenced to life imprisonment may also be eligible for early release, provided that they have served the minimum period of imprisonment prescribed for the offense committed.

It should also be noted that, in the United States, a sentence of life imprisonment may be imposed without the possibility of release. In addition, a prisoner sentenced to life imprisonment may become eligible for early release after serving ten years of the sentence.

Furthermore, in determining early release, significant importance is attached to the prisoner's prospects for future behavior. Under federal criminal law, a prisoner eligible for early release must, prior to release, prepare a post-release supervision plan, in coordination with the correctional institution, specifying the place of residence and employment after release.

### **Austria**

In Austria, a prisoner sentenced to life imprisonment may be released after serving fifteen years of the sentence. Under the Austrian Criminal Code, a probation period of one to five years is imposed on a person released early, depending on the length of the unserved portion of the sentence. For offenders sentenced to life imprisonment, as well as prisoners with mental disorders or recidivists, a ten-year probation period is imposed upon early release.

It is appropriate to note that early release from imprisonment may not be applied in the following circumstances:

**where there are grounds to believe that the prisoner may commit a criminal offence upon regaining liberty;**

**where it is necessary, for the purpose of general crime prevention, that the remaining portion of the sentence be served in full.**

In Austria, the decision to grant early release is rendered by a judge. The judge also appoints an assistant to the released prisoner, whose role is to help the individual comply with the law and maintain a positive outlook. The assistant may be an employee of a non-governmental organization or a worker of a religious organization with official authorization.

### **Denmark, Norway, Sweden**

In Denmark, Norway, and Sweden, supervision over a released person is also carried out by local community volunteers engaged in social work in the area where the individual resides. These countries operate professional probation services, which work in cooperation with such volunteers. The probation authorities

oversee the released offender and provide assistance in social reintegration, while volunteers support these efforts and help monitor the individual's adjustment to society.

### **The Federal Republic of Germany**

Article 57 of the Criminal Code of the Federal Republic of Germany provides for early release from imprisonment. Under this provision, a prisoner serving a sentence of life imprisonment may be released after serving fifteen years, subject to a five-year probation period.

In 1977, the Federal Constitutional Court of Germany held that life imprisonment must include the possibility of conditional release after a certain period, and that the resocialization and rehabilitation of such prisoners is appropriate and consistent with constitutional principles. The probation period may range from two to five years.

A distinctive feature of German law is that the prisoner's own consent is required in order to grant early release.

Under the Criminal Code, the court appoints a probation assistant (Bewährungshelfer) to the released prisoner for the duration of the probation period. The primary functions of the assistant are to provide social support to the released individual, to supervise his or her conduct and behavior, and to ensure compliance with the obligations imposed by the court.

### **The People's Republic of China**

In the case of the People's Republic of China, pursuant to Article 81 of the Criminal Law, a prisoner becomes eligible for early release after serving one-half of his or her sentence. This provision applies only to prisoners sentenced to up to ten years of imprisonment. However, individuals who are recidivists, or who have been sentenced to more than ten years, or to life imprisonment, are not eligible for early release.

A proposal for early release is reviewed by the Supreme People's Court, which transmits its resolution to the administration of the correctional institution. A distinctive feature of Chinese law is that, upon receipt of a proposal for early release, the People's Court is required to disclose the information to the public within five days.

The People's Court publishes the offender's basic information, the crime committed and the sentence imposed, any prior criminal record, the recommendation of the correctional institution, and the grounds for early release. The publication also provides the means for the public to submit opinions or contact the court within the five-day period.

Where necessary, the People's Court may summon witnesses, experts, interpreters, or other persons to provide explanations regarding the prisoner's remorse, merits, or other circumstances supporting or opposing the mitigation of the sentence.

### **The Russian Federation**

Under the Criminal Code, early release may be granted if the prisoner demonstrates rehabilitation and compensates the damage wholly or partially. Eligibility thresholds are:

**1/3 of the sentence for minor and less serious crimes;**

**1/2 for serious crimes;**

**2/3 for particularly serious crimes;**

**3/4 for crimes involving sexual offences against minors or narcotics trafficking.**

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## **Life-sentenced prisoners may apply for early release after serving 25 years.**

However, inconsistencies exist: for certain crimes (terrorism, hostage-taking), the Criminal Code allows imprisonment for up to 30 or 35 years, which means some life prisoners become eligible for early release before prisoners serving long fixed-term sentences, creating a legal contradiction requiring resolution.

Some legal systems assess only the prisoner's record of compliance rather than subjective rehabilitation. For example, in Belarus, early release is available for prisoners with no disciplinary violations.

### **Mongolia**

In the case of Mongolia, Article 6.12 of the General Part of the Criminal Code provides that an offender may be released on parole and placed under supervision if he or she has compensated the damage caused by the crime, demonstrated through conduct that he or she no longer poses a danger to the public, and has not committed any serious violations during the term of imprisonment, and has served:

**not less than one-half of a sentence of imprisonment of up to five years;**

**not less than two-thirds of a sentence of imprisonment from five to twelve years; or**

**not less than three-fourths of a sentence of imprisonment from twelve to twenty years,**

**taking into account the prosecutor's recommendation. When releasing a convicted person on parole, the court shall impose a period of supervision equal to the unserved portion of the sentence.**

If a person released early from imprisonment violates the obligations imposed on him or her during the supervision period, the court—taking into account the prosecutor's recommendation—shall annul the decision on supervision and order the enforcement of the remaining unserved sentence.

If a person released early commits an intentional crime during the supervision period, the court shall add the sentence imposed for the new crime to the unserved portion of the previous sentence. If such a person commits a negligent crime during the supervision period, the court shall decide whether the sentence for the new crime should be added to the unserved portion of the previous sentence.

The law further provides that a person sentenced to life imprisonment may apply for release after serving twenty-five years. The court shall decide whether to release the prisoner, taking into account the circumstances of the crime, the nature of the harm and consequences, and the personal characteristics of the offender. If the prisoner is not released on this ground, the issue must be reconsidered every two years.

As seen from the legislation of the aforementioned countries, early release from imprisonment constitutes a form of incentive and an expression of the principle of humanity.

## **CONCLUSION**

Early release from imprisonment is a concept of significant importance for the State's penal policy and for broader socio-economic considerations. By studying the sound practices of certain foreign jurisdictions and incorporating them into national legislation, Mongolia may better protect its citizens from criminal harm while facilitating the reintegration and rehabilitation of offenders released early from imprisonment, thereby contributing to the enhancement of legal awareness among citizens.

A review of foreign regulations shows that:

A sufficient number of actors participate in parole proceedings, and different bodies render the decision to release. For example, parole boards operate in the United States, the United Kingdom, and Canada; a consultative committee under the Minister of Justice operates in France; while courts make the decision in the Federal Republic of Germany and Austria.

The portion of the sentence that must be served before eligibility for early release varies across jurisdictions.

A probationary period is imposed after release, during which professional probation services and volunteers monitor the individual and provide social welfare support.

## RECOMMENDATIONS

Involve psychologists and criminologists in parole proceedings.

Regulate the possibility or impossibility of parole for life-imprisonment sentences.

Consider reducing the required portion of the sentence to be served before eligibility for early release, in line with comparative international practice.

Introduce a probationary period for early release in accordance with international standards.

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