

## CONDITIONAL EARLY RELEASE FROM PUNISHMENT: THE INTERPRETATION OF THE TERMS OF APPLICATION

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The subject of the research is the public relations governing the serving of the sentence by the convicted person and the exercise of the right to parole.

The purpose of the article is to determine the content and formulate proposals for improving the criminal legislation and the practice of its application on the basis of established approaches to the interpretation of the conditions for the application of parole, provided for in Art. 79 of the Criminal Code of the Russian Federation. The hypothesis of the research is the legislative wording of the conditions for the application of parole, provided for by Russian Criminal Code (paragraph "g" of Part 3 of Art. 79) – “at least three-quarters of the sentence imposed for crimes against the sexual inviolability of minors, as well as for grave and especially grave crimes related to the illegal circulation of narcotic drugs, psychotropic substances and their precursors” – do not have a sufficient degree of specificity and does not allow to unambiguously determine the moment of emergence of the right to parole.

The methodology. General scientific methods (analysis, synthesis, induction, deduction) as well as private scientific methods of criminal law research (formal-legal and linguistic interpretation of legal acts) – were used. The authors propose to correct the provisions of the Russian Criminal Code and to consolidate the content of the concepts used in the criminal law on the basis of the analysis of various normative legal acts, acts of judicial interpretation and provisions of the doctrine of criminal law.

The main scientific results. During the analysis of the provisions of Part 3 of Art. 79 of the Russian Criminal Code, regulating the conditions for the application of parole, the authors reveal a number of inaccuracies in the provisions of the criminal law. Such inaccuracies do not allow to unambiguously determine the grounds for parole of persons who have committed crimes against the sexual integrity of minors, as well as persons who have committed grave and especially grave crimes connected with the illegal circulation of narcotic drugs, psychotropic substances and their precursors. The content of the prescriptions of clause "g" of Part 3 of Art. 79 of the Russian Criminal Code does not have an exact legislative basis, and the interpretation given by the judicial authorities does not always allow us to exclude the uncertainty of the concepts used.

Conclusions. The contradictions were identified by the authors related to the inaccuracy of the legislative prescriptions used in determining some conditions for the application of parole. The authors conclude the need to amend the criminal law and formulated proposals that clarify the wording of Art. 79 of the Russian Criminal Code. Such corrections will eliminate the duality of understanding of certain conditions of parole and increase the effectiveness of law enforcement practice in this area.

## 1. Introduction

Conditional early release from serving a sentence (hereinafter parole) is a widely used means of encouraging and stimulating the lawful post-criminal behavior of persons convicted of a crime [1, pp. 198-202]; [2, S. 142-149]; [3]; [4, pp. 698–703]; [5, p. 102-107]; [6]. The practice of using this type of exemption from punishment testifies to its prevalence and relevance. In 2019 alone, according to the Judicial Department at the Supreme Court of the Russian Federation, about 45 thousand applications for parole were granted. At the same time, in more than 33 thousand cases, parole was refused on various grounds. Release from serving a sentence on this basis is a reaction of the state to such behavior of the convict, which testifies to his correction and, subject to all the conditions enshrined in Art. 79 of the Criminal Code of the Russian Federation, makes it possible to exclude the further implementation of repressive influence. At the same time, the legislator in Art. 79 of the Criminal Code of the Russian Federation determined a list of conditions that both determine the possibility of applying parole and prevent release from punishment.

## 2. Methodology.

During the study, logical-legal, formal-legal and linguistic methods were used, which made it possible to identify a number of problems in the design and application of the norms of the Criminal Code of the Russian Federation regulating parole from serving a sentence.

## 3. Analysis of law enforcement problems

Depending on the category of the crime and other characteristics, the legislator has determined the term that the convicted person must serve in order to be able to apply for parole. The fulfillment of this condition is mandatory for obtaining the right to exemption, in connection with which its content must be extremely clearly defined in the law and have an unambiguous interpretation [7, pp. 66-70]; [8-9].

Analysis of the provisions of Art. 79 of the Criminal Code of the Russian Federation indicates that a number of conditions for the use of parole

contained in paragraphs. "A", "b", "c" p. 3 tbsp. 79 of the Criminal Code of the Russian Federation, today are of an evaluative nature and do not have a sufficiently clear content, as a result of which they require official interpretation at the level of the highest court [10, p. 166.], and in some cases, the correct establishment of their content seems in principle difficult.

Thus, as one of the prerequisites for the release of a person from serving a sentence in paragraph "g" of Part 3 of Art. 79 of the Criminal Code of the Russian Federation indicates the need to serve at least 3/4 of the sentence imposed for committing crimes against the sexual inviolability of a minor.

Considering that sexual inviolability is an absolute prohibition on the entry of adults into sexual relations with persons who do not have sexual freedom, that is, those who have not reached the age of sixteen [11, p. 92.], acting regardless of whether such sexual relations [12, p. 110.], there is uncertainty about the meaning laid down by the legislator in the prescription in question.

In the doctrine of criminal law, it is quite well established that only persons under the age of 16 have sexual immunity [13, pp. 52-54.] (As well as persons who are incapable, due to mental retardation or mental disorder, to perceive and realize the nature of the actions committed against them) [14, pp. 116-118.], and minors aged 16 to 18 years already have sexual freedom [15, pp. 67-69.]; [16, pp. 72-78.]. Confirmation is the criminal prohibition on non-violent sexual intercourse with a person under exactly 16 years of age (Article 134 of the Criminal Code of the Russian Federation).

A literal interpretation of the legislative prescription may lead to the conclusion that the condition of parole under consideration does not apply to cases of crimes against sexual freedom of persons from 16 to 18 years old. Accordingly, the person who committed a crime under paragraph "a" of Part 3 of Art. 131 of the Criminal Code of the Russian Federation (or clause "a" of part 3 of Art. 132 of the Criminal Code of the Russian Federation), in relation to a 16- and 17-year-old victim (victim), is not obliged to serve 3/4 of the sentence, while the commission of the same crime in relation to the 14-

and 15-year-old victim will entail the application of the specified paragraph "g" of Part 3 of Art. 79 of the Criminal Code of the Russian Federation.

A similar wording is used when describing the qualifying features of Part 5 of Art. 131, part 5 of Art. 132, part 6 of Art. 134, part 5 of Art. 135 of the Criminal Code of the Russian Federation. Their interpretation is given in paragraph 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation "On judicial practice in cases of crimes against sexual inviolability and sexual freedom of the individual": "to those who have a previous conviction for a crime against the sexual inviolability of a minor (part 5 of Art. 131 of the Criminal Code of the Russian Federation, Part 5 of Art. 132 of the Criminal Code of the Russian Federation, Part 6 of Art. 134 of the Criminal Code of the Russian Federation, Part 5 of Art. 135 of the Criminal Code of the Russian Federation) include persons who have an outstanding or not cleared conviction for any of the crimes committed against juveniles provided for in Art. 132, part 2 of Art. 133, Art. 134, 135 of the Criminal Code of the Russian Federation".

The cited legislative provision, in the context of the title of Chapter 18 of the Criminal Code of the Russian Federation ("Crimes against sexual inviolability and sexual freedom of the individual"), as well as the title of the aforementioned Resolution of the Plenum of the Supreme Court of the Russian Federation, obviously includes encroachments not only on sexual inviolability, but also on sexual freedom personalities (including minors).

Considering that the special requirements of Art. 79 of the Criminal Code of the Russian Federation are fully justified in the context of special prevention and are associated with the need for a longer stay in conditions of isolation and control of persons posing an increased public danger, based on the nature of the crimes committed, and therefore the terminology used by the legislator should not allow ambiguity in interpretation and, as a consequence, the ability to challenge the judgment. At the same time, an analysis of law enforcement practice allows us to conclude that the courts, as a rule, correctly interpret the provisions of the law (clause "g", part

3 of Art. 79 of the Criminal Code of the Russian Federation), believing that this prescription covers crimes related not only to with sexual inviolability, but also with the sexual freedom of minors.

It should be noted that other regulatory legal acts provide for similar restrictions, grounds or conditions for the application of legal measures. In particular, Art. 3 of the Federal Law "On Administrative Supervision" as one of the grounds for the mandatory establishment of administrative supervision indicates "the commission of a crime against sexual inviolability and sexual freedom of a minor." This formulation, in our opinion, more accurately conveys the meaning of the legislative prescription and eliminates the possibility of a double interpretation.

It seems that the objective need to strengthen criminal liability for crimes against minors is not an excuse for inaccurate interpretation of terms and concepts used in criminal law.

#### **4. Problems of the practice of applying the conditions of parole and suggestions for their elimination.**

In order to improve the law and eliminate possible contradictions in the interpretation of the concept under consideration, we consider it necessary to change the wording used in paragraph "d" of Part 3 of Art. 79 of the Criminal Code of the Russian Federation, to a more precise one: "... for committing crimes against sexual freedom or sexual inviolability of minors ...".

The item under consideration also contains an indication of the need to serve 3/4 of the sentence imposed for grave and especially grave crimes "related to the illegal circulation of narcotic drugs, psychotropic substances and their precursors."

This formulation is unsuccessful for several reasons at once. Firstly, it does not contain a specific list of legal facts (offenses), the commission of which gives rise to certain legal consequences, in contrast to the specific list of "terrorist crimes" in the same paragraph (Articles 205, 205.1, 205.2, 205.3, 205.4, 205.5 of the Criminal Code of the Russian Federation).

The absence of an official normative definition of this term does not allow us to accurately determine the meaning and content of this prescription. So, in addition to the obviously

included Art. 228, 2281 of the Criminal Code of the Russian Federation, regarding other crimes, it is impossible to unequivocally answer the question of whether they are associated with the illegal circulation of narcotic drugs, psychotropic substances and their precursors.

For example, the relevance of such crimes as illegal trafficking in new potentially dangerous psychoactive substances is not always obvious (Article 2341 of the Criminal Code of the Russian Federation); organization or maintenance of dens or the systematic provision of premises for the consumption of narcotic drugs, psychotropic substances or their analogues (Article 232 of the Criminal Code of the Russian Federation); inducement to consume narcotic drugs, psychotropic substances or their analogues (Article 230 of the Criminal Code of the Russian Federation), etc. Such "connectedness" is not obvious, including for the law enforcement officer.

Thus, by the verdict of the Soviet District Court of Volgograd, K. was convicted under Part 2 of Art. 232 of the Criminal Code of the Russian Federation to imprisonment for a period of 2 years with serving the sentence in a penal colony with a strict regime. After 1 year and 1 month, the convicted person filed an application for parole, which was granted. However, the Presidium of the Volgograd Regional Court, canceling this decision, indicated that the crime committed (part 2 of Art. 232 of the Criminal Code of the Russian Federation "Organization or maintenance of dens or the systematic provision of premises for the consumption of narcotic drugs, psychotropic substances or their analogues") is "associated with illegal the turnover of narcotic drugs ...", and by virtue of paragraph g "h. 3 of Art. 79 of the Criminal Code of the Russian Federation, the term of serving the sentence should be 1 year and 6 months.

Such situations become possible precisely because of the ambiguity of the concept used by the legislator and the possibility of its double interpretation.

The content of this condition of release from serving a sentence can be determined only through a systemic interpretation of many legislative and by-laws. For example, a similar concept is used in

determining statistical indicators of crime and is regulated by the corresponding instruction of the General Prosecutor's Office of Russia and the Ministry of Internal Affairs of Russia, List No. 3 of which defines the content of the category of "crimes related to the illegal circulation of narcotic drugs, psychotropic substances and their precursors or analogues, potent substances, plants (or parts thereof) containing narcotic drugs or psychotropic substances or their precursors, new potentially dangerous psychoactive substances."

It seems that today the use of this interpretation in relation to the grounds for exemption from punishment cannot be recognized as admissible. Firstly, the Directive has a narrowly specific scope of application (the formation of statistical reports) and cannot be considered as a priority for the Courts when deciding on release from serving a sentence. Secondly, the given concepts do not coincide both in name and in content.

In particular, Art. 79 of the Criminal Code of the Russian Federation does not contain a mention of analogues, potent substances, plants (or their parts) containing narcotic drugs or psychotropic substances, or their precursors, new potentially dangerous psychoactive substances. In addition, this definition refers to the category of "bound" under certain conditions and other compounds (Articles 158, 159, 160, 161, 162, 163, 2261, 234, 188, 150, 151, 171, 174, 1741, 209, 210, 2101, part 1 of Article 325, Article 327 of the Criminal Code of the Russian Federation).

Despite the similarity of the concepts under consideration, their use in the context of Art. 79 of the Criminal Code of the Russian Federation seems to be legally impossible, in connection with which this condition requires an independent explanation or correction of the name in such a way as to exclude interpretation by analogy.

Conditions similar to those considered are contained in Part 2 of Art. 80 of the Criminal Code of the Russian Federation ("Replacement of the unserved part of the punishment with a milder type of punishment"), which also introduces uncertainty into the content of the conditions for the application of a measure of criminal law.

It is not the first time that the legislator has

used such terms to design the norms of the Criminal Code of the Russian Federation. For example, committing extremist crimes is a mandatory sign of organizing an extremist community (Article 282.1 of the Criminal Code of the Russian Federation). This term received its legal definition in the framework of the note to this article, which made it possible to eliminate uncertainty. Great attention in the legal literature has been paid to the interpretation of the prescriptions of paragraphs. "v", "z", "k" part 2 of Art. 105 of the Criminal Code of the Russian Federation. The term "associated with ..." (kidnapping, robbery, extortion or banditry, etc.) used in these norms clearly defines the list of crimes, the commission of which, in conjunction with murder, makes it possible to classify it as a qualified one. Similar formulations ("related to ...") are also used when describing the qualified features of some corpus delicti (part 4 of Art. 150, part 2 of Art. 213 of the Criminal Code of the Russian Federation, etc.), but they contain an exact description of what facts of criminal activity (actions and corpus delicti) the main crime is connected with.

When describing one of the conditions for exemption from criminal liability for committing a crime under Art. 2283 of the Criminal Code of the Russian Federation, the legislator uses a different, more specific formulation: "actively contributing to the disclosure or suppression of crimes related to illegal trafficking in precursors of narcotic drugs or psychotropic substances, as well as illegal acquisition, storage, transportation of such plants or their parts." In this special ground for exemption from criminal liability, there is no mention of analogues of narcotic drugs or new potentially dangerous psychoactive substances, which makes it possible to specify the content of the legislative prescription.

It seems that the use of these and similar concepts is permissible in the titles of acts of interpretation of the norms of law, while the formulations of the legal prescriptions themselves should exclude their deliberately ambiguous interpretation.

## 5. Conclusions

Elimination of the considered contradictions is possible by clarifying the content of clause "g" of Part 3 of Art. 79 of the Criminal Code of the Russian Federation and the use of the full names of groups of crimes to determine the conditions of parole from serving a sentence:

"Crimes related to illegal circulation of narcotic drugs, psychotropic substances and their precursors or analogues, potent substances, plants (or their parts) containing narcotic drugs or psychotropic substances or their precursors, new potentially dangerous psychoactive substances";

"Crimes against sexual inviolability or sexual freedom of minors."

In order to exclude the possibility of ambiguous interpretation of the conditions under consideration, it seems necessary to correct their names and determine their content within the framework of the notes to Art. 79 of the Criminal Code of the Russian Federation.

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