



**AMERICAN UNIVERSITY OF ARMENIA**

**COLLEGE OF HUMANITIES & SOCIAL SCIENCES**

**LL.M. Program**

TITLE

**ANALYSIS ON LEGAL REGULATION REGARDING EARLY  
CONDITIONAL RELEASE SYSTEM OF THE REPUBLIC OF ARMENIA**

STUDENT'S NAME

**SERGEY LYOVA GHAZINYAN**

SUPERVISOR'S NAME

**PROF. ARMAN TATOYAN**

NUMBER OF WORDS

**9662**

1

## TABLE OF CONTENT

<b>INTRODUCTION</b>	<b>3</b>
<b>I. THE AIM AND PURPOSE OF THE EARLY CONDITIONAL RELEASE SYSTEM AND ITS EVOLUTION IN THE REPUBLIC OF ARMENIA</b>	<b>5</b>
1. The Aim and Purpose of the Early Conditional Release System	5
2. Types of the early conditional release system in CoE Member States	7
i. Discretionary release system	8
ii. Mandatory release system	8
iii. Mixed release system	8
3. Evolution of the Early Conditional Release System in the Republic of Armenia	8
<b>II. ANALYSIS ON THE EARLY CONDITIONAL RELEASE SYSTEM OF THE REPUBLIC OF ARMENIA BEFORE 2017 AMENDMENTS. SOLUTIONS PRESENTED BY THE CURRENT SYSTEM, COVERING THE PROBLEMS OF THE PREVIOUS</b>	<b>12</b>
1. Main problems with regard to the bodies involved in the early conditional release system operating before amendments of 2017	13
i. Administration of penitentiary institution	13
ii. Independent Commission	14
iii. Court	15
2. Procedural issues related to the early conditional system operating before amendments of 2017...15	
3. Substantive issues related to the early conditional system operating before amendments of 2017...16	
<b>III. ANALYSIS ON THE EARLY CONDITIONAL RELEASE SYSTEM OF THE REPUBLIC OF ARMENIA AFTER 2017 AMENDMENTS. THE LEGISLATIVE INITIATIVES OF MARCH 2018.....</b>	<b>19</b>
1. Statistical data on operation of current early conditional release system from July 1, 2017 to December 31, 2017	19
2. Main problems regarding early conditional release system operating after amendments of 2017...21	
i. Necessity of reasoning of decisions of the Independent Commission	21
3. Main directions of legislative initiatives presented in March 2018	23

<i>i. Presentation of reports by the Penitentiary department and Probation Service and elimination of the Independent Commissions</i>	24
<b>LIST OF RECOMMENDATIONS</b>	25
<b>BIBLIOGRAPHY</b>	27

## INTRODUCTION

Prisoner is an equal member of society, who is isolated in order to be reintegrated back in it. The aim of imprisonment is to recover the social justice and to ensure the resocialization of the person. According to the well-known international documents of relevant field, the preparation of person to return to society has high importance. One of the ways to ensure effective reintegration, is the insurance of a prisoner's right to be released earlier than it is imposed by the judicial act in force. This will be a motivation of a person to be corrected and not to commit a crime again in future. In other words, the purpose of the mechanism which is going to be discussed within the current paper is the prevention of reoffending in the society. According to various international the current system has different names but, it is mainly known as "*Early conditional release*".

The early conditional release system exists in many countries, mainly in the Council of Europe (CoE) member states. The mechanism is accepted since its purpose is to ensure the effective resocialization of prisoners. However, if the system has any legislative or practical gaps, it will not only cause the violation of rights of convicted persons, but will have its negative impact on their proper reintegration into society. Therefore, many international documents, including those adopted by CoE, state the aim, purpose and especially, criteria for effective implementation of the mechanism.

The Republic of Armenia is among those states which give a right for early conditional release by prescribing it within the relevant legal acts. However, taking into consideration the sensitiveness of the discussed system in the light of the rights protection of prisoners, as well as the notion on evolution of the system, within the current paper the analyses are conducted in order to reveal the cons and pros of the main regulations related to the early conditional systems which existed in the Republic of Armenia. Moreover, those legal solutions need to be analyzed taking into consideration relevant solutions accepted by the competent international bodies. Furthermore, the necessity to study the field in the light of the national legal framework and its overall logic also exists.

Firstly, the paper will refer to the overall aim and purpose of the conditionally release system, discussing its impact on resocialization of prisoners and future possible reoffending by them. After that, the historical background and evolution of the system in the Republic of Armenia is presented. In this context a particular attention is paid to the latest developments of the system, namely before and after 2017. Another part of the paper is mainly dedicated to comparative analyses of the conditional release systems, which existed before and after 2017 amendments of the relevant legal framework. Within this Chapter the problems of the previous system are revealed and discussed in conjunction with solutions presented by the current system. The last part of the Paper is discussing the current legislative solutions of the early conditional release, in order to understand whether they cover the problems of the previous system, as well as to reveal the issues that occurred after the new system was adopted. In parallel with this issue, the legislative initiatives presented during March 2018 are also analyzed. The analyses within the Paper are mostly based on the international best practice and RA international obligations.

As to the conclusion, with regard to each problem revealed, solutions are suggested and proper recommendations are presented with regard to the provisions which are forcible. The aim of the current Paper is to find the most preferable solutions for each problem of the discussing field, in order to ensure a proper implementation of the right of prisoners to be early conditionally released, as well as their effective resocialization and reintegration into society.

# **I. THE AIM AND PURPOSE OF THE EARLY CONDITIONAL RELEASE SYSTEM AND ITS EVOLUTION IN THE REPUBLIC OF ARMENIA**

The early conditional release system, which exists in different countries with various legal frameworks, gives a chance to convicted persons to release from prison earlier than it is stated in their judgments in force. The principle of the system, in contradiction to amnesties and pardons, is to decide on granting a certain prisoner an early conditional release, because there are justified reasons for absence of further necessity to isolate him or her. Moreover, in comparison with amnesties, the decisions on early conditional release are adopted based on case by case principle, discussing each prisoner's individual case and possible reoffending by him or her in future.

## **1. The Aim and Purpose of the Early Conditional Release System**

The notion, types, purpose and other related aspects of the conditional release system is discussed in various international documents related to rights of prisoners. According to the Paragraph 1 of the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole), “(...) *conditional release means the early release of sentenced prisoners under individualized post-release conditions. Amnesties and pardons are not included in this definition.*”<sup>1</sup>

The aim and necessity of the system is enshrined also in Paragraph 60 (2) of Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955. In particular, it states that “*Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.*”<sup>2</sup>

---

<sup>1</sup> Committee of Ministers of Council of Europe, *Recommendation Rec (2003) 22 to member states on conditional release (parole)*, available at <http://pipeu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited February 12, 2018).

<sup>2</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, available at [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf) (last visited February 12, 2018).

International documents of the current field are stating the importance of the early conditional release system, as a mandatory factor for the resocialization of prisoners. Specifically, Paragraph 9 of Council of Europe Committee of Ministers Resolution (76) 2 on the Treatment of Long-Term Prisoners reads as follows: “*Recommends that the governments of the member states ensure that the cases of all prisoners will be examined as early as possible to determine whether or not a conditional release can be granted.*”<sup>3</sup>

It is also essential to state, that the system has positive influence *inter alia* on **resocialization of prisoners** and **preventing reoffending**. In the preamble of the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole) it is stated 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.*”<sup>4</sup>

According to the Paragraph 3 of the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole) states as follows: “*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.*”

Furthermore, Rules 107.2-107.3 of Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules mentions that “*In the case of those prisoners with longer sentences in particular, steps shall be taken to ensure a gradual return to life in free society. This aim may be achieved by a pre-release program in prison or by partial or conditional release under supervision combined with effective social support.*”<sup>5</sup>

After resocialization and prevention of reoffending, the third and equally important purpose of the early conditional release is the reduction of overcrowding in penitentiary institutions. Recommendation R (99) 22 concerning prison overcrowding and prison population inflation adopted by the Council of Europe Committee of Ministers also states the necessity of taking steps

---

<sup>3</sup> Council of Europe Committee of Ministers, *Resolution (76) 2 on the Treatment of Long-Term Prisoners*, available at <https://rm.coe.int/16804f2385> (last visited February 12, 2018).

<sup>4</sup> Committee of Ministers of Council of Europe, *Recommendation Rec (2003) 22 to member states on conditional release (parole)*, available at <http://pjp.eu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited February 12, 2018).

<sup>5</sup> Committee of Ministers of Council of Europe, *Recommendation Rec (2006) 2 to member states on the European Prison Rules*, available at <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae> (last visited February 12, 2018).

to ensure reduction of prison overcrowding in member states. Specifically, according to the Articles 23 and 24 within Part V on Measures relating post-trial stage states as follows: “***The development of measures should be promoted which reduce the actual length of the sentence served, by giving preference to individualized measures, such as early, conditional release (parole), over collective measures for the management of prison overcrowding (amnesties, collective pardons).***”

*Parole should be regarded as one of the most effective and constructive measures, which not only reduces the length of imprisonment but also contributes substantially to a planned return of the offender to the community.*”<sup>6</sup> However, as it is foreseen from the text, this cannot be conducted without ensuring proper grounds for reintegration of prisoner.

Taking into account the above cited legal provisions, it can be easily stated that giving a chance to prisoner to be early conditionally released has a crucial importance for **reintegration of prisoners** into society and **preventing reoffending** of those who committed crime previously. In addition, the discussed system may also have a positive impact on **reduction of overcrowding** in prisons, therefore, in some cases will eliminate the bad conditions and, consequently, the ill-treatment as well.

Above mentioned aims towards showing the significance of the early conditional release in democratic society, in order to have impact on increasing the level of offences in the state, to have prison population inflation, to reintegrated prisoners and finally, to have healthy population. Hence, as a conclusion for analyses on necessity of the early conditional release system in democratic society, it has to be stated that, according to the above cited international legal standards and rules, the system has high importance also with regard to establishing and developing the rule of law in the country.

## **2.Types of the early conditional release system in CoE Member States**

The relevant international documents distinguish 2 main types of the early conditional release system: “***the discretionary release system***” and “***the mandatory release system***”. In particular, these two types are stated within the chapter IV on Granting of conditional release, which also discusses those main features.<sup>7</sup> However, the practice shows that in the CoE member states there is

---

<sup>6</sup> Council of Europe Committee of Ministers, Recommendation R (99) 22 on Prison overcrowding and prison population inflation, available at <https://pjp.eu.coe.int/documents/3983922/6970334/CMRec+%2899%29+22+concerning+prison+overcrowding+and+prison+population+inflation.pdf/1d28cea8-31d2-4e2f-911c-870119b189c9> (last visited March 31, 2018).

<sup>7</sup> Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole), available at

also another type of the system, called “*the mixed system*”. In particular, as it is provided in the work named Systems of Conditional Release (Parole) in the Member States of the Council of Europe “*In their attempt to analyze the reality of positive law and practices with respect to conditional release in all member States of the Council of Europe, the writers of the new recommendation were led to distinguish between two very different types of CR: the “discretionary release system” and the “mandatory release system”. These form two poles, the interval between which is occupied by other systems, which may be termed “mixed release systems”.*”<sup>8</sup>

The main characteristics of each type of the early conditional release system are as follows:

*i. Discretionary release system*

The first type, namely “*the discretionary release system*” states in accordance with the law the minimum period that prisoners have to serve to become eligible for conditional release. In this case the relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period.

Another important aspect of “*the discretionary release system*” is, that *the criteria that prisoners have to fulfill in order to be conditionally released are clear and explicit*. It is also important to mention that *the criteria for granting conditional release in this case are 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*. Furthermore, within relevant legislative frameworks of those states which apply discretionary release system, the concrete provisions are stated in order to ensure *the setting of a date for reconsidering the question if the decision-making authority decides not to grant conditional release it should*. In any case, *prisoners are able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner*. There are several other criteria for “*the discretionary release system*” as well.

*ii. Mandatory release system*

Another type of the early conditional release is the “*mandatory release system*”, which demands to specify by law the period that prisoners must serve in order to be entitled to release. In

---

<http://pjeu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited March 28, 2018).

<sup>8</sup> *Systems of Conditional Release (Parole) in the Member States of the Council of Europe*, available at <http://journals.openedition.org/champpenal/378> (last visited March 25, 2018).



this case, only in exceptional circumstances defined by law it should be possible to postpone release. The decision to postpone release should set a new date for release.

### iii. Mixed release system

Alongside from the above mentioned two systems, there is also another type of the early conditional release system called “*mixed release system*”. This system has characteristics from both “*the discretionary release system*” and “*the mandatory release system*”. It has developed in recent years and it applies, for example, the aspects of the discretionary system, for long sentences, and a mandatory release system for short sentences.

## **3. Evolution of the Early Conditional Release System in the Republic of Armenia**

Different states have regulated the early conditional release system in various ways. Republic of Armenia is among those states which has the right of prisoners to be early conditionally released. The right for prisoner to be released in conditional manner was enshrined even in the previous Criminal Code which was adopted in March 7, 1961 by the General Assembly of Armenian Soviet Socialist Republic.<sup>9</sup> These regulations were amended several times. In particular, a separate article on prohibiting the early conditional release in specific cases has been prescribed, as well as a provision on involvement of those prisoners released within compulsory labor. There was also the article with specific regulations regarding early conditional release of those prisoners who committed the crime when they were below 18 years of age. It should be mentioned that these provisions were amended several times and were in force till April 18, 2003, when the new Criminal Code of RA was adopted.<sup>10</sup> The related provisions were also enshrined within the RA Criminal Procedure Code of July 1, 1998,<sup>11</sup> as well as RA Penitentiary Code, adopted on December 22, 2004.<sup>12</sup>

During the evolution of the discussed system in Armenia, the mechanism has undergone changed several times. The amendments were conducted both in procedural and substantial manners. After each modification, the procedures, which were involved in the process aimed at deciding on whether to grant a prisoner the release or not, were changed. In order to ensure the proper implementation of the system, as well as justified decision by competent state body, there

---

<sup>9</sup> RA Criminal Code (1961), <http://www.arlis.am/DocumentView.aspx?docid=5>.

<sup>10</sup> RA Criminal Code (2003), <http://www.arlis.am/DocumentView.aspx?DocID=119311>.

<sup>11</sup> RA Criminal Procedure Code (1998), <http://www.arlis.am/DocumentView.aspx?DocID=119306>.

<sup>12</sup> RA Penitentiary Code (2004), <http://www.arlis.am/DocumentView.aspx?DocID=113214>.

was a necessity to prescribe the involvement of different institutions within the mechanism. However, in all cases the final decision to grant the release was adopted by court. Substantial amendments in the system were aimed at prescribing or restricting some rights for targeted groups, for example, for life sentenced prisoners or those who committed the crime when they were below age of 18. The purpose of some reforms was to present separate regulations for concrete offences, for example, a minimum time period to serve in case of a certain criminal offence in order to have a right to be conditionally released.

Evidently, legal regulations have dynamic nature and needs to be amended according to international best practice, social developments and demands of that specific period. Another, not less important reason for amending laws is their inefficiency and challenges in practice. The same comes with RA conditional release system which was changed during 2017. The amendments aimed at creating more effective system, which would not be complicated and would have more impact on resocialization of prisoners.

In general, the evolution of the early conditional release system in Armenia can be divided into two main periods: **before the amendments of 2017** and **after the amendments of 2017**. So in this particular paper the logic of analysis is conducted based on this idea. Therefore, discussing the relevant legal acts it should be first of referred to, the legislative ground for launching of legislative initiatives in this field.

In particular, it was the adoption of RA President Executive Order NK-96-A on approving the 2012-2016 Strategic Action Program for Judicial Reforms and the List of Measures Deriving from the Program. Specifically, paragraph 4.4 of this order states as follows: *“In order to increase the effectiveness of system on criminal justice and criminal execution, it is necessary to reform the procedure on early conditional release, replacement of unserved part of the sentence with a softer punishment.”* In order to ensure the implementation of this paragraph, the order stated 3 main activities which needs to be conducted. Specifically, according to the Paragraphs 4.4.1., 4.4.2. and 4.4.3. the orders were as follows:

*“4.4.1. To study the possibility to simplify the system of bodies adopting decisions on early conditional release and to specify the functions of each body.”.*

*“4.4.2. To state those objective criteria, based on which certain bodies will decide the issue on early conditional release of convicted person.”.*

*“4.4.3. To prescribe effective procedure for investigation of judicial cases on early conditional release, replacement of unserved part of the sentence with a softer punishment.”*<sup>13</sup>

Hence, it can be stated, that among other reforms within the above mentioned order, this became a ground to fundamentally amend the all system. There are several differences of the early conditional release procedures before and after 2017 amendments, which needs to be highlighted. First of all, the involvement of bodies responsible for deciding on whether a person can be conditionally released or not. Before the amendment, the following bodies were involved in the procedure: the Administration of Penitentiary Institution and the Independent Commission and the Court. One of the aims of the legislative changes in 2017 was to create a new system based on the order, within which the involved bodies will be changed. Therefore, currently, there are only two stages: the first is the Independent Commission and the second one is the Court.

Another equally important difference is that the amendments specify the concrete criteria which need to be ensured in order to conditionally release the person. In contradiction with the regulations before 2017 amendments, even if the conclusion of the Independent Commission will be negative, the prisoner will have a right to submit an application for early conditional release to the Court.

It is also essential to underline the overall regulations which cover the legal relations concerning the early conditional release system in Armenia. Those rules are enshrined within the Article 76 of RA Criminal Code,<sup>14</sup> the Article 434 of RA Criminal Procedure Code<sup>15</sup> and Articles 114-116 of RA Penitentiary Code,<sup>16</sup> as well as the RA President Decree NH-163-N of July 31, 2006<sup>17</sup>. Before the amendments of 2017, besides the mentioned rules and documents, the RA Government Decision 1304-N of August 24, 2006<sup>18</sup> and the RA Minister of Justice Order QH-46-N of September 8, 2005<sup>19</sup> were also regulating the field.

The amendments have covered some of the gaps the previous system had, however, given the short period of time that the current system is fully functioning, there is a necessity to understand its

---

<sup>13</sup> RA President Executive Order NK-96-A on approving the 2012-2016 Strategic Action Program for Judicial Reforms and the List of Measures Deriving from the Program (2012), <http://www.arlis.am/DocumentView.aspx?DocID=76932>.

<sup>14</sup> RA Criminal Code, Article 76 (2003), <http://www.arlis.am/DocumentView.aspx?DocID=119311>.

<sup>15</sup> RA Criminal Procedure Code, Article 434 (1998), <http://www.arlis.am/DocumentView.aspx?DocID=119306>.

<sup>16</sup> RA Penitentiary Code, Articles 114-116 (2004), <http://www.arlis.am/DocumentView.aspx?DocID=113214>.

<sup>17</sup> RA President Decree, NH-163-N (July 31, 2006), <http://www.arlis.am/DocumentView.aspx?docid=64548>.

<sup>18</sup> RA Government Decision, 1304-N (August 24, 2006), <http://www.arlis.am/DocumentView.aspx?docID=26704>.

<sup>19</sup> RA Minister of Justice Order, QH-46-N (September 8, 2005), <http://www.arlis.am/DocumentView.aspx?docID=18703>.

cons and pros. Furthermore, it is essential to underline, that the analysis on this occasion are conducted further within the current Paper.

In particular, in order to understand which problems are covered and which still remain, what are the issues the current one has and whether it is in line with the relevant international legal regulations, the current and previous systems need to be thoroughly analyzed. In the light of this, the current legal regulations on the conditional release system of RA should be analyzed not only separately, but also in comparison with the previous regulations. Furthermore, for properly discussing the system, it is also necessary to study its compliance with RA international obligations.

The legislative initiatives presented during March 2018 should be discussed as well. This again shows the modernity and significance of the issue, since the system is undergoing structural changes after operating approximately a year.

## **II. ANALYSIS ON THE EARLY CONDITIONAL RELEASE SYSTEM OF THE REPUBLIC OF ARMENIA BEFORE 2017 AMENDMENTS. SOLUTIONS PRESENTED BY THE CURRENT SYSTEM, COVERING THE PROBLEMS OF THE PREVIOUS**

As it was presented above, the early conditional release system of the Republic of Armenia has a huge historical background, even since the Soviet Union times. Within the current Paper, the latest evolution of the system is analyzed in conjunction with legislative solutions presented by the international bodies of the relevant field. In this connection, it is also important to study the suitability of those solutions to Armenian legislative framework. However, it is also important to reveal problems and contradictions within the national legislation. As it was already mentioned, in order to understand the overall problem of the early conditional release system in the Republic of Armenia, it is necessary to study not only the current system, but also the previous and the suggested ones, because the amendments are being conducted fundamentally and, as the practice shows, frequently.

Within this Chapter the negative aspects and gaps of the early conditional release system operating before 2017 amendments and solutions covering the problems are presented.

First of all, it is essential to underline that the problems of the early conditional release system of 2016 was also discussed within the Annual Report of the RA Human Rights Defender as the National Preventive Mechanism of the respective year. A separate chapter was dedicated to this sphere. In particular, it was highlighted that *“Considering the legislative deficiencies and legal gaps revealed during the examination and discussion of numerous complaints submitted to the Defender’s Office with regard to the early conditional release procedure (...). In particular, there are no available/accessible and predictable procedures and standards for early conditional release which will properly notify convicted person about the place and time of the session of the Independent Commission, enable that person to receive legal assistance in this connection, get acquainted with the materials related to him and presented to the Independent Commission and receive the copies free of charge, present requests on withdrawals, appeal the Commission’s decision in the court, etc.”*.<sup>20</sup>

---

<sup>20</sup> Annual Report of 2016 of the RA Human Rights Defender as the National Preventive Mechanism, available at <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf> (last visited March 31, 2018).

## **1.Main problems with regard to the bodies involved in the early conditional release system operating before amendments of 2017**

First important issue regarding the system existing before 2017 relates the involved instances. The stages of the early conditional release were the following: **the Administration of penitentiary institution, the Independent Commission and the Court**. In order to present the problems more precisely the authorities of each body are discussed below.

### *i. Administration of penitentiary institution*

a) As to the first stage, according to the previous regulation of Article 115 Paragraph 1 after expiration of time period prescribed by the law, the administration of penitentiary institution is obliged to discuss the issue of early conditional release of prisoner.<sup>21</sup>

Taking into consideration the fact that the administration has a huge impact on resocialization of prisoner and should conduct day to day work towards it, it was revealed that administration itself decides whether its activities were effective or not. Put it otherwise, the administration is assessing itself with regard to activities towards recovering of convicted person. In this case, there may be an objective doubt that the administration will not adopt a justified decision.

The amendments conducted during 2017 fully cover this problem. Specifically, the involvement of administrations of prisons is minimum and they are not authorized to decide anything. Their role is to present the summaries based on individual cases of prisoners to Independent Commissions.

This principle on involvement of people or entities deciding the issue of release within resocialization of prisoner is also stated within the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole). Specifically, according to the Paragraph 12 *“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 be concluded before the end of the minimum or fixed period.”*<sup>22</sup>

However, it should be also stated that the restriction of administration to this extend is also a problem, since the day to day work with prisoner is conducted by them, they are responsible for

---

<sup>21</sup> RA Criminal Code (1961), <http://www.arlis.am/DocumentView.aspx?docid=5>.

<sup>22</sup> Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole), available at <http://pjp.eu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited March 28, 2018).

recovering of person. Hence, those people are the most informed ones whether the convicted person can be reintegrated to society or no.

b) Another problem with regard to involvement of administration of prison concerns its further work with inmates. Specifically, the issue relates those cases, when the state body, in this case the administration of prison rejects the person. It can cause the reduction of effectiveness of further relations between staff and prisoner, also the decrease of trust level of prisoners towards the staff of prison. The problem relates the mentality and human factor, which may or may not work.

**Recommendation:**

**It is recommended to ensure the involvement of prison staff within the decision of early conditional release of prisoner and minimize the risk of unjustified decisions.**

**It is also important to ensure proper regulations and practice, in order not to have negative impact on prisoner's further resocialization after adoption of negative decision by the administration of prison.**

*ii. Independent Commission*

The second stage for prisoner to pass in order to receive early conditional release was the Independent Commission. There were 3 Commissions, namely *“Commission attending “Goris”, “Meghri”, “Yerevan-Kentron” and “Prisoner’s Hospital” penitentiary institutions”, “Commission attending “Abovyan”, “Nubarashen”, “Vardashen” and “Armavir” penitentiary institutions”* and *“Commission attending “Sevan” “Vanadzor”, “Artik” “Kosh” and “Hrazdan” penitentiary institutions”*. Each of these Commissions consists of representatives from Police, National Security Service, Staff of President, Ministry of Health, Penitentiary Department of Ministry of Justice, Office of the Human Rights Defender and an independent expert. The persons mainly, were high officials, for example, deputies of heads of institutions, and the Independent Commission were leaded by representatives from Police. Hence, it can be concluded that the decisions were adopted by law enforcement bodies, as those persons were majority within the Independent Commission.

The problem here is the mentality of persons who are deciding whether to grant a person release or not. In particular, as the main task of those people is to deal with criminal issues and criminals in the state, it is doubtful that they will prefer to keep the prisoners in jail.

Furthermore, except the representative from Penitentiary Department, other people are not working towards resocialization of prisoners during their day to day work. So, objectively they

cannot be sufficiently informed about the level of recovery of persons who are presented for early conditionally release.

As it was stated above, this principle is also enshrined within the Paragraph 12 of Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole).

The amendments of 2017 cover this problem as well. In particular, the representatives from Police, National Security Service, Ministry of Health and Penitentiary Department were removed from the list. The heads of Independent Commissions are representatives from Ministry of Justice and there were included independent experts/specialists: sociologist, psychologist and criminologist. The aim of this amendment is to ensure the professional approach of members. However, the issue on involvement of those subjects involved in decision making process within day to day work with prisoner still remain.

Furthermore, it is also important to emphasize, that the number of Independent Commissions and scope of penitentiary institutions for each Commission has been also changed. In particular, five Independent Commissions has been created, namely: *“Commission attending “Nubarashen”, “Vardashen”, “Yerevan-Kentron” and “Prisoner’s Hospital” penitentiary institutions”, “Commission attending “Vanadzor” and “Artik” penitentiary institutions”, “Commission attending “Abovyan”, “Hrazdan” and “Sevan” penitentiary institutions”, “Commission attending “Kosh” and “Armavir” penitentiary institutions” and “Commission attending “Goris” penitentiary institution”.*

**Recommendation:**

**It is suggested to ensure impartial and professional approach towards issue related to early conditional release of convicted persons. It is equally important to authorize the adoption of decision those people, who will be involved within the overall process of resocialization of prisoner or to involve those who are decision makers.**

**iii. Court**

Involvement of the Court within the process on early conditional release of prisoner is generally the same in the both cases: before and after amendment of 2017. The role of the Court is to adopt the final decision whether the person is ready or not to be conditionally released earlier than it is stated within the judgement in force.



The issue here is the overloading of the Courts. It cannot be covered by the amendment of the mechanism on early conditional release, since this is a more systemic problem. However, this may cause the unjustified and inefficient decisions with this regard as well.

**Recommendation:**

**It is proposed to increase the number of judges involved in decision making on early conditional release of prisoners.**

**2.Procedural issues related to the early conditional system operating before amendments of 2017**

One of the main procedural problem of the early conditional system operating before amendments of 2017 was that the decision of the Independent Commission can be complained to the Court only in cases when there was a violation of procedure prescribed by relevant Order of RA President.

This was a huge problem as it contradicts to the overall principle of access to justice, which is enshrined in different international documents. For example, it is also stated in the UN official webpage: *“Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. The Declaration of the High-level Meeting on the Rule of Law emphasizes the right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all.”*<sup>23</sup>

This is the core principle established within the Article 6 Paragraph 1 of the European Convention on Human rights: *“In the determination of his civil rights and obligations **or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.** (...)”*<sup>24</sup> Moreover, this principle was further developed by European Court of Human Rights.

In this regard, the RA Constitutional Court delivered the decision N SDO-733 dated on February 5, 2008, declaring that this provision contradicts the Articles 6, 18 and 19 of RA

---

<sup>23</sup> *United Nation and Rule of Law, available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited March 31, 2018).*

<sup>24</sup> *European Convention on Human rights, available at [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (last visited March 31, 2018).*

constitution of 2005. In particular, within the Paragraph 4 of the Decision, the Court stated that “(...) Paragraph 4 of RA Constitution stated that each suspected person has the right to ask for pardon or for replacing the punishment to softer one. According to that article, **each prisoner** has the right to request for pardon or replacement of punishment to softer one. (...)”.

Furthermore, the Court also stated within Paragraph 10 of its decision that “(...) While discussing the decision adopted by the Independent Commission, the purpose of judicial supervision is not the duplication of authorities of that body, but the supervision of the applicability of those decisions. (...)”.<sup>25</sup>

From the above highlighted statements of the RA Constitutional Court it can be stated that the role and aim of the Court in the decision making process on early conditional release has high importance in both manners: rights protection of prisoners and effective judicial supervision. After 15 months the decision was adopted, the legislative initiatives were conducted within the RA Penitentiary Code according to which “The decisions of Independent Commission regarding issues on early conditional release, replacement of unserved part of the sentence with a softer punishment **are not subject of compliant**, except those cases related to contradiction of law, as well as violation of the procedure prescribed by RA President Order.”<sup>26</sup>.

It is foreseen that the decision of the Constitutional Court of RA was not only left unimplemented, but also the fundamentally contradictive changes were further conducted within the legislative framework. **However, this gap was also eliminated by the amendments conducted in 2017.**

### **3.Substantive issues related to the early conditional system operating before amendments of 2017**

The early conditional release system operating before amendments of 2017 has some substantive problems. In particular, the relevant legislative framework did not specify any criteria which needs to satisfied by prisoner to be early conditionally released. Hence, it can be also stated that the decisions of the competent bodies were no based on concrete principles, which were mandatory to apply in cases of all prisoners.

---

<sup>25</sup> RA Constitutional Court Decision SDO-733(2008), available at <http://www.arlis.am/DocumentView.aspx?DocID=41827> (last visited March 30, 2018).

<sup>26</sup> RA Law on changes in Penitentiary Code (2009), available at <http://www.arlis.am/DocumentView.aspx?DocID=51993> (last visited March 28, 2018).

This issue needs to be discussed in the context of the relevant international documents. Specifically, based on the Paragraph 18 of the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole), *“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 and social and economic circumstances as well as the availability of resettlement programs.”*<sup>27</sup>

This issue was covered by 2017 amendments. Specifically, the concrete criteria for assessing the behavior of prisoner are prescribed by the Article 76 Paragraph 1.1. Another criterion for assessing the further reoffending of prisoner are assessing by the Paragraph 1.2 of the same article.

However, these criteria should be implemented in practice as well. It is not enough to prescribe it theoretically by the law. The efficiency of the system in this regard is not ensured by simply stating it in legislative framework, it should be used by the competent authorities in order to decide whether the person can be conditionally released earlier or not.

This problem should be discussed also in the context of legal certainty. According to the RA Constitutional Court Decision N SDO-753 dated on May 13, 2008 *the principle of legal state is, inter alia, demands also the existence of legal law, which needs to be sufficiently available, in order to ensure the predictability of applicable legal norms for those subjects of rights.*<sup>28</sup>

The same principle is also enshrined within the judgements delivered by the European Court of Human Rights. In particular, according to Paragraph 51 of judgement on case of Ryabykh v. Russia the Strasbourg Court stated: *“(…) [T]he Court reiterates that the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, (…)*”<sup>29</sup> The same statement was also made by the Court in its judgement on case of Brumărescu V. Romania Paragraph 61.<sup>30</sup> In this context, based on the national

---

<sup>27</sup> Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole), available at <http://p1peu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited March 28, 2018).

<sup>28</sup> RA Constitutional Court Decision SDO-753 (2008), available at <http://www.arlis.am/DocumentView.aspx?DocID=43955> (last visited March 30, 2018).

<sup>29</sup> European Court of Human Rights Judgement on case of Ryabykh v. Russia, application 52854/99 (24 July 2003), available at <http://hudoc.echr.coe.int/eng?i=001-61261> (last visited March 31, 2018).

<sup>30</sup> European Court of Human Rights Judgement on case of Brumărescu V. Romania, application 28342/95 (28 October 1999), available at <http://hudoc.echr.coe.int/eng?i=001-58337> (last visited March 31, 2018).

and international legal regulations on certainty, it can be stated that it is important not only to prescribe the legal norms by law, but also to ensure their certainty for those prisoner who have the right to be conditionally released.

The issue of implementation of criteria case by case for each prisoner and, in this context, the reasoning of decisions adopted by the competent state entities, as well as the importance of predictability for prisoners will be discussed further in this Paper.

**Recommendation:**

**It is important to ensure the implementation of criteria on assessing the behavior of prisoner, the further reoffending and other criteria enshrined within the legal acts in practice. This is important in order to decide the issue of early conditional release of prisoner.**

**The legal certainty of all legal norms regarding the early conditional release system must be ensured.**

### **III. ANALYSIS ON THE EARLY CONDITIONAL RELEASE SYSTEM OF THE REPUBLIC OF ARMENIA AFTER 2017 AMENDMENTS. THE LEGISLATIVE INITIATIVES OF MARCH 2018**

As it was presented within the Second Chapter of the current Paper, several problems of early conditional release system before amendments were covered by the legislative changes in 2017. Those solutions mainly concerned the authorities of bodies involved within the decision making process, the responsible state institutions of the Independent Commission, as well as some procedural and substantive issues. However, there still remain some problems, which are not covered by the current legal regulations. Furthermore, this mechanism has its own gaps as well, which are analyzed in this paper. Within this chapter relevant statistical data is also presented.

#### **1. Statistical data on operation of current early conditional release system from July 1, 2017 to December 31, 2017**

Within this part the statistical data on operation of the current early conditional release system are also presented. The importance of study of statistical data is in sense of its further development of the system and the assessment of the one in force. In order to assess the effectiveness of the system with regard to the level of reoffending in the stat it is again important to discuss the concrete statistical data. In this regard it is essential to refer to the approach of the European Court of Human Rights. In particular, within its judgement on case of *Mastromatteo V. Italy* the Court discussed the statistical data of the system, in order whether the state authorities conducted all necessary measures to prevent the violation of Article 2 Right to Life. In this regard, the Court mentioned, that *“The Court considers that this system in Italy provides sufficient protective measures for society. It is confirmed in this view by the statistics supplied by the respondent State, which show that the percentage of crimes committed by prisoners’ subject to a semi-custodial regime is very low, as is that of prisoners absconding while on prison leave (see paragraph 49 above).”*<sup>31</sup> Furthermore, it is important to mention that the Paragraph 49 is dedicated to the relevant statistical data provided by state authorities of Italy.

Moreover, this is also stated in Paragraph 43 of the Council of Europe Committee of Ministers Recommendation Rec (2003) 22 to member states on conditional release (parole): *“In order to obtain more knowledge about the appropriateness of existing conditional release systems and their*

---

<sup>31</sup> *European Court of Human Rights Judgement on case of Mastromatteo V. Italy, application 37703/97 (24 October 2002), available at <http://hudoc.echr.coe.int/eng?i=001-60707> (last visited May 15, 2018).*

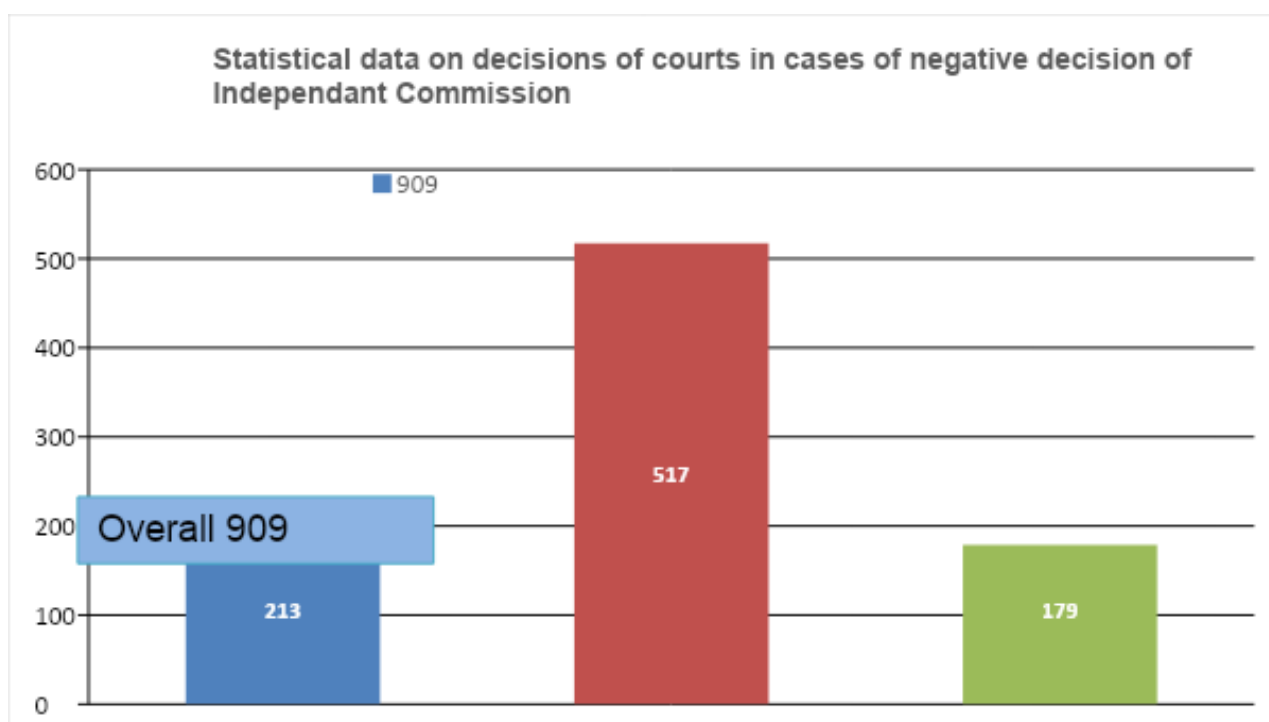
further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.”<sup>32</sup>

The statistical data from July 1, 2017 (launching of the current system) to December 31, 2017 has been studied: the negative and positive decisions of the Independent Commission, as well as the decisions of the Courts.

The conducted study shows, that all positive decisions of the Independent Commission are presented to the court for final decision and the 62% of them are receiving the positive decision. Furthermore, 57% of negative decisions of the Independent Commission presented to the Court received rejection.

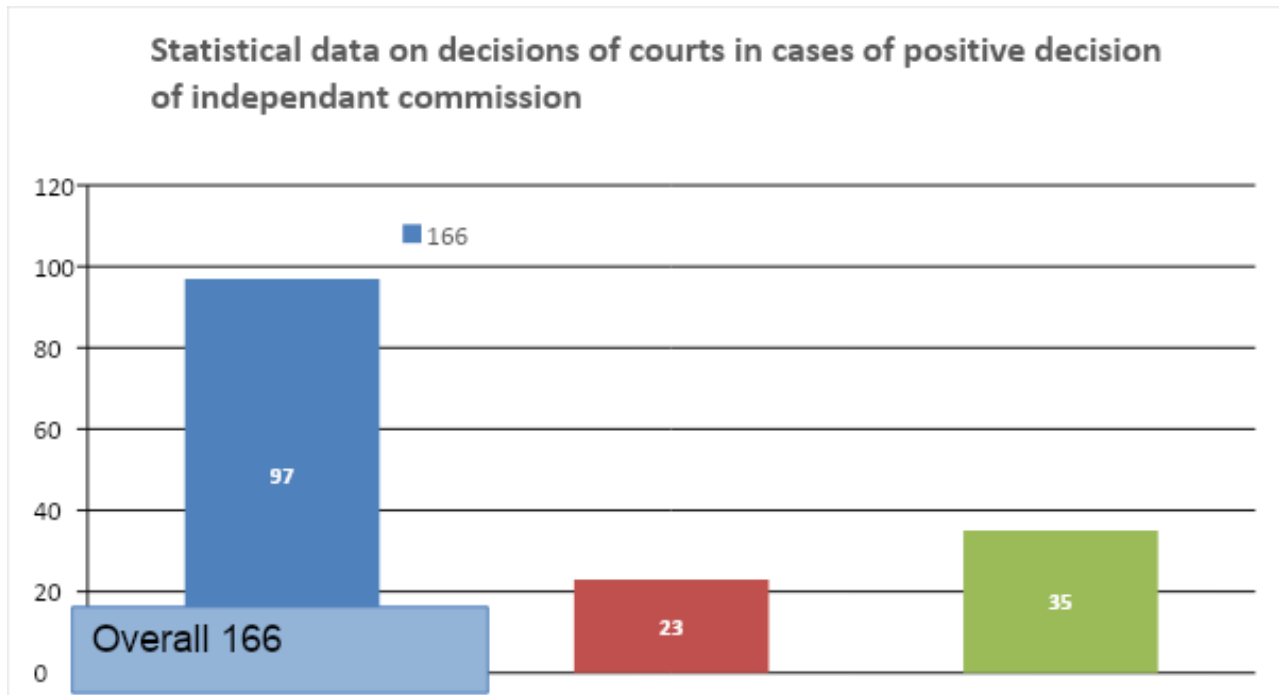
The statistical data is presented based on 2017 Annual Report of the RA Human Rights Defender as the National Preventive Mechanism.<sup>33</sup>

Below are presented the relevant statistical data by graphics:



<sup>32</sup> Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole), available at <http://pjeu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited March 28, 2018).

<sup>33</sup> Annual Report of 2017 of the RA Human Rights Defender as the National Preventive Mechanism, available at <http://www.ombuds.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfd92a8.pdf> (last visited April 3, 2018).



## **2. Main problems regarding early conditional release system operating after amendments of 2017**

Revealed and analyzed problems concerning early conditional release system operating after amendments of 2017 in the republic of Armenia during preparation of current paper are the following:

### *i. Necessity of reasoning of decisions of the Independent Commission*

The necessity and reasoning of each decision by state authority which may have any impact on person's right must be thoroughly justified. The aim of this principle is to exclude any kind of arbitress by state entities or officials. Furthermore, it is also important to ensure the clearness of the bases of the decision adopted. In this occasion it important to mention, that according to the Article 115 Paragraph 3 of RA Penitentiary Code *"In case of not presenting the decision of independent commission to the court by the prisoner, penitentiary institution is presenting the issue of early conditional release or replacement of unserved part of the sentence with a softer punishment 3 months after decision of independent commission (...).*

*"In case of adoption of rejecting decision on early conditional release or replacement of unserved part of the sentence with a softer punishment, administration of penitentiary institution is presenting the issue of early conditional release or replacement of unserved part of the sentence*

*with a softer punishment after 6 months according to the Article 434 Paragraph 3 of RA Criminal Code of Procedure 3 months after decision of independent commission (...).”.*

It is obvious that if the prisoner is not implementing his right to present the decision of the Independent Commission to the court, then he or she will be presented for early conditional release or replacement of unserved part of the sentence with a softer punishment after **3 months**. However, if there will be the negative decision of court, the one will be presented for early conditional release or replacement of unserved part of the sentence with a softer punishment only after **6 months**.

According to the statistics presented above, it is obvious that in all cases when the prisoner gets positive decision of the Independent Commission, he or she presents it to the court. However, the problem is with regard to negative decisions. In particular, as there may be some negative consequences for the prisoner, he or she will not present it to the court. Hence, there will be an issue of proper implementation of his or her right on early conditional release or replacement of unserved part of the sentence with a softer punishment.

Based on the above stated rules and analysis, it can be stated that the decision of the Independent Commission has external influence, by having impact on further development of early conditional release process of prisoner. However, the relevant legislative regulations do not provide any obligation for the Independent Commission to present reasoning for each decision.

It has several positive aspects for reasoning of the Independent Commission, which are presented below:

1.It will ensure the predictability for prisoner. In other words, the decision will serve as a guideline for his or her further resocialization. The prisoner will know what are the reasons for rejection and what is the way for covering them.

2.The reasoning for each decision will help the Independent Commission itself for its further effective functioning. In particular, the decisions can be added within the history with regard to resocialization of prisoner and development of his or her recovering process.

3.Another important reason is that the Independent Commission will provide more professional document to the Court, which will contain the opinions of each member (*inter alia* sociologist, criminologist, psychologist, etc.). Otherwise, it has no power and necessity for further adoption of Court's decision.

Hence, it is essential to discuss the granting of conditional release case by case and to have justification for releasing each prisoner. The reason is also that, the prisoner can cause a real threat



to society and there can be a risk that he or she can commit another crime in freedom. Therefore, it is important to discuss the issue whether the person is recovered or not on case by case bases.

The necessity of reasoning of decisions adopted by bodies involved within the process of early conditional release is enshrined also in the Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole). Specifically, Paragraph 32 states that “*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:*

*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.***<sup>34</sup>

Furthermore, Paragraph 10 of the Council of Europe Committee of Ministers, Resolution (76) 2 On The Treatment of Long-Term Prisoners states that “*Recommends that the governments of the member states grant the prisoner conditional release, subject to the statutory requirements relating to time served, as soon as a favorable prognosis can be formulated; considerations of general prevention alone should not justify refusal of conditional release.*”<sup>35</sup>

Reasoning for each case on early conditional release of prisoner provided by competent state authority is also important with regard to insurance of reducing the number of reoffending in the state. Put it otherwise, in order to have justified decision, the one needs to study the individual case of the concrete prisoner and to assess and predict whether there can be a real threat for the society caused by this subject. This approach will also prevent any sort of arbitress by state officials and will ensure more professional approach.

However, it is also important to highlight, that by saying “**predict**”, it does not include all possible negative impacts from the side of the released person. In this regard the European Court of Human Rights, in the Paragraphs 67 and 68 of the judgement on case of Mastromatteo v. Italy

---

<sup>34</sup> Council of Europe Committee of Ministers, Recommendation Rec (2003) 22 to member states on conditional release (parole), available at <http://pjeu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67> (last visited March 28, 2018).

<sup>35</sup> Council of Europe Committee of Ministers, Resolution (76) 2 On The Treatment of Long-Term Prisoners (1976), available at <https://rm.coe.int/16804f2385> (last visited March 28, 2018).

mentioned that “67. *The Court reiterates at the outset that Article 2 enshrines one of the basic values of the democratic societies making up the Council of Europe (McCann and Others, judgment of 22 September 1995, Series A no. 324, p. 45, § 147).*

***The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (Osman v. the United Kingdom, judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, p. 3159, § 115; see also Tanribilir v. Turkey, no. 21422/93, § 70, 16 November 2000; and L.C.B. v. the United Kingdom, judgment of 9 June 1998, Reports 1998-III, p. 1403, § 36).***

*The State's obligation extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.*

***68. That does not mean, however, that a positive obligation to prevent every possibility of violence can be derived from this provision (see, inter alia, Tanribilir, cited above, § 71, and application no. 16734/90, Commission decision of 2 September 1991, Decisions and Reports 72, at p. 243). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (Osman, cited above, p. 3159, § 116).***

*Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (Osman, cited above, p. 3159, § 116; Paul and Audrey Edwards v. the*

*United Kingdom, no. 46477/99, § 55, ECHR 2002-III; and Bromiley v. the United Kingdom (dec.), no. 33747/96, 23 November 1999, unreported).*”<sup>36</sup>

Hence, taking into account the above cited statement of the Strasbourg Court, it can be highlighted that the action of the state authority, including thorough examination of each case on early conditional release and based on that the adoption of decision with proper justification, is mandatory. However, when it comes to future risks from the prisoners on causing any harm to the society, the responsibilities of the state authority is restricted by the principle of “*knew or ought to have known*”.

**Recommendation:**

**It is recommended to ensure the obligation for the Independent Commission to provide reasoning for its decisions, adopted on early conditional release or replacement of unserved part of the sentence with a softer punishment of prisoner.**

**Voting mechanism of the Independent Commission**

Another problem concern the voting mechanism of Independent Commission prescribed by the relevant legal norms. Specifically, according to the Paragraph 14 of RA President relevant order “*The meetings of the Commission have force, if 4 members are present.*”. Paragraph 30 of the same order states that “*The decisions of the Commission are adopting by the minimum votes of more than a half of overall members.*”. Hence, it can be stated that in case if the 4 members are present, the decisions of the Independent Commission must be adopted unanimously, by having the same vote by all participants of the sitting, whether it will be positive or negative. However, the analysis of current legal regulations makes it obvious, that if there will be even 1 vote different from other 3 there will be no decision on concrete issue or case adopted by the Independent Commission, as in other way it will be the violation of above cited Paragraph 30.

**Recommendation:**

**It is suggested to amend the current legislative regulations in order to ensure the proper voting mechanism. In particular, by regulating the cases when there are minimum sufficient number of members (4) and one of them voted differently than others.**

---

<sup>36</sup> *European Court of Human Rights Judgement on case of Mastromatteo V. Italy, application 37703/97 (24 October 2002), available at <http://hudoc.echr.coe.int/eng?i=001-60707> (last visited May 15, 2018).*

### 3. Main directions of legislative initiatives presented in March 2018

As it was already stated above, during March 2018 a new package of draft laws for making amendments within relevant legal regulation on early conditional release system of the Republic of Armenia, specifically, RA Draft Laws on “Changes within Criminal Code of the Republic of Armenia”, “Changes within Penitentiary Code of the Republic of Armenia”, “Changes within Criminal Procedure Code of the Republic of Armenia” and “Changes and additions within Law on Probation of the Republic of Armenia” has been presented.<sup>37</sup> In this paper, only the main directions of suggested amendments will be analyzed.

According to the suggested regulations several changes will be conducted within the system:

- The process of early conditional release will be launched only based on application submitted by the prisoner;
- Professional assessment on the resocialization and further reoffending of the prisoner will be conducted by the Penitentiary Department and Probation Service;
- Probation service will be involved within the process from the very beginning and after being conditionally released, the prisoner will become the beneficiary of the Service.

#### *i. Presentation of reports by the Penitentiary department and Probation Service and elimination of the Independent Commissions*

As it was already stated, the bodies involved within the process of adoption of decision on early conditional release of prisoner has been again changed. In particular, the Independent Commissions were eliminated and the roles of the Penitentiary Department and Probation Service has been increased.

The problem here is that, both operating as state entities within Ministry of Justice of the Republic of Armenia, are the main decision makers. Hence, this can cause an issue on balancing the powers of bodies involved within the procedure. Since, the body which decides whether the person can be early conditionally released or not is the Ministry of Justice. Furthermore, this regulation also contains some risks with regard to further arbitress by state entities involved.

---

<sup>37</sup> RA Draft Laws on “Changes within Criminal Code of the Republic of Armenia”, “Changes within Penitentiary Code of the Republic of Armenia”, “Changes within Criminal Procedure Code of the Republic of Armenia” and “Changes and additions within Law on Probation of the Republic of Armenia”, available at <https://www.e-draft.am/projects/796> (last visited March 31, 2018).

Another problem here is the lack of resources of Probation Service. If in case of previous early conditional release system, the involvement of the service was not mandatory, only in cases if it will be demanded by courts or the Independent Commission, according to suggested mechanism, it will be mandatory. Hence, the necessity of additional resources at Probation Service has high importance.

**Recommendation:**

**It is proposed to ensure the balancing of powers of bodies involved within the procedure on early conditional release system.**

**Also to enhance the resources of the Probation Service, with regard to its upcoming function within the procedure on early conditional release system.**

## LIST OF RECOMMENDATIONS

- **It is recommended to ensure the involvement of prison staff within the decision of early conditional release of prisoner and minimize the risk of unjustified decisions.**  
It is also important to ensure proper regulations and practice, in order not to have negative impact on prisoner's further resocialization after adoption of negative decision by the administration of prison.
- **It is suggested to ensure impartial and professional approach towards the issue related to early conditional release of convicted persons. It is equally important to authorize the adoption of decision those people, who will be involved within the overall process of resocialization of prisoner or to involve those who are decision makers.**
- **It is proposed to increase the number of judges involved in decision making on early conditional release of prisoners.**
- **It is important to ensure the implementation of criteria on assessing the behavior of prisoner, the further reoffending and other criteria enshrined within the legal acts in practice. This is important in order to decide the issue of early conditional release of prisoner.**  
The legal certainty of all legal norms regarding to early conditional release system must be ensured.
- **It is recommended to ensure the obligation for the Independent Commission to provide reasoning for its decisions, adopted on early conditional release or replacement of unserved part of the sentence with a softer punishment of prisoner.**
- **It is suggested to amend the current legislative regulations in order to ensure the proper voting mechanism. In particular, by regulating the cases when there are minimum sufficient number of members (4) and one of them voted differently than others.**

- **It is proposed to ensure the balancing of powers of bodies involved within the procedure on early conditional release system.**

**Also to enhance the resources of the Probation Service, with regard to its upcoming function within the procedure on early conditional release system.**

## **BIBLIOGRAPHY**

**1.RA legal regulations regarding conditional release system, those which will be analyzed within the theses paper:**

**1.RA Criminal Code,**

<<http://www.arlis.am/DocumentView.aspx?DocID=119311>>

**2.RA Criminal Code (1961),**

<<http://www.arlis.am/DocumentView.aspx?docid=5>>

**3.RA Criminal Procedure Code,**

<<http://www.arlis.am/DocumentView.aspx?DocID=119306>>

**4.RA Penitentiary Code,**

<<http://www.arlis.am/DocumentView.aspx?DocID=113214>>

**5.RA Law on changes in Penitentiary Code (2009),**

<<http://www.arlis.am/DocumentView.aspx?DocID=51993>>

**6.RA President Decree NH-163-N of July 31, 2006,**

<<http://www.arlis.am/DocumentView.aspx?docid=64548>>

**7.RA Government Decision 1304-N of August 24, 2006,**

<<http://www.arlis.am/DocumentView.aspx?docID=26704>>

**8.RA Minister of Justice Order QH-46-N of September 8, 2005,**

<<http://www.arlis.am/DocumentView.aspx?docID=18703>>

**9.RA Constitutional Court Decision SDO-753 (2008),**

<<http://www.arlis.am/DocumentView.aspx?DocID=43955>>

**10. RA Constitutional Court Decision SDO-733(2008),**

<<http://www.arlis.am/DocumentView.aspx?DocID=41827>>

**11. RA President Executive Order NK-96-A on approving the 2012-2016 Strategic Action Program for Judicial Reforms and the List of Measures Deriving from the Program (2012),**

<<http://www.arlis.am/DocumentView.aspx?DocID=76932>>

**12. Annual Report of 2017 of the RA Human Rights Defender as the National Preventive Mechanism,**



<<http://www.ombuds.am/resources/ombudsman/uploads/files/publications/59297c7b4276c9dbf19cd1f1cfd92a8.pdf>>

**13. Annual Report of 2017 of the RA Human Rights Defender as the National Preventive Mechanism,**

<<http://www.ombuds.am/resources/ombudsman/uploads/files/publications/107efea7ef699b67309a61ffdf8d0f1e.pdf>>

**14. RA Draft Laws on “Changes within Criminal Code of the Republic of Armenia”, “Changes within Penitentiary Code of the Republic of Armenia”, “Changes within Criminal Procedure Code of the Republic of Armenia” and “Changes and additions within Law on Probation of the Republic of Armenia”,**

<<https://www.e-draft.am/projects/796>>

**2.Relevant international documents, which have regulations regarding conditional release system and were adopted by organizations member of which is the Republic of Armenia:**

**15. European Convention on Human Rights,**

<[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)>

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

<<http://pjpeu.coe.int/documents/3983922/6970334/CMRec+%282003%29+22+on+conditional+release.pdf/f8708832-8086-4374-8537-63034a45cb67>>

**17. Standard Minimum Rules for the Treatment of Prisoners Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977,**

<[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)>

**18. Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules,**

<<https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>>

**19. Council of Europe Committee of Ministers Resolution (76) 2 on the Treatment of Long-Term Prisoners,**

<https://rm.coe.int/16804f2385>

**20. Council of Europe Committee of Ministers, Recommendation R (99) 22 on Prison overcrowding and prison population inflation,**

<https://pjpeu.coe.int/documents/3983922/6970334/CMRec+%2899%29+22+concerning+prison+overcrowding+and+prison+population+inflation.pdf/1d28cea8-31d2-4e2f-911c-870119b189c9>

**21. Systems of Conditional Release (Parole) in the Member States of the Council of Europe,**

<http://journals.openedition.org/champpenal/378>

**22. European Court of Human Rights Judgement on case of Ryabykh v. Russia, application 52854/99 (24 July 2003),**

<http://hudoc.echr.coe.int/eng?i=001-61261>

**23. European Court of Human Rights Judgement on case of Brumărescu V. Romania, application 28342/95 (28 October 1999),**

<http://hudoc.echr.coe.int/eng?i=001-58337>

**24. European Court of Human Rights Judgement on case of Mastromatteo V. Italy, application 37703/97 (24 October 2002),**

**25. United Nation and Rule of Law,**

<https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>