

CONSIDERATIONS REGARDING THE INSTITUTION OF PROBATION IN THE NEW PENAL CODE

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Abstract: *The benefit of the release on parole is not a right of the convict, but only a title, the rule being to fully and effectively serve the applied sentence, so the competent court will evaluate in each particular case if it is timely and prudent to grant this benefit to the convict. In principle, every convict can benefit from a release on probation, everyone of them having a title to this, regardless of the character of the crime they have committed and for which they have been sentenced by the court to a custodial sentence, on condition that the person present a change for the better, noticeable in their behaviour regarding work, discipline at work and in prison, observance of the internal regulations of the prison, helping the administration of the prison in maintaining the order etc.*

Key words: *imprisonment, probation, Penal Code, penalty, criminal intent.*

1. Introduction

The release on parole represents a complementary institution to the condition of imprisonment, a means of administrative individualization of penalty, which consists in the releasing the convict from the place of detention before fully executing his/her prison sentence or life imprisonment on condition that he/she will not commit any crime until the fulfillment of its duration[1].

The benefit of the release on parole is not a right of the convict, but only a title, the rule being to fully and effectively serve the applied sentence, so the competent court will evaluate in each particular case if it is timely and prudent to grant this benefit to the convict.

Furthermore, the court can decide not to rule the release on parole, although all the legal conditions are fulfilled, taking in consideration the circumstances related to the perpetration of the deed and the perpetrator, but also on reasons related to penal policy, in order to contribute in that particular moment to the strengthening the efficiency of the sentence, to enhancing its preventive effect [2].

2. The conditions for granting the release on parole provided by the current Penal Code

In principle, every convict can benefit from a release on probation, everyone of them having a title to this, regardless of the character of the crime they have committed

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and for which they have been sentenced by the court to a custodial sentence, on condition that the person present a change for the better, noticeable in their behaviour regarding work, discipline at work and in prison, observance of the internal regulations of the prison, helping the administration of the prison in maintaining the order etc. This change for the better becomes manifest especially after the execution of a part of the penalty given, proving the fact that this has taught them a harsh lesson for their subsequent behaviour in society, so that the penalty achieved its purpose, and continuing to keep these convicts in prison no longer seems imperative.

For these convicts, the lawmaker found the solution of freeing them from prison before the expiration of the sentence that they have to serve. Still, it is necessary that they meet certain conditions, expressly provided by the law, referring to the effective execution of a part from the penalty and to give solid evidence that they have bettered, and they can be freed on the suspensive condition of not committing a new crime until the expiration of the execution term for the penalty, otherwise they will be incarcerated again in prison in order to serve the rest of the penalty.

In principle, the release on parole can be granted to any convict, but in order for this measure to be effective and to avoid the risks of an unjustified release from prison, the law stipulates a series of conditions which must be necessarily and cumulatively met:

- Executing a part of the penalty;
- Perseverance in work;
- The convict's behaviour while being imprisoned;
- Solid proof of reformation;
- Criminal history.

These conditions are restrictively stipulated in the law, so in order to grant the release on parole, the seriousness of the

crime for which the person was sentenced is not taken into account, nor the duration of the imprisonment or if it was pronounced when the sentence was given or following the commutation of the life imprisonment sentence.

2.1. Having served a part of the penalty inflicted

In the current regulation, in article 55¹, 59¹ and 60 Penal Code it is established that the parts of the penalty that the convict must execute vary in relation to the degree of concrete social hazard of the deed and of the one who committed it, materialized in the quantum of the penalty inflicted [3].

According to the current regulation on the release on parole, the most important differentiation, operating in all the cases and for all the other criteria of differentiation is the one referring to the duration of the penalty, the compulsory stage that the convict must execute being longer or shorter, insomuch as the penalty executed can be harsher or milder. In this sense, our criminal law sets a reference point, an average figure, namely 10 years (taking into consideration that the special maximum in the case of prison sentence is of 25 years, as it follows from the special part of the Penal Code). In establishing the parts which must be executed, the lawmaker also took into account the character of the crime for which the convict executes a penalty, as well as the age and the gender of the convicts.

Thus, according to the provisions included in article 59, paragraph (1), Penal Code, the release on parole can be granted after the convict has served at least two thirds from his/her sentence in case of the penalty which does not exceed 10 years, or at least three fourths in case of a penalty longer than 10 years.

In calculating these parts of penalty, what will be taken into consideration according

to paragraph 2 of the same article is also the length of the penalty which can be considered, according to the law, as served based on the work performed, since the period of time while the convict worked is more advantageously considered according to the character and the efficiency of the work done [4]. Therefore, in this case, it will be possible for the release on parole to be granted after having served effectively at least half of the penalty when it does not exceed 10 years, and at least two thirds when the penalty is longer than 10 years.

In case of crimes committed with criminal intent, whose social hazard is smaller, affecting social relationships of lesser importance, the convict can be released on parole before having served the entire penalty, according to article 59¹, paragraph (1) Penal Code, if it does not exceed 10 years or at least two thirds in case of a penalty longer than 10 years.

When the part which, according to the law, can be considered as served based on the work performed is taken into consideration in calculating the parts of penalty, the convict who committed a crime with criminal intent will benefit from the release on parole if he served at least one third of his penalty when it is not longer than 10 years and at least a half when the penalty is longer than 10 years (article 59¹, paragraph (2), Penal Code).

The provisions of article 76 in Law no.275/2006 stipulated the calculation method for the penalty which is considered as being served based on the work performed or the educational and vocational training, with an eye on granting the release on parole.

The lawmaker opted for the separate regulation of the release on parole in some special situations, either related to the penalty given or the age of the convict, and it is the case of the release on probation from the life imprisonment penalty (which can be granted after having served for 20

years, and if the convict is over 60 for men and over 55 for women, he/she can be released on parole after having served 15 years from the penalty), release on parole of the juvenile convicts (who can be released on probation when they reach 18 if they served one third of the penalty which does not exceed 10 years or half of it if the penalty is longer than 10 years if they meet the other conditions required in article 59, paragraph (1) Penal Code, or if they have been convicted for committing a crime with criminal intent, after having served one fourth of the penalty which does not exceed 10 years or of a third in case the penalty is longer than 10 years), as well as releasing on probation the elderly (hence convicts over 60 for men and over 55 for women can be released on probation after having served one third of the duration of the penalty if it does not exceed 10 years or a half in case the penalty is longer than 10 years if they meet the other conditions required in article 59, paragraph (1) Penal Code, or if the conviction is for committing a crime with criminal intent, this category of people can be released on probation after having served one fourth of the penalty if it does not exceed 10 years or a third in case the penalty is longer than 10 years.)

2.2. Perseverance in work; the convict's behaviour during the imprisonment period, the solid proof of reformation and the criminal history

The second condition, which, if met, opens the convict's title for the release on parole, is that of being „perseverant in work“. Only the convicts who are unable to work are exempt from work. In order to establish this incapacity, a procedure similar to the one in the free society must be followed. If a convict complains about the fact that he/she is unable to work, a

qualified doctor must examine him/her and report to the director of the prison whether he/she is capable of working or not.

A special situation is represented by the convicts who have turned 60 (men) and 55 (women), who don't have to work unless they ask for this themselves (article 56, paragraph 3, Penal Code) [5].

The third condition regards the convict's discipline during detention, which must manifest itself polyvalently, meaning both in the work process, as well as in all the other activities specific to the job. The analysis of the fulfillment of this condition must be done in relation to the penalty which is served, depending on the behaviour of the convict and his/her attitude towards the requirements imposed by the Internal Regulation of the prison, involving an internal observation and an objective and meticulous grading system of all observations. It is not enough to verify and to ascertain the lack of any sanction, but it is necessary and useful to determine if he/she has committed any crime and to determine its character, the circumstances in which it was committed, the former and the subsequent behaviour. Enforcing a penalty for committing a breach of discipline while having served the prison sentence does not eliminate the possibility of regaining the right to require the release on parole or the possibility of obtaining it, but involves additional efforts from the convict likely to determine and to justify a possible granting of an award consisting in lifting the sanction.

The fourth condition necessary in order to grant the release on parole consists in the solid proofs of reformation that the convict must offer, thus regarding the convict's behaviour while having served the prison penalty from the point of view of his conscience, the way in which he/she demonstrates that he/she understands social responsibility he/she has after granting the release, one thing becoming

clear in respect of the convict: that the goal of his/her penalty was achieved and he/she was re-educated. In essence, the reformation proofs represent a general mirroring of the convict's moral profile [3] and consist in the good behaviour manifested constantly by the convict in prison, the exact fulfillment of the various tasks he/she has been assigned, as for example household chores, the observance of the prison's regulation, getting rewards, the absence of disciplinary sanctions, participating in the cultural and educative activities conducted among prisoners etc. are all elements that represent solid proofs of reformation of the one who serves the imprisonment sentence [6]. The solid reformation proofs also follow from the behaviour of the convict who, in comparison to his/her past, presents an obvious improvement such as: respect and obedience towards the administration of the prison, good behaviour towards the other convicts, giving up on certain bad habits (like violence, arguments, indiscipline etc.), good results at work, paying civil damages, regret for the crime committed, correct behaviour towards the victim, honest promises that after being released, he/she will help to make up for some of the consequences of his/her deed [7], being interested in qualifying or re-qualifying in a profession.

The last condition stipulated by the Penal Code which is to be analyzed when considering the release on parole consists in the previous behaviour of the convict, namely his „criminal history”. This does not represent a condition for the release on probation equivalent to the other conditions and of an equal importance, the release on parole being hampered neither by the presence of a criminal history, nor by relapse, these still representing circumstances which cannot be left aside in case of granting release on parole to any convict [6]. Yet, the convicts without a

criminal history will obtain from the court the release on parole more easily, while the recidivist convicts or, in general, the convicts with a criminal history will also benefit from this advantage but only after a much more rigorous examination of their behaviour in prison and the pertinence of this behaviour in regard to the character of their criminal history.

3. The procedure of granting the release on parole in the current legislation

Article 77 from Law no.275/2006 stipulates that the release on parole is granted according to the procedures provided in the Criminal Procedure Code at the request of the convict or following the proposal of the Commission for the individualization of the regime of the custodial sentences enforcement [6].

According to article 450 from the current Penal Code, the release on parole is ruled at the request or the proposal done according to the provisions of the law regarding the execution of penalties by the district court where the prison is. It follows that the lawmaker also established in this matter an exclusive material and territorial competence; thus, irrespective of the executing court (the court which delivered the pronouncement in the trial court), the law court is the one with competence on deciding upon the release on probation [5].

The procedure to release a convict on parole implies covering two stages. The first one takes place in front of the Parole Board, established within each prison.

Article 77, paragraph (2) in Law no.275/2006 stipulates that the commission for the individualization of the regime in the custodial sentences enforcement, with the participation of the appointed judge for the enforcement of the custodial sentences as president, who proposes the release on parole, take into account the part of sentence which is already served based on

the work performed, the behaviour of the convict and his/her efforts for social reintegration, especially in the educative, cultural, theoretical, psychological counseling and social security activities, the school and vocational training, the responsibilities entrusted, the rewards given, the sanctions applied and his/her criminal history.

The same provisions are also to be found in the Regulation which, in article 191, paragraph (1) stipulates that the commission provided in article 14 in the Law no. 275/2006 (composed of the director of the prison, the deputy director in charge of security and prison regime, the prison's doctor, the head of the socio-educational department and a counselor from the department for the protection of victims and social reintegration of the criminals in whose circumscription the prison is, appointed annually by the head of the department, the psychologist and the teacher involved in the social reintegration program of the convict), with the participation of the judge delegated with the execution of penalties as president, analyze weekly at the premises, the personal records of the convicts in detention who meet the requirements to be released on parole. The head of the parole board is also the head of the prisoners' record office [8].

The analysis of the record is done in front of the convict during which time he/she is informed of the conditions he/she must meet in case he/she will serve the rest of the sentence at large (article 191, paragraph 2 from the Regulation).

Following the analysis, the board writes a reasoned minute.

In case it is considered that the convict does not meet the conditions in order to be released on parole, the board gives another term for the situation to be reviewed, term which cannot be no longer than 1 year. The minute is presented to the convict upon

signature, also being informed that he/she can address directly to the court with a petition for release on parole.

Article 77, paragraph (5) in Law no.275/2006 stipulates that in case the convict addresses directly to the law court asking for a release on parole, he/she encloses the minute from the Commission for the individualization of the regime of the custodial sentences enforcement, together with the documents which certify the mentions included in this [8].

If the board considers that the conditions for the release of the convict on parole are met, they submit the minute together with the documents on which it was based, to the law court.

Thus, the second phase of the procedure for the release on parole begins, which takes place in front of the law court.

The rules of procedure in the settlement of the release on parole either following the notification of the court with the proposal of the board, or following a petition addressed directly to the court by the convict are ruled by the common stipulations in the matter of enforcement provided in article 460, current Penal Code. In this situation, the presence of the convict in front of the court is mandatory, as well as him/her being assisted by a lawyer, whether he/she is chosen or appointed *ex officio*. The cause is settled with the compulsory participation of the prosecutor. The court can consult the individual record of the convict [9].

If the court concludes that the conditions for a release on parole are not met, according to article 450, paragraph (2) in the current Penal Code, it settles through the decision of rejection the term after the expiration of which, it will be possible to renew the proposal or petition. The term cannot be longer than 1 year and it starts when the decision becomes final.

The decision of the court, which is a verdict, is subject to appeal, the lawmaker

settling an especially derogatory term from the general term of appeals, which is of 3 days and starts from the pronouncement for the present parties and from the intimation for the ones not present, according to the general rules in the domain. The prosecutor's appeal is suspensive.

4. The release on parole in the new criminal law

4.1. Substantive provisions

The release on parole is subject to significant changes in the New Penal Code, both in terms of conditions of granting and the social reintegration of the convict through the active and qualified involvement of the state, an essential role being played by the probation officers.

The relevant provisions are represented by articles 99 – 106 from the New Penal Code.

First of all, it is to be noted that the lawmaker chose to no longer maintain the provisions that created differentiated regimes for granting the release to the convicts for crimes committed designedly or with intent, considering that the form of guilt with which the crime was committed was capitalized when the penalty was individualized from the legal point of view and it reflects in the character, the duration and the way of enforcement of the penalty as they have been applied through the conviction.

Therefore, on the same line with the European direction, but also that of Law no. 275/2006 regarding the execution of penalties, granting the release on parole is done exclusively by taking into account the behaviour of the convict while serving the sentence, because the behaviour of the convict can be influenced and shaped more efficiently, the convict thus getting an extra motivation, knowing the fact that

good behaviour brings him/her closer to the release on parole. Granting the release on parole taking into account states of fact previous to the commencement of the prison sentence such as the character or the seriousness of the crime committed, the behaviour during the lawsuit represents a reason for discouragement of the convict in the reintegration process, because he/she understands that his/her release does not depend on the behaviour during the time in prison, but on his/her previous deeds that he/she cannot possibly influence in any way.

The character of judicial instrument of the institution through which the court establishes that the enforcement of the penalty in prison is no longer required until the completion of the term set by the court at sentencing, has been kept through the new regulations because the convict, through the conduct he/she had during the entire period in prison proves that he/she has made constant and obvious progress in what concerns social reintegration and thus convinces the court that he/she will no longer commit crimes and his/her release on parole does not represent any danger for the community.

Therefore, starting from these considerations, the New Penal Code regulates in article 100 the following conditions in relation to which the convict's conduct for granting the release on parole is evaluated:

a). he/she had a good conduct during the time spent in prison;

b). he/she has integrally fulfilled the civil obligations settled through the conviction, apart from the situation in which it is proven that he/she had no possibility to fulfil them;

c). the court is convinced that he/she has reformed and can be reintegrated in the society.

The article also stipulates the part of penalty that the convict has to serve, keeping the quantum from the current

regulation. Thereby, it is stipulated that the release on parole in case of a prison sentence can be ruled if the convict has served at least two thirds of the penalty in case of a sentence not longer than 10 years, or at least three fourths of the penalty in case of a sentence longer than 10 years.

The calculation of the part of the penalty must also be related to the provisions of article 96 from the Draft Law on the enforcement of custodial sentences, which stipulates the method of calculation of the penalty which is considered to be served based on the work done or the educational and vocational training with a view to granting the release on parole.

As a novelty, it is stipulated that in the situation in which the parole revocation is ruled, the fraction of penalty which is considered to be served based on the work done or educational and vocational training cannot be revoked.

An important difference compared to the current regulation, which did not stipulate the penalty regime among the legal criteria of having served the penalty, consists in the fact that, according to the new regulations, only the convict who serves the penalty in an open or semi-open prison can be released on parole (article 100, paragraph 1, letter b, New Penal Code).

The special situations continue to be regulated, as the case of the convict who turned 60, for whom the release on parole can be ruled after having served half of his sentence in case of penalties which do not exceed 10 years, or at least two thirds in case of penalties which exceed 10 years if all the other requirements are met.

The new regulation also takes into account in calculating the fraction of penalty the part which can be considered, according to the law, served based on the work done; in this case, the release on parole not being ruled before at least half of the imprisonment penalty is served when it is not longer than 10 years, and at

least two thirds when the punishment is longer than 10 years for the general case, and at least one third of the imprisonment penalty is served when it is not longer than 10 years, and at least a half when the punishment is longer than 10 years for the special situation of the convict who turned 60.

Article 99 from the New Penal Code stipulates that one of the special situations in granting the release on parole, namely applying it to the convicts sentenced to life imprisonment, providing that it can be ruled if:

- a). the convict has effectively served 20 years in prison;
- b). the convict has had a good conduct during this whole period;
- c). he convict has fully fulfilled his/her civil obligations established through his/her conviction, apart from the case when it is proved that he/she had no possibility of fulfilling them;
- d). the court has the certainty that the convict has reformed and he/she can reintegrate in society.

In all the cases in which the court rules the release on parole of a convict, it has a new responsibility apart from those existing in present, namely to present the reasons which led to granting the release on parole and to warn the convict regarding his/her future behaviour and the risks he/she runs if he/she commits other crimes or he/she will not comply to the surveillance rules or if he/she will not carry out his/her obligations during the surveillance term.

In case of the convict sentenced to life imprisonment, he/she is supervised for a period of 10 years from the date of release (article 99, paragraph 2, New Penal Code), while in the other cases, the period is represented by the interval between the date of release and the date when the penalty ends (article 99, paragraph 6, New Penal Code).

Article 95 from the New Draft Law on the enforcement of custodial sentences stipulates that the convict can be released on parole before the enforcement of the entire sentence if he/she complies with the conditions provided in article 100 or, according to the case, article 99 from the Penal Code.

In order to continue the convict's reformation together with his leaving prison and returning to the community but also in order to supervise him/her so as not to return to his/her criminal pursuits, the new regulation stipulates that during the surveillance period, the convict has the obligation not only to restrain from committing other crimes, the compliance with this obligation being subject to a supervisory regime, but also a series of obligations which aim at his/her readjustment in the community in order to facilitate his/her social reintegration.

In this respect, during the surveillance term, the convict is forced to comply with certain surveillance measures:

- to report to the probation service on the date set by the latter;
- to receive the visits of the person in charge of his/her surveillance;
- to previously notify the authorities regarding any change of domicile and any voyage that exceeds 5 days;
- to inform about the change of workplace and to communicate information and documents that will allow the control of his/her means of existence

At the same time, the court can force the convict released on parole, according to article 101 New Penal Code, to perform certain activities which are useful to the reintegration process:

- to attend a course on educational or vocational training;
- to attend one or more social reintegration programs developed by the probation service or organized in collaboration with institutions in the community;

- not to leave the country's territory, not to be in certain places or at sport events, cultural events or other public gatherings stated by the court;
- not to communicate with the victim or with the members of his/her family, with the participants to the crime or with other people specified by the court or not to get close to them;
- not to drive certain vehicles stated by the court, not to possess, use or carry any kind of weapons [10].

In establishing the obligations and the measures imposed to the released convict, the court, according to the provisions of article 101, paragraph 6, New Penal Code, will consult with the probation service, which is compelled to formulate recommendations in this respect, also having the obligation to inform the court if certain modifications occurred during the surveillance term which justify either modifying the obligations imposed by the court or giving up on some of them, or if the person under surveillance does not respect the measures or does not comply, in the agreed condition, with the obligations that he/she has. In these conditions, the court can rule the modification or the cessation of the obligations which were imposed to the convicted released on parole.

In what concerns the revocation of the release on parole, the New Penal Code adopted the current form of regulation from the recess under surveillance of the enforcement of the penalty in prison. Therefore, in article 104 New Penal Code, it is stipulated that if the person released on parole in bad faith does not keep to the surveillance measures or does not comply with the obligations imposed, the court will revoke the release on parole and will rule the execution of the remainder of the sentence. The same solution will be applied in the situation in which, after granting the release on parole, the convict

committed a new crime, which was discovered during surveillance term and for which a conviction to imprisonment was passed, even after the expiry of that period. The punishment for the new crime is established and enforced on the case, according to the provisions regarding the relapse and intermediate plurality.

But if while being under surveillance it is discovered that the convict had previously committed another crime until being granted the release on parole, for which he/she was given another imprisonment sentence exactly after the expiry of the term, the release will be invalidated, enforcing, depending on the case, the provisions regarding multiple offences, relapse or intermediate plurality. If according to the resulting penalty, the conditions stipulated in articles 99 or 100 are met, the court will be able to grant the release on parole. In this case, the surveillance term will be calculated from the date of the first release (article 105 New Penal Code).

According to article 106 New Penal Code, the penalty is considered served if until the expiry of the surveillance term, the convict did not commit another crime, the revocation of the release on parole was not ruled and there was no cause for cancellation.

4.2. Provisions of procedural law

Both the New Criminal Procedure Code, as well as the New Law for the enforcement of custodial sentences brings some novelties in what concerns the procedure for granting the release on parole.

The Draft Law for the enforcement of custodial sentences provisions, in article 97, that the release on parole is granted only according to the procedure stipulated in the Criminal Procedure Code, at the request of the convict or following the proposal of the Parole Board.

In accordance with this provision, the New Criminal Procedure Code, which regulates the release on parole in only one article, article 587, stipulates that this is ruled on request or proposal made according to the provisions of the law regarding the enforcement of punishments.

The Draft Law for the enforcement of custodial sentences regulates the structure of the Parole Board, present in each prison, namely: the Supervisory Judge of Custody, who is also the chairman of the committee, the prison director, the deputy director for the security of detention and prison regime, the deputy director for education and psychosocial assistance and a probation officer from the Probation Service in the district court where the prison is (article 97, paragraph 2). The secretary of the board is provided by the head of the records service in the respective prison.

This commission has the responsibility to make proposals for release on parole of the convict taking into consideration:

- a). the part of penalty effectively served and the one which is considered to be served, according to article 96
- b). the regime of execution of the custodial sentence in which he/she was assigned;
- c). the fulfillment of the civil obligations established through the conviction, apart from the situation when it is proven that he/she had no opportunity to fulfil them;
- d). the convict's conduct and his/her efforts for social reintegration, especially concerning the work done, the educational, moral-religious, cultural, therapeutic, psychological counselling and welfare activities, educational and vocational training, as well as the responsibilities entrusted, the rewards and the disciplinary sanctions;
- e). his/her criminal history.

At the same time, the board must consider, in drawing conclusions, the

results of applying the instruments for standard assessment of the activities carried out by convicts, approved by the decision of the General Director of the National Administration of Penitentiaries.

It is to be noticed that the Bill of the new law stipulates more criteria which must be considered when analyzing if a convict meets the requirements to be proposed for release on parole. As a novelty, we find the regime of execution of the custodial sentence in the prison in which the convict is assigned, the fulfillment of civil obligations, as well as his/her criminal history.

Thus, the lawmaker considered that it is not sufficient for a convict to have a correct conduct while executing his/her part of the sentence, but he also must take care of covering some of the damage caused in civil life.

The new provisions maintain the obligation to bring the convict in front of the board, with the exception of the medical situations which make it impossible for him/her to come; the convict can attach documents to his/her record, including in order to prove that he/she has fulfilled his/her civil obligations established by conviction or that he/she was unable to fulfil these obligations (paragraphs 5 and 9).

The proposal of the board is recorded, presently, in a minute which comprises the position of the members of the board regarding the proposal of release on parole. Together with the minute, the probation officer from the Probation Service in the district court where the prison is must attach the recommendations regarding the surveillance measures and the obligations stipulated by article 101 Penal Code, which can be applied by the court in case the remaining punishment which has not been executed at the date of releasing the convict is 2 years or even longer (paragraph 8).

Paragraph 10 stipulates that in case the board determines that the convict does not meet the conditions to be released on parole, there is a mandatory provision in the minute to assign a term in order to re-evaluate his/her situation, which cannot be longer than 1 year. In case the petition for release on parole is formulated before meeting the condition related to the part of the sentence which must be served, stipulated in the Penal Code, and the period to be served is longer than one year, the term given by the board will be the date when the period to be served is complete, also stipulated by the Penal Code. In case the period to be served is shorter than one year, the term given by the board can exceed the date when the period to be served is complete, but cannot be longer than one year. At the same time, the board communicates the minute to the convict immediately, who, within 3 days after being notified, under signature, has the possibility to address the district court where the prison is with a petition for release on probation.

If the board considers that the person meets all the requirements to be released on parole, it forwards the minute, together with the documents attesting those certified in it, to the district court where the prison is, also immediately communicating the contents of the minute to the convict.

The capacity to settle the petition for release on parole is attributed, as in the current regulation, as an exclusive competence, to the district court where the prison is (according to article 587 New Procedure Code) [11].

Paragraph 13 in the Draft Law on serving custodial sentences stipulates that in order to settle the petition for release on parole of the convict or the proposal formulated by the board, the court can examine the individual record of the convict or can request copies of the documents in it.

If it is considered that the conditions for granting the release on probation are not met, according to paragraph 2 from article 587 New Criminal Procedure Code, the court will settle through the rejection order and will decide the term after which it will be possible to renew the proposal or the petition, term which cannot be longer than one year and will run from the moment when the decision is final.

It will be possible to contest the decision of the court, which is also a sentence (through the appeal which is specific in matters of enforcement) to the district court where the prison is within 3 days of notification, the appeal filed by the prosecutor being suspensive from execution, identical provisions with the ones already existing in the current Criminal Procedure Code (with the only difference that currently, the appeal is the only recourse to legal proceedings).

As a novelty, article 4 stipulates that a copy of the final decision will be communicated to the competent Probation Service, as well as to the Police in order for the obligations and measures ruled by the instance to be enforced and which the convict must comply with during the release on parole.

5. Final considerations

The release on parole is subject to significant changes in the New Penal Code, both in terms of conditions for granting, and the social reintegration process of the convict through an active and qualified involvement of the state, in this sense an essential role is played by probation officers [8].

It remains a way of individualizing administratively and judicially the imprisonment penalty, also representing a benefit for the convicts who understand the rehabilitation function of the punishment.

The benefit of the release on parole is not a right of the convict, but only their title, the rule being that the entire penalty is served, so, in order to grant it, the court will evaluate for each case in particular if it is recommendable and prudent to grant this benefit to the convict. Furthermore, the court may not rule the release on parole even though all the requirements are met, taking into consideration not only the circumstances related to the perpetration of the crime and the person, but on grounds of penal policy, in order to contribute in that particular moment to the strengthening of the penalty's efficiency, to increase its deterrent effect. In most situations, the fact that the convicts have felt the retributive effects of the punishment and have endured the hardships related to it are sufficient reasons to have a correct conduct thenceforward and not to commit other crimes. It is certain that the re-education and reformation of convicts is not achieved in all cases, a proof of this being the relapses, some of the convicts returning in prison after a while. Therefore, it is to be noticed that the main re-education of those who have committed crimes is done while they serve their imprisonment sentence, when convicts are under the surveillance of the prison's administration, who know them well and in depth according to their conduct, their work and the real signs of reformation, taking into consideration each convicts' particularities.

The new regulations offer an important role to the Probation Service in the district court where the convict will live after his/her release on parole, which will assume the surveillance of the convict and will continue the work started during his/her detention, the final purpose being the convict's reintegration in society.

References

1. Fondor, I.: în V. Dongoroz, et al., *Theoretical explanations of the Penal Code, 2nd edition*. Bucharest. The Romanian Academy Publishing House, 1969, p. 42.
2. Popescu, D.: *The Penal Code, commented and annotated*, general part. Bucharest. Scientific Publishing House, 1972.
3. Zidaru, P.: *Criminal Execution Law*. Bucharest. Press Mihaela S.R.L. Publishing House, 1997, p. 211.
4. Matei Basarab – *Criminal Law. General part*, 2nd volume. Bucharest. Lumina Lex Publishing House, 1997, p. 288
5. Udroi, M.: *Criminal Law. General prt. Special part*, 3rd edition, *Syntheses and scale tests*. Bucharest. CH Beck Publishing House, 2011.
6. Dongoroz, V., et al.: *Theoretical explanations of the Romanian Penal Code, 2nd volume*. Bucharest. Academy Publishing House, 1970.
7. Oancea, I.: *Criminal Execution Law*. Bucharest. All Publishing House, 1997, p.174.
8. Barbu, S.G., Şerban, Al.: *Criminal Execution Law, 2nd edition*. Bucharest. CH Beck Publishing House, 2008, pp.73-74.
9. Neagu, I.: *Treatise of Criminal Procedure. General part*. Bucharest. Universul Juridic Publishing House, 2008.
10. Pascu, I. et al.: *The New Penal Code commented*, volume I, *General part*. Bucharest. Universul Juridic Publishing House, 2012.
11. Mateuţ, Gh.: *Criminal procedure. General part. Special part, volumes I and II*. Bucharest. Lumina Lex Publishing House, 1997-1998.