

## The Controversy in the Romanian Legislation Regarding the Granting of Conditional Release

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**Abstract:** Starting from the four types of conditioned liberation characters (general, individual, optional and revoked) it raises the controversy regarding how to grant it. Thus, in relation to the generality of conditioned liberation, under which, it can be given to any convict regardless the nature and seriousness of perpetrated crime, there are some questions as follows: is conditioned liberation granted correctly in case of extremely serious murder, or not? Is conditioned liberation granted correctly in case of sexual act with a minor? If the answer of this question is affirmative, what will happen with further development of the child? He will be able to get a look at the person who shaded his childhood, just because he is the author of an invention? He will be able to understand that law offered to offender the freedom in exchange for innovations, while the shock that child was forced to endure, was for nothing? The disputed aspects concerning granting conditional release are induced by the development of published scientific papers or patented inventions and innovations.

**Keywords:** conviction; sexual crime; inventions and innovations

**Conditional release** is regulated by Romanian criminal law and it consists of the freedom of convicted person, before completely executing imprisonment, under the condition that he will not commit a crime again until the penalty will reach its time (Pascu, 2004). Concomitantly, the conditional release is regulated by Law no.275/2006 regarding the execution of punishments and measures ordered by the judiciary in criminal proceedings, but also by the criminal procedure law. Thus, the law proposes new rules to equalize their work with a part of sentence length; the work will include development of published scientific papers or patented inventions and innovations. These rules are differentiated according to prisoners' age, adult or minor, and the concrete conditions of work.

According to Criminal law, conditional release may be granted only under certain conditions, relating on one hand, the fraction of punishment which has to be executed by the convicted, and on the other hand, the behavior of the convicted during executing the sentence. If the convicted person shows a good behavior during his stay in prison, the penalty is considered to be executed and if he commits a crime again, he will have to be executed under the same conditions, alongside the punishment for the new crime, and the rest of the sentence will remain unsettled at the date of release.

There are some features that must be highlighted regarding the granting conditional release. First, it has to be mentioned the **generality** of conditional. Thus, anyone who has committed a crime, regardless the severity and its nature, may be conditionally released (whether is a violation of domicile crime or an infanticide crime). So, *in the first case*, a person who refuses to leave the house, room, outbuildings or enclosed places is liable to imprisonment up to 4 years; *in the second case*, the active subject – mother, being in a state of disorder occasioned by birth, and she kills her newborn baby, is

liable to be punished with imprisonment up to 7 years. So, we are in the presence of two types of crimes: against liberty of person and against life; on one hand, we are facing a less serious crime, and on the other hand an offense classified as manslaughter.

Equally, in accordance with the general feature of conditional release, we may wonder if the provisions of Law no. 275/2006 are justified when it allows to the convicted person for aggravated murder, to request the release. Thus, in terms of generality, it does not distinguish between nature and seriousness of committed crime, but it makes you wonder: can a convicted person for committing *murder by fault* and a convicted person for committing *aggravated murder* obtain equally the conditional release? The answer would be that under the provisions of conditional release, it has to distinguish between types of guilt which were the committed the crimes, the fraction of sentence which has to be executed being reported to it; *but how about in terms of delinquent behavior?* Is the social danger posed by the perpetrator directly proportional in both situations? It is well known the fact that the aggravated murder is the worst form of murder stipulated by law, such as, killing a cruelly person.

Thus, in terms of seriousness of the crime, it is liable to punish with life imprisonment, and in accordance with disposals of article 117, Code of Criminal Procedure, a psychiatric expertise is required for the aggravated murder.

Criminal law distinguishes between fractions of punishment that the convict must execute in relation to the form of guilt, thus, making the difference between crimes committed with intention, deliberately, and unintentionally crimes, committed by fault or negligence. *But, how will the Court determine, specifically, the fraction of punishment for a crime committed with intention and fault* (a mixed form of guilt characterized by intentionally exceeding, a combination of intention with guilt? *How does the Court set definitely, the fraction of punishment to be executed for a murder by fault and for a rape crime that resulted in the victims death?* These are questions which certainly get different solutions from the same level of Court review.

However, the Criminal law differentiates between the fraction of penalty to be executed, between sentences not exceeding 10 years and penalties under this limit, compared with executed part. Romanian Criminal Code provides executed fractions of punishment in case of intentionally offenses; so, execution of two thirds of sentence length in case of convicted person to imprisonment up to 10 years, and if a sentence exceeding 10 years, the fraction to be executed is three quarters. In these fractions to be executed, are included parts of punishment deemed executed based on performed work.

As regards the behavior of the convict, Criminal law refers to *persistence in work*, the discipline which must show, the solid evidences of redress and also, to criminal background. *The convicted persistence in work* is about quality products they offer, excess labor standards and also the administrative tasks that are not paid. The *discipline* that must be shown by the convict has to be reported if it established relationships with other prisoners and other subjects of criminal execution and its attitude toward work and social values. *Thoroughly proven of convict redress* means behavioral modifying during the execution of penalty, expressed to the law rules and rules of social conduct, participation to civic activities carried out by prison staff, discharged of tasks that have been assigned, the proper behavior to the place of detention (Margarit, 1998). *Criminal background* are not usually a disadvantage in granting conditional release, but were designed to determine an accurate assessment of convict behavior in prison. But, in practice we should consider that must be an impediment to granting conditional release, when is referring to the same offense which was committed in the past. Thus, if the same crimes of rape are repeatedly committed, or the sexual act with a minor, we consider that the

active subject does nothing more, than being perseverance in the same type of criminal act. Is not required to constitute a generality, but the law should distinguish between criminal background referenced.

Among mentioned controversies, appears that *the Court will determine rightly, correctly, the punishment for a person who committed a rape crime against a victim who has not reached 15 years old* (Article 197, paragraph 3, Criminal Code), and also, *for a person who committed a sexual act with a minor* (Article 198, paragraph 1, Criminal Code)? According to the text provided by article 197, paragraph 3, Criminal Code, the rape against a victim who has not reached 15 years old means „*any kind of sexual act, with a person of different or same sex, by her coercion, or by taking advantage of her inability to defend or to express her volition, if the victim has not reached 15 years old, the punishment is imprisonment from 10 to 25 years and interdiction of some rights*”, and according to disposals of Article 198, paragraph 1, Criminal Code, the sexual act with a minor means „*any kind of sexual act with a person of different or same sex who has not reached 15 years old, is punished with imprisonment from 3 to 10 years and interdiction of some rights*”. Making an analysis of these two law disposals, we can see that we are in front of identity between the material element, active and passive subject. In case of article 197, paragraph 3, Criminal Code, **first difference** is made by coercion or taking advantage of victims inability to defend herself or to express her will, but the natural question that arises is: *if the victim is not reached 15 years old in both cases, really she is unable to defend in case of both offenses? The active subject of both crimes does not take advantage of both victims unable to defend themselves, just because of their age? The second and most important difference* consist in penalties provided by law. Thus, in case of rape crime against who has not reached 15 years old, the offender may be sentenced to imprisonment up to 25 years, and in case of sexual act with a minor, the offender may be sentenced to imprisonment up to 10 years. Practically, there are situations that often are left to the Court discretion and the consequences are not stopped here. After the trial phase, is following the last one, the execution of verdicts, which can determine the **conditional release**. According to the generality, may be granted conditional release both convicted person to imprisonment of 25 years (for rape offense against a victim who has not reached 15 years old) and convicted to imprisonment of 10 years (for sexual act with a minor), but *in case of first conviction*, the request of release comes after almost 19 years of executed sentence; *in case of second conviction*, release may be required after executing nearly 6 years and half.

Moreover, according to the revoked nature, if the defendant was granted conditional release to imprisonment of 25 years, after executing of 19 years of prison, and in period between release and expiry of 25 years, has committed for example, an offense of sexual act with a minor, the Court may revoke the conditional release, or on the contrary, it can maintain this measure.

In addition to the disposals of Criminal Code, concerning the granting of conditional release, Law no. 275/2006, established in article 76, para. 1, letter f, „*sentence is considered executed, based on their work or school instruction and training, in order to grand conditional release,..... it is calculated in case of processing scientific papers published or patented inventions and innovations, 3 executed days for 2 days of performed work*”.

As regards to these provisions, there are new controversies and questions. So, who can guarantee the authenticity of these papers, patented inventions or innovations? Actually, *it can be proved that a scientific work truly is made by the convicted and it is not done by a person outside the prison, further being assimilated by who requested the conditional release?*

Considering these answers of mentioned questions as for convict advantage, we still insist upon a comparative analysis between granting conditional release for processing scientific papers published or patented inventions or innovations and the general feature of conditional release. From this perspective, the generality of release allows any convicted, regardless the committed offences' severity or nature, to reduce the term of executed sentence and further, the granting of conditional release based on published papers or patented inventions and innovations. A subjective but justified question for many people is as follows: *a person who has committed a rape offence against a minor under the age of 15 years, or who committed a sexual act with a minor, should be released just because the Romanian Criminal law recognizes innovative or scientific qualities?* What kind of answer would you give to the parents of the minors, victims of these prisoners? Could they really understand these ingenious qualities, since their children have missed their best years? Could you understand why it was necessary to create these perpetrators fantasies before the law, to appear the monstrous fantasies against their children? May it appear as a way to escape from penalty that should be fully executed?

An example and also a good answer to those questions, is case of American pedophile Kurt Treptow, immigrated professor to the U.S.A., historian, director of scientific institute, investigated for pedophilia and distribution of child pornography, then conditionally released by the Romanian Courts under Law no. 275/2006, published succession of scientific papers. Considering that what he was doing was not enough, Treptows prostitute parties were photographed and recorded on tapes, CDs, with high-performing audio-video. Scenes of unimaginable cruelty were later sold abroad. In Romania, he is in charge of the „Foundation for Romanian Culture and Studies”; the foundation published numerous books and magazines regarding the Romanian culture and history. At first sight, his activity in Romania was made in the legal limits; nobody could have known that this individual had become scary for the Romanian children. This horrible person was lodged by Romania with open arms in worship, courteous way. Just in term of his intellectual vocation, to his profession, to foundation activity that he leads, was likely to develop scientific papers or other inventions. During his professional career, Treptow has published several books and other works with other personalities of Romanian culture. Thus, *on one hand*, we facing a ruthless individual with monster face for many children, and *on the other hand*, before a intellectually type, which even law allows reducing the sentence, conditional release, through instruments which are to his disposals: the production of scientific papers, a very easy thing for a professor.

Because there were serious signs that Treptow had committed offences, such as sexual act with a minor, sexual corruption and sexual perversion in March 2003, he was sentenced to 7 years of imprisonment for the above mentioned facts. Four years later he left the prison, according to the disposals of article 76, paragraph 1, letter f, of Law no. 275/2006 stipulating in his favor: *„the sentence is considered executed, based on performed work or school instruction and training in order to grant conditional release, it is calculated.....for preparation of scientific papers published or patented inventions and innovations, 3 executed days for 2 days of performed work”*. Kurt Treptow was the author of a scholarly work of 400 pages, written in English, called „Life and times of Vlad Dracul. Reverberations on family” and published to the Central Library. In invoking conditional release, Treptow requested witnesses, to show that he is the author, either he was seen writing it, either Treptow expressed before witnesses the desire to write such a work.

And such terrible and traumatic acts were not sufficient against the Romanian children, he considered that the State which hosted him tolerated and allowed to be conditionally released because of the law,

he deserved to be challenged by the European Court of Human Rights. He claimed that he was wrongly convicted, and claiming substantial amounts of money.

Since French society, Anglo-Saxon and Spanish refer to legislations such as chemical castration as a punishment for pedophiles; Romanian society agrees to tame criminal penalties for those who sexually abuse minors. Chemical castration means the hospitalization of offender in case of sexual crimes against minors, in a maximum security medical center, applying a hormonal treatment during hospitalization and after discharge and then they are forced to wear an electronic tracking device.

Due to unbearable conditions in the past prisons and trying to improve this situation, where were necessary and required several proposals to amend the criminal law; but unfortunately, favoring categories of offenders such as pedophiles and the countries which have an hesitant legislation, with ongoing proposals for changes, particularly in relations to minors, it becomes realm of sex tourism, of perverts and pedophiles. Both for victims and their families, the legal provisions are against their prescriptions and the law supports offenders. The rapist and the one committing acts of molestation and any acts of pedophilia, can always be analyzed both from a legal and psychological perspective. Thus, *psychologists* would characterize them as persons with serious sexual problems, mental and socially dangerous person; rapist behavior is characterized as being caused by a personality disorder, which is inappropriate, antisocial and explosive.

Even those features arising from the rapist or pedophile genetic profile, Romanian Criminal law should be more rigorous. Moreover, we distinguish between categories of victims. Thus, we can say that injured person, victims of any type of crimes, may recover more quickly both morally and financially than the ones that have been subject to rape offence or any sexual abuse, and when the victim is a minor there are negative consequences at levels of its life.

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