

Conditional release as a mechanism for rehabilitation outside the closed environment in Algerian legislation (Legal - statistical study)

الإفراج المشروط كآلية لإعادة التأهيل خارج البيئة المغلقة في التشريع الجزائري
(دراسة قانونية – إحصائية)

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Abstract:

The policy of social rehabilitation of prisoners is considered, one of the most important policies recently adopted by Algeria within the framework of reforming the justice sector, as part of a large reform plan in the field of penal institutions. This policy aims to establish mechanisms to support prisoners, rights while fully respecting human rights. These new policies fall within the precise respect for the international treaties ratified by Algeria, especially those related to human rights.

Conditional release system is considered one of the most crucial of these mechanisms, as a remedy for the negatives and flaws of reform and rehabilitation in closed environments, especially for long-term sentences, and as a means to avoid direct transition from a life of confinement to a life of freedom. The legislator has adopted this system based on trust between the penal establishment and the prisoner, allowing for a transitional process based on the prisoner, personality and its virtues and capabilities. Compliance with this system is a criterion for submission to it, and this only happens if this trust is not violated. Hence, the success of the conditional release system in the social rehabilitation of Prisoners and reducing the crime rate.

Keywords: Conditional Release; Closed Environment; Open Environment; Prisoner 's Rehabilitation; Penal policy

المخلص:

تعتبر سياسة إعادة التأهيل الاجتماعي للمساجين أحد أهم السياسات التي انتهجتها الجزائر مؤخرا في إطار إصلاح قطاع العدالة، ضمن خطة إصلاح واسعة في قطاع المؤسسات العقابية، وترمي هذه السياسة إلى وضع آليات لدعم حقوق المساجين في ظل الاحترام الكامل لحقوق الإنسان، وتندرج هذه السياسة الجديدة ضمن الاحترام الدقيق للمعاهدات الدولية التي صادقت عليها الجزائر لا سيما المتعلقة بحقوق الانسان.

ويعتبر نظام الافراج المشروط أحد أهم هذه الآليات، فتداركا لما يحمله الإصلاح والتأهيل من سلبيات وعيوب في البيئة المغلقة، خاصة في ظل العقوبات طويلة المدة، وتفاديا للانتقال المباشر من حياة الاعتقال إلى حياة الحرية، فقد اعتمد المشرع هذا النظام القائم على الثقة بين الإدارة العقابية والمحبوس، والذي يسمح بالانتقال المرحلي على اعتبار شخصية السجين وما تحمله من محاسن وقدرات، معيارا للخضوع لهذا النظام، وهذا لا يتأتى إلا إذا لم تخرق هذه الثقة، وبالتالي نجاح نظام الافراج المشروط في إعادة التأهيل الاجتماعي للمحبوسين وتقليل نسبة الاجرام.

الكلمات المفتاحية: الافراج المشروط؛ البيئة المغلقة؛ البيئة المفتوحة؛ اعادة تأهيل المساجين؛ السياسة العقابية

Introduction:

Combating and reducing the criminal phenomenon in any society is considered one of the basic goals that modern penal policies have sought to enshrine in their laws.

Perhaps the success of the penal policy within the state is the basic criterion that depends on either achieving or failing this goal. The penal policy is considered as the treatment given to the patient.

If the real and far-reaching goal of criminal punishment lies in combating crime, i.e., in protecting the rights and interests that the criminal legislator deems worthy of penal protection, this far-reaching goal of punishment is, however, achieved through objectives and purposes closely related to it.

The primary objective of punishment in the past has been to inflict pain on the convict in order to achieve deterrence, both general and specific. After that, the purposes of punishment evolved to become a means of rehabilitation and reform, influenced particularly by the modern social defense movement's advocacy for the necessity of focusing on the criminal's person and reintegrating him or her as a productive member of society after their release from prison.

In fact, penal treatment in all its forms occurs not only within penal institutions but also in another different type that takes place outside of them.

If the rehabilitation process within punitive institutions is carried out following specific methods to achieve certain goals, then this process takes place outside closed environments, employing different means and mechanisms overseen by various bodies.

Among these methods is the parole system, which allows for the release of the incarcerated individual before the completion of their sentence, so they do not transition directly from a closed environment to freedom, but rather this transition is gradual. Just as the legislator gradually infringes upon this freedom, they also gradually restore it, so after being confined in a closed environment, the individual is then placed in an open environment where their freedom is restricted.

Conditional release is considered a transitional period during which the prisoner does not directly transition to a life of absolute freedom, which exposes them to what is known as the shocks of freedom.¹

Therefore, it requires a gradual process of lifting the restrictions imposed on the convicted individual by imposing obligations and constraints on them after release, the purpose of which is to ensure that they do not return to crime again.

How successful is the conditional release system in the social rehabilitation of prisoners in Algerian legislation?

In order to answer this question, we approach the topic through two main themes:

the first addresses the legal system of conditional release

the second discusses the role of external interests in activating the conditional release.

¹ Asmahan Abdel Razzaq, "The Conditional Release and the extent of reliance on criminal risk as a criterion for judgment", Journal of Human Sciences, University of Constantine1, Issue 39, Jun 2013, P1

1. The Legal System of Conditional Release

In this chapter, we will address the definition of conditional release, its characteristics and the conditions related to it. After that, we will shed light on the bodies charged with granting it, the obligations of the released person, and finally the effects and annulment of the release decision.

1.1 Conditional Release: definition

The Algerian legislator did not provide a definition of the Conditional Release System either in Order No. 72/02 regulating prisons and prisoner rehabilitation or in Law 05/04 regulating prisons and social reintegration of detainees. Instead, it sufficed to mention the prisoner's eligibility for this system when certain conditions are met, as stated in Article 134 of the Prison Regulation Law, similar to the approach taken by the French legislator, which only mentioned in Article 729 of the French Code of Criminal Procedure that the purpose of parole is the reintegration of the convicted individual and preventing their return to criminal activities. It stipulates that⁽¹⁾: " La libération conditionnelle tend à la réinsertion des condamnés et à la prévention de la récidive."

On the other hand, we find that the Egyptian legislator defined the conditional release as: "Releasing the individual sentenced to a custodial sentence before the expiration of their full sentence, subject to conditions that entail obligations imposed on them, restricting their freedom, with such freedom contingent upon fulfilling those obligations"(²)

Conditional release, also known as parole or release on conditions in some legislations, refers to the release of a convicted or incarcerated individual before the completion of their full sentence, provided certain conditions are met, and they comply with the procedures that restrict their freedom during the remaining period of their sentence.⁽³⁾

Conditional release is a system that allows the convict to be released prior to the expiration of his sentence under the conditions.⁽⁴⁾

It is an ancient system that emerged in the late 18th century, and this system has French origins, where the jurist Bonneville de Marsagny coined it since 1848, and then the Law of 14 of 1885 gave it its place in the legislation by the French de Marsani.

It was preceded by England in 1803, and then moved to Portugal and Germany as well as the Austrian Empire⁽⁵⁾. It later spread to encompass most legislation, regardless of their

religious doctrines and political systems. Consequently, the conditional release system is currently applied in most modern legal systems, benefiting both the offender and the society of which they are a part.

The conditional release system is considered one of the trust-based systems that connect the prisoner with the administrative detention.

⁽¹⁾ Ibrahim Babbah, "Conditiona Release Mechanism for the Reintegration of Prisoners in the Algerian legislation", Professor Researcher Journal for Legal and Political Studies, University of M'sila, Volume1, Issue 9, March 2018, P163.

⁽²⁾ Ibid, P165.

⁽³⁾ Ali Abdelkader Al-Qahwaji, Penal Code: General Section, Book Two: Liability and Criminal Punishment. University Press House, Alexandria, 1998, p320

⁽⁴⁾ Ahsan Bousaqiaa, The brief in General Penal Law, Dar Houma, Algeria. 4th ed, 2007 , p354

⁽⁵⁾ Fattouh Abdullah Al-Shadli, Basics of Criminology and Punishment, Al-Halabi Legal Publications, Beirut, 1st ed, 2007, p574

The Algerian legislator has adopted the parole system since the issuance of Order No. 72/02 dated February 10, 1972, regulating prisons and prisoner rehabilitation, where it was allocated a complete chapter (Chapter Two, Section Three). Similarly, it was included in the new Prison Regulation Law, Law No. 0/04 dated February 6, 2005, regulating prisons and social reintegration of prisoners, where it was also given a complete chapter (Chapter Three, Section Six).

Through these definitions, we conclude that parole has several characteristics.

1.2.Conditional Release: characteristics

1.2.1 Non-final release

In other words, it is subject to revocation, which means that the convicted individual may be returned to imprisonment. Therefore, the decision for conditional release does not imply a final release, as the parole period is included within the overall sentence duration. Conditional release can also be revoked at any moment if the parolee violates any of the conditions imposed upon them during its period, as despite being released on a condition, the convicted individual remains subject to certain restrictions and obligations outside the prison walls⁽¹⁾.

1.2.2.Conditional Release : Privileged by the Reintegration of Incarcerated Individuals Conditional release is considered a privilege rather than an assured right for every inmate present in the penal institution. The Algerian legislator has granted the authority to bestow this privilege to the inmate who has demonstrated uprightness and good conduct⁽²⁾.

1.2.3. Conditional Release : a Method of Penal Treatment

According to modern penal perspective, conditional release is considered one of the penal treatment methods that have yielded positive results, by reintegrating prisoners into society, refining their behavior, and aligning it with the law, thereby mitigating their criminal risk.

1.2.4. Conditional Release Does not End the Sentence

The conditional release cannot be relied upon if it is acknowledged as a reason for the termination of the sentence.

Conditional release means serving the remaining portion of the sentence outside the penal institution, which implies that the convicted individual during this period must adhere to the obligations imposed upon them, such as deprivation of residence in a specific place and refraining from giving testimony except as evidence.

In light of modern punitive policy, the concept of parole has evolved to become a means of individualized treatment for convicted individuals.

The French legislator issued a decree on April 1, 1952, specifying the particular conditions to which a parolee may be subject, and notably introduced for the first time the establishment of parole assistance committees. Thus, this decree affirmed the rehabilitative role of the parole system⁽³⁾.

⁽¹⁾ Karim Masoudi, "The conditional release system in Algerian legislation", Approaches, University of Djelfa, Volume 2, Issue 28, January 2016, p 350

⁽²⁾ Amal Zouaoui, "Conditional release in Algerian legislation" Notebooks of Politics and Law, Kasdi-Merbah Universit, Volume 13, Issue 03, June 2021, p 193.

⁽³⁾ Omar Khoury, "Conditional release as a means of social reintegration of imprisoned persons", Algerian Journal of Economic Legal Sciences, University of Algiers, Issue 01, 2009, p50.

Parole reflects the status of the convicted individual who serves the remaining portion of the custodial sentence in the community, after having complied with certain imposed conditions. However, it serves as a punitive treatment method aimed at reintegrating the offender socially.

The legal nature of conditional release has raised several issues, ranging from considering it a grant or reward granted to the convicted individual for good conduct and behavior within the penal institution, to being a stage in the execution of the custodial sentence, or an independent measure of assistance aimed at reintegrating into society. However, for us, it remains a method of penal treatment⁽¹⁾.

We endorse this opinion, as conditional release is considered a method of penal treatment and a system of trust that allows for the gradual transition from loss of liberty to full freedom.

1.3.Conditional Release : conditions

The Algerian legislator has adopted the system of conditional release and considered it a means to assist in the rehabilitation and social reintegration of incarcerated individuals. This objective is evident through discussions about the conditions and measures of this system, which include:

1.3.1.Formal Conditions

1.3.1.1.Basic Documents Constituting the Conditional Release file⁽²⁾

- Application or proposal or penal status of the prisoner.
- Criminal record certificate N2.
- A copy of the verdict.
- Non-appeal certificates.
- Summary of the facts of the committed crime.
- A voucher for payment of judicial expenses and fines imposed, as the case may be, or a receipt proving that.

The failure to pay these fines is considered an obstacle preventing the convicted individual from benefiting from this system, and the state endeavors to find legal solutions to this problem, such as installment payments, for example:

- The fulfillment of the civil compensations imposed on the party concerned, or evidence of the civil party's waiver thereof.
- The prison warden's report on the situation, conduct, and behavior of the detainee during their period of incarceration, as well as the completed tasks and certificates obtained during this period.

Therefore, conditional release is considered a method that allows for the modification of the punishment enforcement system, based on the prisoner's response to penal treatment methods within the penal institution.

⁽¹⁾ AbdelHafid Tashour, The Role of the Judge Implementing Criminal Judgments in the Social Rehabilitation Policy, Office of University Publications, Algeria, 4th ed, 2001,p117

⁽²⁾ People's Democratic Republic of Algeria, Ministry of Justice, Circular No. 05-01 Dated 05 June 2005, regarding how to decide on conditional release files, p3

1.3.1.2.Examination of Applications and Adjudication Deadlines

The Parole Board deliberates on the cases presented to it in the presence of at least two-thirds of its members and decisions are made by a majority vote. In the event of a tie, the chairman's vote prevails⁽¹⁾.

The decision made by the Parole Board judge shall conform to the opinion of the Parole Board in accordance with the provisions of Article 138 of the Law on the Organization of Prisons and the Social Reintegration of Prisoners, and Article 7 of Executive Decree No. 05/180 concerning the composition of the Parole Board and its procedures.

Based on the committee meeting minutes, the committee secretary shall draft a resolution approving the granting of conditional release according to the standard form. This resolution shall be signed by the sentence enforcement judge, and the secretary of the committee shall deliver it along with a copy of the file to the public prosecutor pursuant to a notification record, indicating its immediate receipt through registration of notifications between the committee's secretariat and the public prosecution.

In the event of the refusal of the release request, the detained individual concerned shall be notified of the committee's resolution denying conditional release, pursuant to a notification record signed by the detainee, who shall also place their fingerprint in the detainees' notification register. In case of refusal to sign, the secretary shall indicate with the statement "(Refusal to Sign)".

If the application is rejected, the detainee may not submit a new application before 03 months from the date of notification of the refusal decision⁽²⁾.

If it is revealed to the committee, during its review of the file, that it does not contain the essential documents, with the exception of what is provided for in paragraph two of Article 13 of Executive Decree No. 05/180 dated May 17, 2005, which specifies the formation of the Parole Board and its procedures, the committee may postpone its decision to a subsequent session, provided that the postponement does not exceed one month.

In the event of no appeal filed by the Public Prosecutor against the decision of conditional release, a copy thereof shall be sent to the director of the correctional institution for execution, and another to the Public Prosecutor at the Judicial Council in whose jurisdiction the beneficiary's place of residence falls, for inclusion of the decision in the judicial record. The original copy shall be filed with the concerned individual's file at the secretariat of the Parole Board.

The files of conditional release, whose jurisdiction for decision rests with the Minister of Justice, shall be prepared in the same manner as described above, accompanied by other documents according to the reasons for the conditional release request (health or reward reasons). We will detail these two types of release when discussing the authorities responsible for granting conditional release.

⁽¹⁾ Article 07, Executive Decree 05-180, May 17, 2005, specifies the composition of the Sanctions Implementation Committee and the modalities of its operation.

⁽²⁾ Article 09, Executive Decree 05-180, May 17, 2005, determines the composition of the Sanctions Implementation Committee and the modalities of its operation.

1.3.1.3. Appealing against Conditional release Decisions and its Effects

In case of an appeal against the decision of conditional release, its execution shall be suspended until it is decided upon by the Sentence Adjustment Committee established by Article 143 of the Prison Organization and Social Reintegration Law for Detainees.

-The Public Prosecutor shall file the appeal with a statement of reasons before the committee within eight days from the date of notification, which shall be recorded in the designated register. The file, accompanied by the appeal statement, shall then be forwarded by the Public Prosecutor to the Sentence Adjustment Committee within a period of 15 days from the date of registration of the appeal⁽¹⁾.

-The Sentence Adjustment Committee shall adjudicate on the appeal filed against the decision to grant conditional release within a period of 45 days from the date of the appeal. Failure to render a decision within this period shall be deemed as rejection of the appeal⁽²⁾.

-In case of rejection of the appeal, the decision of rejection issued by the Sentence Adjustment Committee shall be communicated to the sentencing judge overseeing its execution by the Public Prosecutor. If the appeal is accepted, the decision to grant conditional release shall be annulled, and the secretary of the committee shall register the decision in the designated register. If the decision to grant conditional release issued by the sentencing judge is annulled, a new request for conditional release cannot be submitted until a period of three (3) months has elapsed from the date of the Sentence Adjustment Committee's decision⁽³⁾.

For reference only, Article 141 of Law 05-04 grants exclusive right to the Public Prosecutor to appeal, within eight (8) days from the date of notification, the decision of conditional release before the Sentence Adjustment Committee. These are the formal procedures mandated by the legislature for conditional release.

1.3.2. Objective Conditions

As conditional release represents an exceptional pathway aimed at maintaining the principle of continuous enforcement of the sentence from its inception to its completion in prison, the legislature has suspended its application under certain conditions, including: the individual being subject to a custodial sentence, having completed the probationary period, exhibiting good conduct, and providing serious guarantees of rectitude, as expressed by the Algerian legislature in Article 134 of the Prison Organization Law (05-04). Furthermore, this system is nothing but a means to alter the manner of criminal punishment execution, primarily transitioning from confinement in a closed environment to open environment, through the gradual transition represented by conditional release.

After reviewing Articles 134 to 136 included in the third chapter of the Prison Organization Law (05-04), it is evident that the Algerian legislature has established several objective conditions for benefiting from this system, which can be summarized as follows:

1.3.2.1. The Prisoner Must Have Been Sentenced to a Custodial Sentence

Conditional release may be granted to a detainee sentenced to one of the custodial penalties, as mentioned in the Penal Code, including primary penalties for crimes such as death penalty, life imprisonment, imprisonment ranging from 05 to 20 years, as well as

⁽¹⁾ Article 12, Decree 05-180.

⁽²⁾ Article 11, Executive Decree 05-181, May 17, 2005, establishes the Committee for Adaptation, Organization, and Operation of Sanctions.

⁽³⁾ Article 11, Executive Decree 05-181.

primary penalties for misdemeanors such as imprisonment exceeding two months to 5 years, and so forth⁽¹⁾.

In this manner, conditional release is applicable to one of these penalties, with the exception of the death penalty, which cannot be benefited from, provided that the individual is actually detained in a correctional facility. It does not apply to other penalties such as complementary penalties or security measures, which constitute the second form of criminal sanction, even if they are custodial penalties. Therefore, regarding the scope of conditional release, upon examining Article 134 of Law No. 05-04, we find that the legislator has left the door open for detainees to benefit from this system, considering the nature of the custodial penalty, regardless of the nature of the committed crime, even if it involves terrorist offenses or those threatening state security.

1.3.2.2. Spending the Probationary Period of the Sentence in a Penal Institution

Most penal legislations require that the convicted individual serve a certain period of their sentence in the penal institution before a decision is made to grant them parole. Based on this period, the behavior of the detainee in the penal institution and their response to punitive measures within the institution are assessed to determine eligibility for this trust-based system. This period represents a certain proportion of the sentence duration, which varies among legislations. For instance, the French Code of Criminal Procedure sets it at half of the sentence duration, and two-thirds for recidivists (Article 739). Both English and German laws set it at two-thirds of the sentence duration, while Egyptian law specifies it as three-quarters of the sentence duration (Article 52 of the Egyptian Prison Organization Law)⁽²⁾.

We find that the Algerian legislator has specified the probationary period in penal institutions, taking into account the circumstances of the convicted individual. If the individual is a first-time offender, the probationary period is set at half of the sentence imposed on them, as stipulated in Article 134, paragraph two. However, if the individual is a recidivist, this period is set at two-thirds of the sentence imposed on them, as per Article 134, paragraph three of Law 05-04, provided that this period does not fall below one year.

Serving a period of 15 years applies to detainees sentenced to life imprisonment, and if the legal conditions are met, the sentencing judge issues the conditional release order - as previously mentioned - after obtaining the opinion of the Sentence Adjustment Committee, if the remaining sentence equals or is less than twenty-four (24) months. However, if the remaining sentence exceeds this duration, the authority lies with the Minister of Justice, as per Article 141 of Law 05-04.

1.3.2.3. Good Conduct and Serious Guarantees of Integrity

This condition is revealed through the examination period stipulated by the legislator for the utilization of this system. The legislator has specified it in Decree No. 72-02, as well as in Law 05-04 without any alteration to its content. The emergence of the conditional release has always been associated with a fundamental condition, namely the good conduct and behavior of the detainees.

⁽¹⁾ Mohamed Ahmed Larid, "The position of the Algerian legislator on the conditional release system", Journal of Research in Law and Political Science, Ibn Khaldun University of Tiaret, Issue 06, May 2017, p17.

⁽²⁾ Fawzia Abdel Sattar, Principles of Criminology and Punishment, Dar Al-Nahda Al-Arabi, Beirut, 4th ed, 1978, p423.

The conditional release, considering this condition, is not an acquired right for detainees, but rather a grant issued by the legislator and made as a disciplinary reward to be given to the prisoner who meets certain conditions, as Professor Ahsen Bouskia stated. It is an optional measure and a temporary procedure subject to review, reflecting the success of the punishment in achieving its rehabilitative and reformatory purpose.

This condition holds significant importance, as it is impermissible to release the convicted individual before the expiration of the examination period stipulated by the legislator. It appears that this period is sufficient to assess their behavior, which in itself serves as an indicator for the cessation of the individual's criminal risk and their rehabilitation

Due to its close proximity to the convicted individual, the penal administration is more capable than others of observing the development of their personality and assessing their eligibility for placement within this system through evaluating their behavior and response to disciplinary treatment⁽¹⁾.

This criterion is considered vague, especially the criterion of demonstrating serious guarantees of rectitude. For this reason, we find that some legislation have not adopted this condition, such as Italian, German, and Belgian legislation. While others believe it to be a necessary condition, this can only be achieved through the report prepared by the director of the penal institution regarding the detainee's situation and their accomplishments, as well as through the certificates obtained and the assessment of the psychologist in the penal institution, along with the social assistance report, which is considered one of the essential documents included in the file.

1.4.Bodies Responsible for Granting Conditional Release

Legislations have not followed a unified approach in determining the competent authority for conditional release assessment. Some legislations have delegated this matter to the executive authority represented by the officials responsible for penal execution. This is evident in the approach adopted by the Egyptian legislator, which entrusts the authority for conditional release to the Director General of Prisons (Article 53 of the Prison Organization Law). Furthermore, Article 63/3 of the same law grants the Public Prosecutor the authority to consider complaints regarding conditional release and take appropriate action. Therefore, conditional release in Egyptian law has an administrative character.

Some legislations have opted to empower a specialized judge in the execution field with the authority to issue decisions regarding conditional release, as in the Brazilian Criminal Procedure Code⁽²⁾.

As for the Algerian legislator in Law 05-04 regulating prisons, he entrusted this task to both the sentencing judge and the Minister of Justice, linking it to the remaining duration of the imposed sentence as a criterion for determining these powers.

1.4.1.The Sentence Enforcement Judge

It can be said that the Algerian legislator has entrenched the granting of conditional release by expanding the authorities competent to grant such a decision, whereby the sentence

⁽¹⁾ Ibtissam Ramadani, "The impact of the Social Defense Movement on penal policy in Algeria", LMD doctoral thesis, University of Khenchela, Faculty of Law and Political Science, Department of Law, 2020-2021,p250

⁽²⁾ Omar Khoury, Punitive Policy in Algerian Law: A Comparative Study, Dar Al-Kitab Al-Hadith, Cairo, 1st ed, 2009,p 410.

enforcement judge now has the authority to make the decision within the framework of the Conditional Release Board. In contrast, under Decree No. 72-02 dated 10/02/1972, which includes the Prison Law and Prisoners' Rehabilitation, the authority was limited to proposing before the Minister of Justice as per Article 181 of this Decree. This unequivocally indicates the legislator's concern for the rights of prisoners, especially considering that the judicial body represents a genuine protection for the rights and freedoms of individuals.

The Law No. 05-04 dated February 6, 2005 accorded significant importance to the role of the sentence enforcement judge by granting them broad powers and legal mechanisms to assist in the performance of their duties as outlined by this law. One of the most important mechanisms is stipulated in Article 24 of the aforementioned law and further elaborated upon in Executive Decree No. 05-180 dated May 17, 2005. This includes the establishment of a Conditional Release Board chaired by the sentence enforcement judge. This board, headquartered in penal institutions, serves as an effective means to facilitate the rehabilitation and social reintegration of detainees. Among its key tasks is the examination of requests for conditional release. To ensure the smooth functioning of this board, it has been equipped with a secretariat overseen by a registrar appointed by the Public Prosecutor from among the court clerk⁽¹⁾.

In case the legal conditions are met, the sentence enforcement judge issues the decision of conditional release, after consulting the Parole Board, if the remaining sentence is equal to or less than 24 months, pursuant to Article 141 of the aforementioned Law 05-04.

1.4.2. Minister of Justice

The Minister of Justice is competent to adjudicate on requests for conditional release in the following cases:

- If the remaining duration of the sentence exceeds 24 months, in which case the Sentencing Adjustment Committee may express its opinion on the files presented to the Minister of Justice within a period of 30 days from the date of their receipt, in accordance with Article 10 of Executive Decree No. 05-181 specifying the composition, organization, and procedures of the Sentencing Adjustment Committee.
- If the request for conditional release constitutes a reward for the detainee, which is the case referred to in Article 135 of Law 05-04, it concerns a detainee who informs the competent authorities about a serious incident before its occurrence that could compromise the security of the penal institution, or provides information to identify the perpetrators, or generally discloses criminals and facilitates their arrest. This is known as exceptional conditional release, in which the detainee is exempted from the requirement of the examination period stipulated by the legislator to benefit from this system.
- If the detainee is afflicted with a serious illness or permanent disability that is incompatible with their continued detention, in which case the detainee is also exempted from the requirement of the duration or examination period, and this condition would continuously and progressively adversely affect their physical and mental health, then the jurisdiction is vested in the Minister of Justice. In this case, the sentence enforcement judge compiles the file, which must include, in addition to a detailed report from the prison physician, a medical or

⁽¹⁾ See Articles 03 to 13 of Executive Decree 05-04.

psychological expertise report prepared by three specialist doctors in the relevant illness who are appointed for this purpose (Articles 148-149 of Law 05-04).

It is worth noting that the Algerian legislator has established a Sentencing Adjustment Committee in this regard, pursuant to Executive Decree No. 05-181 dated May 17, 2005. This committee is responsible for studying requests for conditional release, the adjudication of which falls under the jurisdiction of the Minister of Justice. The committee expresses its opinion before decisions are issued regarding these requests (Articles 10 to 15 of the aforementioned Executive Decree No. 05-181).

1.5.Obligations of the Released Individual and their Supervision

According to Article 145 of Law (05-04), the sentence enforcement judge may include specific obligations and monitoring measures in the conditional release order.

1.5.1.Special obligations

The conditional release system is considered a conditional means of implementing the deprivation of liberty penalty. It aims to apply the deprivation of liberty penalty in a more lenient environment. Therefore, the legislator imposes conditions and restrictions, which are represented by specific obligations which are included in the conditional release order. It is worth noting that Law 05-04 did not specify the meaning of specific obligations, despite being mentioned in Article 145, unlike Decree No. 72-02, which specified these obligations in Articles 186 and 187, namely⁽¹⁾:

- Signing a special register maintained by the police or gendarmerie. With the introduction of external services by the legislator, this register is now located at their level.
- To be deported from the national territory for foreigners.
- To undergo monitoring and treatment measures for the purpose of eliminating toxicity specifically.
- To be lodged in a reception center or in a qualified institution for receiving parolees.
- Not to drive certain vehicles classified in driving licenses.
- Not to frequent certain places such as drinking establishments or other public places, and not to associate with certain convicted individuals, especially those who collaborated in the crime, and not to receive or harbor in their residence certain individuals, especially those harmed by the crime.

The Algerian legislator's decision not to limit these obligations for conditional release may be justified by his desire to grant broad powers to the authorities responsible for granting conditional release, such as external services that oversee the parolee under certain conditions. These services have discretionary authority to impose any obligation they deem appropriate for the detainee, such as not allowing them to leave their residence after 9:00 PM and before 7:00 AM, and not associating with undesirable companions.

However, it would have been more appropriate for the legislator to at least mention some obligations, even as examples. This would have been recognition of the principle of legality upon which criminal law is based, especially considering that these obligations restrict the freedom of the parolee and limit their movement. Additionally, it is important to recognize that parole is not final; it is merely a modification of how the remaining sentence is carried out, with the authority for its implementation granted to the sentence enforcement

⁽¹⁾ Articles 186 and 187 of Order 72-02, containing the Prison Organization and Prisoner Reeducation Law.

judge. He is entrusted with ensuring the legitimacy of the implementation of the deprivation of liberty penalties and alternative penalties when necessary, as well as ensuring the proper application of punishment individualization measures. This is in accordance with Article 23 of Law 05-04 dated February 6, 2005.

These obligations are considered specific commitments that the detainee agrees to in the event of a conditional release proposed by the sentence enforcement judge or the prison director.

1.5.2. Monitoring and Assistance Measures

We begin by noting that these measures are aimed at preventing the conditionally released prisoners from committing future crimes.

The Prison Organization Law 05-04 did not specify monitoring measures and assistance contrary to what was stated in Article 185 of Decree 72-02, which defined monitoring measures. It also remained silent on assistance measures. Similarly, Article 186 of Decree

72-02 mentioned the possibility of supervising the released individual conditionally and monitoring them through a set of measures, including:

- Residence at the designated location according to the conditional release order: This is stipulated in Article 144 of Law 05-04, where the sentence enforcement judge or the Minister of Justice, depending on the situation, may request the opinion of the governor of the province where the prisoner intends to reside. The competent security authorities are notified of the conditional release location. Therefore, the released prisoner is obligated to reside at the location specified in the parole order and cannot leave without written permission from the sentencing judge. The released prisoner must provide necessary information about the new residence, the reason for the move, the duration of stay, individuals residing or in contact with them. The discretionary power to grant this permission remains with the judge⁽¹⁾.

In fact, the location of conditional release execution is the same as the residence of the released prisoner before being sentenced and entering the penal institution.

- Compliance with the summons of the sentencing judge and social assistance is required. If the beneficiary of the conditional release chooses a residence within the jurisdiction of the sentencing judge's workplace, then monitoring can be conducted without any issue. However, a problem arises if the parolee resides elsewhere outside the jurisdiction of the sentencing judge. In such a case, monitoring and ensuring compliance with the imposed conditions and obligations become challenging. So, how is the monitoring process conducted and to what extent is compliance with the conditions and obligations imposed on him?

In fact, with the establishment of external agencies by the legislator, these agencies also have the task of monitoring and following up on conditional release. This, of course, is done in coordination with the judge overseeing the execution of the sentence, who is the judge of the place of residence specified in the conditional release decision.

Accepting visits from social assistance and providing them with all the information and documents allowing for the monitoring of the means of livelihood of the released individual. This is also done under the supervision of the external agency for reintegration, where the released individual is committed to accepting these visits conducted by social assistance to his

⁽¹⁾ Ibrahim Babbah,, op cit, 183.

place of residence or work, in order to identify his problems and attempt to resolve them. This is stipulated in Article 90 of the Prison Organization Law.

In any case, benefiting from the parole system remains contingent upon the condition that the detainee settles judicial expenses, fines imposed on them, as well as civil compensations, unless the civil party renounces them. This is stipulated in Article 136 of the Prison Organization Law.

This condition poses an obstacle to granting conditional release, although the legislator attempts to find a solution to this issue. If judicial expenses can be paid through the establishment of a file at the external services called the "needs file", within the framework of the assistance system, then the solution for compensations would be to pay them in installments. This indicates the efforts made by the state to activate this mechanism to alleviate overcrowding in correctional facilities on one hand, and to reduce the crime rate and prevent detainees from recommitting crimes on the other.

1.6.Revocation of the Conditional Release Decree and its Consequences

The prisoner's release represents the immediate effect of the conditional release decision, which is the first step in implementing what was stated practically. However, it remains subject to review in the event of a new conviction, where the new crime reflects the failure of parole as a means of rehabilitation outside the penal institution to achieve its goal. Moreover, a breach of the obligations specified in the parole decision constitutes grounds for its revocation and the return of the convicted person to the penal institution to complete the remaining sentence. The period spent outside the prison is counted towards the sentence already served, as stipulated in Article 147 of the Prison Organization Law 05-04. Conversely, in the opposite case, the parole becomes final upon its success.

One of the most important reasons for revoking a conditional release decision is the released person's violation of the obligations and conditions imposed on them, or the issuance of a new conviction before the expiration of the sentence for which the convict benefited from the conditional release

Upon revocation of the conditional release decision for the convicted individual, the full sentence imposed on them shall be served, after deducting the time spent in prison or in an open environment prior to the issuance of the conditional release decision. This means that this period is taken into account.

In case of revocation of the conditional release decision for any of the reasons mentioned in Article 147 of Law 05-04, the revocation decision issued by either the judge in charge of implementing the sentence, or by the Conditional Release Adaptation Committee in accordance with Article 161, or by the Minister of Justice, shall be served to the beneficiary. The beneficiary must automatically return to the correctional facility where they were serving their sentence. Failure to do so will result in the judge in charge of implementing the sentence sending a copy of the decision to the public prosecutor's office, which has jurisdiction over their place of residence, for enforcement through public force.

Upon the individual's re-incarceration, the director of the correctional facility must immediately notify the judge responsible for implementing the sentence or the Minister of Justice, depending on the situation. In case of any dispute regarding the implementation of

these procedures, the matter is escalated to the General Directorate for Prison administration⁽¹⁾.

In conclusion, if it is possible to avoid short-term sentences through alternative penalties, conditional release represents the optimal means to reduce long-term custodial sentences and prevent their transformation into life sentences, wherein the convict would spend the remainder of their life. This is particularly significant as it leads to a reduction in the sentence once the convict serves a portion of their punishment.

In fact, according to statistics from the General Directorate of Prison Administration, from 2005 to 2018, 23,000 detainees benefited from parole⁽²⁾.

2. The Role of External Services in Activating the Conditional Release

In this axis, we will discuss the role of external services, as well as their establishment as an authority overseeing and monitoring parole, along with the statistical aspect related to Conditional Release

2.1.External Services : definition, role and function

2.1.1.Definition

The External Affairs Department has been established in accordance with the provisions of Article 113 of Law No. 05-04 dated 27 Dhu al-Hidjah 1425 AH corresponding to February 6, 2005 AD, pursuant to Executive Decree No. 07/67 dated 1st Safar 1428 AH corresponding to February 19, 2007 AD. This decree specifies the procedures for organizing and operating the External Affairs Department for the management of prisons, responsible for the social reintegration of detainees⁽³⁾.

Article 113 of Law 05-04 stipulates the establishment of external departments under the management of prisons tasked with collaborating with relevant state and local authorities to implement programs for the social reintegration of detainees. These departments are referred to as the External Affairs for Reintegration.

Through this article, it can be inferred that the General Directorate of Prisons and Rehabilitation seeks to establish an external department within the jurisdiction of each judicial council. According to statistics provided by this directorate, the number of external departments has reached 11 as of December 2014 and 30 as of the present day⁽⁴⁾.

This means that there are judicial councils where these external departments have not been established yet, and when necessary, branches can be established in accordance with a decision from the Minister of Justice.

In this field, it is noted that the Algerian penal system has witnessed significant development in the field of penal reform since the end of the 2000s until the present day. The General Directorate of Prisons and Rehabilitation was established by virtue of Executive Decree No. 98-202 dated June 2, 1998, which includes the creation of the General Directorate of Prisons and Rehabilitation and its organization. Its tasks were defined to reform the sector of penal institutions, aiming to contribute to the success of penal policy by reforming the Algerian penal system. The method of penal reform was detailed in Article 2 of Executive

⁽¹⁾ Hamdi Pasha Omar, The Prison Organization Law: Regulatory Texts Taken for its Implementation, Dar Houma, Algeria, 1st ed, 2006, p75.

⁽²⁾ <https://dgapr.mjustice.dz/> Conditional Release

⁽³⁾ People's Democratic Republic of Algeria, Official Gazette, No. 13, 02/21/2007, p5

⁽⁴⁾ <https://www.mjustice.dz/ar/penitentie-2-2-2>

Decree No. 04-393 dated December 4, 2004, which regulates the General Directorate of Prisons and Rehabilitation.

In the same context and parallelly, the National Committee for Justice Reform was established in October 1999 AD. Its main task was to carry out a comprehensive reform process for the justice sector, including the penal system¹.

Aspects of this reform include the rehabilitation of the prison sector and the expansion of penal institutions. This expansion may be a result of Algeria's ratification of numerous international treaties and agreements in this field. What we observe is that this reform, particularly starting from the year 2008 AD, has addressed the issue of overcrowding that penal institutions were facing by opening additional penal institutions.

2.1.2 Role

According to Article 3 of Executive Decree No. 07-67 dated February 19, 2007, the External Services for Reintegration, which falls under the Ministry of Justice, is supposed to be present within the jurisdiction of each judicial council. This department operates in coordination with the probation judge at the level of this council.

Referring back to this article, these external departments are tasked with implementing the approved programs in the field of social reintegration of detainees, within the framework of Law 05-04, and in accordance with its provisions in this regard. They specifically undertake:

- Monitoring the situation of detainees placed under various regimes, including parole, conditional release, semi-liberty, and pre-trial detention pending the execution of the sentence.
- Ensuring the monitoring of social reintegration programs for released detainees upon their request.
- Taking all appropriate measures and assisting in the rehabilitation of all individuals under their care, providing all necessary information to the probation judge, either upon request or on their own initiative. This information enables the judge to take appropriate measures, based on their discretionary authority like other judges.

According to Article 4 of Decree 07/67, this department operates in cooperation with the relevant authorities, including the judiciary, other relevant state agencies, local authorities, public institutions and organizations, as well as members and organizations of civil society. This is done within the framework of raising awareness among these institutions that detainees must reintegrate into society as productive individuals to prevent recidivism. This is the ultimate goal pursued by penal policies in most countries.

Lastly, the key observation to note in this regard is that this represents one aspect of the influence of modern social defense movement on Algerian legislation. The department can establish a network to coordinate with associations, in cooperation with penal institutions.

2.1.3.Function

(¹) Aisha Abdel Hamid , "The legal system of conditional release as a mechanism for the reintegration of detainees under Algerian penal legislation, ", Academic Journal for Research and Scientific Publishing, fifteenth issue, July 2020,p 348.

Initially, we point out that the Algerian legislature has taken effective steps in the development of penal policy by establishing external departments at the level of the jurisdiction of judicial councils. This is within the framework of reforming the justice sector, particularly focusing on penal institutions.

According to Article 8 of Executive Decree 07-67, detainees who have remained in custody for a maximum of six months from the date of their release receive visits from personnel of the department. This is intended to prepare them for the post-release phase. Furthermore, each detainee has the right, upon their request, to benefit from a visit by personnel of the department. During these visits, they are informed about the steps they can take to facilitate their social and vocational rehabilitation, as well as the organizations that can provide assistance and support.

The External Affairs may conduct social investigations concerning convicted or accused individuals, and monitor the situation of individuals placed under judicial supervision to ensure their compliance with obligations, duties, and conditions, especially those related to parole. This includes all elements related to monitoring the obligations or conditions imposed on the detainee according to Article 11 of Executive Decree No. 07-67 concerning the establishment of External Affairs.

According to Article 14 of Decree 07-67, the head of the department shall, upon the completion of each year, send a report detailing the activities carried out by the department to the Minister of Justice. Additionally, a copy of this report shall be sent to the Prosecutor General at the level of the judicial council to which the department is attached, as well as to the probation judge responsible for supervising the implementation and monitoring of criminal judgments.

In conclusion, while these departments carry out their tasks, they may request assistance from any external party to aid in their duties, particularly civil society, which can provide effective assistance in the context of social reintegration of detainees. The External Affairs for Reintegration play a central role in partnership relations at the local level, serving as a key link for partnership with civil society. They are simultaneously connected to penal institutions, probation judges, state authorities, local communities, and civil society. From this position, they represent a cornerstone in coordinating various entities responsible for the social reintegration of detainees.

3.The Conditional Release in Algeria: statistical study

It is worth noting that these parole statistics were provided to the researcher by the General Directorate of Prisons and Rehabilitation, under the Ministry of Justice, through the External Affairs for Prison Management responsible for social reintegration of detainees, affiliated with the Judicial Council of Khenchela. These statistics are national and cover the period from 2020 to 2023.

Before analyzing these statistics, let's understand the External Affairs for Prison Management responsible for the social reintegration of detainees affiliated with the Judicial Council of Khenchela.

3.1.Defining the External Services of the Prison Administration Responsible for the Social Reintegration of Detainees in Khenchela

The external services affiliated with the Judicial Council of Khenchela started its activities in December 2015. It is located in Ain El Karmah neighborhood (opposite to the

regional radio station) on the Batna-Khenchela road. This department operates within the framework of conditional release and carries out the following tasks⁽¹⁾:

- Reception of detainees subject to conditional release.
- Opening a file containing elements related to monitoring obligations or conditions imposed on the individual, especially regarding the terms of eligibility and the conditional release license.
- Reminding to the individual of the obligations imposed on them according to the terms of eligibility.
- Setting a schedule that includes dates for the individual's appearance before the department.
- Members of the department may visit the workplaces of beneficiaries of this system, their residences, or any other location to ensure the individual's compliance with the obligations imposed on them.
- Notifying the sentence enforcement judge about any breach of the obligations imposed on the individual based on a report.
- Sending the end-of-monitoring report to the sentence enforcement judge.

3.2.Presentation and Analysis of Statistics Related to the Conditional Release

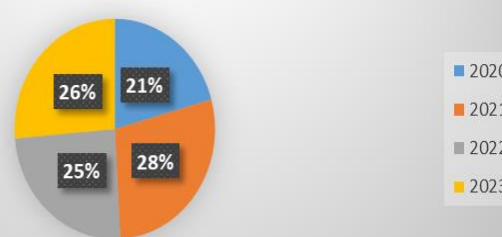
Before delving into the analysis of the statistical data provided by the General Directorate of Prisons and Rehabilitation, it is worth noting that the number of beneficiaries of the parole system since the issuance of the Prison Organization Law, Law 05-04 dated February 6, 2005, until 2018 amounted to 2300 detainees nationwide². As for the number of prisoners benefiting from this system between 2020 and 2023, it is recorded in the table below.

Table 1: The Number of detainees Benefited from Conditional Release in Algeria from 2020 to 2023.

Year	Number of the Benifited Prisoners	Percentage
2020	1318	%21
2021	1813	%28
2022	1563	%25
2023	1681	%26
Total	6375	%100

Source: General Directorate of Prison Administration and Reintegration (Ministry of Justice) - People's Democratic Republic of Algeria

Figure 01: The Number of Prisoners Benefiting from Conditional Release in Algeria Nationwide from 2020 to 2023



⁽¹⁾ An interview with the director of the department in charge of the social reintegration of detainees.

⁽²⁾ [https:// dgapr.mjust.gov.dz/](https://dgapr.mjust.gov.dz/)

Based on the figures shown in the above table, it is evident that there is a slight fluctuation in the number of beneficiaries of the conditional release system at the national level during the period from 2020 to 2023. This fluctuation varies from year to year over the four-year period, and it may be attributed to the number of applications filed. It can be said that the increase and decrease in the number of incarcerated individuals benefiting from the parole system is attributable to the rise in the number of prisoners in penal institutions and its variation from year to year based on the number of crimes committed each year.

The Algerian legislature's obligation for the settlement of judicial costs, fines, and civil compensations may be the cause behind this. Even though there are other requirements, this one prevents the beneficiaries from using the system. In addition, as stated in publication number 05-01 about the processes for deciding parole requests, the lack of proper documentation and formal requirements are obstacles to using this system.

Conclusion

The conditional release system has been implemented by the Algerian legislator as a means of assisting prisoners with their social rehabilitation. This is part of a larger reform program that the legislator has approved under Law 05-04. This follows Algeria's ratification of multiple human rights treaties and international agreements. We have arrived at the following conclusions after scrutinizing the legal texts included in this statute and the statistics pertaining to the application of this system by prisoners:

- The Algerian legislature established the Parole system, which functions as a transitional phase between incarceration and total freedom, within the context of a graduated system.
- The prisoner's inability to pay court costs, fines, and civil damages will prevent them from being eligible for this system.
- The legislator has stipulated that there must be substantial protections for morality, behavior, and good conduct. This criterion is used to evaluate how well a detainee complies with the criminal justice system.
- The legislator increased the authority of the judge who imposed the sanctions by extending the conditional release powers, which had previously only been available to the Minister of Justice.
- The legislator stipulated the requirement to seek the opinion of the Sentence Adjustment Committee on matters falling within the jurisdiction of the Minister of Justice. However, it did not clarify whether this opinion is advisory or mandatory.
- By establishing external services for reintegration, the Algerian legislator has made a significant contribution to activating this system.

- The eligibility for and granting of conditional release to prisoners is governed by a combination of factors related to the rate of committed crimes, the number of prisoners in penal institutions, the duration of the imposed sentence in these institutions, and the number of applications submitted.

Based on these results, we suggest the following:

- It is imperative to address the issue of judicial fees, fines, and civil compensations.
- There is a necessity to expand the authority of the judge responsible for applying penalties without restriction on the duration, considering their role as a representative of the judiciary in supervising the execution of criminal judgments and safeguarding rights and freedoms.
- Amendment of Article 10 of Executive Decree No. 05-181 to clarify whether its role is advisory or mandatory for the Minister of Justice.
- Organizing conferences and scientific seminars to raise awareness among members and organizations of civil society about the importance of accepting detainees as productive members of society.

In conclusion, despite the criticisms directed towards this system since its inception, due to its encroachment on the sanctity of the judgment, the principle of separation of powers, and despite the achievements of this system in developing punitive policy, it remains an effective mechanism for assisting detainees in transitioning from confinement to freedom. Nevertheless, change stems from the psyche of individuals, as Allah Almighty does not change the condition of a people until they change what is within themselves

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