

The Impact of New Provisions on Commutation and Parole on Prison Administration

Shuli Wang

Jilin Justice Officer Academy, Changchun, Jilin 130062, China

Keywords: Commutation of Sentence, Parole, Prison Administration, Influence

Abstract: commutation of sentence, parole and temporary execution outside prison is a penalty execution system for criminals who are sentenced to a certain penalty in our country at the present stage. According to their specific transformation performance during their sentence, they can reduce their sentence term or conditionally release them or not accept them temporarily, and decide to serve their sentence outside prison temporarily after accepting them. Since January 1, 2017, the “provisions on the specific application of laws in handling cases of commutation and parole” promulgated by the supreme people's court has been formally implemented, which poses challenges to prison management. Compared with the “provisions of the supreme people's court on several issues concerning the specific application of laws in handling commutation and parole cases” promulgated and implemented in 1997, the new provisions have many bright spots in improving the commutation and parole system. However, as far as the problems existing in chinese current commutation and parole system are concerned, the new provisions still have certain defects and need further improvement in the future.

1. Introduction

From January 1, 2017, the “regulations on the specific application of laws in handling cases of commutation and parole” (hereinafter referred to as “regulations”) promulgated by the supreme people's court will come into effect. The implementation of the “regulations” has brought challenges and new requirements to prison management. After the implementation of this regulation, the prison work will face new problems. Only by actively dealing with it can we make a smooth transition and ensure the fair handling of commutation and parole cases according to law. Due to changes in the situation and the situation, new problems are constantly emerging and this judicial interpretation needs to be revised and supplemented [1]. The judicial supervision of the supreme people's court has undertaken this work. The new “regulations” have improved the legal provisions on the change of penalty execution and unified the judgment standards and law enforcement standards for commutation and parole cases nationwide. However, there are also problems such as too fast changes, insufficient refinement and inadequate coordination, which have certain impacts on the penalty execution [2]. The commutation and parole system is a positive “reward” for the prisoners' good performance during the execution of the penalty. If criminals can get commutation or parole, it means they have the opportunity to return to society in advance. The commutation and parole provisions run through the criminal policy of “tempering justice with mercy”, which is not only conducive to protecting the basic rights of criminals, but also conducive to promoting the scientific and standardized prison work.

2. Characteristics of the “Regulations”

2.1 The Nature of Commutation and Parole Has Been Clarified for the First Time

The legal profession has been disputing about how to define the nature of commutation and parole, which has brought a lot of inconvenience to the prison management. The prison management has been eager to have a unified explanation on the nature of commutation and parole, so as to better carry out the future prison management. Article 1 of the “Regulations” stipulates that

“commutation and parole are penal systems that encourage criminals to reform. “ For the first time in judicial interpretation, the nature of commutation and parole has been clarified in the form of articles, clarifying the deviation in understanding the nature of commutation and parole in judicial practice.

2.2 Criminal Policy Should Combine Leniency with Severity

“The “Regulations” pointed out that the criminal policy of tempering justice with mercy should be implemented, which shows that the ultimate purpose of the law is not to punish people, but to transform people through relevant legal means to facilitate the normal operation of society [3]. The target and standard of the commutation rate should be strictly controlled, “the commutation rate of 18 categories of criminals such as duty crimes should be strictly controlled according to Article 8 of these Provisions”; The target of non-parole and non-parole has been defined. Taking care of the commutation of sentences for elderly criminals who have basically lost their ability to work and are unable to take care of themselves, criminals suffering from serious diseases or criminals with physical disabilities can appropriately relax the range of commutation. At the same time, the scope of parole is also defined. At the same time, leniency is also proposed for the parole of six categories of prisoners. These are all good regulating functions of commutation and parole, making the punishment of the above-mentioned prisoners eased.

2.3 The Commutation Structure is More Scientific and Reasonable

Punishment is not the ultimate goal, the ultimate goal is to transform people and promote social harmony and stability. Therefore, in order to better encourage criminals to carry out self-transformation, it is necessary to improve the commutation structure so that the commutation structure is more scientific and reasonable, which is especially obvious in the “Regulations”. To further clarify the conditions for commutation, the nature and specific circumstances of the criminal's crime, the degree of social harm, the performance of the original sentence and the property sentence in the effective judgment, and the consistent performance after delivery shall be comprehensively investigated in handling. With regard to the determination of the ruling scale, the “Regulations” have made scientific adjustments to the starting time, interval and range of commutation of fixed-term imprisonment, life imprisonment and death penalty with a reprieve. The commutation range has been adjusted accordingly, especially the one-time commutation range of fixed-term imprisonment has been greatly shortened. For example, if a prisoner of fixed-term imprisonment “shows true repentance or meritorious service, the one-time commutation shall not exceed nine months. After the implementation of the commutation and parole provisions in 2017, the last article, namely Article 42, added a retroactive provision, abolished the practice of two judicial interpretations taking effect simultaneously, and adopted a unified commutation and parole provisions in 2017 for all prisoners reporting commutation and parole, thus providing prisoners with unified conditions, judgment standards and law enforcement standards for reporting commutation and parole.

3. Challenges to Prison Management Brought by “Regulations”

The promulgation and implementation of the “Regulations” and the new regulations on commutation and parole can better encourage criminals to seriously and actively reform. On the one hand, they can better guide the development of prison management, but at the same time they also bring great challenges to prison management. In the process of its implementation, if the education and training of the prison people's police, the propaganda for the prisoners and the related judicial interpretation work cannot be done well, it will certainly bring certain influence on the prisoners' thoughts, the supervision and reform work of the penalty enforcement organs and the social security and stability.

3.1 The Reduction in the Commutation Rate Has Resulted in “Overcrowding” in Prisons.

Prison management, mainly manages criminals, an obvious fact is that if the number of prisoners is large, it will definitely increase the difficulty of prison management, and the first challenge brought by the “Regulations” to prison management is that due to the reduction of the commutation rate, the number of prison prisoners will increase in the short term. From the actual effect, artificially set a commutation ratio. If the number of criminals who meet the commutation conditions exceeds this ratio every year, no commutation will be granted and the commutation will wait for the next year. It is bound to become a difficult point in prison commutation and parole work to determine whether criminals have the ability to execute and perform. If the prisoner's crime is “18 kinds of crimes”, the sentence can be commuted only after two years of execution. At the same time, the commutation rate should be strictly controlled according to the prisoners who are not “18 kinds of crimes”. [5]. Before the implementation of the “Regulations”, prisoners who meet the conditions of commutation according to the inherent fixed conditions and have a large commutation range will have their sentences in prison extended due to the implementation of the new regulations, especially in the prison for severe offenders. According to the “Regulations”, the death penalty is suspended for two years and the commutation interval for criminals serving life imprisonment is extended. The reduction of sentence reduction will lead to a faster increase in the number of prisoners, which will make it difficult for the prison to accept them. If the prison is expanded or newly built, it will increase the execution cost and increase the financial burden on the country.

3.2 The Mood of Criminals Applying the Old Criminal Law Fluctuates Greatly

According to the original relevant provisions on commutation, if anyone committed a crime before April 30, 2011, the punishment shall be applicable to the criminals in the Criminal Law promulgated before the Amendment (VIII) to the Criminal Law, satisfying the “97 Judicial Interpretation on Commutation and Parole”. The judicial interpretation is characterized by large commutation range and high commutation frequency. Although this centralized declaration facilitates the work of the executive authorities, it also causes the workload of the people's courts to increase sharply within a certain period of time. Especially, the trial procedures for commutation and parole cases are stricter after the new regulations come into effect. Under the condition of limited judicial resources, it is inevitable that it is difficult to ensure the quality of the cases [6]. After the prison term of the prisoners is generally extended, the life time in the heavily guarded prison will be correspondingly extended. The advantages and disadvantages of the prison environment make the physical and mental conditions of the prisoners easy to have problems, causing great harm to the physical and mental health. Criminals also have human rights, and the needs of criminals should also be paid attention to, not just because criminals deprive them of their rights. The “Regulations” are now applicable to the commutation of the above-mentioned criminals. “The range of commutation will change from large to small and from fast to slow. “ Therefore, this kind of criminals are difficult to accept at the moment, their enthusiasm for reform will decline, and their thoughts will fluctuate greatly.

3.3 Prison Education Management Becomes More Difficult

The existing prison education reform model has proved effective after years of exploration. It has always adhered to the policy of “giving way”, allowing criminals to reform in hope, organizing criminals to carry out ideological, cultural, vocational and technical education, strengthening social assistance and education, strengthening psychological counseling, etc. However, the “Regulations” bring about a reduction in the extent of commutation and a reduction in the frequency of commutation, thus prolonging the time prisoners spend in prison. The “longer sentence than life” and “giving a way out” deviate from each other. Therefore, the inherent education mode is no longer suitable for the new stage of prison education and management requirements. For some serious crimes with reprieve, considering their personal danger, the commutation of sentence can be restricted according to the circumstances of the crime. However, for criminals with fixed-term imprisonment of more than three years, life imprisonment and ordinary reprieve, the criminal law

has no restriction on commutation of sentence. The attitude of self-abuse and self-abandonment led to their unwillingness to accept prison management, education and labor reform. What's more, they did not obey the management of the prison people's police. They took the initiative or deliberately stirred up trouble and vented their dissatisfaction with the law or the society to the prisoners or the correctional police around them, seriously affecting the safety and stability of the prison and the personal safety of the prison police on the frontline of reform [7]. How to let these criminals who basically do not see the hope of commutation and parole, but also life imprisonment criminals with unprecedented danger, supervision difficulty and education difficulty, reform in hope has become a major problem in the current prison penalty execution.

3.4 The Existing Educational Reform Measures in Prisons Are Backward and Do Not Match the Reform Requirements

For a long time, the classification of prisons in our country is generally based on the length of the original sentence of the prisoners. Those with fixed-term imprisonment of less than 5 years (including 5 years) are short-term criminals; Those who are sentenced to fixed-term imprisonment of 6 to 14 years are Chinese criminals. Those sentenced to more than 15 years, life imprisonment and death penalty with a suspension of execution are felons, thus the remand prison is divided into short-term prison, medium-term prison and felon prison. The fundamental purpose of commutation and parole is to encourage criminals to actively reform. It is a kind of rewarding measure to actively reform criminals in the process of penalty execution. At the same time, it reflects the implementation of our country's criminal policy of tempering justice with mercy, giving full play to the function of punishment and realizing the purpose of punishment. In this mode, commutation plays a central leading role. Whether the prisoners can get out of prison early by commuting their sentences depends on how many reward points they can get in the prison scoring and assessment system converted from various reformatory behaviors in prison [8]. In fact, in addition to the lack of aftercare restriction mechanism, there are two reasons for this defect in the commutation system. First, the executive authorities only pay attention to the performance of the criminal's objective behavior when requesting commutation, ignoring the criminal's subjective and ideological transformation, which leads to the fact that although the criminal has obtained commutation, his subjective thinking has not really pleaded guilty to the law. It is more difficult than ever to be strict with 18 types of criminals and lenient with several types of criminals. Therefore, it is more difficult to deal with commutation cases than before.

3.5 Prison Medical Pressure Highlights

With the implementation of the “Regulations”, the commutation rate of criminals is reduced and the frequency of commutation is reduced. The reduction of these commutation opportunities actually prolongs the time prisoners spend in prison, which will definitely bring challenges to the prison's medical and health work. The “aging” of prison criminals will become more and more serious, the number of sick prisoners will become more and more, the medical and health work load will become heavier and heavier, and the prison will now overload the medical facilities that operate, and the load will become heavier. The Prison Law stipulates that when prisoners are sent to prison to receive punishment, the prison shall conduct a physical examination. This “physical examination” is based on the medical level of the prison hospital. Examination of some disease items, such as HIV, will be carried out in due course after the prisoners are imprisoned according to the requirements of the health and epidemic prevention departments in the area where the prison is located. Shorten the interval between two commuting sentences so that criminals can perform well in a short time after commutation. This also involves the problem of adjusting the commutation range. The reason why the interval between commuting sentences in our country is too long is because the commutation range is too large in practice [9]. If we rely on social hospitals, it will inevitably lead to the shortage of police custody, increased supervision risks, increased medical expenses and other issues. When the overload operation of the prison hospital cannot be solved sometimes, the medical resources of the social hospital need to be used, but it will also increase the number of police in custody and multiply the supervision risks.

4. Countermeasures for Improvement of Prison Management after the Implementation of “Regulations”

4.1 Implement the regulations and enhance the prison's ability to handle cases according to law

At present, there are a large number of responsible policemen in our district's prison system who are involved in submitting requests for commutation and parole of prisoners. First-line grass-roots police who have long-term contact with prisoners at the prison level; In addition to supervision, the correctional police themselves should also be responsible for the filing and registration of relevant departments, and have less contact time with prisoners than the frontline grassroots police. From the perspective of learning methods, prisons need to carry out centralized learning. Prison managers have heavy management tasks, and many of them have multiple roles. Therefore, they need to organize collective learning, but the forms can be varied, such as video conference and teleconference. Familiar with and understand the provisions of the “Regulations”, understand the background of the introduction of the “Regulations”, understand the legislation spirit, original intention, deepen the understanding of the “Regulations”; A strong atmosphere should be formed within the prison to learn the 2017 commutation and parole regulations, so that all prison police are familiar with and understand the provisions of the 2017 commutation and parole regulations. The “Regulations” are combined with cases to enhance the pertinence and effectiveness of learning. From the training point of view, to strengthen the training intensity, targeted training can be carried out according to the specific requirements of different positions, which can be divided into full training and key training.

4.2 Formulate Local “Implementation Rules”

The following issues should be taken into consideration when formulating and improving the “Detailed Rules for Implementation”: First, vague clauses such as “one commutation of sentence shall not exceed nine months of fixed-term imprisonment”, “commutation of sentence shall be carried out for more than one year” and “genuine repentance” need to be clarified to improve the operability of the provisions on commutation and parole in 2017. Because the regulations have just been implemented, the detailed rules for the implementation can only be implemented in practice. here is a brief introduction to the main aspects that the detailed rules for the implementation of commutation and parole should include. The relationship between various factors that should be comprehensively investigated when handling commutation cases and the extent of commutation should be clarified to further clarify the operational criteria for requesting commutation. Clear commutation and parole conditions; Regulate the extent of commutation; Regulate commutation frequency; Review mechanism for commutation and parole, etc. As far as possible, there is no need for the prison to use a percentile system for the calculation and assessment of prisoners, but prisoners need to convert their reward points into corresponding assessment points when requesting commutation of sentence by the intermediate people's court.

4.3 Establish a Dynamic Evaluation System for Prisoners and Implement Classified Supervision

When prisoners leave and enter prison, education and reform departments will carry out corresponding evaluation mechanisms to facilitate the corresponding evaluation. At the same time, when prisoners are preparing for parole, the prison will also carry out corresponding evaluation and evaluation to ensure that they meet the requirements of parole. Strengthen the psychological counseling of crimes and the treatment of psychological diseases, relieve the prisoners' prison pressure through psychological counseling and treatment, and strive to better transform themselves in a positive state; To correctly handle the relationship between serving a sentence and reducing the sentence, one must not make negative changes because of the small reduction in the sentence. One must not bargain, discount or deal with it passively. Therefore, only by establishing a regular physical and mental dynamic evaluation mechanism for prisoners, can they better understand the ideological changes that occur in the process of penalty execution, and the prison can carry out

targeted education and management, and take appropriate prevention and control measures for possible problems. Secondly, the right should be protected, and there should be corresponding procedures to ensure the acquisition of this right, that is, if the right holder does not enjoy the right according to law, he can lodge an appeal or appeal. Compile new teaching materials for classified education, such as those for life imprisonment of criminals and those for criminals whose death sentences are suspended for two years, to educate different types of criminals on their ideological and behavioral characteristics. To do a good job in the publicity of the new regulations, the most important thing is to let prisoners understand the situation clearly, and it is best to understand the requirements of the relevant regulations on commutation and parole in the context of the rule of law in our country.

4.4 Innovating Prison Reform Methods to Improve the Quality of Reform

The comprehensive application of the three major prison reform measures has this amazing combined effect in ensuring the safety of prison supervision and improving the reform quality of prisoners. However, with people's attention to the prison and the constantly complex changes in prison conditions, the current prison reform means need to carry out scientific and effective management concept renewal and effective management method innovation within the scope permitted by law. We should increase the number of prisoners, speed up the construction of high-security prisons and prison areas, improve the supervision facilities, equip corresponding police forces, form the detention capacity as soon as possible, and implement the classified detention system. If the sentence is commuted in the retrial, the original commutation term shall not be counted and the original commutation ruling shall be revoked, and the executing organ shall reconsider whether to declare commutation. The effective disciplinary measures taken by the prison police in many years of practice have been incorporated into the legal track and gradually increased to legal means. According to the serious situation of prisoners breaking the supervision and reform order or violating the supervision rules and disciplines, a set of administrative disciplinary structure system of prison administration with clear levels and strong operability is established. Strengthen the construction and training of full-time and part-time psychological consultants to promote the mental health development of criminals and ensure that criminals can serve their sentences at ease. Therefore, the state should appropriately increase the financial support to the old and disabled prisons and prison areas, and at the same time, it can also consider establishing a shared hospital model between prisons and society.

4.5 Strengthen the Professional Construction of the Prison People's Police Force

Article 12 of Chapter II of the Prison Law clearly stipulates that the prison people's police are the prison management personnel, while the prison people's police are the people's police who are legally engaged in prison management, execution of punishment, and undertaking the punishment and reform of prisoners. They are the organizational entities and main forces of the national execution of punishment organs, and they are the armed criminal judicial forces. Strengthen the construction of early warning teams responsible for commutation and parole; To carry out relevant training, enhance the commutation and parole business ability, adhere to the certificates; We will improve the system of early warning, rewards and punishments, and set up subsidies and allowances. The new "Regulations" clearly define the commutation standards for various types of crimes and punishments, as well as the targets and standards for lenient and strict commutation and parole. When prisons handle commutation and parole cases, they should classify and manage the cases and separate ordinary cases from special cases. The construction of prison informatization can also play an unexpected role in reducing the cost of prison work, improving the management quality and efficiency of prisoners, reducing the personal danger of prison police, and improving the prison management standards and management level. Mobilize the enthusiasm of handling cases; We will improve the "Implementation Details" for commutation and parole work, establish a set of standardized operation procedures, and enhance the effectiveness, standardization and scientificity of management.

5. Conclusion

As an important part of Chinese penal system, the commutation and parole system fully embodies the criminal policy of “combining punishment with leniency, combining punishment with education”. It plays an immeasurable positive role in mobilizing the enthusiasm of criminals to reform, stabilizing the mood of criminals to reform, maintaining the safety and stability of regulatory sites, and saving the execution cost. For a system to achieve good practical results, the improvement of the system is on the one hand, and the correct implementation of the system is equally important. There are many problems in the commutation and parole system in our country. Apart from the defects in the system, there are also many problems caused by unscientific implementation. In the daily management, the prison police should pay attention to the collection and custody of law enforcement evidence, actively do a good job in the prison situation, the investigation and judgment of the crime situation, and the dynamic control of the information of prisoners such as high-risk prisoners and stubborn prisoners. Those prisoners who violate prison rules and discipline and resist reform should be included in the strict prison management list in a timely manner, and should be controlled and understood in a timely manner. Therefore, on the basis of the improvement of the commutation and parole system in the new regulations, the implementation of the new regulations needs to be put in place in order to really make the commutation and parole system after the improvement of the new regulations achieve the expected effect in practice.

References

- [1] Yang Ling. (2017). The impact of parole system in continental law system on Chinese parole system. *Journal of Guangxi Police Academy*, vol. 30, no. 5, pp. 23-26.
- [2] Chen Tuan. (2018). On the “Reform” after the felon supervision problems and countermeasures. *Guangxi Police Academy*, no. 1, pp. 19-22.
- [3] Li Zhongdong. (2017). Kenya's Prison Reform. *Prosecutorial Power*, no. 9, pp. 54-55.
- [4] Chen Yuan. (2017). The program design of synchronous supervision of commutation and parole by procuratorial organs. *People's Procuratorate*, no. 11, pp. 56-59.
- [5] Li Rui. (2019). On the Legal Nature of Lifelong Imprisonment-From the Perspective of Death Penalty Reduction in Ancient China. *journal of suihua university*, no. 3, pp. 38-40.
- [6] Wang Meili, Yang Lixin, Zhang Sihui. (2018). Questioning the Rationality of Life Imprisonment for Corruption and Bribery Crimes--From the perspective of Foucault's discipline theory. *Journal of Shanxi Institute of Political Science and Law Management Cadres*, no. 1, pp. 76-79.
- [7] He Ruixian. (2017). Thoughts on Strengthening Financial Management of Prison Enterprises. *Chinese Collective Economy*, no. 20, pp. 110-111.
- [8] Wang Jianlong. (2017). Discussion on Innovation of Ideological and Political Education for Prison Managers. *Century Bridge*, no. 7, pp. 63-64.
- [9] Chen Cai. (2017). Prison human resources management issues and measures to explore. *Modern corporate culture*, no. 18, pp. 160-160.