

TOMASZ KALISZ

SUBSTANTIVE PREREQUISITES  
OF CONDITIONAL RELEASE

I. The prerequisites, i.e. formal and substantive conditions, allowing for the administration of a conditional release of a convict from the rest of their imprisonment term are of key importance within various issues relating to this measure. In practice, the second group (the so-called substantive prerequisites) raise a broad discussion and real problems connected with their practical application. Binding regulations of the Criminal Code (Article 77 of the CC<sup>1</sup>) provide for one substantive prerequisite, i.e. the so-called criminological prognosis. The article aims to present the issues connected with the interpretation and administration of a conditional release from the perspective of that particular prerequisite. Within the existing model of a discretionary court decision to grant or deny a conditional release, the determination of the content of a concept of criminological prognosis and the grounds and assessment of it are key theoretical and practical issues. The analysis of political and criminal assumptions that we formulate towards a conditional release and their influence on the regulations defining the prerequisites of this measure can also be a valuable addendum to the above-mentioned considerations.

II. Looking at the penalty of imprisonment from a historical perspective, it is difficult to imagine a situation in which the course of its execution would undergo modification, i.e. the so-called independent factors that could be assessed legally. In the past, the execution was a simple implementation of a penalty defined in a sentence, a literal execution. Over time, penal law has considerably moved the content of sanctions towards a more complex executive formula of a different character<sup>2</sup>.

---

<sup>1</sup> A conditional release from the rest of the penalty of imprisonment is at present regulated by two Acts: Criminal Code of 6 June 1997 (Journal of Laws No. 88, item 553 with amendments that followed) and Penalties Execution Code of 6 June 1997 (Journal of Laws No. 90 item 557 with amendments that followed).

<sup>2</sup> L. Bogunia, T. Kalisz, *Pojęcie i nauka prawa karnego wykonawczego. Uwagi na tle procesu wyodrębniania dyscyplin naukowych prawoznawstwa* [Concept and study of penalties execution law – com-

Particular elements of sanction do not result only from the sentence. It often happens that the sentence ingredients cannot be defined straight away, some of them grow slowly and gradually change within the stage of the penal process administration. Thus, the need to modify a ruling in the course of its administration can occur many times. It can result from the expected changes or an occurrence of alarming signs of deepened reasons of social demoralisation. Thus, changes introduced to the ruling content can fundamentally change the sentence, e.g. a conditional release means cancelling isolation in favour of controlled freedom. The flexibility of the process of penalty administration assumes a diversity of influence exerted on convicts, which is based on an assumption of individual treatment. This results in a differentiated way of penalty execution, creating a possibility of using numerous ways of administering it. In practice, it means that the content of a sanction can often, to a great extent, stray from the so-called statutory "standard".

The above-mentioned circumstances build a clearly different perspective with regard to a conditional release than is commonly adopted in rulings. It concerns the inadmissible and difficult to accept practice of treating a conditional release as an extraordinary measure or a formula of non-execution of an entire penalty. To illustrate the problem better, it is worth giving a few example rulings: *...a conditional release that is prior to the completion of a sentence is an exception to the rule of serving an entire penalty as was ruled in the sentence...*<sup>3</sup> In another ruling, the court states that: *...the institution of a premature release is of an extraordinary character and can be extraordinarily applied...*<sup>4</sup> In practice, courts often emphasize that: *...the rule is the completion of an entire penalty and reductions in that are exceptions used when it is just, i.e. both well-deserved and purposeful...*<sup>5</sup>; or *...serving the entire binding penalty should always be a rule, thus a penalty should be served in the way it was ruled and without interruption...*<sup>6</sup> None of the binding regulations of criminal law, especially Article 77 § 1 of the CC, can give grounds to state that a conditional release is an exceptional measure<sup>7</sup>. From the perspective of a conditional release, it is difficult to find grounds to deny it

---

ments on the process of distinguishing jurisprudence disciplines], [in:] *Problemy wymiaru sprawiedliwości karnej. Księga Jubileuszowa Profesora Jana Skupińskiego* [Problems of penalties execution – Professor Jan Skupiński jubilee book], (ed.) A. Błachnio-Parzych, J. Jakubowska-Hara, J. Kosonoga, H. Kuczyńska, Warszawa 2013, pp. 580–581.

<sup>3</sup> Ruling of the Appellate Court in Cracow of 21 June 2000, II Akz 217/00, Krakowskie Zeszyty Sądowe of 2000, No. 6, item 12.

<sup>4</sup> Ruling of the Appellate Court in Lodz of 30 April 1999, II Akz 148/99, not published.

<sup>5</sup> Ruling of the Appellate Court in Cracow of 27 June 2000, II Akz 214/00, Krakowskie Zeszyty Sądowe of 2000, No. 7–8, item 54.

<sup>6</sup> Ruling of the Appellate Court in Gdansk of 22 August 2000, II Akz 630/00, Biuletyn orz. SA w Gdańsku of 2001, p. 40.

<sup>7</sup> S. Lelental, *Warunkowe przedterminowe zwolnienie w orzecznictwie Sądu Najwyższego i sądów apelacyjnych* [Conditional release in the rulings of the Supreme courts and appellate courts], *Przegląd Więziennictwa Polskiego* of 2000, No. 28, p. 122.

if both prerequisites: formal and substantive ones are met<sup>8</sup>. Finally, a probation period within a conditional release does not mean a reduction or nullification of penalty (an act of pardon). In fact, it is a form of completion of the penalty execution initiated in prison in different conditions (at liberty), although still connected with the implementation of the aim of imprisonment that is defined in Article 67 of the Penalties Execution Code<sup>9</sup>.

Having taken the above-mentioned circumstances into account, one can see the change that has taken place in criminal law, especially the law on execution of penalties. The autonomy of executive proceeding is a pragmatic approach to a penal sanction based on scientific research results. And an assessment-related criminological prognosis treated as a prerequisite to conditional release is a consequence of the movement of stress towards individual and preventive targets<sup>10</sup>.

In terms of preventing the separation of the execution stage from the sentencing stage, full autonomy in the case of a conditional release is ruled out. This is connected with abstractly defined formal minima (Article 78 of the CC). It is assumed that this element is to implement all aims of a penalty, not only the aim connected with individual prevention (it is decreed as a rule at the legislative stage). Thanks to formal thresholds, a specific bridge is developed between those two stages of penal proceeding, with clearly differentiated accents on detailed tasks. The only issue we can discuss in connection with a conditional release is the construction in Article 77 § 2 of the CC, which allows, in specially substantiated cases, for establishing stricter formal thresholds than those specified in the basic regulation in Article 78 of the CC (by the way, it is a somewhat controversial solution because of a clear lack of determinants of a concept of estimation)<sup>11</sup>.

III. The provision of Article 77 § 1 of the Criminal Code exhaustively defines the elements that are taken into account when developing a criminological prog-

---

<sup>8</sup> J. Lachowski, *Warunkowe zwolnienie z reszty kary pozbawienia wolności* [Conditional release from the rest of the penalty of imprisonment] Warszawa 2010, pp. 204–207.

<sup>9</sup> L. Bogunia, *Wykonywanie środków karnych związanych z probacją w ujęciu nowego kodeksu karnego wykonawczego* [Execution of penalty measures connected with probation in the light of the new Penalties Execution Code] [in:] *Probacja w systemie prawa karnego wykonawczego* [Probation in the system of penalties execution law], (ed.) L. Bogunia, Wrocław 1998, pp. 119–124; G. B. Szczygieł, *Warunkowe przedterminowe zwolnienie a prewencja generalna* [Conditional release and general prevention], *Gdańskie Studia Prawnicze*, volume XIX, 2008, (ed.) J. Warylewski, p. 229.

<sup>10</sup> W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna* [Polish criminal law – General issues], Kraków 2010, pp. 489–490.

<sup>11</sup> S. Leleńtal, *Rozdział III §28. Warunkowe przedterminowe zwolnienie* [Chapter III § 28: Conditional release] [in:] *System Prawa Karnego. tom 6, Kary i środki karne. Poddanie sprawcy próbie* [Criminal law system, volume 6, Penalties and penalty measures – Probation of the perpetrator], (ed.) M. Melezini, Warszawa 2010, pp. 1116–1121; Z. Sienkiewicz, *Rozdział XVIII. Środki związane z poddaniem sprawcy próbie* [Chapter XVIII: Measures connected with the perpetrator probation] [in:] *Prawo karne materialne. Część ogólna i szczególna* [Criminal substantive law – general issues] (ed.) M. Bojarski, 5<sup>th</sup> edition, Warszawa 2012, pp. 383–384.

nosis. The prognosis is at present the only substantive (evaluating) premise of a conditional release<sup>12</sup>. Its certain content based on definitely indicated quantifiers is of key importance for the practical implementation of a conditional release. A question that must be asked here is: Do the discussed construction and the mode of obtaining detailed findings create an opportunity to achieve a certain and unambiguous prognosis result and is the achievement of this result possible at all?

First of all, it must be emphasized that the so-called criminological prognosis concerns the future and unknown behaviour of a convict (specific figments of imagination in relation to how a convict will act at liberty after having been released from prison). Thus, it is not easy to accept an opinion (unfortunately, often) expressed in rulings that: *...a court can grant a conditional release only in the case of an unambiguous positive criminological prognosis, i.e. a convict's demeanour, features and personal conditions, lifestyle before and after crime commitment, behaviour during the imprisonment as well as the circumstances of crime substantiate a conviction that while serving the sentence the convict changed the behaviour in a positive and lasting way, which guarantees that after a release they will comply with law and will not commit a crime again...*<sup>13</sup> A prognosis is not the same as certainty; the concepts cannot be treated as equivalent. Otherwise, a conditional release would be a dead letter. Or, from the perspective of the idea expressed in the cited ruling, a period of probation and duties or monitoring would be absolutely useless. Also the premises of a withdrawal of a conditional release would be useless because each time we should have a guarantee of a convict's behaviour being in compliance with law.

In the prognosis process, it is essential to establish the content of its particular elements (factors) and to answer a question about the prognostic value of each element listed in Article 77 § 1 of the Criminal Code. The catalogue included in the provision is a closed one. This means, and it must be strongly emphasized, that a criminological prognosis cannot be made based on circumstances that are different from those listed by the legislator<sup>14</sup>. It is absolutely necessary to protest against a practice of referring, within a conditional release proceeding, to a court directive on penalty (Article 53 of the CC), a circumstance of the amount of

---

<sup>12</sup> T. Bojarski [in:] *Kodeks karny. Komentarz* [Criminal Code – Commentary], 5<sup>th</sup> edition, (ed.) T. Bojarski, Warszawa 2012, pp. 194–195; P. Hofmański, L.K. Paprzycki, *Kodeks karny. Komentarz* [Criminal Code – Commentary], 2<sup>nd</sup> edition, (ed.) M. Filar, Warszawa 2010, pp. 401–403; A. Marek, *Kodeks karny. Komentarz* [Criminal Code – Commentary], 3<sup>rd</sup> edition, Warszawa 2006, p. 194.

<sup>13</sup> Ruling of the Appellate Court in Katowice of 11 December 2008, II Akz 1459/08, Prokuratura i Prawo supplement of 2009, No. 10, item 23.

<sup>14</sup> G. Wiciński, *Podstawy stosowania warunkowego zwolnienia z odbycia reszty kary* [Grounds for conditional release from the rest penalty to be served], *Przegląd Więziennictwa Polskiego* of 1999, No. 24–25, p. 32 and next; B. Myrna, *Warunkowe przedterminowe zwolnienie w świetle nowej kodyfikacji karnej, Nowa Kodyfikacja Prawa Karnego* [Conditional release in the light of new criminal statute – New criminal law statute], vol. VI, (ed.) L. Bogunia, Wrocław 2000, p. 241 and next.

penalty served so far, and in this context, its adequacy and proportionality to the circumstances of crime commitment, and prevention in general<sup>15</sup>.

In accordance with the statutory provision, a criminological prognosis consists of: a convict's demeanour, features and personal conditions, crime commitment circumstances, behaviour before and after crime commitment and behaviour when serving the imprisonment. After the Act amendment of 2011, the circumstance connected with a convict's lifestyle before the commitment of crime is not listed in the catalogue any more. By the way, it is necessary to add the Penalties Execution Code contains two more regulations that have to be taken into account in a criminological prognosis. Article 162 § 1 of the Penalties Execution Code provides that a penitentiary court also takes into account an agreement resulting from mediation. And, in case of a perpetrator of crime defined in Articles 197–203 of the Criminal Code, committed in relation to paraphilia, a conditional release cannot be granted without asking for expert opinions.

The first quantifier of the prognosis is the so-called convict's demeanour<sup>16</sup>. It is a convict's attitude to life and given social phenomena, an approach, a presented stand and opinions. Relations with other people are also assessed, especially repetitive behaviour. Next, personal features are assessed. These are mainly biological features (age, sex, psychical and physical health condition, impairment etc.). Personal features also include the features of character, temperament, personality, self-assessment skills, conscience sensitivity, intellectual level, plans for the future, skills and interests. Personal conditions are a separate element. These are environmental conditions where a convict lives: accommodation, employment, professional activeness and financial position<sup>17</sup>.

The above-mentioned factors must be assessed dynamically, i.e. with regard to the past, presence and possible changes. A convict's changes are especially valuable as they are desired effects of the penitentiary influence. It is also necessary to take into account events, sometimes totally independent of this influence, which result from the subsequent stages of every man's life (death or serious

---

<sup>15</sup> Compare the quoted theses of the court rulings: S. Lelelntal, *Warunkowe przedterminowe zwolnienie w orzecznictwie Sądu Najwyższego i sądów apelacyjnych w latach 2000 (II półrocze – 2002r.)* [Conditional release in the rulings of the Supreme Court and appellate courts in the 2000s (2<sup>nd</sup> half of 2002)], *Przegląd Więziennictwa Polskiego* of 2003, No. 40, p. 192 and the following, *ibid.*, *Warunkowe przedterminowe zwolnienie w orzecznictwie Sądu Najwyższego i sądów apelacyjnych w 2005 r.* [Conditional release in the rulings of the Supreme Court and appellate courts in 2005], *Przegląd Więziennictwa Polskiego* of 2006, No. 50, p. 135 and next.

<sup>16</sup> J. Macharski, *Pojęcie postawy w polskim prawie karnym* [Concept of demeanour in Polish criminal law], *Państwo i Prawo* 1976, No. 8–9, pp. 130–135.

<sup>17</sup> W. Rodakiewicz, *Warunkowe zwolnienie młodocianych z reszty kary pozbawienia wolności* [Conditional release of minors from the rest of the penalty of imprisonment], Wrocław 2005, pp. 142 and 150; J. Lachowski, *Warunkowe...*, *op. cit.*, p. 254 and the following; S. Paweła, *O czynnikach prognostycznych przy warunkowym zwolnieniu* [On prognostic factors for conditional release], *Nowe Prawo* of 1983, No. 9–10, p. 71 and next; J. Wąsik, *O konieczności dalszego doskonalenia instytucji warunkowego zwolnienia* [On the need to further improve the measure of conditional release], *Wojskowy Przegląd Prawniczy* of 1982, p. 80 and next.

illness of a close person, marriage, birth of offspring etc.). Taking the decision of granting a conditional release, it is necessary to take into account the evolution of a convict's demeanour and changes in the field of their personal features and conditions.

The provision of Article 77 § 1 of the CC, within the establishment of a criminological prognosis, provides that – apart from the above-mentioned quantifiers – the circumstances of the crime commitment must be taken into account. This element is a very specific one among all the others that influence a prognosis. The circumstances were already taken into account first of all in the course of the criminal proceeding and a decision on a penalty. In the development of a prognosis their role is clearly statistical (they are not subject to any change). It seems that proposals to make this quantifier an auxiliary one is fully justifiable. It can be used especially in the scope in which the circumstances demonstrate a convict's personal features. But the circumstances of crime commitment should not be an independent element in the process of developing a prognosis. What is even more important, they should not be the only decisive factor in denying a conditional release.

The behaviour after the commission of crime – this element of the prognosis procedure is quite often connected with considering the convict's attempts to prevent the consequences of the crime, to compensate the loss, to make up for the wrong, but also their eagerness to show repentance, plead guilty and apologise to victims. The value of these circumstances for the prognosis can be varied. First of all, everybody has the right against self-incrimination (thus, does not have to plead guilty). Secondly, pleading guilty and other actions may be calculated to get a lenient penalty, thus may be treated by a convict absolutely instrumentally. There can also be a problem with a crime preparation, an attempt to commit crime or a crime only by virtue of statute (*malum prohibitum*).

The last of the circumstances enumerated in Article 77 § 1 of the CC is the behaviour during the imprisonment. It is one of the oldest prerequisites taken into account in the course of a conditional release administration (it is known to all Polish regulations dealing with this measure). The category is collective in character and covers all indications of a convict's action or omission whose assessment can influence a prognosis. The assessment of a convict's behaviour in the course of serving imprisonment must be complex and individual incidents should be assessed on an adequate scale. In comparison with all the other prognosis factors, it must be emphasised that this period is best documented because it is done during the imprisonment. The documentation is often developed in the form of specialist opinions, various diagnoses and regular performance assessment.

For the proper conditional release practice, the existence of an unquestionable and clear justification of the release decision is of great importance, also for a convict. A court should explain what elements were decisive in the criminological prognosis and what evidence it based on. We are moving in the space

of free assessment of evidence where decisions must be rationally justified. The parties to the proceeding have an obvious right to question them. It is aimed at showing deficiency in reasoning and not at polemic discussion of an alternative vision. From this perspective, the collected evidence and the justification prepared by the court should be convincing. Their role is to make a presentation of the course of reasoning and explication of reasons for taking a particular decision. All this is to convince the parties that it is right or to give them a chance to better prepare for a conditional release in the future. The indicated praxeological assumptions with regard to rulings on a conditional release also play an important role in supervision by appeal, which allows for a verification of a ruling appealed against. In practice, there are rulings with justifications that do not meet the above-mentioned requirements. Not rare cases of carelessly developed decisions, often with very laconic justification that is limited to a repetition of statutory prerequisites, must shock. In the case of denying a conditional release, it is incomprehensible that reference is made to circumstances that are not included in the catalogue of prognosis factors. Following S. Leleñtal, it is worth mentioning the following examples: only the obligatory part of penalty having been served, long time to the end of penalty, type (character) of the committed crime, lack of convict's condemnation of the crime he/she committed, convict's way of acting, sense of social justice, level of social harmfulness of the act, possibility to depreciate the original sentence, principle of serving full penalty, general preventive objectives<sup>18</sup>.

Decision on whether to grant or deny a conditional release must be rationalised through a prism of the so-called statutory prerequisites of the measure (especially prognostic prerequisites). The practice of administrating this measure, especially the prognosis process, often seems to be independent of the current shape of the directives, proving that the issue can be dealt with from the perspective of the judge's autonomous disposition (a set of values and preferences resulting from individual attitudes of the representatives of the judiciary). It is difficult to explain the indicated latitude, sometimes going beyond the existing prognostic prerequisites, or the treatment of circumstances of Article 77 of the Criminal Code as sets of not really meaningful words quoted to provide justification for decisions, in terms of some kind of interpretational irregularities. With such practice of justifying decisions with regard to a conditional release, it is possible that courts are likely to follow the established routine in similar cases or, sometimes, act in accordance with their own system of values, individual attitudes and beliefs. This means that the practical importance of the provisions regulating the prerequisites of a conditional release should not be overrated. We can risk a very pessimistic statement that the regulations most often constitute a curtain for illusions that the process of conditional releases can be conducted

---

<sup>18</sup> S. Leleñtal, Chapter III § 28, *Warunkowe...* [Conditional release...] *op. cit.*, p. 1110.

following strict paradigms designed by the legislator, in the way that is totally independent of a judge's autonomous disposition, free of other sets of values and their preferences<sup>19</sup>.

A dictionary of the Polish language defines the term "prognosis" as ... *prediction of future facts, events and phenomena based on justified – usually scientific – premises, data, circumstances and research, formulated by specialists in a given field...*, or ... *someone's prediction, supposition, often intuitive one...*<sup>20</sup> From the perspective of the linguistic definitions of the term "prognosis", we can have a problem with giving an answer to a question which of them better suits the process of prognosis within a conditional release. This strict assessment becomes clearer if we ask about the prognostic value of particular elements constituting a substantive prerequisite of a conditional release. Are the factors added in the course of the measure an effect of the legislator's conscious decisions based on scientific research or only somewhat intuitive search for such determinants? It is worth considering to what extent these elements are confirmed from the perspective of their prognostic effectiveness. It is necessary to verify them honestly in the context of the scientific findings of criminological, social, psychological and pedagogical studies. It is important to find an answer to the question to what extent the particular quantifiers of the criminological prognosis are checked in practice. When, in what conditions and towards what categories of convicts are specific factors better or worse at helping to develop a prognosis? What is the direction of mutual influence of these very diverse factors taken into account in the process? Which of the factors, if any, overlap and strengthen or weaken their effectiveness? Which of them act in the space of internal interaction, triggering or hampering expected changes? Finally, an important question is the issue of the assessment of particular prognosis factors from the perspective of dynamically changing social, environmental, scientific and technological conditions, especially changes in criminality. It seems we have to make up for this great omission.

IV. It is also worth looking at the prerequisites of a conditional release through a prism of the so-called political-criminal function that this institution can play or has played throughout its historical development. Several, differently specified, political-criminal functions of a conditional release are highlighted in literature<sup>21</sup>. The so-called individual-preventive function is a very clear one in this catalogue. Understood in a traditional way, it is an action targeting a particular

---

<sup>19</sup> Compare: T. Kaczmarek, *Ogólne dyrektywy sądowego wymiaru kary w teorii i praktyce sądowej* [General directives of a juridical penalty in the juridical theory and practice], Wrocław 1980, pp. 153–166.

<sup>20</sup> *Uniwersalny słownik języka polskiego* [Universal Dictionary of the Polish Language], (ed.) S. Dubisz, Warszawa 2006, p. 568.

<sup>21</sup> A. Tobis, *Funkcje warunkowego zwolnienia i jego podstawy w prawie porównawczym* [Function of conditional release and grounds for it in comparative law], Poznań 1971, p. 12–61; B. Stańdo-Kawecka, *Warunkowe zwolnienie w krajach europejskich* [Conditional release in the European countries], *Przegląd Więziennictwa Polskiego* of 2007, No. 54, p. 5560; J. Lachowski, *Warunkowe zwolnienie z reszty kary poz-*



convict. With respect to a conditional release, the importance of its protecting and educational effect is emphasised. The so-called general preventive function is a typical antithesis of the former. In its assumption, a conditional release is a formula addressed to the community. The so-called formal thresholds for a conditional release and a possibility to toughen the conditions – Article 77 § 2 of the CC – can be the instruments of influence. A conditional release can also be discussed from the perspective of the mechanism of non-punitiveness of the criminal law system. In such an approach, the measure should be applied as quickly as possible, just after the substantial premise has been met. The probation period should not exceed the rest of the penalty term to be served. The function of individual treatment of the penalty of imprisonment also appears in literature. It concerns mainly the execution stage, where we say that the implementation of the penalty content should be a process depending on individual convict's needs.

It relates to a consideration of a particular convict's specific characteristic features and real adjustment of a sanction to a particular perpetrator in the course of execution. Such executive proceeding is in contradiction to a mechanical approach to the issue of penalty administration, and when the principle of flexibility in modifying penalties and other means of response to crime is taken into consideration, it is a demonstration of rational and modern policy on penalty execution. In the past, the importance of a conditional release as a specific prize for a convict was emphasised. It is connected with encouragement, or praise for the scope, speed and in particular stability of change in the socially desired attitudes of a convict. Another perspective is constituted by the so-called disciplinary function in the penitentiary policy. Clear and applicable criteria for a conditional release strengthen convicts' motivation to get involved in the process of the penitentiary rehabilitation system and, at the same time, increase the level of safety and order in penitentiary units.

In a spirit of that, we can also speak about the mechanism of regulating the overcrowding in prisons. A conditional release allows for a temporary decrease in the total number of convicts. The situation should not be assessed positively in terms of criminal policy. In economic terms, however, a conditional release must be perceived as a considerable cost reducing factor in penalty administration. The analysed measure is important for post-penitentiary assistance. It concerns institutional strengthening of activities within social re-adaptation of convicts after they have left prison. A properly completed, with respect to its content, probation period can help a convict to re-integrate, and in particular prevent a return to crime. Finally, a conditional release facilitates the implementation of the principle of *ultima ratio* penalty of imprisonment.

---

*bawienia wolności* [Conditional release from the rest of the penalty of imprisonment], Warszawa 2010, pp. 139–157.

The presented perspective, in the context of a possible choice of one or some of the indicated functions as leading, will essentially determine the normative shape and practice in the field of a conditional release. We do not always fully realise what the consequences of the decreed or postulated functions of that measure are. The choice of one or some of them (assuming they are not contradictory) must determine the direction of detailed solutions. It is justifiable, especially in the context of work on the new regulation of a conditional release in Poland, to consider the political-criminal aspects of that measure – especially in connection with the functions that we would consciously like to be implemented in practice.

## **SUBSTANTIVE PREREQUISITES OF CONDITIONAL RELEASE**

### **Summary**

The article aims to present issues connected with the administration of a conditional release from the perspective of a substantive prerequisite in the form of criminological prognosis. Within the existing model of discretionary court decision to grant or deny a conditional release, the establishment of the content of the concept of a ‘criminological prognosis’ and highlighting attitudes and directions in its assessment are the key theoretical and practical issues (especially from the perspective of penitentiary courts rulings). The analysis of political-criminal assumptions that are formulated towards a conditional release and their influence on the shape of the regulation on the content of the prerequisites of the measure supplements the indicated considerations.

## **PRZESŁANKA MATERIALNA WARUNKOWEGO ZWOLNIENIA**

### **Streszczenie**

Celem opracowania jest przedstawienie problemów związanych ze stosowaniem warunkowego zwolnienia, w perspektywie przesłanki materialnej w postaci prognozy kryminologicznej. W przestrzeni obowiązującego modelu dyskrecyjnej decyzji sądowej w zakresie udzielenia bądź odmowy warunkowego zwolnienia, ustalenie treści pojęcia „prognoza kryminologiczna” oraz wskazanie podstaw i kierunku jej oceny to kluczowe problemy teoretyczne i praktyczne (zwłaszcza w perspektywie orzecznictwa sądów penitencjarnych). Uzupełnieniem wskazanych rozważań jest analiza założeń polityczno-kryminalnych, jakie formułujemy wobec instytucji warunkowego zwolnienia, i ich wpływ na kształt regulacji określających treść przesłanek tej instytucji.

**LA PRÉMISSE MATÉRIELLE DE LA MISE EN LIBERTÉ CONDITIONNELLE****Résumé**

Le but de cet article est la présentation des problèmes de l'application de la mise en liberté conditionnelle dans la perspective de la prémisse matérielle sous la forme du pronostic criminologique. Dans le cadre du modèle actuel de la décision discrétionnaire juridique pour présenter le refus de la mise en liberté conditionnelle, fixer le sens de la notion «pronostic criminologique» ainsi que démontrer les bases et directions de son évaluation – ce sont les problèmes-clés théoriques et pratiques (surtout dans la perspective de la jurisprudence des cours pénitentiaires). Le complément des considérations présentées est formé par une analyse des hypothèses politico- criminelles qui sont formulées à l'institution de la mise en liberté conditionnelle et son influence sur les régularisations qui définissent les prémisses de cette institution.

**МАТЕРИАЛЬНАЯ ПРЕДПОСЫЛКА УСЛОВНОГО ОСВОБОЖДЕНИЯ****Резюме**

Целью исследования является освещение проблем, связанных с применением условного освобождения в перспективе материальной предпосылки в виде криминологического прогноза. В сложившейся модели судебных дискреционных решений в сфере предоставления условного освобождения либо отказа его предоставить, определение содержания понятия «криминологический прогноз», а также указание на основы и направления его оценки – это ключевые теоретические и практические проблемы (особенно в перспективе судебной практики пенитенциарных судов). Дополнением к указанным рассуждениям служит анализ предположений политико-криминального характера, которые формулируются по отношению к системе условного освобождения, и их влияние на форму регулирований, определяющих содержание предпосылок данной системы.