CURRENT ISSUES
CONDITIONAL RELEASE[1]

(Conditional release under Arts. 112, 206-12 Pen C. and Arts. 216-17 Crim. Pro. Co — Conditions for release — Jurisdiction to order release — Procedure for release.)

INTRODUCTION

Article 112 provides that prisoners sentenced to imprisonment may, on certain conditions laid down by law, be released on probation prior to the expiration of the term of sentence. Furthermore, according to Article 207, orders for conditional release are to be made by the courts. These general rules involve the following questions: (a) on what conditions may an order for conditional release be made? (b) which court is competent to make such an order? and (c) what is the procedure for making such an order? Similar questions arise with respect to the conditional release of prisoners sentenced to internment,[2] which will not be discussed here.

CONDITIONS FOR RELEASE

According to Articles 112 and 207, no order for conditional release may be made in the absence of the following material and personal conditions:

(A) (i) Two-thirds of the sentence must have been served or, in case of a life sentence, twenty years must have been served;[3] and

(ii) The prisoner concerned must have satisfied, to the best of his ability, such order or agreement as may have been made or entered into regarding his civil liability for the damage arising from the offence.[4]

(B) (i) Conditional release must be "deserved" by the prisoner concerned,[5] and it may not be deemed to be deserved unless this prisoner's conduct "has been satisfactory"[6]; *i.e.*, by his behaviour and work while in prison he gave "tangible proof of his improvement."[7]

(ii) Since an order for conditional release may not be made unless "it affords a reasonable chance of success,"[8] it does not suffice

1. Unless otherwise indicated all references are to the Penal Code of 1957.
2. Arts. 130 (2), 131.
3. Art. 112 (1).
4. Art. 207 (b).
5. Art. 206, para. 2.
6. Art. 112 (1).
7. Art. 207 (a).
8. Art. 206, para. 2.

that the prisoner should have been of good conduct in prison. It is also necessary that his character as well as the conditions in which he will find himself upon release should be such that an optimistic prognosis may be made.[9] The risk inherent in releasing prisoners on probation naturally varies depending on whether they will find jobs after release, receive material and moral support from their families and the like.

These are the only conditions upon the fulfillment of which the making of an order for conditional release depends. Admittedly, Article 112 (2) states that penitentiary regulations will prescribe the conditions for, and manner of, implementing the provisions of Article 112 (1). The fact that regulations of the kind have as yet not been made should not, however, be used as an excuse for declining to order conditional release, since they will not lay down substantive requirements different from those laid down in the Penal Code. These regulations will, for instance, prescribe the minimum marks which a prisoner should get before he is eligible for release, the time for which or conditions on which he may be made to live in those labour settlements mentioned in Article 112 (1) (second paragraph) etc., so that the decision whether he gave tangible proof of his improvement may be made in accordance with precise criteria. But it does not and it cannot follow that, so long as these criteria do not exist, a prisoner may not be deemed to have corrected himself and to be fit for conditional release.

JURISDICTION TO ORDER RELEASE

No authority other than the court is competent to make an order for conditional release. Such an order by its very nature requires a new judicial decision since it affects a matter which is *res judicata* and implies the revision of a judgment in force. Thus the Prisons Administration may not of its own motion release prisoners on probation, even though it considers them to be perfectly fit for release; its only duty is to advise the court as to whether an order for release ought to be made in any particular case. Nor do other executive authorities play any part in the decision whether a prisoner should be released, since this decision is within the exclusive jurisdiction of the courts. Any other solution would, in addition to contradicting the principle of separation of powers laid down in Article 110 of the Constitution, amount to confusing two steps which are fundamentally different; namely, conditional release and pardon. There is no more reason for the executive to have a say in the former than there is for the judiciary to have a say in the latter.

The court competent to order conditional release is "the court having passed the sentence in relation to which such order is to be made."[10] It is not required that this order should be made by the judges who passed the sentence;

9. Art. 207 (c).
10. Crim. Pro. C., Art. 216, Sub-arts. (1) and (2) (a).

there would be no justification for such a requirement as even the latter judges do not know the prisoner well enough to be able to decide whether he is fit to be released. All that is required is that the court that gave the final judgment, whoever its members may be when release is applied for, should be satisfied by the prision authorities that the conditions for ordering release are fulfilled.

PROCEDURE FOR RELEASE

An order for conditional release may not be made except on an application to this effect being lodged[11] either by the prisoner himself through the prison authorities (who must submit it to the court even though they do not agree that the applicant should be released; in such a case, their only power is to state the reasons for their disagreement when the application is considered by the court) or directly by the prison authorities (which should be the practice whenever they are in favour of the applicant being released.) The application, by whomsoever made, must give reasons, and the regulations to be drafted under Article 112 will presumably specify its form and exact contents; it will then be decided in accordance with Sub-articles (2)-(5) of Article 217 of the Criminal Procedure Code (note that the public prosecutor may, for good cause to be shown to the court, object to the granting of the application) and, if it is granted, the following rules will apply:

1. The court *must* fix a probation period not shorter than two, nor longer than five, years[12] and the sentence will not be deemed to have been fully served unless and until this period expires without any intervening revocation of the release order.

2. The court *may* fix so-called rules of conduct[13] i.e., rules of the nature defined in Article 202, with a view to lessening the risk of a relapse. The court may dispense with these rules when it considers them to be unnecessary.

It is often advisable that released prisoners should, in their own interest, be subjected to a certain amount of supervision, which is normally to be carried out by probation officers or charitable institutions.[14] The fact that the services of such officers or institutions are not available now should not be invoked as a ground for not releasing prisoners; to refuse release only for this reason would be contrary to the law, since Article 210 (2) expressly provides that no order for supervision may be made which is unpractical or useless. The Code, therefore, envisages that it may be impossible to supervise released prisoners, but it does not regard this an obstacle to the granting of a conditional release.

11. *Id.*, at Art. 217 (1).
12. Art. (210) (1).
13. Art. (210) (1).
14. Art. 210 (2).

The reason for this solution is evident if one bears in mind that the court may, on granting an application for release, order "any measure for securing the success of the probation."[15] Thus, if direct supervision cannot be exercised, there is nothing to prevent the court from ordering *e.g.*, the released prisoner to report to the court or the police at regular intervals or from requiring a reliable person, whether or not a relative of this prisoner, to vouch for the latter's good conduct or generally to carry out the duties of a probation officer. In other words, there is ample room in the Code for supervision otherwise than by probation officers or charitable institutions, as the court has full powers to prescribe any requirements it deems necessary in view of the prisoner's reformation, so long as these requirements are not inconsistent with the aims of conditional release.

SUMMARY

No application for conditional release should be dismissed by the court except for want of any of the material or personal conditions mentioned under paragraphs (A) and (B) above. Any dismissal ordered on other grounds must be considered unlawful; so too, any attempt to stop applications from being sent to court or any interference with the courts' powers regarding the granting of applications, would be unlawful. A prisoner who "deserves" to be released may not be denied the benefit of what he has earned through his good conduct and his desire to correct himself simply because supervisory authorities are non-existent (since the purpose which the legislature had in mind when providing for supervision may be served equally well by different methods to be specified by the court from case to case) or because his release should, e.g., displease the person, physical or juridical, against whom he committed his offence.

15. Arts. 202 and 210.