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## Conditional Release in Lithuania and Poland: Comparative Analysis


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The article<sup>1</sup> offers analysis of the legal framework of the institute of conditional release in Lithuania and Poland. In both countries, conditional release is considered a probationary measure to regulate prison overcrowding and promote effective social readaptation of convicts. The authors explore the concept of the conditional release at the international and national levels, reveal the content of the formal and substantive grounds of conditional release, and examine the similarities and differences in legal regulation of conditional release in Lithuania and Poland. In addition, the conditional release application statistics in Lithuania and Poland are compared. The authors argue that, despite their high prison population rates, Lithuania and Poland are reluctant to use some of the probation instruments, allowing for an early release

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of detainees, such as the conditional release. Moreover, the policies of Poland and Lithuania regarding this institute's legislative regulation and criminal application seem insufficiently in line with international standards.

**Keywords:** conditional release, probation, international standards, criminal policy, Lithuania, Poland.

## Contents

<i>Introduction</i> . . . . .	24
1. <i>The concept of conditional release in international and national systems and the formal grounds of its application</i> . . . . .	26
2. <i>Substantive ground of application of conditional release</i> . . . . .	31
3. <i>Application of conditional release in practice</i> . . . . .	34
<i>Summary</i> . . . . .	40
<i>References</i> . . . . .	41
<i>Bibliography</i> . . . . .	41
<i>Normative acts</i> . . . . .	42

## Introduction

A map on the first page of the report presenting the key findings of the SPACE I survey of 2023<sup>2</sup> shows that the historical heritage of the Cold War continues to bear heavily on criminal policy across Europe. The Eastern part of the continent is darker than the Northern and Western parts, which indicates that prison population rates in post-Soviet countries are significantly higher than in other states. Generally, in post-Soviet countries, people are detained more often and for longer periods of time. The high prison population rates do not depend upon the country's population or geographical dimension (with the notable exception of Slovenia) – somehow, the shared past constitutes a more critical factor impacting the criminal and sentencing policies. Such is also the case with Lithuania and Poland.

At the beginning of 2021, Lithuania, which is one of the smallest European Union (further, EU) Member-States, with a population of about 2.85 million inhabitants, again had one of the highest prison population rates in the EU – 190 prisoners per 100 000 inhabitants, despite a remarkable decrease in the last 10 years.<sup>3</sup> On the other hand, in Poland, with a population of about 37 million people, the incarceration rate in 2019 was nearly 50% higher than in 1990. And yet, it shows a definite downward trend for 2001–2014, when it was over 200<sup>4</sup>, and reached its highest level in 2006–2007, when it was over 230<sup>5</sup>. After a drop in 2021, when the prison population rate was equal to 179.4, it rose again in 2022 (190.4) and 2023, when it was 193.8.<sup>6</sup> These rates are proof of a systemic problem that needs addressing.

<sup>2</sup> Aebi, M. F., Cocco, E. Prisons and Prisoners in Europe 2023: Key Findings of the SPACE I survey. 2024. Available: [https://wp.unil.ch/space/files/2024/06/SPACE\\_I\\_2023\\_Key\\_Findings.pdf](https://wp.unil.ch/space/files/2024/06/SPACE_I_2023_Key_Findings.pdf) [last viewed 10.06.2024].

<sup>3</sup> Aebi, M. F., Cocco, E., Molnar, L. SPACE I-2022 – Council of Europe Annual Penal Statistics: Prison populations, Council of Europe and University of Lausanne, 2023, p. 33. Available: [https://wp.unil.ch/space/files/2024/01/240111\\_SPACE-I\\_2022\\_FinalReport.pdf](https://wp.unil.ch/space/files/2024/01/240111_SPACE-I_2022_FinalReport.pdf) [last viewed 23.04.2025].

<sup>4</sup> In this article, the prison population rate provided is the number of prisoners per 100 000 inhabitants.

<sup>5</sup> Gruszczyńska, B., Marczewski, M., Siemaszko, A., Ostaszewski, P., Włodarczyk-Madejska, J., Klimczak, J. (eds.). Atlas Przemocności 6 w Polsce [Atlas of Crime 6 in Poland]. IWS, Warszawa, 2021, p. 106.

<sup>6</sup> Aebi, M. F., Cocco, E. SPACE I-2023. Council of Europe Annual Penal Statistics: Prison populations. Council of Europe, 2024, p. 33. Available: [https://wp.unil.ch/space/files/2025/04/space\\_i\\_2023\\_report.pdf](https://wp.unil.ch/space/files/2025/04/space_i_2023_report.pdf) [last viewed: 23.04.2025].

Following the recommendations of the Committee of Ministers of the Council of Europe, most notably, Recommendation R(99)22 concerning prison overcrowding and prison population inflation,<sup>7</sup> alternatives to detention could and should be one of the main tools to decrease the incarceration rates in Eastern Europe. They may be used at different stages of criminal proceedings or the stage of the execution of punishments. The most important alternative measure applied after conviction is the conditional release, which is correctly named “one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.”<sup>8</sup>

The various aspects of conditional release have been analysed by Lithuanian and Polish academics, for example, in publications of Simona Mesonienė,<sup>9</sup> Stefan Lelental,<sup>10</sup> Ilona Michailovič, Liubovė Jarutienė,<sup>11</sup> Andželika Vosyliūtė,<sup>12</sup> Włodzimierz Wróbel,<sup>13</sup> Mieczysław Ciosek,<sup>14</sup> Gintautas Sakalauskas,<sup>15</sup> etc. On the other hand, none of the publications mentioned above in Lithuania or Poland have presented an in-depth comparative analysis of the legal regulation and practical application of the conditional release in the two neighbouring countries.

Primary goals of this article are, as follows: 1) to explain the concept of the conditional release in international and national levels; 2) to disclose and

<sup>7</sup> Recommendation Rec(99)22 concerning prison overcrowding and prison population inflation. Compendium of Conventions, Recommendations and Resolutions relating to Prisons and Community Sanctions and Measures. Strasbourg, Council of Europe Publishing, 2021, pp. 166–169.

<sup>8</sup> Recommendation Rec(2003)22 on conditional release (parole). Available: <https://search.coe.int/cm?i=09000016805df03f> [last viewed 15.04.2025].

<sup>9</sup> Mesonienė, S. Lygtinio paleidimo instituto retrospektyva užsienio valstybėse ir Lietuvoje [The retrospective of parole release in foreign countries and Lithuania]. *Jurisprudencija*, 2010, No. 3 (121); Mesonienė, S. Teisiniai lyginamieji lygtinio paleidimo iš pataisos įstaigų aspektai [Parole: comparative legal aspects]. *Jurisprudencija*, 5(83), 2006, pp. 73–81.

<sup>10</sup> Lelental, S. Warunkowe przedterminowe zwolnienie. System Prawa Karnego. Kary i środki karne. Poddanie sprawcy próbie [Conditional Early Release. In: The Criminal Law System. Penalties and Penal Measures. Placing the Offender on Probation]. 2010, pp. 1064–1142.

<sup>11</sup> Michailovič, I., Jarutienė, L. Factors that influence parole boards' and judges' decisions on parole application in Lithuania. *Baltic Journal of Law & Politics*, 10(1), 2017.

<sup>12</sup> Vosyliūtė, A. Lygtinis paleidimas kaip integracijos prielaida: teismų sprendimų problemos. Bausmių taikymo ir vykdymo tarptautinis palyginimas, tendencijos ir perspektyvos Lietuvoje [Conditional Release as a Prerequisite for Integration: Problems in Court Decisions. In: International Comparison of Sentence Application and Enforcement, Trends and Perspectives in Lithuania]. Vilnius, 2017, pp. 205–231; Vosyliūtė, A. Lygtinio paleidimo iš pataisos namų taikymo teismų praktikoje probleminiai aspektai. Bausmių vykdymo sistemos teisinis reguliavimas ir perspektyvos Lietuvos Respublikoje [Problematic Aspects of the Application of Conditional Release from Correctional Institutions in Court Practice. In: Legal Regulation and Perspectives of the Sentence Enforcement System in the Republic of Lithuania]. Vilnius, 2010, pp. 95–115.

<sup>13</sup> Wróbel, W. Glosa do uchwały pełnego składu Izby Karnej SN z dnia 11.I.1999 r. I KZP 15/98 (dot. zastosowania przepisów nowego k.k. w odniesieniu do spraw warunkowego przedterminowego zwolnienia) [Commentary on the Resolution of the Full Chamber of the Criminal Division of the Supreme Court of 11 January 1999, Case No. I KZP 15/98 (concerning the application of the provisions of the new Criminal Code to cases of conditional early release)]. *Państwo i Prawo*, 3, 1999, p. 106.

<sup>14</sup> Ciosek, M. Psychologia sądowa i penitencjarna [Judicial and Penitentiary Psychology]. Warszawa, 2001.

<sup>15</sup> For example: Sakalauskas, G. Non-custodial sanctions and measures in Lithuania: A large bouquet with a questionable purpose and unclear effectiveness. Promoting non-discriminatory alternatives to imprisonment across Europe. Non-custodial sanctions and measures in the member states of the European Union. Lithuania, Coimbra: Instituto Jurídico Faculdade de Direito da Universidade de Coimbra, Colégio da Trindade, 2021.

compare legal application of conditional release preconditions (formal and substantive ground) in Lithuania and Poland; 3) to analyse and compare the statistics of practical application of conditional release in both countries. The authors of this article argue that, despite their high prison population rates, Lithuania and Poland are reluctant to use some of the probation instruments, allowing for an early release of detainees, such as the conditional release.

## 1. The concept of conditional release in international and national systems and the formal grounds of its application

The institute of conditional release is usually indicated in the legal acts of the Committee of Ministers of the Council of Europe. It should be noted that these legal acts are usually not mandatory but are recommendations. These recommendations describe the content and aim of conditional release and continuously promote the use of conditional release in the Member States of the Council of Europe.<sup>16</sup>

According to Recommendation Rec(2006)2-rev on the European Prison Rules,<sup>17</sup> steps must be taken to ensure a gradual return of prisoners to life in a free society, and it may be achieved by partial or conditional release under supervision combined with adequate social support. Undoubtedly, the most important is the Council of Europe Recommendation Rec(2003)22 on conditional release (parole),<sup>18</sup> which states “[...] that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community.” According to the Recommendation, a conditional release “is a community measure” and means “the early release of sentenced prisoners under individualised post-release conditions.”

Meanwhile, EU legal acts (as well as Council of Europe conventions<sup>19</sup>) envisage the institute of conditional release only indirectly, as a measure that can be applied in the cases of the transfer of execution of imprisonment or probation measures in another state. For example, Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions,<sup>20</sup> which regulates the transfer of those convicted by probation measures, indicates that “probation decision shall mean a judgment or a final decision of a competent authority of the issuing State taken based on such judgment: (a) granting a conditional release”. Furthermore, Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of

<sup>16</sup> For example, Recommendation CM/Rec(2010)1 on European probation rules. Available: <https://search.coe.int/cm?i=09000016805cfbc7> [last viewed 21.04.2025], etc.

<sup>17</sup> Recommendation Rec(2006)2-rev on the European Prison Rules. <https://search.coe.int/cm?i=09000016809ee581> [last viewed 20.04.2025].

<sup>18</sup> Recommendation Rec(2003)22 on conditional release (parole). Available: <https://search.coe.int/cm?i=09000016805df03f> [last viewed 15.04.2025].

<sup>19</sup> For example, Convention on the Transfer of Sentenced Persons (1983) and its additional protocols (1997, 2017). Available: <https://rm.coe.int/1680079529> [last viewed 21.04.2025]; etc.

<sup>20</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. OJ L 337, 16.12.2008, pp. 102–122.

their enforcement in the European Union,<sup>21</sup> which regulates the transfer of those convicted by imprisonment, stipulates that “Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time”.

Thus, EU legal acts and the Council of Europe recommendations describe conditional release as a tool helping to avoid de-socialisation of prisoners, reducing incarceration length, and setting the conditions for its transfer for execution in another state. Furthermore, the Recommendation on conditional release (parole) also distinguishes two types of release – mandatory and discretionary conditional release systems, and specifies their essential requirements. In the meantime, the definition and legal significance of the conditional release and the choice of the conditional release system are left to the competence of national legislators. It should be noted that Lithuania and Poland have chosen a discretionary release system (with certain features of a mandatory system),<sup>22</sup> according to which the imprisoned person, for example, in Lithuania, must serve a specific part of the punishment (formal ground) and demonstrate during the execution of imprisonment that their risk of criminal behaviour is low or that they have made evident progress in reducing it (substantive ground).

Various definitions of conditional release can be found in Lithuanian academic publications. According to Simona Mesonienė, conditional release is a form of release of a convict from serving full imprisonment time, whereby specific conditions are established, and the convict is encouraged to reform themselves further, subject to institutional supervision.<sup>23</sup> Andželika Vosyliūtė states that conditional release is a form of serving the deprivation of freedom sentence awarded by the court<sup>24</sup> (such a position was confirmed by the European Court of Human Rights in the case *D. Ganusauskas v. Lithuania*<sup>25</sup>). Ilona Michailovič and Liubovė Jarutienė mention that the judges in Lithuania treat conditional release as “an opportunity to motivate the sentenced individuals” and “an opportunity for the sentenced individuals to return to society”.<sup>26</sup> According to Gintautas Sakalauskas, the potential application of conditional release

<sup>21</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. OJ L 327, 05.12.2008, pp. 27–46.

<sup>22</sup> On the conditional release systems and their essence, see: *Tournier, P. V.* Systems of Conditional Release (Parole) in the Member States of the Council of Europe. Between the principle of equality and individualization, pragmatism. *Champ Penal-Penal Field, Varia*, 1, 2004. Available: <https://journals.openedition.org/champpenal/378> [last viewed 23.04.2025].

<sup>23</sup> *Mesonienė, S.* Teisiniai lyginamieji, p. 75.

<sup>24</sup> *Vosyliūtė, A.* Lygtinis paleidimas, p. 208.

<sup>25</sup> The European Court of Human Rights recalls that the “Convention does not confer, as such, a right to release on licence or require that parole decisions be taken by or subject to review by a court. A penalty involving deprivation of liberty, which the offender must undergo for a period specified in the court decision, is justified at the outset by the original conviction and appeal proceedings [...]. In the present case, the order for the applicant’s conditional release did not in any way affect the validity of the trial court’s judgment and the subsequent appeal procedures by which the applicant was convicted and sentenced to six years’ imprisonment. Nothing indicates that the causal link between the conviction and the re-detention was broken” (see: ECtHR decision on inadmissibility of application No. 47922/99 by *D. Ganusauskas v. Lithuania*. Available: GANUSAUSKAS v. LITHUANIA (coe.int) [last viewed 25.04.2025].

<sup>26</sup> *Michailovič, I., Jarutienė, L.* Lygtinio paleidimo iš pataisos įstaigų taikymo problemos Lietuvoje [The Problems of Parole Application in Lithuania]. *Kriminologijos studijos*, 4, 2016, pp. 162–163.

is one of the factors encouraging positive behaviour of sentenced individuals serving their prison sentences. In addition, it allows for limiting the negative effects of imprisonment, encourages the responsibility and self-sufficiency of the conditionally released, decreases the number of prisoners and the costs associated with prisons, etc.<sup>27</sup>

According to the Lithuanian Law on Probation,<sup>28</sup> conditional release in Lithuania is described as a conditional alternative to an imposed imprisonment during which the conditionally released person is supervised. This form of probation aims to ensure the effective resocialization of conditionally released individuals and reduce the recidivism of their criminal acts. In Lithuania, conditional release falls only within the remit of the Commission<sup>29</sup> on conditional release (for example, in cases of prisoners sentenced for negligent crimes) and in some cases (for example, in cases of prisoners sentenced to more than 10 years but less than 25 years of imprisonment), the decision of the Commission on conditional release has to be confirmed by the court. The conditional release application grounds are provided in the Code of Punishments Execution<sup>30</sup> of Lithuania (further, CPE of Lithuania).

The Polish criminal law and punishment execution doctrine describes conditional release as a probation measure,<sup>31</sup> an alternative to imprisonment<sup>32</sup> or the final stage of serving a prison sentence.<sup>33</sup> In addition, the Polish doctrine emphasizes

<sup>27</sup> Sakalauskas, G. Lygtinis paleidimas iš įkalinimo įstaigų įsigaliojus Probacijos įstatymui: teorija ir praktika [Release from prison on probation after the entry into force of the Probation Act: Theory and practice]. *Teisės problemos*, 4(82), 2013, pp. 11–15.

<sup>28</sup> Lietuvos Respublikos probacijos įstatymas [Law on Probation of Lithuania]. *Valstybės žinios*, 2012, Nr. 4-108.

<sup>29</sup> In 2012, nine Commissions on conditional release were established to assess better an individual's readiness to return to society and impose obligations and measures to be fulfilled during the conditional release. However, these regulatory changes created a conditional release decision-making system, where an individual's readiness to be released is first assessed by the commission on conditional release, but the commission's decision must be subsequently sustained by the court. The legislator sought to envisage a formal role for the court, assessing if the decision was adopted in compliance with the applicable formal requirements, but not evaluating its merits (reasonableness). However, practice evolved in a somewhat different direction, and the courts assessed not only the legal criteria of the decision on conditional release, but also the merits of the decision. Consequently, a double-filter conditional release system was formed, whereby two bodies must make decisions based on the same criteria and issue (see: *Nikartas*, S. Nuomonė atsakant į 2018-03-23 raštą Nr. (1.39) JR-2071 pateikta Lietuvos Respublikos Teisingumo ministerijai [Opinion in Response to the Letter No. (1.39) JR-2071 of 23 March 2018, Submitted to the Ministry of Justice of the Republic of Lithuania by Letter]. *Teisės e-aktualijos*, Nr. 2(15), 2018, pp. 19–22). Such a decision-making procedure formed by the courts that does not comply with the law, and difficulties in attracting society's representatives to serve as members of the commissions, as well as examples where in separate cases, the decision of conditional release depended on the composition of the commission (see: *Michailovič, I. Jarutienė, L. Lygtinio paleidimo*, p. 152; *Sakalauskas, G., Jarutienė, L., Kalpokas, V., Vaičiūnienė, R. Kalinimo sąlygos*, p. 222), were criticized by proposing to establish a professional conditional release commission. In 2025, a newly formed single centralized commission (composed of 11 members) began its activity. Moreover, to ensure the prevention of corruption and impartiality, as well as the misuse of information, for the first time in history, the commission considered anonymized information when solving the question of a specific convict's conditional release.

<sup>30</sup> Lietuvos Respublikos bausmių vykdymo kodeksas [Code of Punishments Execution of Lithuania]. *Valstybės žinios*, Nr. 73-3084, 2002; *TAR*, Nr. 15495, 2022-07-14.

<sup>31</sup> *Lelental, S. Warunkowe przedterminowe*, pp. 1064–1142.

<sup>32</sup> *Kuczyńska, H. Kształt i praktyka stosowania warunkowego przedterminowego zwolnienia. Alternatywy kary pozbawienia wolności w polskiej polityce karnej* [The Form and Practice of Applying Conditional Early Release. Alternatives to Imprisonment in Polish Criminal Policy], 2009, pp. 170–225.

<sup>33</sup> *Świda, Z. Charakter i stosowanie instytucji warunkowego przedterminowego zwolnienia z odbycia reszty kary pozbawienia wolności. Nauki penalne wobec problemów współczesnej przestępczości. Księga jubileuszowa z okazji 70 rocznicy urodzin Profesora Andrzeja Gaberle* [The Nature and Application



that the application of conditional release is based on scientific knowledge about the harmful effects of closed-type institutions, imprisonment in them, and the need to proportionally change the form of serving a sentence, taking into account changes in the personality of the convicted person.<sup>34</sup> The decision on the conditional release application in Poland is the court's competence in all cases.

In the Polish legislative system, the institute of conditional release is regulated in two legal acts: the Penal Code (further, PC of Poland) and the Penal Executive Code (further, PEC of Poland).<sup>35</sup> Articles 77–80, 82 of the PC of Poland regulate the substantive and formal grounds of this institute and the consequences of the expiry of the probationary period, while the procedure for application, the determination of obligations during the probationary period, the course of supervision and the revocation of conditional release are regulated by the provisions of the Articles 159–163 of the PEC of Poland. It should be noted that the conditional release, as an institute of a probationary nature, was regulated in all Polish criminal codifications (1932, 1969, and 1997). It is also necessary to remember the economic value of this institute – supervision of the convict in free conditions is cheaper than his/her long-term stay in prison. Conditional release is also a regulator of the prison population and an instrument that prevents prison overcrowding. Currently, there are three prerequisites of the conditional release: shortening the execution of the imprisonment being served, the convict's consent to establishing a specific contract, and providing support to the convict and placing him/her under judicial and probation supervision.

In both countries, the application of conditional release is connected with the actually served part of a sentence. According to Article 82 of CPE of Lithuania, conditional release may be granted to prisoners who have actually served the following minimum parts of their sentences: 1) after serving one-third of the imprisonment imposed – persons sentenced for negligent crimes, juveniles and other inmates if the sentence imposed does not exceed 4 years; 2) after serving half of the imprisonment imposed – prisoners sentenced for a sentence of more than 4 years and less than 10 years; (3) after serving two-thirds of the imprisonment imposed – prisoners sentenced to more than 10 years but less than 25 years of imprisonment. Prisoners not released after the above-mentioned term (except high-risk criminal behaviour offenders and persons sentenced for grave crimes or some serious crimes) are automatically released under the control of e-monitoring after serving three-quarters of the imprisonment imposed. Moreover, all prisoners who have not served a disciplinary penalty for a breach of discipline committed while serving a sentence may be released at least 3 months after the disciplinary penalty has been served.

It should be noted that the minimum term stipulated in the law, which must be fulfilled for conditional release, is consistently getting shorter, but it also has a negative impact on practice, since commissions on conditional release and courts often do not apply conditional release because a large part of the imprisonment remains to be served.<sup>36</sup> Besides, some authors emphasize that the differentiation

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of the Institution of Conditional Release from the Remainder of a Prison Sentence. In: *Penal Sciences in the Face of Contemporary Crime Problems. Jubilee Book on the Occasion of the 70<sup>th</sup> Birthday of Professor Andrzej Gaberle*, 2007, pp. 373–374.

<sup>34</sup> *Ciosek, M.* Psychologia sądowa, pp. 216–217; *Steuden, S.* Współczesne koncepcje depersonalizacji. *Zdrowie Psychiczne* [Contemporary Concepts of Depersonalization. Mental Health], 1983, pp. 30–36.

<sup>35</sup> Ustawa z dnia 6 czerwca 1997 r. kodeks karny [Act of 6 June 1997 – Criminal Code], Dz.U. z 1997 r., Nr 88, poz. 553 ze zm.; Ustawa z dnia 6 czerwca 1997 r. kodeks karny wykonawczy [Act of 6 June 1997 – Executive Criminal Code], Dz.U. z 1997 r., Nr 90, poz. 557 ze zm.

<sup>36</sup> *Vosyliūtė, A.* Lygtinis paleidimas, p. 215.

of conditions for conditional release, based on the duration of the sentence, is not in line with the purpose of punishment's execution – resocialization, as the needs and opportunities for resocialization depend on the person and not on the length of the sentence imposed. Additionally, the length of punishment depends primarily on the severity of the crime, which the legislator already takes into account when establishing appropriate lengths of imprisonment in the sanction of the article of the Criminal Code of Lithuania.<sup>37</sup>

The formal prerequisites for the application of conditional release in Poland are regulated in Article 77 of the PC of Poland. These prerequisites are mandatory, meaning the convict must obligatorily meet them to apply for conditional release. They also consist of serving a specific period of the sentence imposed. As a rule, a convict can be conditionally released after serving at least half of the sentence, and for a convict sentenced to a term of not less than 25 years – after serving 15 years of imprisonment. A convict under conditions of ordinary recidivism can be released after serving two-thirds of the sentence imposed, and under conditions of multiple recidivism, after serving three-fourths. A prisoner sentenced to life imprisonment may be conditionally released after serving 30 years of their sentence. The PEC of Poland also provides for a conditional release after a break in sentence. The formal requirements are, as follows: the sentence imposed must not be longer than 3 years, the convict has served at least 6 months of the sentence, and the break in sentence granted to him/her lasted at least 1 year.

These terms are instructive for the penitentiary court and are only minimum thresholds for applying the conditional release. Conditional release is imposed for a trial period, which, as a rule, is equal to the period remaining to serve the sentence in full, but must be between 2 and 5 years, for a repeating offender it cannot be shorter than 3 years, for a person sentenced to 25 years or more it must be at least 10 years, while for a person sentenced to life imprisonment the trial period lasts for life. In addition, the court may order probation for the probationary period and oblige the convict to fulfil certain obligations.

A comparison of the legal regulations and scientific approaches in Poland and Lithuania shows that in both countries, conditional release, following international recommendations, is described as a probationary measure, the essence of which is the performance of a specific (traditionally, the last) part of imprisonment not in a penitentiary facility, but while free in society with certain obligations (restrictions) and under the supervision (*inter alia*, e-monitoring) of probation services. In both countries, a discretionary conditional release model is applied, according to which the convict must serve a specific part of the imposed imprisonment (formal ground), and the prediction of their behaviour that allows for the conclusion that the person shall not commit a new crime again (substantive ground). It should be emphasized that in Poland, a more exhaustive list of categories of specific parts of imposed imprisonment to be served to apply the conditional release is provided, and these terms are longer than those provided in Lithuania.

## 2. Substantive ground of application of conditional release

As to the substantive ground, in Lithuania, the conditional release can be granted for prisoners with a “low risk of criminal behaviour” or who “have made evident progress” in reducing the risk of their criminal behaviour. The definition

<sup>37</sup> Sakalauskas, G. Non-custodial sanctions, p. 8.



of the progress of risk reduction (presented in Article 82 CPE of Lithuania) is obscure and does not specify how risk reduction progress should be estimated, so it induces various interpretations. It should be noted that for the decision on conditional release, the conclusion of the social investigation must be submitted, which contain information about the resocialization measures applied to this convict and the results of their implementation, the risk of his/her criminal behaviour and the changes related to this risk during the execution of the sentence. This means that social behaviour analysis in the conclusion prepared by the imprisonment facility and an individual's criminal behaviour risk assessment play an essential role in establishing the substantive grounds for conditional release. In 2012, the director of the Prisons' Department of Lithuania approved 6 methodologies for assessing the risk of criminal behaviour.<sup>38</sup> OASys methodology is best known.<sup>39</sup> It requires an assessment of the convict's personality before the commission of the crime and during the execution of the sentence, and the obtained results are reflected in the conclusion of the social investigation (which can indicate low, medium, or high risk). Some scientists noticed that commissions on conditional release tend to apply conditional release when the risk of the convict's criminal behaviour is low or moderate. In contrast, judges tended to apply conditional release when inmates were classified as low-risk only.<sup>40</sup> Moreover, the Lithuanian court practice shows that while deciding on the issue of conditional release, courts were relying not on final conclusions of the social investigation and the risk of criminal behaviour calculated according to the OASys assessment methodology, but selecting certain circumstances from the documents mentioned above and giving them priority over the final conclusions of the social investigation.<sup>41</sup> For example, when making a decision on conditional release, it is based on the convict's criminal history (number

<sup>38</sup> HCR-20 Assessing Risk for Violence; Historical, Clinical, Risk Management; SV Hare Psychopathy Checklist: Screening Version; SVR-20 The Sexual Violence Risk; SARA – The Spousal Assault Risk Assessment; Brief Spousal Assault Form for the Evaluation of Risk; OASys – The Offender Assessment System. (See more: Kalėjimų departamento prie Lietuvos Respublikos teisingumo ministerijos direktoriaus 2012 m. birželio 25 d. įsakymas Nr. V-211 dėl nusikalstamo elgesio rizikos vertinimo metodikų ir elgesio pataisos programų aprobavimo Lietuvos bausmių vykdymo sistemoje tvarkos aprašo patvirtinimo ir adaptuotų nusikalstamo elgesio rizikos vertinimo metodikų ir elgesio pataisos programų aprobavimo [Order No. V-211 of the Director of the Prison Department under the Ministry of Justice of Lithuania, dated 25 June 2012, On the Approval of the Procedure Description for the Validation of Criminal Behavior Risk Assessment Methodologies and Behavioral Correction Programs in the Lithuanian Penal Enforcement System and the Validation of Adapted Criminal Behavior Risk Assessment Methodologies and Behavioral Correction Programs]. *Valstybės žinios*, Nr. 72-3770, 2012. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.428643/asr> [last viewed 23.04.2025].

<sup>39</sup> OASys methodology is composed of 12 empirically tested static and dynamic risk of criminal behaviour measurement criteria: 1) criminal history (past and present offences); 2) analysis of committed crimes; 3) assessment of living conditions (what is the quality of one's dwelling location); 4) education, studying and ability to find employment (history of education and employment); 5) finances and income (individual's ability to utilise their income); 6) relationships (quality of individual's relationships with others as well as its influence on criminal behaviour is assessed); 7) lifestyle and circle of friends (hobbies and whom does one interact with); 8) drug abuse; 9) alcohol abuse; 10) emotional well-being (emotional issues adversely affecting one's and related individuals' daily life); 11) reasoning and behaviour (nuances of individual's reasoning, especially in relation with social problems); 12) one's own perception of committed crimes and supervisory measures imposed (see: Čėsniėnė, I., Laurinavičius, A., Ūstinavičiūtė, L. Nusikalstamo elgesio rizikos vertinimas Lietuvoje: esama situacija ir raidos tendencijos [Criminal risk assessment in Lithuania: current situation and future trends]. *Kriminologijos studijos*, No. 3, 2015, p. 65).

<sup>40</sup> Vosyliūtė, A. Lygtinis paleidimas, pp. 224–225; Michailovič, I., Jarutienė, L. Factors that influence parole, p. 238.

<sup>41</sup> Sakalauskas, G., Jarutienė, L., Kalpokas, V., Vaičiūnienė, R. Kalinimo sąlygos, pp. 218–219.

of convictions, nature of crimes committed, etc.), part of the imprisonment served, implementation of a social rehabilitation plan,<sup>42</sup> previously applied conditional release or suspension of the sentence execution, compensation of damages,<sup>43</sup> etc. The results of research show that conditional release in most cases is not applied because: a) the served part of the imprisonment has been too brief; b) due to the poor motivation of the convict himself/herself; c) high risk of repeated criminal behaviour or no reduction in the level of such risk; d) the convict does not implement the social rehabilitation plan; e) the convict does not have a place of residence; f) the convict does not maintain relations with their relatives; g) in cases of “publicly resonant” crimes.<sup>44</sup>

As in Lithuanian law, in the Polish legal system, the substantive ground (provided in the PC of Poland) is also subject to verification when making a decision on conditional release. Their summation to form a positive criminological prognosis of the offender, i.e., a reasonable belief that the conditionally released person will observe the rule of law and fulfil the obligations imposed for the probationary period and, in particular, will not commit a new crime again. The court examines the following substantive circumstances: attitude, personal qualities and conditions, circumstances surrounding the commission of the crime, behaviour after the commission of the crime, and behaviour while serving the sentence. According to the Polish case law, it is emphasized that the penitentiary court should assess the entire period of serving the sentence and incidental failures of the convict to comply with the prison regulations should not affect the comprehensive assessment of the criminological prognosis, since the process of rehabilitation may proceed unevenly and not simultaneously in all periods of serving the sentence. At the same time, however, the mere absence of educational troubles and regulatory offenses, as well as compliance with the instructions of prison staff, are insufficient to establish a positive criminological prognosis justifying the granting of conditional release, which, by its very nature, should be not only meritorious but, above all, expedient. In particular, it is recognized that decisions on conditional release should not be based on general preventive goals and only individual preventive goals, taking into account only the corrective purposes of punishment: rehabilitation and correction. It should also be borne in mind that the penitentiary court should not delay too long in granting conditional release to a convict who has acquired the entitlement, as this could cause a gross disproportion between the punishment covered by the conditional release and the probation period. Ensuring minimum standards of adjudication in cases of conditional release requires precise determination of the content of each substantive premise, which, as Stefan Lelental notes, is theoretically and practically not feasible.<sup>45</sup>

Furthermore, it should be noted that different groups of prisoners excluded from the possibility of a conditional release application in Poland and Lithuania can be identified. For example, in Lithuania, according to the Article 83 of the CPE the following groups of prisoners are excluded from the conditional release: a) individuals sentenced for Crimes against the Independence, the Territorial Integrity and the Constitutional Order of the State of Lithuania; b) individuals sentenced for sexual crimes against minors; c) individuals sentenced for intentional crimes

<sup>42</sup> Michailovič, I., Jarutienė, L. Lygtinio paleidimo, pp. 159–160.

<sup>43</sup> Vosyliūtė, A. Lygtinis paleidimas, pp. 221–223.

<sup>44</sup> Michailovič, I., Jarutienė, L. Lygtinio paleidimo, pp. 152, 172, 179; Vosyliūtė, A. Lygtinis paleidimas, pp. 215, 224.

<sup>45</sup> Lelental, S. Warunkowe przedterminowe, pp. 1064–1142.

committed during temporary detention, custody, arrest or serving imprisonment; and, since the most recent amendments of law, d) individuals sentenced for Crimes against Humanity and War Crimes.<sup>46</sup> The question of those to whom conditional release cannot be applied is under discussion. For example, as noted by Gintautas Sakalauskas, blocking the ability to apply conditional release to individuals who have committed sexual crimes against minors prevents full implementation of the requirements of Article 1 of the CPE of Lithuania, which states that the purpose of the laws on the execution of punishment is to establish such a procedure for executing the punishments that, after serving the sentence, the convicted person shall pursue their life goals legally. Additionally, the non-application of conditional release when individuals are sentenced for intentional crimes committed during temporary detention, custody, arrest, or serving an imprisonment is also criticized. Gintautas Sakalauskas raised the question whether a crime committed in an imprisonment facility and of itself (without any conditions) should eliminate the possibility of granting conditional release, since registration of committed crimes depends on the relations between the prisoners and the institution's employees, and the latency of crimes in prisons is high.<sup>47</sup>

In Poland, specific categories of convicts have also been specified by the provisions of the PC of Poland, for whom the possibility of applying the conditional release has been significantly reduced or completely abolished. The difference in Poland's case is that, in particularly justified cases, the criminal court may, when imposing the sentence, set even stricter formal restrictions to apply for conditional release than those provided for under the general rules. In this case, there are no guidelines for extending the term, which provides room for a great deal of judicial discretion. This may be incompatible with the principle of individualization of serving a sentence and undermine the effectiveness of rehabilitation through imprisonment. This provision is a kind of vote of no confidence concerning the penitentiary court. The assumption is that it may treat the convict too liberally and allow him/her to leave prison too soon.<sup>48</sup>

In Poland, the limit on the minimum sentence necessary to serve in order to apply for conditional release was set at as much as 40 years, which *de facto* excluded specific categories of convicts from benefiting from this institute. This causes a sense of hopelessness, which leads the convicted person to lose responsibility for his conduct.

What is more, when imposing a life imprisonment for an act committed after a final conviction for a crime against life, health, sexual freedom, against public security, or of a terrorist nature, for a sentence of more than 20 years' imprisonment or life imprisonment, the court may impose a total ban on conditional release. When imposing a sentence of life imprisonment, the court may impose a prohibition of conditional release, if the nature and circumstances of the act and the personal characteristics of the offender indicate that their remaining at liberty will cause

<sup>46</sup> The legislator has amended the list of situations when the conditional release cannot be applied a couple of times. For example, from 1 May 2003 to 1 July 2012, conditional release could not be applied to individuals serving their sentences in imprisonment institutions in disciplinary group conditions. Such an exception was criticized, stating that the law provided for many opportunities for prison administration to punish the prisoners disciplinarily and limit their conditional release possibilities (see: Sakalauskas, G. Lygtinio paleidimo sistema ir korupcijos rizika [The Conditional Release System and the Risk of Corruption]. Vilnius, 2010, p. 16). Currently, the law does not prohibit applying conditional release in such situations.

<sup>47</sup> Sakalauskas, G. Lygtinis paleidimas, p. 19.

<sup>48</sup> Wróbel, W. Glosa do uchwały, p. 106.

a permanent danger to the life, health, freedom, or sexual freedom of others. The prohibition on applying for conditional release of specific categories of convicts, established at the adjudication stage, is inconsistent with the European Prison Rules and Recommendation on conditional release (parole). The basic justifications for the desirability and rationality of granting conditional releases are based on scientific knowledge of the harmful effects of total institutions, the prisonization that occurs in them, and the necessity of modifying the sentence during its serving in proportion to the changes occurring in the convict's personality.<sup>49</sup> Judgment on extending the period to apply for conditional release or its total prohibition at the time of sentencing should be assessed as absurd and excessively punitive.

A comparison of the legal regulations and scientific approaches in Poland and Lithuania shows that in both countries, the substantive ground of conditional release is practically identical, and consists of an assessment of the convicted individual's personality and behaviour, leading to the conclusion that the person shall fulfil imposed obligations (restrictions) during the probationary period and will not commit a new crime again. In Lithuania, the determination of the substantive ground for conditional release is based on a more formalised criminal behaviour risk assessment and a conclusion prepared by the imprisonment facility. It should be noted that in both Lithuania and Poland, in court practice, the decision on conditional release in some instances is determined not by the overall assessment of the convict, but by individual aspects of the assessment. In both countries, the law provides for specific groups of prisoners excluded from the conditional release application. Moreover, in Poland, criminal courts have the discretion to set stricter formal restrictions to apply for conditional release, which is impossible in Lithuania.

### 3. Application of conditional release in practice

In almost every program of the governments of Lithuania since regaining independence in 1990, the question of the conditional release regulation has been mentioned. For example, the program of the XVIII Government of Lithuania (adopted in 2020) stated that improving the conditional release system by establishing the most precise possible criteria and procedures of its implementation is one of the government's priority tasks.<sup>50</sup> Despite the constant essential changes in conditional release regulation in 1995, 1999, 2003, 2012, 2015 and 2020, the aim of which most often was motivated by the wish to decrease incarceration rates in Lithuania and take into account the needs of convicts, the application of conditional release in practice can be described as often not complying with the declared objectives, unstable and inconsistent.

For example, 1995–2003 was characterized by the highest number of prisoners in Lithuania. In 1996, there were 13 002 prisoners, in 1999 – 14 596 prisoners, and in 2002 – 11 566 prisoners<sup>51</sup>, but at the same time, conditional release was also widely applied (for example, in 1995 – 4495 prisoners were conditionally released, in 2002 – 4211 prisoners, in 2003 – 4927 prisoners, etc.). Meanwhile, in other periods (2012–2018 and 2019–2022), the number of prisoners consistently decreased, e.g., from

<sup>49</sup> Ciosek, M. *Psychologia sądowa*, pp. 216–217; Steuden, S. *Współczesne koncepcje*, pp. 30–36.

<sup>50</sup> Lietuvos Respublikos Seimo nutarimas dėl XVIII Lietuvos Respublikos Vyriausybės programos Nr. XIV-72 [Resolution of the *Seimas* of the Republic of Lithuania on the XVIII Government Programme of Lithuania No. XIV-72]. TAR, 2020-12-11, Nr. 27121.

<sup>51</sup> The Lithuanian statistics referred to in the article are official statistics of the Lithuanian National Courts Administration, Lithuanian Prison Service and Lithuanian Probation Service.

**Table 1. Number of requests examined by the Commission and number of conditionally released persons in Lithuania**

<b>Year</b>	<b>Number of requests examined by the Commission on conditional release</b>	<b>Number of conditionally released persons</b>
2016	No data	826
2017	No data	629
2018	No data	449
2019	No data	430
2020	No data	984
2021	2729	889
2022	2682	926
2023	3017	1057

8413 (2012) to 5799 prisoners (2018); from 5635 (2019) to 4270 prisoners (2022). At the same time, the application of conditional release also decreased, for example, from 1198 conditionally released (2012) to 449 conditionally released (2018).

The application of conditional release was also inconsistent, as the comparison of statistical data of individual periods shows significant fluctuations (see Table 1). For example, from 1995 to 1997, there were around 12 000 prisoners, and conditional release was applied to an average of 3800 convicts. From 1998 to 2000, there were around 14 100 prisoners, and conditional release was applied to an average of 3150 convicts. From 2002 to 2004, there were around 10 200 prisoners, and conditional release was applied to an average of 3882 convicts. After the 2012 reform related to the adoption of the new Lithuanian Law on Probation, statistics for individual periods show an even more significant decrease in the use of conditional release: in 2012–2015, on average each year, there were 8085 prisoners, and conditional release was applied to 1109 convicts on average, and in 2016–2018 – an average each year of 6060 prisoners, and conditional release was applied to an average of 635 convicts. In 2020–2022, on average each year, there were 4644 prisoners, and the application of conditional release increased to an average of 897 convicts.

Thus, the statistics of the application of conditional release permit to state that the declared goals of reducing the number of prisoners and considering the needs of convicts were not achieved.<sup>52</sup> However, it should be noted that when evaluating the last reform of 2020 and its results during 2020–2023, we can currently agree with the opinion expressed in the doctrine that “it is not clear if this is a new trend.”<sup>53</sup> Finally, it is worth noting the stereotype often stressed in the Lithuanian media that conditionally released individuals are likely to commit repeated crimes and are dangerous to society. However, Lithuania’s statistics and scientific research<sup>54</sup> do not confirm such a stereotype; for example, in 2020, only 12 persons, and in 2021, only 7 persons, committed new crimes during the conditional release period.

<sup>52</sup> Declared goals were achieved only by the reform of the entire criminal justice system implemented in 2003, during which the new Criminal Code, Code of Criminal Procedure and CPE of Lithuania were adopted and entered into force.

<sup>53</sup> Sakalauskas, G. Non-custodial sanctions, p. 13.

<sup>54</sup> Sakalauskas, G., Jarutienė, L., Kalpokas, V., Vaičiūnienė, R. Kalinimo sąlygos, p. 410.

In Poland, for the analysis of changes in the dynamics of the incarcerated, it is necessary to consider the numerous amnesties carried out in 1974, 1977, 1981, 1983, 1984, 1986, and 1989, which largely influenced the decrease in the number of inmates.<sup>55</sup> The latest Polish official penitentiary statistics are available for 2022 in the form of the Annual Statistical Information of the Ministry of Justice and the Central Board of the Penitentiary Service,<sup>56</sup> which show trends in penitentiary policy similar to those observed in Lithuania. The number of incarcerated in Poland in 2021 was 71 209; in 2022, it was 72 513.

Several factors influence the regulation of the prison population. Still, the most significant should be considered, among others, legislative changes, consisting in the criminalization or decriminalization of some social problems, the general level of legal culture of society, manifested, on the one hand, in the willingness to report crimes, on the other hand, in the reliability of formalized social control bodies to record reports, evidentiary activity during court proceedings and, finally, the policy of applying conditional release. As for the legislative changes in recent years in Poland, quite significant in reducing inmates was the legislative change of 2013, involving the repeal of Article 178a para. 2 of the PC of Poland, which reclassifies driving a vehicle other than a motor vehicle, in a residential zone or traffic zone, under the influence of alcohol or drugs as a misdemeanour. As a result of this legislative change, there was a change in the sentences of imprisonment, enforceable to custodial sentences of up to 30 days, which resulted in nearly 1300 convicts leaving prisons in 2013.<sup>57</sup>

Concerning the policy of applying conditional release in Poland (as in Lithuania and other post-Soviet countries), one notices a growing “austerity” in the policy of using this institute (limiting the conditions of application) and an increase in punitive and penal populism<sup>58</sup>. Despite successive legislative changes in this

<sup>55</sup> These amnesties, in retrospect, should be evaluated as absolutely necessary, since, given Poland's geopolitical situation in those years, people who committed “politicized crimes” were sent to penitentiary institutions, propagandistically beneficial for strengthening the authority of those in power.

<sup>56</sup> See more: <https://sw.gov.pl/strona/statystyka-roczna> [last viewed 23.04.2025].

<sup>57</sup> See more: *Atlas Przestępczości* 6, p. 106.

<sup>58</sup> Penal populism on conditional release was not analysed more widely and deeply in this article. However, it should be noted that penal populism on conditional release in Poland and Lithuania most often manifests itself at the legislative level, since from time to time some members of parliament propose to tighten the conditions of conditional release, expand the circle of prisoners to whom conditional release does not apply, etc. Sometimes, the legislator (despite scientific criticism and arguments about their non-compliance with international standards) accepts such proposals. There is no doubt that the attitude of the parliament and part of the public is seen (or even feels pressure) by judges, which indirectly influences the stricter application of conditional release for convicts, especially sentenced for certain “more sensitive” crimes (e.g., sexual crimes, crimes against children, etc.). Penal populism on conditional release in Poland and Lithuania most often manifests itself at the legislative level, when some members of parliament propose to tighten the conditions of conditional release, expand the circle of prisoners to whom conditional release does not apply, etc. Sometimes, the legislator (despite scientific criticism and arguments about their non-compliance with international standards) accepts such proposals. There is no doubt that the attitude of the parliament and part of the public is seen (or even feels pressure) by judges, which indirectly influences the stricter application of conditional release for convicts, especially sentenced for certain “more sensitive” crimes (e.g., sexual crimes, crimes against children, etc.).



area, which declared respect for international recommendations, statistics show a disturbing trend in using this institute in recent years. In Poland, from year to year, the number of applications submitted for conditional release decreases, and fewer applications are granted. The percentage of conditional releases granted to the number of applications submitted in 2012 was 46.1%, in 2016 – 33.0%, and in 2019 – only 25.3%.<sup>59</sup> Similar to the policy of applying conditional release in Poland is the policy of granting conditional release from prisons, which are also becoming fewer yearly. According to the Bureau of Information and Statistics of the Central Board of Prison Service, the population of prisons in Poland as of 2023 is at 92.12%, but at the same time, the number of long-term prison sentences of more than 10 years and life imprisonment is increasing.<sup>60</sup> No change in the trends of the policy of applying conditional release may, in the not-too-distant future, restore the problem of excessive prison overcrowding.

Statistics presented in Table 2 show the number of conditional releases granted in Poland and the distribution of applications for conditional release by the institution of the application for release between 2016 and 2023. The total number of requests for conditional release has decreased from 34 692 (2016) to 25 767 (2020) and 20 299 (2023). Meanwhile, the number of conditional releases granted in Poland has also steadily decreased in recent years, for example, from 11 431 (2016) to 6158 (2020) and 5019 (2023). As mentioned earlier, the prison population in Poland has increased slightly in recent years, but it is nevertheless visible and may be significantly influenced by the tightening of the policy of granting conditional releases.

Table 2. Total number of requests, successful and unsuccessful applications for conditional release in Poland

<div>Year</div> <div>Institution</div>	2016	2017	2018	2019	2020	2021	2022	2023
Total requests for conditional release	34 692	31 771	30 296	28 026	25 767	23 028	22 012	20 299
Successful applications	11 431	9584	8554	7087	6158	4973	5209	5019
Director of prison	6791	5700	4680	3309	2543	1541	1609	1573
Prosecutor or court	2	1	2	2	4	1	1	4
Probation officer	7	2	8	7	9	6	6	5
Convicted person or defence counsel	4631	3881	3864	3769	3602	3425	3593	3437

<sup>59</sup> See more: Atlas Przestępczości 6, pp. 106, 119.

<sup>60</sup> See more: Atlas Przestępczości 6, p. 115.

Continuation of the Table 2

<b>Year</b> <b>Institution</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Unsuccessful applications</b>	<b>23 258</b>	<b>22 186</b>	<b>21 737</b>	<b>20 936</b>	<b>19 609</b>	<b>18 055</b>	<b>16 803</b>	<b>15 274</b>
Director of prison	504	603	659	410	209	97	108	78
Prosecutor or court	0	1	0	0	1	0	1	1
Probation officer	8	6	9	11	6	4	6	2
Convicted person or defence counsel	22 746	21 576	21 069	20 517	19 393	17 954	16 688	15 193
Applications considered by the court of its own motion	3	1	5	1	0	0	0	0

Source: <https://www.sw.gov.pl/strona/Statystyka>

According to Polish law, those entitled to submit an application for conditional release are: the director of the penitentiary institution in which the inmate is detained, the prosecutor, the court, the probation officer, the convict, and his/her defence counsel. The court examines the applications with full procedural observance of the principles of judicial independence. Still, in practice, there are visible trends that a decisive influence on positive decisions on granting conditional release is the fact that applications to the court are submitted by the director of the penitentiary institution, i.e., *de facto* by prison officers working directly with the inmate, rather than by other entities entitled to submit applications. This may raise objections from a formal and procedural point of view, but let us draw attention to the fact that the most accurate opinion as regards the evaluation of the positive criminological prognosis of the convict required for conditional release is the one that can be given by those who are in the closest contact with the inmate.

Table 2 also reflects the courts' lack of activity in submitting applications for conditional release *ex officio* and the marginal activity of prosecutors, courts, and probation officers in this area. Prosecutors, courts, and probation officers (all together) have submitted a maximum of only 24 successful and unsuccessful applications for conditional release out of 30 296 applications (2018), and 20 successful and unsuccessful applications for conditional release out of a total of 28 026 (2019) and 25 167 (2020) applications. Furthermore, statistics of Table 2 shows that the majority of applications are submitted by convicted persons or their defence counsel, for example, in 2016, 29 537 applications out of 34 692, or 85.1% of all applications; in 2020, 22 995 applications out of 25 767, or 89.2% of all applications; and in 2023, 18 630 applications out of 20 299, or 91.8% of all applications.

It should be noted that the subject who submitted successful conditional release applications changed significantly between 2016 and 2023: while in 2016–2018 it was the prison director (for example, in 2016, prison directors submitted 6791 successful applications out of all 11 431 successful applications), whereas in 2020–2023, it became the convicted person or their defence counsel (for example, in 2023, they submitted 3437 successful applications out of all 5019 successful applications). However, applications submitted by directors of penitentiary institutions have resulted in negative decisions less frequently than those submitted by convicts and their defence counsels.

Finally, the number of total applications that produced negative decisions is three times greater than those which resulted in positive decisions, for example, in 2022, 5209 successful applications, that brought a positive decision, and 16 803 unsuccessful applications; in 2023, 5019 successful applications and 15 274 unsuccessful applications. The data proves that the conditional release in Poland is not applied following the European recommendations, as the last stage of serving the sentence in non-custodial conditions should be obligatory.<sup>61</sup>

There are four categories of convicts in Polish prisons: juveniles (M), first-time convicts (P), recidivists (R), and those serving military detention (W). The effectiveness of an application for conditional release depends on the category to which a given prisoner is assigned. Table 3 presents a summary of successful applications for granting conditional release, taking into account the penitentiary category to which the convict was classified.

**Table 3. Total number of successful applications by the categories of convicts in Poland**

<div>Year</div> <div>Applicant</div>	2016	2017	2018	2019	2020	2021	2022	2023
Successful applications.	M-99	M-72	M-52	M-33	M-32	M-14	M-21	M-16
In total	P-6936	P-5807	P-5096	P-4367	P-3804	P-3085	P-3246	P-3077
	R-4399	R-3706	R-3411	R-2689	R-2322	R-1874	R-1942	R-1932
	W - 0	W - 0	W-0	W - 1	W - 0	W - 0	W - 0	W - 0

By far the most frequent use of the institute of conditional release is made by first-time convicts, for example, in 2016, 6936 applications of this group of convicts were successful out of a total of 11 434 successful applications; in 2020, 3804 applications – out of 6158; and in 2023, 3077 applications – out of 5025 applications. Such a result is obvious, since they constitute the largest group among the inmates and their criminological prognosis is usually more certain than that of persons with criminal careers or juveniles. Recently, the policy of applying conditional release has been tightened towards all categories of convicts (except convicts serving military detention).

In conclusion, it can be stated that the statistics on the application of conditional release show an evident trend of tightening the policy of applying this probation measure in Poland, which only confirms the strengthening of the punitive nature

<sup>61</sup> Recommendation Rec (2006) 2-rev on the European Prison Rules. Available: <https://search.coe.int/cm?i=09000016805df03f> [last viewed 20.04.2025].

of criminal policy. Meanwhile, in Lithuania, the application of conditional release has slightly increased in the last three years (2020–2023). However, this does not yet permit to recognize that this is already a stable (and positive) trend. Although a comparison of the application of conditional release in Poland and Lithuania shows some differences, it can hardly be admitted that both countries' practices follow international recommendations, according to which the last part of imprisonment should be served outside a prison.

## Summary

In Poland and Lithuania, conditional release is described as an institute of a probationary nature, the essence of which is the performance of a specific (traditionally, the last) part of imprisonment not in a penitentiary facility, but while free in society, but with certain obligations (restrictions) and under the supervision (*inter alia*, e-monitoring) of probation services. In both countries, a discretionary conditional release model is applied, according to which the convict must serve a specific part of the imposed imprisonment (formal ground), and the prediction of their behaviour that allows for the conclusion that the person shall not commit a new crime in the future (substantive ground). In Poland, a more exhaustive list of categories of specific parts of imposed imprisonment to be served to apply the conditional release is provided, and these terms are longer than those provided in Lithuania.

The substantive grounds for conditional release are practically identical in Poland and Lithuania. It consists of an assessment of the convicted individual's personality and behaviour, leading to the conclusion that the person shall fulfil imposed obligations (restrictions) during the probationary period and will not commit a new crime again. In Lithuania, the determination of the substantive ground for conditional release is based on a more formalised criminal behaviour risk assessment and a conclusion prepared by the imprisonment facility, whilst in Poland criminal courts have the discretion to set stricter formal restrictions to apply for conditional release, which is impossible in Lithuania. In the court practice of both countries, the decision on conditional release in some instances is determined not by the overall assessment of the convict, but by individual aspects of the assessment. In both countries, the law provides for specific groups of prisoners excluded from the conditional release application, which is criticized in both states' doctrine.

The statistics on the application of conditional release show an evident trend of tightening the policy of applying this probation measure in Poland, which only confirms the strengthening of the punitive nature of criminal policy. Meanwhile, in Lithuania, the application of conditional release has slightly increased in the last three years (2020–2023). However, this does not yet permit to recognize that this is already a stable (and positive) trend. Furthermore, the application of conditional release in Poland and Lithuania cannot be assessed as follows international recommendations, according to which the last part of imprisonment should be served outside a prison. Taking into account this, it is worth considering whether applying a mandatory conditional release model for specific categories of convicts should be foreseen in Poland, and extended in Lithuania, which would create legal prerequisites for a wider application of conditional release.

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