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Conditional release: a procedural mechanism for adapting the enforcement of custodial sentences : A study of Algerian law in the light of international standards and French and Finnish legislation

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Abstract

This study examines conditional release from two perspectives: its legal nature, and the safeguards surrounding decisions to grant, refuse or revoke it. It proceeds on the basis that conditional release does not replace or reduce the sentence, but rather transfers the enforcement of the remainder of the sentence to the community, as evidenced by Article 147 of Law No. 05-04, which counts its duration as time served. It then assesses its conditions and the competent authority responsible for granting, revoking and monitoring those released, both before and after the Criminal Procedure Code No. 25-14 of 2025, in light of the Council of Europe's 2003 recommendation and the case law of the European Court of Human Rights, whilst comparing it with French and Finnish legislation. It concludes that the reform has brought Algerian law closer to international standards regarding procedural safeguards, whilst the criteria for granting conditional release remain vague; the financial condition continues to link freedom to the ability to pay; and post-release obligations and support fall short of what is required to achieve the objective of social reintegration.

Keywords: conditional release, adjustment of sentence, sentencing judge, social reintegration, fair trial.

Introduction

The enforcement of custodial sentences is no longer a single, continuous period ending upon the expiry of the sentence imposed; the modern legislator has divided this period between time served behind bars and time spent in the community under supervision. Parole is the oldest and most widely applied form of this division; it has been regulated by the Algerian legislature in Articles 134 to 150 of Law No. 05-04, which contains the law governing prisons and the social reintegration of prisoners¹, Between 2005 and April 2018, approximately 23,805 prisoners benefited from this scheme², followed by 21,000 prisoners in the first nine months of 2024 alone³. This raises a question that the figures do not answer: is release granted because the convicted person has demonstrated their ability to reintegrate into society, or because the prison system no longer has the capacity to accommodate them?

The French data explains why legislation has focused on this system, as the reoffending rate within the five years following release stood at 63 per cent amongst those who left prison upon completion of their sentence without any adjustments, compared with 39 per cent amongst those granted conditional release⁴. This difference should not be taken

¹ Law No. 05-04 of 6 February 2005, containing the Law on the Organisation of Prisons and the Social Reintegration of Prisoners, Official Gazette, Issue No. 12 of 2005, as amended and supplemented by Law No. 18-01 of 30 January 2018, Official Gazette, No. 5 of 2018.

² General Directorate for Prison Administration and Reintegration, Reintegration Regulations, dgapr.mjustice.gov.dz, accessed 21 September 2026.

³ 21,000 prisoners have benefited from conditional release since the start of 2024, El Tera Algeria website, 29 October 2024, citing the Algerian Press Agency.

⁴ Annie Kensey and Abdelmalik Benaouda, 'The risks of reoffending among those released from prison: A new assessment', Cahiers d'études pénitentiaires et criminologiques, No. 36, Directorate of Prison Administration, May 2011, pp. 1–8.

as conclusive evidence, as those granted conditional release undergo a pre-selection process, but it does illustrate that the manner of release from prison is not a neutral detail.

This system has entered a new phase with the enactment of Law No. 25-14, which includes the Code of Criminal Procedure; its fourth book is devoted to the judicial authorities responsible for enforcing sentences and the procedures followed before them⁵. Consequently, an application for release according to the Ministry of Justice, is submitted by the prisoner or their defence counsel, and is decided in accordance with the principles of public proceedings, the right to be heard, and the rights of defence and litigation at two levels⁶. The significance of this becomes clear in light of what has preceded: the supervision of the enforcement of sentences under Order No. 72-02 was described as administrative supervision carried out by a judge⁷, and Law No. 05-04 did not significantly alter the essence of this framework, as it entrusted the adjudication of appeals against the decisions of the judge responsible for the enforcement of sentences to an administrative committee attached to the Minister of Justice⁸, nor did it grant the prisoner the right to appeal against a refusal of release; they may only submit a new application after three months. Consequently, some legal scholars have called for reasons to be given for the refusal and for the right to appeal against it to be granted⁹. The question is therefore no longer whether conditional release is an administrative or a judicial matter, but rather: what are the implications of this shift in understanding the nature of the system and its safeguards?

The answer requires, first, a clarification of the nature of conditional release. Article 147 of Law No. 05-04 considers the period spent by the released prisoner on conditional release to be a sentence already served, and, upon its revocation, obliges the prisoner to serve the remainder of the sentence¹⁰. Thus, the sentence is neither extinguished nor replaced by conditional release; rather, the place and manner of its enforcement are altered.

Significance of the study: The nature of the safeguards required when granting, refusing or revoking conditional release depends on how it is classified; the judicial bodies established by Law No. 25-14 have yet to publish any case law on its application, and therefore require criteria by which to interpret the new text—criteria which the text itself does not provide.

Previous studies: Shuaib Darif concluded that conditional release under Law No. 05-04 is of a mixed judicial and administrative nature, whilst Nisreen Safi and Abdelhafiz Tashour linked its classification to the authority issuing it¹¹. Faisal Boukhalfa detailed the powers of the judge responsible for the enforcement of sentences and the methods of appealing against his decisions¹². whilst Mowaffaq Eid al-Jabour addressed conditional release as a means of individualising punishment¹³. However, these studies predate Law No. 25-14, and none of them systematically assessed the Algerian system against the Council of Europe's 2003 recommendation and the case law of the European Court of Human Rights, nor did they compare it with the Finnish model – which is what this study seeks to address.

Research question: To what extent has the Algerian legislature, following the 2025 reform, succeeded in regulating conditional release as a structured procedural mechanism for adapting the enforcement of sentences, based on pre-determined criteria and subject to judicial review which the convicted person has the right to initiate, in comparison with international standards and the French and Finnish legal systems?

Methodology and scope of the study: The study adopted analytical and comparative methodologies, and selected French and Finnish law because they embody the two models distinguished by the Council of Europe's recommendation,

⁵ Law No. 25-14 of 3 August 2025, containing the Code of Criminal Procedure, Official Gazette, Issue No. 54 of 2025, Book IV.

⁶ Remarks by Abdelrazak bin Salem, Director of Criminal Affairs and Pardon Procedures at the Ministry of Justice, at the symposium organised by the Higher School of the Judiciary on the judicial authorities responsible for the enforcement and adaptation of sentences, 13 November 2025, published in Al-Nahar, ennaharonline.com.

⁷ Decree No. 72-02 dated 10 February 1972, containing the Law on the Organisation of Prisons and the Rehabilitation of Prisoners, now repealed. See also: Nasrin Safi and Abdelhafid Tachour, 'The System of Sentence Enforcement Judges in Algerian Legislation', *Journal of Humanities*, University of the Mentouri Brothers, Constantine 1, Vol. 31, Issue 2, June 2020, p. 365, citing: Lakhmisi Athamnia, 'Penal Policy in Algeria and International Human Rights Conventions', PhD thesis, Mohamed Khider University, Biskra, 2009, p. 154.

⁸ Abdelhafid Tashour, 'Judicial Intervention during the Enforcement Phase of Criminal Sentences in Algerian Legislation', *Journal of the Kuwait International College of Law*, Special Supplement to the Proceedings of the Fourth Annual Conference, Issue 2, Part II, November 2017, p. 356; and Article 143 of Law No. 05-04, op. cit.

⁹ Shuaib Darif, 'Conditional Release as a Means of Social Reintegration of Prisoners in Algerian Legislation', *Journal of Humanities*, University of the Mentouri Brothers, Constantine, Vol. 29, No. 1, June 2018, pp. 327 and 331, based on Article 9 of Executive Decree No. 05-180 of 17 May 2005, which sets out the composition of the Sentence Enforcement Committee and its operating procedures.

¹⁰ Article 147 of Law No. 05-04, op. cit.

¹¹ Shuaib Darif, op. cit.; Nisreen Safi and Abdelhafid Tachour, op. cit.

¹² Faisal Boukhalfa, 'Judicial Supervision of the Enforcement of Criminal Penalties in Algerian Legislation', Master's thesis in Legal Sciences, specialising in Criminology and Penology, El-Haj Lakhdar University, Batna, 2011–2012.

¹³ Mowaffaq Eid al-Jabour, 'Conditional Release as a Means of Individualised Punishment', *Journal of Legal and Economic Research*, Faculty of Law, Mansoura University, Vol. 14, No. 87, 2024, pp. 1–50.

discretionary release and mandatory release (¹⁴). It drew on data from these two countries regarding recidivism, given the scarcity of published Algerian data, and was limited to adult convicts; it therefore does not address sentences for juveniles, pardons or electronic monitoring as alternative sanctions, except to the extent required by the distinction being made.

Outline of the study: The first section addresses the normative basis of conditional release and its legal nature, whilst the second section deals with its procedural framework: its conditions, the competent authority, the safeguards afforded to the convicted person before that authority, and the subsequent obligations, monitoring and revocation.

Section One: The Normative Basis of Parole and its Legal Nature

To define the position of conditional release, it is necessary to examine its origins and the international standard against which it is measured, and then to determine its legal nature as revealed by national and comparative legal texts.

Section 1: Conditional release in international standards: from a privilege to a safeguard

Section 1: The Origins of Conditional Release and the Development of Oversight

Conditional release originated as a means of rewarding good behaviour; the French legislature regulated it under the Act of 14 August 1885 as a privilege granted to prisoners, on the condition that those released would continue to serve their sentences outside the institution whilst remaining under its supervision¹⁵. It was not until the reform of 1945 that judges became involved in the enforcement phase in France, and the role of the judge responsible for the enforcement of sentences was established in 1958; the release of prisoners serving the longest sentences remained within the remit of the Minister of Justice until the year 2000. In Algeria, however, French legislation remained in force after independence until Decree No. 72- 02 was issued, which made the granting of parole the exclusive prerogative of the Minister of Justice; Law No. 05-04 subsequently introduced fundamental amendments to this decree¹⁶.

In Finland, conditional release took a different path, becoming a tool in a deliberate policy to reduce the prison population; the minimum sentence that must be served before eligibility was reduced from six months to fourteen days, and following the 1989 reform, the proportion of prisoners released in this way rose from less than 40 per cent to nearly the total number¹⁷. The Council of Europe Convention on the Supervision of Persons Sentenced to Suspended Sentences or Released on Probation, in force since 1975, established cooperation between states in the rehabilitation of those released on probation¹⁸; conditional release is thus part of a rehabilitation policy that requires supervision extending beyond release from prison. This development reveals that the question has shifted from determining who deserves a reward to determining who has the authority to decide on the freedom of a person whose sentence has not yet been served, and under what safeguards.

Section Two: The Basis in Global and Regional International Instruments

International human rights law does not explicitly oblige states to grant conditional release, but its basis is established in Article 10(3) of the International Covenant on Civil and Political Rights, which makes the reform and social rehabilitation of prisoners the primary aim of their treatment; the Human Rights Committee has interpreted this to mean that no penal system should be based solely on punishment¹⁹. This obligation takes precedence over ordinary law in Algeria, which acceded to the Covenant in 1989, as Article 154 of the Constitution stipulates that ratified treaties take precedence over domestic law; the Supreme Court has relied on this principle with regard to the Covenant itself²⁰.

Non-conventional rules have translated this principle into practice: the Nelson Mandela Rules link the limitation of recidivism to the use of the prison term for the reintegration of the convicted person, and recommend their gradual return to society before the end of the sentence through supervised release that is not entrusted to the police and is accompanied by effective social assistance²¹, The Tokyo Rules stipulate that decisions regarding release, with the exception of pardons, must be subject to review by a judicial or independent authority at the request of the offender²², whilst the Arab Charter

¹⁴ Council of Europe, Committee of Ministers, Recommendation Rec(2003)22 to member states on conditional release (parole), 24 September 2003, Appendix, para. 5.

¹⁵ Nisreen Safi and Abdelhafiz Tashour, op. cit., pp. 368–369, citing: Nabila Ben Cheikh, 'The System of Conditional Release in Algerian Legislation', Master's thesis, University of Constantine, 2009–2010, p. 10.

¹⁶ Faisal Boukhalfa, op. cit., pp. 20, 21, 27, 88 and 90.

¹⁷ Tapio Lappi-Seppälä, 'Imprisonment and Penal Policy in Finland', *Scandinavian Studies in Law*, vol. 54, 2009, pp. 333–380, esp. pp. 356–357.

¹⁸ European Convention on the Supervision of Offenders Conditionally Sentenced or Conditionally Released, ETS No. 051, which entered into force on 22 August 1975, Preamble.

¹⁹ International Covenant on Civil and Political Rights, adopted on 16 December 1966, Article 10(3); Human Rights Committee, General Comment No. 21 on Article 10, 1992, para. 10.

²⁰ Presidential Decree No. 89-67 of 16 May 1989, providing for accession to the two International Covenants, Official Gazette published on 17 May 1989; Article 154 of the Constitution promulgated by Presidential Decree No. 20-442 of 30 December 2020, Official Gazette, No. 82 of 2020; Supreme Court, decision of 26 April 2021, Case No. 00006, *coursupreme.dz*.

²¹ United Nations Standard Minimum Rules for the Treatment of Prisoners, the Nelson Mandela Rules, General Assembly Resolution 70/175 of 17 December 2015, Rules 4 and 87.

²² United Nations Standard Minimum Rules for Non-custodial Measures, the Tokyo Rules, General Assembly Resolution 45/110 of 14 December 1990, Rules 9.2 to 9.4.

on Human Rights establishes the reform and rehabilitation of prisoners as the objective of the prison system²³. However, these instruments stopped at stating the objective and did not specify the conditions for early release or the safeguards governing such decisions; it was therefore left to European standards to fill this gap.

Section III: The Council of Europe's Recommendation and the Case Law of the European Court of Human Rights

The most detailed formulation of the international standard was set out in the 2003 Recommendation of the Committee of Ministers of the Council of Europe on conditional release, which defines it as early release subject to individual post-release conditions, and excludes amnesty from its scope. It recommends that it be made available to all convicted persons, even those serving life sentences, and that the convicted person be informed from the outset of their sentence when they will become eligible and according to which criteria²⁴. Most importantly, it places the burden of proof on the authorities to demonstrate that the criteria have not been met, and obliges them, in the event of a refusal, to set a date for review, ensuring that the prisoner is heard, has access to their file, receives a written, reasoned decision, and may appeal to an independent and impartial body²⁵. This goes beyond the conclusion reached by some Algerian legal scholars that release occupies an intermediate position between a privilege and a right²⁶.

The case law of the European Court of Human Rights has lent these guidelines a force they did not previously possess. In the case of *Winter and Others v. the United Kingdom*, the Grand Chamber stipulated that a life sentence must be reducible, that is, subject to a review to assess whether continued detention remains justified on legitimate penal grounds, and noted that comparative and international law supports such a review within a period not exceeding twenty-five years²⁷. In the case of *Murray v. the Netherlands*, it held that a person sentenced to life imprisonment must be afforded a genuine opportunity for rehabilitation so that their chance of regaining their freedom is real²⁸, and in the case of *Hutchinson v. the United Kingdom*, it affirmed the right to know from the outset what steps must be taken for their release to be considered, drawing on the 2003 recommendation, and highlighted the safeguards of independence and impartiality inherent in the judicial procedure²⁹. Early release in the European system is no longer a purely discretionary grant; rather, the possibility of it has become a condition for the legitimacy of the life sentence itself.

Second requirement: the legal nature of parole, a form of sentence enforcement for which there is no alternative

Section One: The Jurisprudential Controversy over the Legal Classification of Parole

Since its inception, conditional release has sparked controversy regarding its legitimacy, as some viewed it as undermining the finality of a judgement and the principle of the separation of powers; however, its advantages in encouraging prisoners to maintain discipline ultimately prevailed³⁰. The dispute over its legal characterisation has persisted: according to one school of jurisprudence, it constitutes the release of a convicted person before the expiry of their sentence, subject to certain obligations imposed upon them; whilst according to another, it constitutes a suspension of the enforcement of the criminal penalty once certain conditions are met³¹. The two definitions are not synonymous: the former treats release as a means of serving the sentence in the community, whilst the latter treats it as a suspension of its enforcement subject to a condition, and each has a different effect upon revocation.

Legal scholarship is also divided on the nature of the decision: some regard it as an administrative measure that modifies the method of penal treatment, whilst others regard it as a judicial measure that affects the enforceability of the judgement. Some researchers in Algerian law have characterised it as hybrid, due to the predominance of the administrative element within the Committee for the Enforcement of Sentences and the administrative nature of the Minister of Justice's decisions³², whilst others have emphasised its administrative nature because it is issued without stating reasons and is not subject to appeal, given the silence of the 2005 legislation regarding the status of the judge responsible for the enforcement of sentences and his decisions³³. It is the statutory provisions alone that determine which of the two classifications is closest to each piece of legislation.

²³ Arab Charter on Human Rights, adopted on 23 May 2004, in force since 15 March 2008, Article 20(3).

²⁴ Recommendation Rec(2003)22, op. cit., paras. 1, 2, 4.a and 5.

²⁵ Ibid., paras. 20, 21, 32 and 33.

²⁶ Shuaib Darif, op. cit., p. 326.

²⁷ ECtHR, Grand Chamber, *Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10, 9 July 2013, §§ 119–120.

²⁸ ECtHR, Grand Chamber, *Murray v. the Netherlands*, no. 10511/10, 26 April 2016, § 104.

²⁹ ECtHR, Grand Chamber, *Hutchinson v. the United Kingdom*, no. 57592/08, 17 January 2017, §§ 44 and 47.

³⁰ Faisal Bukhalfa, op. cit., p. 88.

³¹ Mahmoud Naguib Hosni, *Lectures on Criminology and Penal Law*, Dar al-Nahda al-Arabiya, Cairo, 1988, p. 352; Sharif Sayed Kamel, *The Science of Penal Law*, Dar al-Nahda al-Arabiya, Cairo, no year of publication, p. 358; both cited in: Shu'ayb Darif, op. cit., p. 322.

³² Shu'ayb Darif, op. cit., p. 323; he refers, in the context of judicial practice, to: Ahmad Bilal Awad, *Lectures on Criminal Penalties*, Dar al-Nahda al-Arabiya, Cairo, 2000–2001, p. 248.

³³ Nisreen Safi and 'Abd al-Hafiz Tashour, op. cit., p. 369; 'Abd al-Hafiz Tashour, 'Judicial Intervention at the Stage of Enforcement of Criminal Sentences', op. cit., p. 342.

Section Two: The Position of Algerian Law in a Comparative Perspective

The position of conditional release in Law No. 05-04 reveals the legislator's conception of its nature; the law distinguishes between systems of rehabilitation outside a closed environment, whilst maintaining a continuing relationship with the penal institution—namely, external workshops, semi-liberty and open environments—and systems for the adaptation of the sentence, to which Chapter Six is devoted: leave, temporary suspension of the sentence and conditional release; to which, following the 2018 amendment, electronic monitoring³⁴ was subsequently added. The first category modifies the conditions of enforcement, whilst the second regulates the enforcement itself in terms of time and place.

However, the decisive evidence comes from the provisions on the consequences. Article 146 stipulates that the period of release shall be equal to the remainder of the sentence, whilst Article 147 requires a person released upon revocation to serve the remainder of the sentence, with the period of release counted as time served; whereas Article 131 provides that the period of provisional detention pending the enforcement of the sentence shall not be counted towards the term of imprisonment³⁵. Provisional detention is a suspension of enforcement, whereas conditional release is a continuation of it in a different form; its revocation does not nullify the part of the sentence that has already been served³⁶, and it has therefore been rightly described as the final stage in the enforcement of a custodial sentence prior to final release, although the same researcher has described revoked release elsewhere as being 'as if it had never happened'³⁷, a description that requires qualification, as revocation does not nullify the effect of the time already served. Conditional release under Algerian law is a method of enforcing the sentence outside the prison; it is neither a substitute for nor a reduction of the sentence, and it affects the manner of enforcement of the sentence rather than its substance, because the term of the sentence is served in full, part of it within the prison walls and part of it outside.

French law adopts a different approach: Article 733 of the Code of Criminal Procedure requires the convicted person, following revocation, to serve the remainder of their sentence on the day of release, in whole or in part, as determined by the revocation order (³⁸). Thus, the period of release is not automatically determined by law; rather, its outcome depends on the discretion of the revocation authority. This makes release in the Algerian system akin to a conditional suspension of the remainder of the sentence, rendering Algerian law more equitable towards the convicted person in this regard. Finnish law, on the other hand, aligns with the Algerian understanding in defining conditional release as a release whereby the convicted person serves the remainder of their sentence whilst at liberty; however, it separates the probationary period from the remainder of the sentence, setting it at a maximum of three years, and stipulates that the penalty for a serious breach of obligations is the serving of between four days and fourteen days of the remaining sentence³⁹. It thus regards a breach as an indication requiring rectification, rather than a ground for revoking the release.

The three laws agree that conditional release does not affect the sentence imposed, unlike the instrument of international criminal law; as Article 110 of the Rome Statute confers upon the International Criminal Court the exclusive authority to reduce a sentence, following a review, once the convicted person has served two-thirds of the term or twenty-five years in the case of life imprisonment⁴⁰. This reduction is not subject to any subsequent conditions under the Statute, nor is it subject to revocation; it constitutes a modification of the sentence itself, not of the manner of its enforcement.

Section Three: Distinguishing Parole from Similar Schemes

Conditional release differs from a pardon – which is a constitutional power of the President of the Republic⁴¹ – in that a pardon deals with the sentence itself, whilst conditional release leaves the sentence in force and makes the granting of freedom conditional upon the fulfilment of certain obligations; for this reason, the recommendation excludes pardons from its scope, as stated above. It also differs from a suspension of sentence in that the latter is decided by the court at the time the sentence is handed down, meaning the convicted person does not enter prison in the first place; conditional release, however, is only conceivable after part of the sentence has been served. This distinction is clarified by Finnish law, which also recognises a suspended prison sentence for a probationary period of between one and three years⁴².

As for placement under electronic monitoring, this is the system most closely resembling conditional release, as it is, in turn, a method of serving the sentence outside a correctional facility; It was authorised by Law No. 05-04 in 2018 for those whose sentence, or the remainder thereof, does not exceed three years; Law No. 24-06 incorporated it into the Penal Code as an alternative sentence; and Law No. 25-14 subsequently added it to the provisions governing the

³⁴ Law No. 05-04, op. cit., Articles 100 to 111 and 129 to 150, and Articles 150 bis to 150 bis 16, as added by Law No. 18-01.

³⁵ Articles 146, 147 and 131 of Law No. 05-04, op. cit.

³⁶ Faisal Boukhalfa, op. cit., p. 87.

³⁷ Shuaib Darif, op. cit., pp. 328 and 331.

³⁸ Article 733 of the Code of Criminal Procedure.

³⁹ Prison and Probation Service of Finland, 'Conditional release', rikosseuraamus.fi, page last modified on 25 November 2025, accessed on 21 September 2026; Criminal Code of Finland 39/1889, Chapter 2c, Section 5.

⁴⁰ Rome Statute of the International Criminal Court, adopted on 17 July 1998, Article 110, paragraphs 1, 2 and 3.

⁴¹ See the specific provisions on the powers of the President of the Republic in the Constitution, op. cit.

⁴² Lappi-Seppälä, op. cit., p. 338.

adaptation of sentences⁴³. They differ in the degree of restriction rather than in nature: a person under supervision is required to remain in a designated place which they may only leave with authorisation, whilst a person released on probation regains freedom of movement within the limits of their obligations; therefore, the two systems are suitable for use in succession.

Section Four: The Status of the Convicted Person between a Privilege and a Right

In its traditional conception, conditional release has been linked to the idea of a privilege that may be revoked should the beneficiary breach its conditions⁴⁴. The influence of this conception remains evident in Law No. 05-04, which does not provide for release as a matter of law nor does it grant the prisoner the right to appeal against its refusal, even though contemporary penal theory regards it as a form of rehabilitative treatment in an open environment⁴⁵.

We consider that resolving this issue requires a distinction to be made between two levels: at the substantive level, a person sentenced under a discretionary system does not possess a right to release per se, and international standards themselves maintain this system alongside the mandatory system; at the procedural level, however, they do have the right to have their application considered in accordance with pre-established criteria, for the burden of proof regarding non-compliance to rest with the authorities, and to appeal against a refusal to an independent body⁴⁶. In this sense, Law No. 25-14 did not make release a substantive right, but it did make the consideration of such a request a guaranteed procedural right. And insofar as the decision in this matter—whether granting, refusing or revoking—concerns the liberty of a person whose sentence has not yet been served, it is entitled to the same guarantees of a fair trial as judicial decisions affecting personal liberty.

Section Two: The Procedural Framework for Parole, from Administrative Decision to Judicial Proceedings

The value of conditional release in terms of reintegration depends on the clarity of its conditions, the impartiality of the authority granting or refusing it, and the support and assistance available to the released person upon their release.

Section 1: Conditions for Eligibility for Conditional Release: Between Statutory Provisions and Discretion

Section One: General Conditions and the Limits of Discretionary Power

Law No. 05-04 stipulates that the prisoner must have been finally convicted, and must have served a probationary period equal to half the sentence for a first-time offender, and two-thirds for a repeat offender, provided that this period is not less than one year, and fifteen years for those sentenced to life imprisonment; that they be of good character and conduct and demonstrate serious assurances of their rehabilitation; and that they pay court costs, fines and civil damages, or provide proof that the civil party has waived these claims⁴⁷. The mandatory minimum period may delay the earliest possible date of release; this is determined by law for certain offences, and may be determined by the court in other cases whenever a sentence of five years or more is imposed, provided that it does not exceed two-thirds of the sentence⁴⁸; however, the court must inform the convicted person, from the time of sentencing, of the date before which their release will not be considered, in accordance with the principle of prior notice, provided that this does not prevent a genuine review of the sentence.

The two conditions relating to conduct and good character are subject to genuine discretion; as the first is subjective and open to abuse, whilst the second is vague and difficult to verify⁴⁹. This is precisely what the recommendation warns against when it stipulates that criteria must be clear and realistic, taking into account the convicted person's character and their social and economic circumstances, and preventing unemployment or a lack of accommodation following release from being grounds for refusal or postponement⁵⁰. The matter is further complicated by the fact that Law No. 05-04 requires the judge responsible for the enforcement of sentences to state the grounds for their decisions only in cases of provisional detention pending the enforcement of the sentence⁵¹; consequently, the vague criterion remains unchecked in its application.

As for the financial condition, whilst it is intended to ensure justice for the victim⁵², it links release to the ability to pay rather than to the suitability to reintegrate into society; thus, those unable to pay spend the same time in prison as those who are financially able spend in freedom. The measures introduced in 2024 allowed those with less than two years

⁴³ Article 150 bis of Law No. 05-04, op. cit.; Law No. 24-06 amending and supplementing Decree No. 66-156 containing the Penal Code, Official Gazette, Issue 30 of 2024, Article 5 bis 7 et seq., See also: Al-Khabar newspaper, 'The Penal Code Brings This New Provision for Prisoners', 6 May 2024; speech by Abd al-Razzaq bin Salim, op. cit.

⁴⁴ Shuaib Darif, op. cit., p. 330.

⁴⁵ Faisal Boukhalfa, op. cit., pp. 88 and 126.

⁴⁶ Recommendation Rec(2003)22, op. cit., paras. 4.a, 5, 20, 21, 32 and 33; ECtHR, *Hutchinson v. the United Kingdom*, op. cit., § 44.

⁴⁷ Articles 134 and 136 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., pp. 88–90.

⁴⁸ Article 60 bis of Decree No. 66-156 containing the Penal Code, as amended by Law No. 14-01 of 4 February 2014. See: Nasreen Safi and Abdelhafid Tachour, op. cit., p. 370.

⁴⁹ Faisal Boukhalfa, op. cit., p. 89, citing: Ahsan Bouskia, *A Concise Guide to General Criminal Law*, Dar Houma, Algiers, 3rd ed., 2006, p. 336.

⁵⁰ Recommendation Rec(2003)22, op. cit., paras. 18 and 19.

⁵¹ Faisal Boukhalfa, op. cit., p. 139.

⁵² Nisrine Safi and Abdelhafid Tachour, op. cit., p. 370.

remaining on their sentences to be released before paying fines and court costs⁵³ ; however, this temporary measure does not obviate the need to review the legislation, and the most viable solution would be to make the payment of compensation one of the conditions for release, rather than a prerequisite.

Section Two: Special Cases of Conditional Release

Law No. 05-04 provides for two types of early release: the release of a prisoner who reports a serious incident affecting the security of the prison or who identifies criminals and assists in their arrest; and release on health grounds for a prisoner suffering from a serious illness or permanent disability that precludes their continued detention⁵⁴ . The first scenario links release to a service provided by the prisoner to the prison administration rather than to their progress in rehabilitation; this shifts the system from a logic of reform to one of exchange. Whilst we see no reason why a prisoner should not be rewarded for their cooperation, such a reward is more appropriately applied to a reduction in sentence rather than to conditional release, which presupposes that the beneficiary is prepared to return to society. Attention is also drawn to the length of the probationary period for life imprisonment, which is fifteen years, whilst Finnish law permits release after twelve years () and after ten years for those who committed the offence before the age of twenty-one (⁵⁵). Both of these periods are shorter than the twenty-five years for which the European Court of Justice noted that the comparable provisions support a review before their expiry (⁵⁶).

Section III: Conditions for release in the two comparable models

French law grants release on a discretionary basis where the convicted person has demonstrated serious efforts towards reintegration and has served a period equal to at least the remainder of their sentence⁵⁷ ; however, it requires the status of anyone who has met the duration requirement to be reviewed at least once a year, in accordance with the Recommendation's requirement to set a date for review⁵⁸ . It added the provision of release subject to conditions, requiring a review of the status of a person sentenced to a total of no more than five years' imprisonment once they have served two-thirds of their sentence; it then made this a legal requirement if the total sentence does not exceed two years and the remaining term does not exceed three months, except in cases of material impossibility resulting from a lack of accommodation⁵⁹ , thus combining discretionary and mandatory systems, although this latter exception conflicts with the Recommendation's stipulation that a lack of accommodation does not justify refusing release, and that the authorities must arrange temporary accommodation⁶⁰ .

Finnish law, on the other hand, virtually eliminates discretion, as 99 per cent of those released each year are granted conditional release, with the exception of a limited number of dangerous repeat offenders whom the courts order to serve their full sentences; First-time offenders are released after serving half their sentence and repeat offenders after two-thirds, by decision of the prison governor⁶¹ . The decision is administrative but involves virtually no discretion; consequently, it does not raise the same issues regarding safeguards as a discretionary decision would, as the need for a judge is proportional to the extent of the discretionary power. This does not mean that enforcement is devoid of individualisation; the 2006 Prisons Act requires an individual plan for each prisoner based on a systematic assessment of risks and needs, which is updated throughout the sentence⁶² . Thus, the exercise of discretion has shifted from the moment of release to the enforcement phase.

The Algerian legislator is not required to abandon the discretionary system, but rather to regulate it through measurable criteria, periodic review and the provision of reasons for rejection. The legislator may also adopt quasi-mandatory release at the end of short sentences, where individual assessment makes only a negligible difference, as noted in the recommendation⁶³ .

Second Requirement: The Competent Authority and Safeguards for the Convicted Person Before It

Section One: The system under Law No. 05-04

An application for conditional release was to be submitted by the prisoner, their representative or a relative to the judge responsible for the enforcement of sentences or the director of the institution; and any of them was entitled to propose it; it was then submitted to the Sentence Enforcement Committee, chaired by the Sentence Enforcement Judge and comprising the prison governor and prison staff, including the chief warder, the court clerk, the doctor, the

⁵³ Al-Tara Algeria website, op. cit.

⁵⁴ Articles 135, 148 and 149 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., p. 91.

⁵⁵ Lappi-Seppälä, op. cit., p. 346.

⁵⁶ ECtHR, *Vinter and Others v. the United Kingdom*, op. cit., § 120.

⁵⁷ Article 729 of the Code of Criminal Procedure, as amended by Law No. 2021-1729 of 22 December 2021, applicable until 1 January 2029, the date of entry into force of Order No. 2025-1091 of 19 November 2025.

⁵⁸ Article 730, paragraph 3, of the Code of Criminal Procedure; Recommendation Rec(2003)22, op. cit., para. 21.

⁵⁹ Article 720, I and II, of the Code of Criminal Procedure, with respect to paragraph II derived from Article 11 of Law No. 2021-1729 of 22 December 2021 and applied since 1 January 2023 pursuant to Decree No. 2022-1261 of 28 September 2022.

⁶⁰ Recommendation Rec(2003)22, op. cit., para. 19.

⁶¹ Lappi-Seppälä, op. cit., p. 346.

⁶² Ibid., p. 344.

⁶³ Recommendation Rec(2003)22, op. cit., para. 7.

psychologist, the educator and the social worker; thus, the judiciary was represented therein only by its chairperson⁶⁴. The law divides the authority to grant such measures between the Sentence Enforcement Judge for those with a remaining sentence of twenty-four months or less, and the Minister of Justice for those with a longer remaining sentence. The judge shall issue his decision only in accordance with the majority opinion of the committee, whilst the Minister shall decide following a non-binding advisory opinion from the Sentence Adjustment Committee⁶⁵. The sentencing judge is appointed by a decision of the Minister of Justice; in practice, he is selected from among the judges of the Public Prosecution Service, contrary to what judicial intervention at the enforcement stage would require, namely that he be a trial judge⁶⁶.

The appeal procedures reflected this nature: the Public Prosecutor may appeal against a release decision within eight days before the Sentence Adjustment Committee with immediate effect, and the Minister of Justice may refer to the Committee within thirty days any decision which he considers to have a negative impact on security or public order⁶⁷, whilst the detainee was not granted the right to appeal against the rejection of his application⁶⁸, and the committee is chaired by a judge from the Supreme Court, but its other members are administrative officials appointed by the Minister⁶⁹. The safeguards were therefore designed to protect society from inappropriate releases, rather than to protect the convicted person from an inappropriate rejection.

Section Two: The Shift Under Law No. 25-14

It is against this backdrop that the significance of Law No. 25-14 is to be understood. This law established, alongside judges responsible for the enforcement of sentences, departments and chambers for the enforcement of sentences⁷⁰, and subjected the adjudication of applications for sentence adjustment to the principles of public proceedings, adversarial proceedings, and the rights of defence and litigation across two levels – in what the Ministry of Justice described as a ‘procedural revolution’ that transformed the procedure from an administrative to a judicial one⁷¹. The convicted person thus became a party to legal proceedings, represented by their defence counsel, whereas previously they had been the subject of a decision against which they had no right of appeal; Algerian law has thus come close to the standard set by the Recommendation regarding the right to be heard, access to the case file, a reasoned decision and the right to appeal to an independent higher authority⁷².

However, the remaining gap hinges on three issues: the provision of reasons for the ruling on the application, which is a general requirement in any judicial decision affecting rights and freedoms⁷³, and which is all the more necessary given the vagueness of the criteria set out in Article 134; the scope of the Minister of Justice’s jurisdiction over the longest sentences, as it is inconsistent with the logic of rehabilitation for the release of prisoners serving the most severe sentences – on which the European Court’s case law has focused – to remain within the remit of an administrative authority; and the independence of the judge, given that his appointment is by ministerial decree, whilst some legal scholars have called for his appointment by presidential decree and for him to be counted amongst the judges of the court⁷⁴.

The choice of public hearings raises a new issue, as ruling on an application requires an examination of the convicted person’s past, their physical and mental health, and their family circumstances. The recommendation did not stipulate that hearings be public, but rather that the applicant be heard and given access to their file, and it permitted the resubmission of the application should their circumstances change substantially in their favour⁷⁵, and the French regional parole board used to deliberate in a closed-door session⁷⁶. We consider that public hearings are a safeguard established primarily in the interests of the convicted person; he should therefore be enabled to request that the hearing be held in private to protect his privacy. Furthermore, the three-month time limit for resubmitting the application loses its justification once the appeal has been upheld, and the criterion of ‘substantial change’ adopted by the recommendation is the most accurate.

⁶⁴ Faisal Boukhalfa, op. cit., pp. 123, 124 and 131; Article 2 of Executive Decree No. 05-180, op. cit.

⁶⁵ Articles 141 and 142 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., pp. 124, 125, 142 and 143.

⁶⁶ Article 22 of Law No. 05-04, op. cit.; Faisal Boukhalfa, op. cit., p. 34; Abdelhafid Tashour, ‘Judicial Intervention at the Stage of Enforcement of Criminal Sentences’, op. cit., pp. 363 and 364.

⁶⁷ Articles 141 and 161 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., pp. 140 and 144.

⁶⁸ Shuaib Darif, op. cit., p. 327; Nasreen Safi and Abdelhafid Tachour, op. cit., p. 369.

⁶⁹ Executive Decree No. 05-181 of 17 May 2005, defining the composition, organisation and functioning of the Committee on the Adaptation of Penalties, Official Gazette, Issue 35 of 2005, Article 3.

⁷⁰ Law No. 25-14, op. cit., Book IV; Ministry of Justice, Organisation of a forum on the judicial authorities responsible for the application and adjustment of penalties in the light of the Code of Criminal Procedure, mjustice.gov.dz, 13 November 2025.

⁷¹ Speech by Abdelrazak bin Salem, op. cit.

⁷² Recommendation Rec(2003)22, op. cit., paras. 32 and 33.

⁷³ Faisal Boukhalfa, op. cit., p. 138.

⁷⁴ Nisrine Safi and Abdelhafid Tachour, op. cit., p. 373.

⁷⁵ Recommendation Rec(2003)22, op. cit., paras. 21 and 32.

⁷⁶ Code of Criminal Procedure, Articles D. 522 to D. 542, as amended by Decree No. 2000-1213 of 13 December 2000, in force from 1 January 2001 to 1 January 2005.

Section Three: The competent authority in the two comparative models

In France, the Minister of Justice had jurisdiction over conditional release whenever the remaining sentence exceeded five years, until Law No. 2000-516 abolished this jurisdiction and replaced it with a judicial and adversarial procedure regardless of the remaining sentence, and stipulated that the decision of the judge responsible for the enforcement of sentences must be reasoned and subject to appeal⁷⁷. Then, in 2004, the Sentence Enforcement Court was established⁷⁸. Today, the sentencing judge has jurisdiction over release where the sentence does not exceed ten years or where the remaining term does not exceed three years; in all other cases, the court has jurisdiction. Their decisions may be appealed to the Sentencing Chamber of the Court of Appeal, which rules with a reasoned decision following a hearing on the merits, and any annulment is issued by the same judicial body⁷⁹. Under Finnish law, ordinary, quasi-automatic release is entrusted to the director of the institution, whilst the release of prisoners serving life sentences or those who have served their full sentences—both of which are discretionary matters—is referred to the Helsinki Court of Appeal⁸⁰. Judicial jurisdiction is inherent in the exercise of discretion wherever it occurs, and the most severe penalties are the first to be subject to judicial safeguards, not the last.

Section 3: Post-release: Obligations, Monitoring and Revocation

The need for safeguards does not end with the issuance of a release order; the released person remains, throughout this period, in a vulnerable position governed by obligations, the breach of which may result in their return to the penal institution.

Section One: Obligations, Supervision Measures and Assistance

Law No. 05-04 permits the release order to include specific obligations, supervision measures and assistance, without specifying their nature; some researchers have viewed this as a potential source of arbitrariness that may push the released person back into reoffending rather than protecting them from it⁸¹. The recommendation does not preclude the individualisation of conditions, but it assumes that this is based on actual knowledge of the convicted person; it therefore recommends reports from prison staff who know the individual, and the use of reliable tools to assess risks and needs⁸². Leaving the obligations unspecified also raises the question of legality, as they constitute restrictions on the freedom that the released prisoner is supposed to regain. For this reason, the Finnish Constitution stipulates that the rights of those deprived of their liberty shall be guaranteed by an Act passed by Parliament⁸³; according to the text, the types and limits of the obligations are to be specified, whilst the choice of what is appropriate in each case is left to the judge.

Finnish law provides a model of supervision proportionate to need; only around one-fifth of those released are subject to it, and it combines supervision with support. The 2006 Prisons Act introduced probationary release under supervision, which precedes conditional release by a maximum of six months and requires a plan setting out accommodation, means of support and daily activities⁸⁴. Under Algerian law, the judge responsible for the enforcement of sentences ensures that the released prisoner complies with their obligations⁸⁵ without any specific criteria for supervision; however, electronic monitoring, following its inclusion in the sentencing guidelines, opens the door to a system similar to the Finnish model.

Section Two: Aftercare for those released

Upon release, the released prisoner faces what is known as the 'release crisis', or a crisis of trust between them and those around them⁸⁶. Law No. 05-04 provides for social and financial assistance for destitute prisoners upon release; the procedures for this were set out in a joint ministerial decision in 2006. However, in the view of some researchers, these provisions do not amount to effective post-release care that reduces recidivism⁸⁷. This need is consistent with the basic principles governing the treatment of prisoners, which call for the creation of conditions conducive to the reintegration of released prisoners with the participation of the community⁸⁸, and with the European Prison Rules, which require prison

⁷⁷ Senate, written questions No. 26503, 'Policy on the release of prisoners', Official Journal of the Senate, July 2000, and No. 32781, 'Judicial review of certain decisions by judges responsible for the enforcement of sentences', Official Journal of the Senate of 26 April 2001, p. 1405, replies from the Ministry of Justice.

⁷⁸ Faisal Boukhalfa, op. cit., p. 22.

⁷⁹ Code of Criminal Procedure, Article 712-1, in the version in force until 1 January 2029, the date of entry into force of Order No. 2025-1091 of 19 November 2025, and Articles 712-13, 730, paragraphs 1 and 2, and 733, paragraph 1.

⁸⁰ Lappi-Seppälä, op. cit., p. 346.

⁸¹ Article 145 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., pp. 125 and 126.

⁸² Recommendation Rec(2003)22, op. cit., paras. 25, 37 and 38.

⁸³ Lappi-Seppälä, op. cit., pp. 341–342.

⁸⁴ Ibid., pp. 343, 346 and 347.

⁸⁵ Faisal Boukhalfa, op. cit., p. 108.

⁸⁶ Ibid., pp. 93 and 94.

⁸⁷ Articles 114 and 115 of Law No. 05-04, op. cit.; Joint Ministerial Decree of 2 August 2006 concerning the granting of social and financial assistance to destitute prisoners upon their release, Official Gazette, No. 62 of 2006. See also: Faisal Boukhalfa, op. cit., pp. 94 and 95.

⁸⁸ Basic Principles for the Treatment of Prisoners, General Assembly Resolution 45/111 of 14 December 1990, Principle 10.

administrations to cooperate with the bodies responsible for supervising released prisoners⁸⁹. Conditional release is the natural setting for such care, as it allows for the monitoring of released prisoners during the period when the risk of reoffending is at its highest. In Finland, the five-year reoffending rate stood at 33.8 per cent among those released in 2017 on probation, compared with 52.8 per cent among all those released in the same year⁹⁰. These figures are subject to the same caveat regarding pre-selection, but they point in the same direction.

Section Three: Revocation and its effects

Revocation remains the decision with the most severe impact on the freedom of the released prisoner, and was authorised by Law No. 05-04 in the event of a new conviction or a breach of obligations⁹¹, with no intermediate measures between the continuation of release and its revocation, whereas the recommendation calls for minor breaches to be dealt with by advice or a warning, and for serious breaches to be considered in terms of whether stricter conditions or temporary revocation would suffice before revocation⁹². In Finland, parole is, in practice, revoked only upon the commission of a new offence warranting imprisonment and by a court order⁹³, whilst French law entrusts revocation to the judicial authority that granted the parole, in accordance with the same procedures⁹⁴. Once parole has been granted by a court, the logic of Law No. 25-14 requires that its revocation must likewise follow a substantive hearing, that intermediate sanctions must be available prior to revocation, and that its effect must remain subject to Article 147, which counts the period of parole as time served, a feature in which Algerian law is superior to its French counterpart, and which any subsequent amendment would do well not to compromise.

Conclusion

This study began with a question regarding the extent to which the Algerian legislature, following the 2025 reform, has succeeded in regulating conditional release as a structured procedural mechanism for adapting the enforcement of sentences, and has arrived at the following conclusions and recommendations.

Conclusions

Firstly: Parole under Algerian law constitutes an indispensable means of adjusting the manner in which a sentence is served, as evidenced by the fact that its duration is counted as time served under Article 147 of Law No. 05-04; in this respect, it is fairer to the convicted person than French law.

Secondly: International standards have shifted early release from being a discretionary grant to a mechanism governed by clear criteria and procedural safeguards, and the case law of the European Court has made its availability a condition for the lawfulness of life imprisonment.

Thirdly: The system established by Law No. 05-04 remains, in essence, administrative in nature: the judge is bound by the opinion of a majority of a committee dominated by administrative members; the Minister decides on the longest sentences; and the prisoner is denied the right to appeal against the rejection of his application.

Fourthly: Law No. 25-14 transformed the determination of the sentence into a judicial process based on public hearings, the right to be heard, the rights of the defence, and a two-tier appeal system; as a result, Algerian law has come closer to international standards regarding procedural safeguards, and the consideration of a request for release has become a guaranteed procedural right, even if release itself has not been established as a substantive right.

Fifthly: as far as can be ascertained from the available information, the reform did not address the vagueness of the criteria for granting release, nor the financial condition, nor the failure to specify obligations, nor the absence of intermediate sanctions, nor the inadequacy of aftercare.

Sixth: A comparison reveals that judicial jurisdiction is inseparable from discretionary power wherever it exists, and that the most severe penalties are those subject to judicial review.

Recommendations

Firstly: The criteria set out in Article 134 should be defined using measurable indicators, and the competent authority should be required to demonstrate non-compliance in the event of a refusal, in accordance with paragraphs 18 and 20 of the Council of Europe's recommendation.

Secondly: Review the status of every person who has fulfilled the duration requirement at least once a year; set a date for reconsideration in the event of a refusal; and consider introducing quasi-mandatory release at the end of short sentences.

Thirdly: To authorise the release of prisoners who are unable to pay, and to make the payment of civil compensation one of the conditions for release rather than a prerequisite.

⁸⁹ Council of Europe, Committee of Ministers, Recommendation Rec(2006)2 on the European Prison Rules, 11 January 2006, rules 107.4 and 107.5.

⁹⁰ Eeva Järveläinen, Teemu Rantanen and Timo Toikko, 'Finnish supervised probationary freedom as support for desistance from crime', *European Journal of Probation*, 2024, doi: 10.1177/20662203231217175, citing statistics from the Prison and Probation Service of Finland, 2023.

⁹¹ Article 147 of Law No. 05-04, op. cit. See also: Faisal Boukhalfa, op. cit., p. 108; Shuaib Darif, op. cit., p. 328.

⁹² Recommendation Rec(2003)22, op. cit., para. 30.

⁹³ Lappi-Seppälä, op. cit., pp. 346–347.

⁹⁴ Article 733, paragraph 1, of the Code of Criminal Procedure, cited above.

Fourthly: Extend judicial oversight to all cases of conditional release, regardless of the remaining sentence, and entrust the revocation of such releases to the same judicial body following a substantive review, whilst continuing to count the period of conditional release as time served.

Fifth: Sentencing judges should be appointed from among trial judges, with safeguards ensuring their independence from the executive authority.

Sixth: To specify the list of conditions that may be included in a release order, and to provide for intermediate sanctions prior to revocation, as called for in paragraph 30 of the recommendation.

Seventh: Convert the reward currently granted to a prisoner who reports an offence into a mechanism for reducing the sentence.

Eighth: Strengthen aftercare by activating the external services of the prison administration, adopting reliable tools for risk and needs assessment, and using electronic monitoring in the period prior to conditional release.

Ninth: Publish regular statistics on parole and the recidivism rate amongst those benefiting from it.

Tenth: Enabling the convicted person to request that the hearing be held in camera, and permitting them to resubmit the application should their circumstances change substantially.

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