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The problem of expanding the rights of those sentenced to life imprisonment

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Abstract

As of 2023, the issue of life imprisonment is the least regulated in Ukrainian criminal-executive law. Moreover, life imprisonment is the most controversial form of punishment, prompting research into its specific aspects. The purpose of the study is to explore problematic issues related to the rights of those sentenced to life imprisonment for short-term release from the institution serving the sentence. Various methods, including systemic-structural, analytical, comparative, and terminological, were used to achieve this purpose. An analysis of the legal status of those sentenced to life imprisonment in Ukraine concluded that these subjects of criminal-executive legal relations do not have the right to leave the prison, particularly in the presence of exceptional personal circumstances. It was also established that, according to current criminal-executive legislation in Ukraine, only specific categories of prisoners serving a sentence of imprisonment possess such a right, reflecting the essence of the punishment's purpose. The study demonstrates that it is through the regime of legal restrictions that the state has the opportunity to fulfil criminal-executive tasks, including preventing criminal offences by both convicts and other individuals. The legally established status of those sentenced to life imprisonment, especially in terms of legal restrictions, aims to deter not only recidivists but also individuals who may contemplate or prepare to commit such serious criminal offences. If, in 2002, the number of those sentenced to life imprisonment in Ukraine exceeded 100 individuals, by 2022, it had decreased to 23. It is emphasised that expanding the rights of individuals serving a life sentence may lead to social tension and

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pose a threat to the national security of Ukraine. The results of the study can be used in further regulatory adjustments regarding problematic aspects of life imprisonment

Keywords:

criminal offence; criminal-executive legislation; serving a sentence; prevention of offences; interaction with convicts; recidivism

Introduction

An ambiguous question of the institution of life imprisonment in modern political, legal and public thought arises in connection with the humanisation of modern criminal systems in legal, democratic countries. The problems associated with deprivation of liberty as a form of punishment become more relevant as approaches to the penal system increasingly focus on the rehabilitation and resocialisation of convicts, creating contradictions between the existence of life imprisonment and humanistic approaches to punishment. The expansion of convicts' rights is the subject of public discussion and debate. The increased interest in this issue indicates the importance of discussing and finding a balance between protecting the rights of convicts and ensuring public safety. The latter only intensifies the relevance of the issue in countries where the problem of national security is articulated in connection with military events, particularly in Ukraine. Criticism is triggered, in particular, by the possibility of causing harm to society and citizens due to the short-term travel beyond the penitentiary institutions by individuals sentenced to life imprisonment (Possibility of short-term visits..., 2023). The contradiction between the process of humanising criminal legislation and ensuring national security is complicated by the fact that in Ukraine, the functioning of the institution of life imprisonment has received relatively little attention.

Life imprisonment became a preventive measure that replaced the death penalty. Analysis by T. Pavlov (2023) convincingly demonstrates that this form of punishment is relatively new and not fully regulated by Ukrainian legislation, leading to collisions in practical application. P.L. Fries (2018) notes that with the development of society, corresponding changes occur in legislation regarding individuals in places of deprivation of liberty, requiring institutions to adapt to new regulatory frameworks. N.M. Parasyuk (2022) emphasises the need for the state to rationally approach the humanisation of life imprisonment, adhering to proportionality and justice in establishing criminal-legal impact. N.V. Malyarchuk & M.V. Moroz (2018) underscore that life imprisonment in Ukraine is a relatively new and specific form of punishment. The introduction of this practice was driven by international requirements from the

Council of Europe for democratic countries where forms of punishment like the death penalty are unacceptable.

The opinion of F.A. Stepanyuk *et al.* (2021) on the necessity of special state control over individuals sentenced to life imprisonment is valid, as such convicts are responsible for extremely serious crimes, and accountability for these should be clearly regulated at the legislative level without causing disputes or ambiguous interpretations. The Constitutional Court of Ukraine also adheres to this position (Possibility of short-term visits..., 2023), having analysed the constitutionality of specific provisions of Article 111 of the Criminal Executive Code of Ukraine¹, refusing to open cassation proceedings. These positions indicate the relevance of discussion and the need for further research into this problem in the context of finding a balance between protecting the rights of convicts and ensuring public safety in modern society.

In their paper, Yu.V. Kernyakevich-Tanasiychuk (2019) expresses support for a humane attitude toward prisoners, considering their rights in the context of international standards. In addition, the author considers the opposite viewpoint, focused on implementing various tools and mechanisms to ensure the necessary level of law and order in society, suggesting that each country should choose such tools according to its needs. A study conducted by M.V. Batluk (2021) aimed to identify inconsistencies in Ukrainian legislation with standards outlined in the Convention for the Protection of Human Rights and Fundamental Freedoms². From this perspective, an important question arises regarding the possibility of allowing individuals sentenced to life imprisonment to make short-term visits outside institutions exclusively in specific cases. Researchers insist that this issue should be thoroughly and comprehensively investigated, considering its significant importance for society. Therefore, a detailed analysis of the issues arising in the context of the compliance of legislation with international standards and the possibility of granting short-term visits to those sentenced to life imprisonment is crucial for further discussions, especially in a significant societal context.

The purpose of the study is to clarify the risks associated with the expansion of the freedom of individuals

¹ Decision of the Third Panel of Judges of the Second Senate of the Constitutional Court of Ukraine No. 3-72/2023(145/23) "On Opening of Constitutional Proceedings in the Case on the Constitutional Complaint of Anatolii Luzhynetskyi Regarding the Compliance with the Constitution of Ukraine (constitutionality) of Certain Provisions of Part One of Article 111 of the Criminal Executive Code of Ukraine". (2023, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/v103u710-23#Text>.

² European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

sentenced to life imprisonment, particularly regarding short-term visits outside penitentiary institutions.

Materials and Methods

During the study, a comprehensive analysis of papers addressing the issues was conducted. In the course of the investigation into the rights of individuals sentenced to life imprisonment, the authors analysed the most problematic aspects of the legal status of life prisoners who are not endowed with the legal right to short-term visits outside the correctional colony. General scientific and special legal research methods were employed. The dialectical method was used to analyse theoretical and legal recommendations regarding the regulation of state policy in Ukrainian criminal-executive legislation. Analysis and synthesis methods were employed to identify, based on the examination of current legislation in Ukraine, problems in improving life imprisonment and propose solutions. Comparison methods and description and classification methods helped systematise existing scientific opinions on the main problems of the rights of those sentenced to life imprisonment.

Among the special methods of research, the comparative legal method, systemic analysis method, dogmatic method, historical-legal method, and forecasting method were applied. The comparative legal method assisted in determining possible paths for the development and improvement of existing mechanisms in criminal-executive legislation, definitions of scientific categories, and approaches. The historical-legal method revealed the content of current criminal-executive legislation in Ukraine and specified the rights held by those sentenced to imprisonment. The modelling method provided an opportunity to outline prospects for improving criminal-executive legislation and regulating the mechanism of serving sentences in Ukrainian penitentiary institutions. The formal-logical method helped understand specific aspects of regulation in legislation. The dogmatic method of research was used to form scientific concepts and categories, including refining the rights of those sentenced to life imprisonment. In addition, the forecasting method was used to formulate proposals regarding granting the right to short-term

visits outside the colony, even in exceptional cases, to individuals sentenced to life imprisonment.

The study is based on the analysis of the following legal framework regulating life imprisonment issues: the Law of Ukraine “On Amendments to Some Legislative Acts of Ukraine Regarding the Implementation of Decisions of the European Court of Human Rights,”¹ the Convention for the Protection of Human Rights and Fundamental Freedoms², the Criminal Executive Code³, the Law on the Constitutional Court of Ukraine⁴, and the Constitution of Ukraine⁵. In addition, quantitative data on individuals sentenced to life imprisonment in Ukraine was utilised in the study (General characteristics of the State..., 2023; Supreme Court of Ukraine, 2022).

Results and Discussion

At the legislative⁶ level, the legal status of individuals sentenced to life imprisonment is increasingly becoming the subject of further detailed regulation in Ukraine. Undoubtedly, individuals serving sentences in penitentiary institutions have the constitutional and legally guaranteed right to appeal to any state authority (Article 40 of the Constitution of Ukraine and Articles 8, 107, 113 of the Criminal Executive Code⁷), including the Constitutional Court of Ukraine (Article 56)⁸. However, considering existing potential and real threats to Ukraine’s national security, a balanced approach is necessary at all levels to address urgent issues related to those sentenced to life imprisonment and the national interests of the state, dependent on a well-considered policy in this area. The state is responsible for ensuring the effective execution of sentences and achieving its goals to protect the interests of crime victims, society, and the state as a whole (Part 1, Article 1 of the Criminal Executive Code)⁹. To provide a qualified response to the questions examined in this study, it is necessary to comprehensively and systematically clarify the content of key provisions in Ukrainian criminal-executive legislation, such as the legal status of individuals, including those convicted, the purpose and objectives of criminal punishment, the legal restrictions imposed on certain categories of individuals serving sentences, and the regime of sentence execution.

¹ Law of Ukraine No. 2689-IX “On Amendments to Certain Legislative Amendments of Ukraine Concerning the Execution of Judgments of the European Court of Human Rights”. (2022, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2689-20#Text>.

² Law of Ukraine No. 475/97-BP “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention”. (2006, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80#Text>.

³ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

⁴ Law of Ukraine No. 2136-VIII “On the Constitutional Court of Ukraine”. (2017, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2136-19/ed20170713#Text>.

⁵ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁶ Law of Ukraine No. 2689-IX “On Amendments to Certain Legislative Amendments of Ukraine Concerning the Execution of Judgments of the European Court of Human Rights”. (2022, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2689-20#Text>.

⁷ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

⁸ Law of Ukraine No. 2136-VIII “On the Constitutional Court of Ukraine”. (2017, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2136-19/ed20170713#Text>.

⁹ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

General principles of the legal status of the convicted, including those sentenced to life imprisonment, are defined in the Constitution of Ukraine (Articles 24, 27, 28, 63, and Part 1 of Article 92)¹ and the Criminal Executive Code (Articles 7-10)². However, none of the legal norms address the rights of the convicted to short-term visits outside correctional and educational colonies. Such a right, according to the provisions of Article 111³ of the Criminal Executive Code, is granted only to specific categories of individuals sentenced to imprisonment. Considering the requirements of the Basic Law of Ukraine and international legal sources ratified by the Verkhovna Rada (such as the Convention for the Protection of Human Rights and Fundamental Freedoms⁴), as of 2023, legal grounds for granting the right to individuals sentenced to life imprisonment for short-term visits outside the colony, even in exceptional cases, are not provided. These legal grounds are not specified in the relevant (local) legislative acts of Ukraine that establish such a right for those sentenced to imprisonment, including life imprisonment. This conclusion can be drawn by analysing the content of Part 2 of Article 151⁵ of the Criminal Executive Code. The rights of individuals serving sentences in the form of life imprisonment, as stipulated in Article 107 of this legislative act, are extended to those sentenced to short-term imprisonment⁶. However, the law does not provide for the right to short-term visits outside the colonies for the former or the latter subjects of criminal-executive legal relations. Thus, the demands of individuals sentenced to life imprisonment for short-term visits outside penitentiary institutions today are unjustified.

According to the provisions of Part 1 of Article 111 of the Criminal Executive Code⁷, the mentioned right is stipulated only for convicts held in correctional colonies with a minimum level of security and lenient conditions of detention (Part 2 of Article 18 of the Criminal Executive Code)⁸, sectors of social rehabilitation, correctional colonies of minimum security with general conditions of detention (Article 98 of the Criminal Executive Code)⁹, sectors of social rehabilitation in correctional colonies of medium security, and in educational colonies

(Article 98 of the Criminal Executive Code)¹⁰. Thus, despite the requirements of the principle of equality of convicts before the law (Article 24 of the Constitution of Ukraine¹¹ and Article 5 of the Criminal Executive Code¹²), not all categories of these individuals have the right to short-term visits outside the colonies because their legal status is determined by the legal restrictions (punishment and regime of sentence execution) established for other security levels (Part 3 of Article 11, Articles 17, 19, 94, 96-98 of the Criminal Executive Code¹³), which, again, does not contradict either the norms of the Constitution of Ukraine or those international legal acts that have become part of national legislation (Article 9 of the Basic Law of Ukraine)¹⁴. Therefore, the legal limitations for convicts are based on the level of their social danger, and the process of execution-serving sentence is based on the regime ensuring and implementing certain legal restrictions. In this case, the regime forms the basis for such an element of the punishment goal as the penalty (Part 2 of Article 50 of the Criminal Code of Ukraine¹⁵), and the latter is an integral part and essence of the entire criminal responsibility.

The term “penalty” is understood as the application of such measures restricting the rights and freedoms of the convict that will be sufficient to achieve the main goals of punishment – rehabilitation of this person and the implementation of measures of both special (regarding the specific convicted person) and general (concerning other citizens who have not been subject to criminal responsibility) prevention (preventing the commission of new crimes or criminal offences) (Alexandrov *et al.*, 2005). In contrast, the term “criminal responsibility” is interpreted by researchers as the consequences of a personal, property, or organisational nature that a person who has committed a criminal offence undergoes based on the law and a court decision (Petryshyn *et al.*, 2015). In turn, the concept of “regime” is provided in Part 1 of Article 102 of the Criminal Executive Code¹⁶, the essence of which boils down to the legislatively established order of execution-serving a particular criminal punishment (Article 51 of the Criminal Code)¹⁷ assigned to the convict by the court

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

² Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

³ *Ibidem*, 2003.

⁴ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

⁵ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

⁶ *Ibidem*, 2003.

⁷ *Ibidem*, 2003.

⁸ *Ibidem*, 2003.

⁹ *Ibidem*, 2003.

¹⁰ *Ibidem*, 2003.

¹¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

¹² Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

¹³ *Ibidem*, 2003.

¹⁴ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

¹⁵ Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

¹⁶ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

¹⁷ *Ibidem*, 2003.

(Dzhuzha *et al.*, 2010). In this context, one of the functions of the regime is punitive, aiming to restrain the person serving the sentence from committing new crimes not only through intimidation but also by encouraging their rehabilitation and obtaining certain benefits and lawful goods¹.

Thus, the essence, content, and scope of restrictions regarding convicts (in this case, those sentenced to life imprisonment) constitute a complex of legal, technical, individual, and other measures formulated based on general (in the form of the concepts of legal and criminal responsibility), special (by enshrining the punishment goal in law and criminal-executive legislation, Part 1 of Article 1 of the Criminal Executive Code²), and individual (restrictions of rights, legitimate interests, and freedoms of the guilty person) approaches at the legislative, law enforcement, and legal application levels. This is done in connection with the need to protect the interests of the individual, society, and the state while serving sentences. It can be concluded that even with the presence of exceptional personal circumstances defined by law (Article 111 of the Criminal Executive Code³), a person sentenced to life imprisonment does not have the right to short-term visits outside the colony. This is due to the severity of the committed criminal offence (Article 12 of the Criminal Code⁴), the nature and degree of social danger of this category of individuals subject to criminal responsibility (Alexandrov *et al.*, 2005), the regime of this type of punishment (Article 151 of the Criminal Executive Code⁵), legal facts, and other socio-legal consequences of the conviction of the guilty person (including the impossibility of leaving the colony in cases of exceptional personal circumstances). All these elements constitute the essence and content of restrictions necessary and sufficient to achieve the defined purpose of punishment (Part 2 of Article 50 of the Criminal Code⁶) and the purpose of Ukrainian criminal-executive legislation (Part 1 of Article 1 of the Criminal Executive Code⁷). These are the realities of implementing the tasks of criminal-executive policy both in Ukraine⁸ and in other European countries (Puzyrov, 2018), considering that none of them legislatively provides for the right discussed in this article for convicts.

As indicated by the results of exploring judicial practice on the imposition of criminal penalties, the number of individuals sentenced to life imprisonment decreases annually since courts impose it only in exceptional cases, considering all the circumstances of the criminal proceedings and the guilty person⁹. This fact serves as an additional argument that the most stringent measures of the execution-serving regime of punishment in the form of life imprisonment, as defined by law (Articles 102, 107, 151 of the Criminal Executive Code¹⁰), are justified both from a legislative and a judicial standpoint in addressing this issue. Considering the aforementioned trend in the imposition of sentences by courts in the form of life imprisonment, as well as the amendments made to the current criminal-executive legislation of Ukraine aimed at humanising the process of its execution-serving, it should be acknowledged that even as of July 1, 2023, when there were 1545 individuals sentenced to this type of criminal punishment in the country (General characteristics of the State..., 2023), their number cannot serve as a legal basis for granting them the right to short-term visits outside the colony, as stipulated in Article 111 of the Criminal Executive Code¹¹. It is essential to note that attempts to weaken ("improve") the execution-serving regime of punishment in the form of life imprisonment, including through the use of the possibilities of the European Court of Human Rights (ECtHR) in Ukraine, have been persistent both during the period of the Criminal Code of 1960 (General characteristics of the State..., 2023) and in the 21st century (Stepanyuk *et al.*, 2021).

In modern socio-economic, socio-political, and legal conditions, the state is objectively forced to take actions in so-called extreme necessity (Article 39 of the Criminal Code¹²) because the lawful interests of other persons, primarily the victims of the crime, society, and the state, are more valuable in criminal-executive activities (Part 1 of Article 1 of the Criminal Executive Code¹³) than the rights sought by individuals sentenced to life imprisonment. The latter are adequately governed by regulations such as the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴; the International Covenant

¹ Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

² Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

³ *Ibidem*, 2003.

⁴ Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

⁵ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

⁶ Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

⁷ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

⁸ Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2136-19/ed20170713#Text>.

⁹ Resolution of the Plenum of the Supreme Court of Ukraine No. v0007700-03 "On the Practice of Imposing Criminal Punishment by Courts". (2003, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0007700-03#Text>.

¹⁰ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

¹¹ *Ibidem*, 2003.

¹² Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

¹³ Criminal Executive Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>.

¹⁴ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

on Civil and Political Rights¹; Recommendations of the Council of Europe of September 24, 1982, No. R(82)16²; annex to the Recommendation of the Council of Europe of October 9, 2003³; extracts from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴, and others.

An essential element of the legal status of individuals serving sentences in isolation from society is the legal restrictions and prohibitions on fundamental rights and freedoms. Among them is the right to short-term visits for individuals sentenced to life imprisonment. Such a legal approach does not contradict any current international legal act, which is part of Ukraine's national legislation regulating the process of executing and serving sentences. This is appealed to in their statements by individuals serving the mentioned punishment and their legal representatives. Thus, political and constitutional rights regarding convicted persons who have committed a criminal offence and are serving a sentence in the form of life imprisonment, with varying degrees of limitation specified in the Constitution, must be regulated in accordance with the criminal-executive system. This will improve its practical application in this area concerning individuals serving life imprisonment. In terms of legislative regulation, the foundations of the constitutional-legal status of convicts in Ukraine largely correspond to international standards, and therefore, the main task remains to implement them in practice.

According to observations by V. Korotayev (2020), questions about modifying those articles of the Criminal Code where the punishment of life imprisonment is mentioned are increasingly being raised. This valid point needs to be supplemented by noting that this punishment is currently applied in exceptional cases, so all attempts to change the practice of implementing it or its limitations require significant objective reasons. The existing mechanisms of punishment in the form of imprisonment aim not only to punish the criminal but also to have a positive impact on the personality of the convicted individual. As rightly indicated by S.V. Romantsova (2023) and B. Jarman (2020), legal restrictions, in conjunction with adaptation programs, increase the chances of effectively influencing the consciousness and behaviour of individuals serving sentences. Unjustified interference leading to a breach of the isolation regime of convicts can negatively affect the effectiveness of these measures.

Life imprisonment should be the most severe punishment (Mostepanyuk, 2005), applicable to individuals who have committed criminal actions posing a high societal risk. Yu.Yu. Ivchuk (2023), in their study, maintains the position that individuals sentenced to imprisonment have a special legal status and are significantly restricted in freedom of movement compared to individuals sentenced to other forms of punishment, placing them in a more vulnerable position. It is worth adding that individuals serving life imprisonment are in identical conditions. Since their punishment regime does not allow them to leave the places of detention, the issue of their evacuation from conflict zones is equally relevant. The punishment involves the indefinite isolation of the convicted individual from society by keeping them in penitentiary institutions, and Article 50 of the Criminal Code⁵ of Ukraine (which defines what constitutes punishment) provides a comprehensive characterisation of life imprisonment as a form of punishment.

Life imprisonment is imposed on an individual as the most severe form of punishment for an especially serious crime established by a court verdict, involving the constant isolation of the guilty person by keeping them in institutions with a special regime, as reasonably noted by O. Humin & M. Koval (2020). Therewith, it is worth agreeing with researchers that new alternative forms of punishment and the implementation of pardon procedures for such convicts should be instruments of further humanisation of Ukraine's criminal legislation. Other attempts to restrict this punishment undermine its essence defined in the Criminal Code and contradict the entire penitentiary legislation. In particular, this includes the hypothetical permission for convicts to make short-term visits beyond the places where they are serving their sentence.

According to Yu.V. Lysenko (2020), many complaints about the mechanism and conditions of serving a sentence in life imprisonment come from the prisoners themselves. There is dissatisfaction with the fact that the conditions of detention do not meet European standards, and the order prescribed in regulations is not followed in institutions. It is essential to note the numerous problems associated with serving a sentence in the form of life imprisonment, which, as of 2023, remain unresolved, and those who have the desire to address them – the convicts – do not have the right to do so (Lysenko, 2020). In light of this, it is worth noting

¹ International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://zakon.rada.gov.ua/laws/show/995_043/ed19661216#Text.

² Recommendation of the Council of Europe No. R(82)16 To Participating Countries Regarding the Granting of Short-term Leave to Prisoners. Short-term Leave of Absence for Prisoners. (1982, September). Retrieved from <https://zakononline.com.ua/documents/show/159296159296>.

³ Recommendation of the Council of Europe of the Committee of Ministers of the Council of Europe No. Rec(2003)23 «On the Execution of Sentences of Life Imprisonment and Other Long Terms of Imprisonment by the Administrations of Places of Detention». Retrieved from <https://zakononline.com.ua/documents/show/243688243753>.

⁴ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. (1987, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/995068#Text>.

⁵ Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>.

that the practical implementation of existing provisions regarding life imprisonment may have more practical benefits for convicts than granting them new rights, such as temporary release from prison. Although formally this may humanise the punishment of life imprisonment, as emphasised by A. Symkovych (2020), this right is controversial and uneven in different jurisdictions. Moreover, the impact on the mental well-being of convicts under such a hypothetical practice remains unstudied, which does not speak in its favour.

The position of S.D. van Zyl & C. Appleton (2019) requires special attention, as they argue that life imprisonment in the modern world increasingly fails to meet the demands of justice. Researchers assert that the number of individuals subject to this punishment is increasing disproportionately to the rise in crime. This may indicate a growing number of cases of unjustified application of this punishment, which was intended to replace the death penalty but has gained broader use in contemporary conditions. The spread of this type of punishment in the 21st century, particularly for young offenders, is also noted by B. Crewe *et al.* (2020). Both studies propose addressing this problem by abandoning this form of punishment. Another option is the possibility of replacing life imprisonment with other forms of punishment, as was made possible in Lithuania following the 2019 reform of life imprisonment (Namasvicius, 2023). The Constitutional Court of Ukraine has also ruled that the impossibility of replacing life imprisonment with other punishments is unconstitutional¹, and a bill establishing such a practice was approved by the President of Ukraine in 2022².

When considering the issue of further humanisation of the criminal paradigm, it is essential to consider the specificity of each individual country and study how and to what extent this punishment is characteristic of specific regions. In Ukraine, in 2022, only 2% of individuals convicted of particularly serious crimes received this punishment (Supreme Court of Ukraine, 2022), indicating that Ukraine does not have a problem with unjustified sentences to life imprisonment. Thus, addressing the issue of the increasing application of this punishment should focus not on its humanisation but on stricter adherence to its provisions and more orderly court proceedings. Given that contemporary courts more often issue such sentences than originally envisaged, the humanisation or “softening” of this punishment may lead to the opposite result – an increase in the number of individuals sentenced to life imprisonment.

Conclusions

The analysis of regulations, including provisions of international law, judicial practice, and scientific sources, allows asserting that there are no social, psychological, moral, legal, or other grounds for expanding the rights of individuals sentenced to life imprisonment, including those related to short-term leave for these individuals beyond the colonies in the presence of exceptional personal circumstances. Any attempts at leave are not only scientifically unfounded but also dangerous in the context of existing potential and real threats to the national security of Ukraine. Furthermore, the legal status of individuals in places of deprivation of liberty is an important institution of the penitentiary system, the importance of which manifests in: firstly, criminal punishment, which is one of the forms of state coercion; secondly, the content of the sentence, which involves the actual penalty, including established legal restrictions on rights and freedoms; thirdly, the execution by individuals serving sentences, with duties imposed on them to properly implement their rights and legitimate interests to achieve the set results. The authors also emphasised that the implementation of the rights and legitimate interests of individuals serving sentences is based on international legal acts, which serve as the basis for the national legislation of Ukraine and regulate the mechanism for legality during the execution of sentences by individuals in penitentiary institutions. The recommendations established in international acts play a crucial role in ensuring the rights of convicts. However, it is essential to consider the realities of the criminal-executive system and the practice of sentence execution, especially regarding life imprisonment, where the state’s legal position in ensuring compliance with international norms occupies a prominent place. The imposition of life imprisonment is a legal consequence that has a considerable impact and importance for the convicted individual, ensuring societal security.

Further research on the issue may be associated with the psychological component of life imprisonment and the mental well-being of an individual as a consequence of short-term leave beyond prison walls.

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Conflict of Interest

None.

¹ Decision of the Constitutional Court of Ukraine in the case No. 6-p(II)/2021 “On the Constitutional Complaints of Dmytro Volodymyrovych Krupko on the Constitutionality of Article 81, Paragraph 1, and Article 82, Paragraph 1, of the Criminal Code of Ukraine, Volodymyr Volodymyrovych Kostin, Oleksandr Stepanovych Melnychenko on the Constitutionality of Article 82, Paragraph 1, of the Criminal Code of Ukraine, and on the Constitutional Complaint of Viktor Ivanovych Hohin on the Constitutionality of Article 81, Paragraph 1, of the Criminal Code of Ukraine”. (2021, September). Retrieved from <https://ccu.gov.ua/sites/default/files/docs/6-p2-2021.pdf>.

² Law of Ukraine No. 2689-IX “On Amendments to Certain Legislative Acts of Ukraine Concerning the Enforcement of Judgements of the European Court of Human Rights”. (2022, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2689-IX>.

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Проблема розширення прав засуджених до довічного позбавлення волі

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Анотація

Станом на 2023 рік проблема довічного позбавлення волі є найменш урегульованою в українському кримінально-виконавчому праві. Водночас довічне позбавлення волі є найбільш дискусійним видом покарання, що актуалізує дослідження його окремих аспектів. Метою статті є дослідження проблемних питань щодо права засуджених до довічного позбавлення волі на короткочасні виїзди за межі установи відбування покарань. Для її досягнення використано різноманітні методи, серед яких: системно-структурний, аналітичний, порівняльний і термінологічний. Здійснено аналіз правового статусу засуджених до довічного позбавлення волі в Україні, на підставі результатів якого зроблено висновок про те, що зазначені суб'єкти кримінально-виконавчих правовідносин не наділені правом виїзду за межі в'язниці, зокрема за наявності виняткових особистих обставин. Водночас встановлено, що згідно з чинним кримінально-виконавчим законодавством України таким правом володіють лише окремі категорії засуджених до позбавлення волі, у чому, власне, й виявляється сутність мети покарання. У дослідженні доведено, що саме через режим правообмежень держава має можливість виконувати завдання кримінально-виконавчого характеру, одним із яких є запобігання вчиненню кримінальних правопорушень як засудженими, так й іншими особами. Закріплений на законодавчому рівні правовий статус засуджених до довічного позбавлення волі, особливо в частині правообмежень, спрямований стримувати від вчинення особливо тяжких злочинів не тільки рецидивістів, але й осіб, які вперше задумали чи готуються вчинити такі кримінальні правопорушення. Якщо 2002 року кількість засуджених до довічного позбавлення волі в Україні складала в абсолютних числах понад 100 осіб, то 2022 року – 23 особи. Констатовано, що розширення прав осіб, які відбувають покарання у вигляді довічного позбавлення волі, може спричинити суспільну напругу та посягання на національну безпеку України. Результати дослідження можуть бути використані під час подальшого нормативно-правового врегулювання проблемних аспектів довічного позбавлення волі

Ключові слова:

кримінальне правопорушення; кримінально-виконавче законодавство; відбування покарання; запобігання правопорушенням; поведінка із засудженими; рецидив