

## Procedure and conditions of life executing punishment: essence and tendencies of reform in criminal executive legislation of Ukraine

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### Abstract

The article is devoted to the consideration of essence and tendencies of reforming the criminal-executive legislation of Ukraine concerning the procedure and execution and serving life imprisonment conditions. Certain debatable provisions, both theoretical and legal, concerning procedure and conditions of life service executing punishment are considered. In particular, attention is paid to the problems of legal nature and objectives of life imprisonment, priority of aims and opportunities to achieve correction (resocialization) of convicts, appropriate legal mechanism (tools) that would prevent irreversible negative changes in convict's personality, which occurs under the influence of indefinite isolation. Particular attention is paid to the analysis of more specific problems related to criminal-executive criteria for the perception of life imprisonment as subspecies of imprisonment for a certain period; systemic content ratio of general penitentiary norms, which determine the legal status of convicts sentenced to life imprisonment, and special ones, which should reproduce peculiarities of regime requirements of penitentiary institutions of different security levels (in particular, medium and maximum). It is proved that clarity, completeness and system-legal balance will be facilitated by the formal reproduction in the law of classification of all criminal-executive norms of Chapter 22 of the Criminal Executive Code (hereinafter—CEC) (based on a certain criterion) into norms of general and special significance, which in turn should be divided into the following subtypes. General penitentiary provisions, which determine the initial legal status of persons sentenced to life imprisonment, provide a list and features of the rights, legitimate interests, responsibilities of convicts, ways (mechanism) to comply with safe conditions of detention, etc. General penitentiary provisions, which define the basic principles for implementation of changes in detention conditions during execution and serving a sentence (essence, tasks, forms, general requirements for material grounds for application, procedural issues of progressive system implementation, definition of disciplinary system). Particular attention to specific characteristics on the gender basis is determined, inter alia, by different levels of security of institutions where punishment takes place, and accordingly by different procedures and conditions of detention, the legal status of convicts.

**Keywords:** execution, serving, life imprisonment, criminal-executive legislation, punishment, imprisonment for a definite term, tendencies, resocialization, reforming

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## Procedure and conditions of life executing punishment: essence and tendencies of reform in criminal executive legislation of Ukraine

### Introduction

Life imprisonment is a new type of punishment for the criminal legislation of Ukraine, which should, on the one hand, provide preventive functions of the death penalty (severe punishment, fear), the application of which was imposed in Ukraine in 2000, and subsequently decided by the legislator on exclusion from the current system of criminal penalties, and on the other hand, is one of the types of criminal penalties, the purpose of which is not only punishment, but also correction and re-socialization of convicted person. The dualism of this type of punishment, when against the background of the prevailing importance of its punitive nature and content is the problem of forming a positive attitude to the executive regime and serving a sentence, motivation to achieve positive results while serving a sentence - is reproduced in complexity and multifaceted understanding of its legal nature imprisonment for a specified period.

It is practically generally accepted that the decision on whether life imprisonment is a subtype of imprisonment for a definite term, or whether it is a self-sufficient, specific content of the main punishment - depends on the criteria underlying the interpretation of a significant amount of criminal law factors and criminal-executive nature.

Among the latest issues are the peculiarities of the functioning of institutions for the execution of this most severe type of punishment, assessment of their ability to achieve in the process of executive purposes of punishment (correction, resocialization), search for effective legal mechanisms and tools to neutralize significant adverse effects of indefinite isolation physical and mental condition. On the background of state policy reorientation in the field of punishment execution in the direction of increasing attention to the convicts' rights and legitimate interests, the incentive social and legal penitentiary institute changes the detention conditions, depending on the sentence and the degree of correction.

In one of the historical shortcomings of the correctional labor (criminal-executive) legislation is the problem of inadequate level of systemic and consistent criminal-executive norms in terms of regulating changes in order of convicts' detention for a certain period, inadequate level of reproduction of theoretical research's results and practice requirements in this area - scientists' attention should be focused on clarifying this situation in relation to life imprisonment (Reznik et al., 2020).

Relatively insignificant term of validity of this type of punishment, absence of holistic theoretical and legal concepts of understanding the place and importance of life

imprisonment in the general system of punishment make this problem relevant.

The legal basis for defining and understanding further ways to improve criminal enforcement legislation in this area should be an approach according to which each specific area of the same (identical) criminal enforcement relations should be governed by a set of similar criminal enforcement rules. Ensuring the rights and legitimate interests of convicts in the field of life imprisonment requires a new approach to codification of legal provisions on the separation basis, systematization according to certain criteria (sequence, relationship, nature of content) in accordance with legal requirements and theoretical research.

Scientific research of domestic legislative and law enforcement practice on implementation of life imprisonment proves that the essence and tendencies' problems of reforming of the criminal-executive legislation of Ukraine in this area are reproduction of scientific discussion results on many issues.

Thus, the problems of legal nature and objectives of life imprisonment, the priority of aims and opportunities to achieve convicts' correction (resocialization), appropriate legal mechanism (tools) that would prevent irreversible negative changes in the convict's personality, which occurs under the influence of indefinite isolation are the components of scientific publications T.V. Duyunova (2014), N.V. Kolomiets (2018), V. Korotayev (2020), L.O. Mostepanyuk (2005), Yu.A. Ponomarenko (2009), V.P. Sevostyanov (2006), S.I. Skokov (2005) and O.I. Frolov (2005).

Determining the appropriate amount of restrictions, which reproduces the severity of life imprisonment; proving the possibilities and forms of changes in the legal status of a person sentenced to this type of punishment; formulation of formal and material basis for such changes; substantiation of possibilities of projection of essence and forms (stages) of progressive system of execution and serving of punishment concerning convicts who are in long isolation, on practice of realization of life imprisonment, etc., - are not possible without taking into account scientific positions of such scientists as A.P. Gel, T.I. Gorbachevska (2019), O.P. Horpynyuk (2020), O.A. Hrytenko (2015) etc., who mainly considered these issues in relation to imprisonment for a definite term.

The peculiarity of doctrinal sources of criminal and criminal-executive law on the problems of life imprisonment is that most publications have as their component an analysis of various factors of socio-demographic, legal, international and psychophysical nature on feasibility (inexpediency) of determining at the legislative level to persons sentenced to life imprisonment, Art. 81 and 82 of

the Criminal Code, which determine the criminal law grounds for the application of parole institutions and commutation of punishment to another milder one. A typical approach is to consider this problem against the background of peculiarities of the purpose of correction and re-socialization of convicts sentenced to life imprisonment, and accordingly, as the introduction of quite promising final stages of changing the conditions of life imprisonment while serving a court sentence. As criteria that should be the basis for a positive decision of the legislator, scientists (T.I. Gorbachevska (2019), O.P. Horpynyuk (2020), O.M. Kabanov (2018), V. Korotayev (2020), N.V. Kolomiets (2018), A.Kh. Lazebna (2019), Y.A. Ponomarenko (2009)) define provisions different in its socio-legal significance: the content of international legal standards and international legal experience; the level ratio of moral suffering of convicted person and torture essence, inhuman treatment; opportunities to achieve the punishment aim; the importance of changes in the legal status in achieving the correction aim and resocialization, etc.

Finally, the analysis included research on degree and nature of the impact of socio-demographic and psychophysical characteristics of convicts on order and conditions of execution and serving sentences, the essence of which lies in significant isolation from society with regard to men and women, the degree and nature of changes dependence in the detention conditions during the execution of this punishment on gender characteristics are practically unexplored. Thus, the doctrine defines the rights of regularity in relation to the significant relationship between gender and effectiveness of the execution of imprisonment (V.A. Badyra 2009; O.A. Hrytenko, et al., 2015) is the basis for further research in terms of determining the special criminal-executive rules governing life imprisonment.

## Materials and Methods

Chosen by us methodological approach to the interpretation of identified source data, certain indicators and information was to help solve a specific problem – to determine the nature, tendencies and shortcomings of reforming the criminal executive legislation of Ukraine in terms of determining the order (conditions) of execution and serving a life sentence. The scope of execution of punishment in the form of life imprisonment is regulated by Art. 150, 151, 151-1, 151-2 of Chapter 22, Section IV of the CEC of Ukraine. Relevant legislation has changed several times (in 2006, 2010, 2013, 2016). The changes were reproduced not only in another version of certain articles, but also in the formulation of new criminal executive norms.

The corresponding structure of criminal-executive law and legislation enhances the importance of general theoretical methods of system-legal (comparative-legal) and historical-comparative (retrospective) analysis. It is gener-

ally accepted that the observance of theoretical principles of legislation systematization, types and nature of relations between legal norms (of one or different law branches), systematic harmonization of content and essence of general and special norms, continuity of law, etc. – contribute to unity and correct interpretation of law norms.

Attaching special importance to the impact of proper systematization of the Criminal Executive Code of Ukraine on the quality of their interpretation and, accordingly, on law enforcement in the field of execution and serving a sentence of life imprisonment, - considered it necessary to analyze the content and essence of those rules that directly were contained in these structural units, as well as those related to regulation of imprisonment for a certain period and indirectly reproduced both the positive achievements and shortcomings of the current criminal-executive legislation on life imprisonment. The results were obtained on the basis of the analysis at two levels: historical – from the standpoint of determining the continuity of criminal executive legislation and the nature of persistent problems; modern – from the standpoint of determining promising areas for further improvement of existing legislation.

The theoretical basis in the research of the problem identified by the authors are doctrinal sources (doctrinal conceptual provisions) on certain aspects of the state and areas of solving persistent problems of the most severe type of criminal punishment, which is life imprisonment. The use of these sources allowed not only to determine the current problems of criminal executive legislation in this area, with the peculiarities of the continuity of legal provisions, but also to form their own vision of trends in further reform of criminal executive legislation of Ukraine.

## Results

In view of the fact that the CEC of Ukraine has undergone repeated changes since its entry into force in 2004 and to date in terms of determining procedure and conditions of execution and serving a sentence of life imprisonment, the nature and direction of these changes becomes relevant. It is important to what extent these changes reproduced the substantive, substantive and systemic patterns of the relationship between the legal norms of Section IV of the CEC, as well as between them and other penitentiary provisions, in particular those governing the execution and serving of imprisonment for a certain period.

The answers to these questions include an appeal to the analysis of more specific problems related to criminal-executive grounds (criteria) for the perception of life imprisonment as a subspecies of imprisonment for a certain period; systemic ratio of the content of general penitentiary norms, which determine the legal status of persons sentenced to life imprisonment, and special ones, which should reproduce the peculiarities of regime requirements of penitentiary institutions of different levels of security

(in particular, medium and maximum); the presence (absence) of systematization of legal provisions on application regulation of changes in detention's conditions of convicts while serving their sentences for general and special ones; the reproduction state in the criminal-executive provisions of socio-demographic and psychophysical properties of convicts; identification of content and characteristics of life imprisonment's implementation for different categories of convicts: males and females.

The general penitentiary provisions governing the execution and serving of life imprisonment should be analyzed at two levels: as relating to the previous legal status of convicts, which is established and must accompany them from the first day of serving the sentence; and general provisions concerning changes in the conditions of detention of lifers, regardless of their gender.

Regarding the first group of criminal-executive legal norms: their content and essence are reproduced first of all in Art 151 of the CEC «Procedure and conditions of execution and serving life imprisonment». This article is an integral and main component of Chapter 22 with the same title since the entry into force of the CEC in 2004 (from January 1, 2004) to the present day (Criminal Executive Code of Ukraine, 2021). Contents of Art 151 of the Criminal Procedure Code should be considered as provisions of general importance, as they apply to all convicts sentenced to life imprisonment, regardless of gender. They reproduce the features and specificity of initial legal status of convicts to the most severe type of punishment.

At the time of the CPC's entry into force, these provisions referred to the grounds for keeping a convict in solitary confinement (protection against encroachments by other convicts, prevention of committing a new crime, on medical grounds); fixed the fact that those sentenced to life imprisonment is subject to Art. 107 of the CEC, which determines the list of rights and obligations of persons sentenced to imprisonment for a certain term; determined the procedure for recruitment, secondary education, the amount of money that convicts had to spend on food and basic necessities (as at that time, up to 50% of the minimum wage earned in the colony), the number of short-term visits (two on year; long-term not provided), care packages, parcels (respectively, two per year), the duration of the daily walk (one hour).

In the future without losing its significance, as a rule of a general nature, the provisions of Art. 151 CEC have undergone qualitative changes, clarifications and additions. First, the legal status of convicts, which is established from the first day of their stay in the institution, in terms of financial costs, has undergone significant humanization. From now on, the amount of money that a convict can spend on food, clothing, shoes, linen, basic necessities is not limited. In addition, it does not matter whether these funds are earned, or received by transfer, and so on.

Secondly, the granting of the right to a monthly short-term visit and six long-term visits testify to the fact that the legislator attaches special importance to the convict's

social ties, especially with his immediate surroundings (relatives and friends), which meets international legal standards of detention imprisonment of any person.

In general, the fact that a significant improvement in custody conditions of persons sentenced to life imprisonment occurred as a logical extension of the reform of procedure and conditions of imprisonment, as well as the fact that the list of rights and responsibilities of persons sentenced to life imprisonment a certain period provided for in Art. 107 of the CEC, also applies to persons sentenced to life imprisonment – testified in favor of perception of punishment type in question as a subspecies of imprisonment as such. This conclusion, due to the reforming tendencies of the criminal-executive legislation, is essential against the background of prolonging the scientific discussion on determining the legal nature of life imprisonment and its relationship with imprisonment for a certain period (Mostepanyuk, 2005; Ponomarenko, 2009). The attitude to the considered type of punishment as to a kind of imprisonment for a certain term will allow finding that real mechanism (tools) of achievement of the correction purpose and resocialization of the most dangerous category of convicts.

Regarding the second group of criminal-executive legal norms, in general, in the previous (initial) version of the content of Art 150 and Art 151 of the CEC of Chapter 22 (Criminal Executive Code of Ukraine, 2021) did not contain provisions that would indicate the general grounds and procedure for changing the conditions of detention of convicts, depending on the term served and the of convict's conduct. There is one exception. The only norm that could be considered as concerning the system of introducing improved conditions of detention for life imprisonment was Part 6 of Art. 151 of the Criminal Procedure Code, which stated that with conscientious conduct and attitude to work after serving ten years, convicts were allowed to spend an additional month's money in the amount of 20% of the minimum wage - which could be seen as part of a progressive system of execution (serving) the type of punishment in question.

Therefore, in cases where law enforcement raised questions about the specifics of implementing any changes in life imprisonment, a comprehensive systemic interpretation of the provisions of Chapter 22 with general provisions on changes in the execution of imprisonment should have been carried out. for a certain period (Chapter 15 of the CEC). This concerned the types of changes in the conditions of serving a sentence, the procedure for documenting such changes (Article 100 of the CEC); material and formal grounds for application of such changes, and hence the grounds for application of a progressive system of execution and serving a sentence in the form of imprisonment (Article 101 of the CEC). However, these rules did not mention life imprisonment at all. So the questions remained unanswered.

A positive trend in the reform of criminal-executive legislation was that the structural component of changes it underwent was the deepening and clarification of the

content of those provisions that contained general requirements for the procedure, basis for changing the conditions of life imprisonment. This was reproduced in the formulation of new criminal executive norms contained in Art. 151-1 of the CEC «Changing the custody conditions of convicts sentenced to life imprisonment» (Criminal Executive Code of Ukraine, 2019). These include the provisions set out in Part 1 and Part 4 of Article 151-1 of the CEC. Part 1 with reference to Art 100 of the CEC specifies the types of changes in detention conditions (within one institution, by transfer to another institution) and features of documentation and coordination of the implementation of these types of transfer, and therefore changes in detention conditions while serving a life sentence. Part 4 formulates a general exception, which applies to patients with sexually transmitted diseases, the active form of tuberculosis, mental disorders. The change of detention conditions does not apply to these convicts.

However, if we consider the content of the above criminal-executive legal norms as provisions of general importance concerning any person sentenced to life imprisonment, determine the general initial legal status of the convicted person (Article 151 of the CEC) and determine the general provisions for implementing changes serving a sentence of life imprisonment (Article 151-1 of the CEC) – we must recognize that some of them do not meet this criterion. In particular, this applies to those allegations that it is necessary to keep convicts at the beginning of serving two sentences in a cell, the formal and material grounds for granting the right to participate in group events of educational, cultural and physical culture and health (Part 1, 6 Article 151 of the CEC). The ratio of the content and essence of these provisions with the provisions contained in Part 2 and 3 of Art. 151-1 of the CEC (formal and material grounds for transferring men from double to multi-bed premises organised as cells (hereinafter – POC), then to ordinary living quarters; transfer in the order of recovery from ordinary living quarters to POC, maximum security colony) proves that this should apply only to men. Accordingly, the latter also proves that this norm contains both special rules concerning purely men and general ones (as discussed above). Therefore, it does not meet the requirements of systematization of the norms of Chapter 22 of the CEC into general and special on the procedure for applying changes in the execution of punishment.

In our opinion, this state of affairs should be corrected towards a clearer systematization of the relevant criminal-executive provisions into legal norms of general and special significance. The theory of criminal and criminal-executive law proves that clearer codification promotes high-quality law enforcement. And the main factor in the expediency of distinguishing general provisions has always been the strengthening of the importance of the basic principles, which reproduced the features and characteristics of the tasks of a particular legal institution, its essence, form and basis of application. Accordingly, in view of the research study, such an approach requires the

formulation of criminal-executive norms in terms of determining the basic principles of such penitentiary institutions as the initial legal status of a person sentenced to life imprisonment (list and features of rights, legitimate interests, responsibilities), and changes in the detention conditions during the execution and serving of the sentence (essence, tasks, forms, general requirements for the grounds of application, procedural issues of implementation of the progressive system).

Another factor that leads to a more in-depth codification of the legal norms of Chapter 22 of the CEC on the principle of division into general and special is the need to reproduce in criminal-executive provisions psychophysical and socio-demographic differences between convicts sentenced to life imprisonment.

The problem of determining the appropriate relationship between the nature and degree of public danger of the act, the characteristics of the individual who committed it and the amount of state coercion is constant. To date, the search for the minimum necessary amount of restrictions, order and conditions of punishment execution, treatment of convicts, which can cause only moral suffering and distress, which will contribute to early correction and will not lead to severe mental states (frustration). This increases the importance of seeking legal remedies that can prevent and neutralize the negative consequences of serving the most severe sentence of life imprisonment.

Of particular note is the fact that the essence, purpose (purpose) of the most severe punishment in the form of life imprisonment, the peculiarities of its implementation should be considered against the background of the significant evolution of international legal system of human protection, life, health, dignity, proof not only the need to provide conditions for the convict's life as a human, but also to create a system of preventive criminal-lawful and criminal-executive measures that should neutralize the significant negative impact of indefinite detention on convict's physical and mental condition (Horbaches ka, 2019; On Amendments to Certain Legislative Acts..., 2017; Frolov, 2005; Yatsishin, 2015).

It should be assumed that any punishment is a certain deprivation and restriction, and hence personal discomfort, which has a significant negative impact on physical and mental condition of the convicted. The degree of restriction corresponds to the danger of the act and is reproduced in the severity of punishment. Life imprisonment is the most severe punishment and, accordingly, causes significant personal suffering. However, the criteria for defining treatment and punishment as inhuman as causing suffering are purely subjective, often depending on circumstances: convict's age, state of health, gender. Regarding the last criterion, it is generally accepted that expression degree of feelings of fear, depression, inferiority, perception of certain regime conditions as humiliation depends on gender. There is a different perception by convicted women and men of the procedure and conditions of serving a sentence of imprisonment.

The fact that forced isolation, which is the main

essence of imprisonment for a certain period and life imprisonment, has a more detrimental effect on convicted women, proves the results of many special studies, which deal with the significant interdependence between psychophysiological characteristics of women, their health and nature of its perception of legal regime restrictions; the convict has a high level of psychological stress, accumulation of negative emotions and aggression; faster process of loss of individuality by women and acquisition of degradation signs, psychological disorders, psychopathic manifestations; a greater degree of disintegration of socially useful ties (one and a half times, compared to men), which significantly affects the process of their correction and resocialization (Badyra & Denisova, 2009; Hrytenko, 2015; Merkulova, 2003).

Moreover, all this applies to life imprisonment, given the stricter conditions and procedure for keeping convicts in solitary confinement. And since the result of scientific research is a constant and constant reform of current criminal-executive legislation of Ukraine in the direction of increasing differences in the legal status (in terms of restrictions) of women and men serving a term of imprisonment, such a trend should be extended to the specifics of reform current criminal-executive legislation on execution and serving a sentence of life imprisonment.

We are prompted to such a conclusion by the appeal results to certain statistical data, the peculiarities of the coverage of this issue in the doctrine of law, and mainly by the results of appeal to the system-comparative analysis of current criminal-executive legislation.

Thus, if during the entire period of imprisonment in Ukraine the court decided to apply it to approximately two thousand people, for women this type of punishment was applied only 24 times. As of January 1, 2020, 23 convicted women were kept in the Kachanivska correctional colony of the minimum level of security with general conditions of detention No. 54 (Kharkiv region) in the sector of the average level of security (Buhaychuk & Isakov, 2015; Criminal-executive system of Ukraine, 2019). Against the background of the total number of persons sentenced to life imprisonment, this is a rather small percentage (1.5%).

It is on this basis and taking into account that most particularly serious acts are committed by women in response to violence against them, and the practice of life imprisonment will require quite significant reform in 2015 and 2019, bills were initiated to abolish life imprisonment for women (Korotayev, 2020). According to some, Ukraine is the only post-Soviet country where life imprisonment is still applied to women (Lazebna, 2019). Adherence to the principle of equality and legality in criminal justice calls into question the appropriateness of such a decision. However, it is these principles that determine the need to respect the natural rights and interests of women, their sexual, social and psychophysical characteristics during the execution of the most severe punishment.

We must also pay attention to certain features of the

doctrine in terms of analysis of these issues. In the first comments to the criminal-executive legislation since the entry into force of the practice of life imprisonment (2001-2005), scientific publications of the same time or no emphasis at all on the peculiarities of execution (serving) of this punishment for women, or analyzed by laws. In particular, it was stated that according to the Rules of Procedure of penitentiary institutions, handcuffs and a dog handler with a service dog were not used against women in case of removal from the cells and their escort, unlike men (Bogatyrev, 2008).

Some researches only made superficial remarks that neither the Chapter 21, which deals with the specifics of serving a sentence of imprisonment for women, nor Chapter 22, which regulates the execution of life imprisonment, contains any specific provisions on the specifics of implementation of life imprisonment for such a special category of convicts as women. Accordingly, it was concluded that the criminal-executive legislation is deprived of certain stimulating properties for them (Buhaychuk & Isakov, 2015; Sevostyanov, 2006).

In others, rather strict proposals were made on options for a gradual change in detention conditions of women sentenced to life imprisonment. In particular, it was proposed to keep them at the initial stage in cell-type premises in medium security correctional facility, and after being in isolation for at least three years to apply transfer to ordinary living quarters of this correctional colony (Skokov, 2005).

We should single out another group of studies in which proposals for changes during the execution (serving) of life imprisonment were considered regardless of gender. This means that the author did not specify whether the proposals apply to all convicts or only men.

Thus, in a special scientific research on peculiarities of implementation of life imprisonment L.O. Mostepanyuk suggested that the fact of positive results of correction and serving at least 15 and 20 years of imprisonment, respectively, be considered as material and formal grounds for transferring convicts from premises organised as cells to ordinary living quarters of the maximum security colony and to the medium security colony; the fact of serving 23 years of imprisonment should be considered as a formal basis for transferring convicts to a social adaptation unit. According to the author, serving 25 years of imprisonment gives the right to apply parole with the establishment of a 10-year probationary period, during which the validity of ultrasound will be checked (Mostepanyuk, 2005).

While in terms of the basis and forms of the first two stages of improving the conditions of isolation, scientists' positions mostly coincided, the views of scientists differed significantly on the vision of the final stages of the progressive system of execution and serving a life imprisonment sentence. So I.G. Bogatyrev proposed after 25 years of imprisonment to replace life imprisonment with a term of 3 to 5 years with the subsequent application of parole (Bogatyrev, 2008).

Although these proposals do not single out gender,

their content suggests that changes within the maximum security colony and by transferring from the maximum security colony to the medium security colony can only apply to men. Whereas the final stages of improving the legal status (transfer to the section of social adaptation, parole) are already of general importance.

## Discussion

It should be noted that as a mandatory element of the progressive system (its final stage), the vast majority of authors consider the possibility of applying to persons sentenced to life imprisonment, parole. In view of the research subject, namely the emphasis on the positive and negative results of long-term reform of criminal law in Ukraine in this area – we do not intend to dwell on this issue.

However, it should be noted that the experience of some foreign countries has the practice of applying to persons sentenced to life imprisonment, parole, which could be implemented in our domestic legislation. In particular, we propose to analyze the procedure for applying parole in Austria, England, Spain, Poland, Germany, Switzerland, the Republic of Latvia, the Republic of Latvia, and Estonia.

The criminal laws of the countries in which this release mechanism is integrated into the legal system deal differently with the issue of minimum term of imprisonment and the conditions of such release. Thus, according to the current version of the relevant articles of the Criminal Code of Poland, a convict may be released from life imprisonment after serving 25 years (§3 of Article 78 of the Criminal Code of Poland), provided that he/she has achieved their correction and will not commit new crimes in the future. Article 77 of the Criminal Code of Poland) (Skokov, 2002). Except the general minimum term of 25 years, in § 2 of Art. 78 of the Criminal Code of Poland it is provided the possibility of increasing the minimum term by a court decision in particularly justified cases. At the same time, the law does not disclose the meaning of the term «especially justified cases», nor does it define the maximum allowable limits of such an increase, and therefore in practice it may be equal to 30, 35 or even 40 years. After the release of the «life-long prison sentence convicted» in accordance with the current version of § 3 of Art. 80 of the Criminal Code of Poland, a probationary period of 10 years begins to emerge, during which the probation service monitors his/her behavior. In case of non-compliance with the conditions of release, the court decision is revoked, the convict returns to life imprisonment and can apply for re-release only after 5 years (Article 81 of the Criminal Code of Poland). At the same time, according to the changes provided for in the law of 13 June 2019, from January 2020 the probation period for a person released from life imprisonment may last for life (§ 3 of Article 80 of the Law on Amendments to the Criminal Code of Poland of 13 June 2019)) (Shutko, 2015).

The Criminal Justice Act of 2003 of England provides for differentiated minimum terms of parole from life imprisonment - 30, 25 or 15 years. These terms are set by the legislator for crimes committed in certain circumstances, which is provided for in Annex 21 to this law (Chovgan, 2017).

Spain, which for a long time did not provide for life imprisonment in the national system of punishments, revived this type of punishment in 2015 (Article 35 of the Criminal Code of Spain) (Pokalchuk, 2011). According to Art. 92 of the Spanish Criminal Code, early release of a «lifer» may take place after serving 25 years of the sentence, and in the case of conviction for a set of crimes, this period may be 30 years (Article 78 of the Spanish Criminal Code) (Merkulova, 2003). The court makes a decision, taking into account the convict's identity, the crime circumstances, his/her behavior during the sentence, marital status, recidivism risks, reports of administration of execution, experts' conclusions on a favorable prognosis of social reintegration. Convicted of terrorist crimes to be released from further life imprisonment must demonstrate an unequivocal renunciation of the purposes and means of terrorist activity, active cooperation with authorities to prevent the commission of other crimes by a terrorist organization, and so on. If a positive decision is made, a probationary period of 5 to 10 years is set, the favorable expiration of which depends on the dismissal of the dismissed and compliance with the established prohibitions (parts 2, 3 of Article 92 of the Spanish Criminal Code).

In Germany, a convicted person receives the prospect of parole after serving 15 years. According to § 57a of the Criminal Code of Germany, the conditions for such release from further serving of the sentence, in addition to the expiration of a certain period, are to ensure the interests of public safety and convict's consent. In addition, the mandatory condition of release is the experts' conclusions, which certify the correction of convict and the absence of risks of committing new crimes after release (Lazebna, 2019). Release from life imprisonment is conditional, because after release the probationary period begins, during which the probation service monitors the behavior of the released and performance of his/her duties determined by the court. In case of non-compliance with the conditions of release, the court decision is revoked (§ 56e of the Criminal Code of Germany).

Under Austrian criminal law, a person sentenced to life imprisonment may be released from further serving of this sentence if he/she has served at least 15 years and has reason to believe that he/she will not commit new crimes in the future (Part 6 § 46 of the Austrian Criminal Code). Such release is conditional, and the probationary period is 10 years, after which the person is finally released from life imprisonment (Part 1 of § 48 of the Criminal Code of Austria) (Djuzha et al., 2010).

Swiss criminal law provides for the possibility of releasing a life sentence from serving a sentence after serving 15 years, and for exceptional cases – after 10 years (Part 5

of Article 86 of the Swiss Criminal Code) (Bogatyrev, 2008). Exceptional circumstances include: old age, serious illness or other circumstances that indicate that person no longer poses a threat to society (Article 64c of the Swiss Criminal Code). The decision on early release is based on the forecast of convict's future behavior, taking into account his identity and other factual circumstances. A five-year probationary period is set for a person released from life imprisonment, during which the probation service monitors his / her behavior. (Article 86 of the Criminal Code of Switzerland).

Amendments were made to Art 51 of the Criminal Code of Lithuania (Law of the Republic of Lithuania No. XIII-2005 of March 21, 2019 (Kolomiets, 2018), according to which release from life imprisonment now belongs to the court powers, which may apply it at the request of the penitentiary in case of grounds for such release in the form of a set of objective and subjective circumstances specified in Art 51 of the Criminal Code of Lithuania (Abrhám et al., 2018).

According to objective factors, early release of prisoners for life is possible only after they have actually served twenty years of the sentence (Part 1 of Article 51 of the Criminal Code). In this case, if the convict commits a new intentional crime during these twenty years, the period of this term is interrupted and begins to expire again from the moment of committing a new intentional crime (Part 4 of Article 51 of the Criminal Code of Lithuania). At the same time, the term defined in Part 1 of Art. 51 of the Criminal Code of Lithuania for a period of twenty years does not indicate the automatic release of lifers from further imprisonment. To do this, the court must establish the existence of a subjective component for such release, namely to ensure the expediency and necessity of termination of punishment given the degree of probability of committing new crimes by the convict, his behavior while serving his sentence, eliminating or compensating a significant part of the damage, the efforts he makes to ensure full compensation for the damage, etc. (Part 2 of Article 51 of the Criminal Code of Lithuania). If these bases exist, the unserved part of the sentence of life imprisonment shall be replaced by imprisonment for a term of five to ten years. In this case, the term of the new milder sentence begins to expire from the moment the court decision enters into force.

The powers of the court to release from life imprisonment are determined by Art. 60, 61 of the Criminal Code of the Republic of Latvia (Korotayev, 2020) (hereinafter - the Criminal Code of Latvia), which provide several independent grounds for such dismissal. One of them is enshrined in Art. 60 of the Criminal Code and is associated with the existence of exceptional circumstances, which consist in facilitating the convict's disclosure of a crime committed by another person. The requirement for such assistance is that the crime committed by another person must be of the same gravity or more serious than the crime for which the convict is serving his / her sentence. If there are such grounds, the court replaces the imposed life im-

prisonment with imprisonment for a term of twenty years. At the same time, the Criminal Code does not contain any requirements regarding the amount of the sentence imposed by the convict for such a replacement to take place. Thus, in this case, the replacement of life imprisonment with temporary imprisonment does not depend on the convict serving a certain part of the sentence and may take place even immediately after the sentence enters into force. The peculiarity of the application of this type of release from life imprisonment is that it is unconditional, because its finality is not determined by the further behavior of the convict.

In Estonia, persons sentenced to life imprisonment may be released from serving their sentence after the expiry of a twenty-five-year term. Such dismissal belongs to the discretion of the court and may be applied if there are grounds under Part 4 of Art. 76 of the Estonian Criminal Code, namely when making such a decision, the court must take into account the crime circumstances, perpetrator's identity, behavior of the convict before and during the sentence, as well as his /her living conditions and consequences for them after release (Duyunova, 2014).

Thus, the analysis of foreign experience shows the existence of a mechanism that ensures the realization of convict's right to be released from further imprisonment on the parole basis, which should be introduced as a basis for reforming domestic legislation.

In addition, it should also be noted that issues related to the possibility of applying to persons sentenced to life imprisonment, parole, are actively discussed in special studies.

Practically every research of criminal and criminal-executive nature on life imprisonment does not avoid the question of analysis of the criteria that determine the appropriateness (or, conversely, inexpediency) of parole to persons sentenced to life imprisonment, basis and procedure for implementing this interdisciplinary institute.

The problem of legislative definition in criminal law of such possibility, formulation of formal and material basis for its application, determination of potential legal consequences of substitution by way of pardon of life imprisonment for imprisonment for at least 25 years and correlation of these consequences with parole, etc. discussions since the entry into force of the Criminal Code in 2001. Most scientists (T.I. Gorbachevska (2019), O.P. Gorpynyuk, O.M. Kabanov, V. Korotayev, N.V. Kolomiets, A.V. Lazebna, Yu.A. Ponomarenko) is focused on a positive solution to this issue (Horbaches ka, 2019; Horpynyuk, 2020; Kabanov, 2018; Korotayev, 2020; Kolomiets, 2018).

Therefore, only on the comparison basis of these doctrinal provisions can we conclude that there is a significant difference in scholars' views on appropriate system of changes in life imprisonment conditions, in general, for convicted women in particular. On the one hand, it is positive that from the first years of implementation of the new type of punishment in doctrine of criminal executive law the issue of changes in the legal status of convicts sen-



tenced to life imprisonment, the will, the nature and features of which had to be related to term of stay in isolation and positive changes in behavior (Hel, 2014).

The author's vision on expedient formal and material bases of application of detention's improved conditions, character and certain sequence of such changes was given. The importance of such research has increased, considering that even in the presence of a certain legal definition of changes in detention conditions, these changes were practically not applied in practice (Antoniuk et al., 2018). There were only a few cases, given the significant number of gaps and contradictions of legal nature, imperfection of penitentiary regulation and conceptual apparatus, absence of clear material bases for translation.

However, on the other hand, the doctrine proves that from the first years of the entry into force of criminal law provisions on introduction of a new type of punishment – life imprisonment, scientists focused mainly on the nature of changes in detention conditions for men, as it was mostly spoken on maximum security institutions for this punishment execution. In some cases, the procedure for transfer from one type of POC and another, further transfer to ordinary living quarters was analyzed in relation to convicted women, which was contrary to current legislation.

This situation in the doctrine of criminal and criminal-executive law was due to a significant number of negative factors that indicated the imperfection of criminal-executive legislation in terms of regulating the specifics of execution and serving a sentence of life imprisonment for convicted women: lack of systemic legal relationship between provisions criminal-executive norms contained in Chapter 22 and other structural parts of the CEC, vagueness and insufficient completeness of the relevant legal definitions.

If the peculiarities of execution and serving of life imprisonment concerning males were in the area of legislator's attention since the entry into force of the CEC in 2004 and were regulated directly by the provisions of Art. 150 and 151 of the Criminal Procedure Code, the relevant problems concerning convicted females, as at that time, required a rather complex analysis of the whole set of criminal-executive provisions on imprisonment as such (Criminal Executive Code of Ukraine, 2021). So only in Art. 18 of the Criminal Procedure Code "Correctional colonies" stated that women sentenced to life imprisonment, whose death penalty or life imprisonment was replaced by a term of imprisonment by pardon or amnesty, should serve their sentences in medium-security penal colonies. A common interpretation of Art. 92 of the Criminal Procedure Code "Separate Detention of Prisoners in Correctional and Correctional Institutions" provided grounds to believe that all three categories of convicted women should be kept separate and isolated from each other. Again, a common interpretation of Art. 94 of the CEC «Structural sections of correctional and educational colonies» testified in favor of the fact that within the institution of medium level of security females should

be distributed in accordance with the requirements of Art. 95-97, 99 CEC on quarantine sites, diagnostics and distribution; resocialization; enhanced control (detention in POC); social rehabilitation, as the law did not contain any exceptions to life imprisonment.

However, such a widespread approach to the interpretation of penitentiary norms, which directly regulated the peculiarities of execution and serving of a sentence of imprisonment for a certain term for convicted women, was hardly justified. The fact that at the time of the CEC's enforced in 2004 a significant number of unanswered questions about the specifics of life imprisonment for women had a significant impact on the status and quality of law enforcement. Therefore, it is natural that one of the main directions of reforming the legislation was to define these features in Chapter 22 of the CEC.

As already mentioned, the criminal-executive legislation has changed many times. And these changes, among other things, were reproduced in the formulation of a new criminal-executive norm contained in Art. 151-2 of the CEC «Peculiarities of execution and serving of punishment by women sentenced to life imprisonment» (Criminal Executive Code of Ukraine, 2019). Therefore, at first glance, the legislator eliminated the main shortcomings in terms of influencing the state of regulation of the area of demographic and criminal-executive characteristics of those sentenced to life imprisonment. However, this is not entirely true.

No less questions arise when interpreting the content of Part 2 of Art. 151-2 of the CEC, which only emphasizes that a regime is established for women to keep convicts in a medium-security correctional colony. At first glance, this is logical, given which institutions and sectors women are in. However, for men, such a thesis does not exist at all, as the main guideline is the level of security of the institution (maximum). Consequently, everything that is not prohibited by law applies to both persons sentenced to imprisonment for a certain term and those sentenced to life imprisonment. Therefore, the legislator's clarification of the type of regime for convicted women only reinforces the importance and necessity of determining the peculiarities of the of a progressive system of implementation execution and serving sentences for the considered category of women, bases and procedure for changing their conditions, given the regime of medium security. However, these issues were generally ignored by the legislator.

We believe that the extension to women of the requirements for their initial detention in double POC (since Part 1 of Article 151 does not single out the categories of convicts) is hardly appropriate. Keeping women in ordinary living quarters of the medium security sector in compliance with the general restrictions established by Art. 151 of the CEC for persons sentenced to life imprisonment will correspond to the peculiarities of their psychophysical condition. However, the penitentiary provisions need to be clarified in terms of determining the features of the initial legal status of convicted women, given the essential regime differences between the average level of security

and the maximum level of security; formulation of formal and material grounds for changing the conditions of detention, taking into account the current system of procedures and grounds for transfer from one station to another within the average level of security, etc.

Finally, several considerations regarding the appropriate interpretation of the current content of Art. Art. 150, 151, 151-1 of Chapter 22 of the CEC as such, which should relate to the peculiarities of the execution and serving life imprisonment sentence by men. Provisions relating to these features are contained in various articles of a particular chapter. In particular: in Part 1 of Art. 150 of the CEC states that men sentenced to life imprisonment serve their sentences in the maximum security sectors of the medium security penal colonies and the maximum security penal colonies; Part 2 of this article deals with the formal grounds (serving 10 years) for transfer from POC (it is not specified which type) to ordinary residential premises of the maximum level of security. Thus, in terms of content, this norm mainly applies to men, as it emphasizes a certain level of security of the institution (except for one sentence, which refers to the place of detention of women).

The requirement to place convicts in double POC and wear special clothes is in part 1 of Art. 151 of the CEC; the requirements on the material (conscientious treatment) and formal (serving 5 years) grounds for granting the right to participate in group activities of educational, cultural and physical culture and health are in Part 6 of pointed article. However, the place where these activities can take place is not specified. At first glance, this norm determines the procedure and conditions of execution and serving a sentence of life imprisonment for all convicts, regardless of gender. However, the comparison of this norm with the following article refutes this assumption.

After all, Part 2 of Art. 151-1 deals only with the formal grounds for changing the conditions of detention of convicted men within the maximum security colony: from double POC to multi-seat POC (with permission to participate in group events) - after serving at least five years of imprisonment; from multi-bed POC to ordinary living quarters - after serving at least five years of imprisonment in this type of POC, Part 3 defines the material bases (malicious violation of the order of serving) for the deterioration of the conditions of detention of the convict - transfer from ordinary residential premises to the penitentiary of the maximum security colony (however, to which type - is not specified).

So, if Parts 1, 6 of Art. 151 of the Criminal Executive Code apply to all convicts, so why in the following articles are procedural issues specific only to men who are in a maximum security institution? If our assumption is not true, then these provisions can not be contained in the norm of general importance, but require coordination with other special provisions that determine the specific procedure for implementation and serving of life imprisonment for men. The urgency of coordination is enhanced by the presence of certain contradictions,

vagueness, in some cases, the identity of the above criminal-executive legislative provisions, if they are considered purely in relation to a certain category of convicts (in particular, men). It is desirable to concentrate all these provisions in one norm, as such an approach will allow to determine more clearly the peculiarities of the legal status of convicts both at the first stage of serving the sentence and later during the application of changes in the most severe type of punishment.

## Conclusions

Summarizing the above, we must emphasize the following. On the one hand, the penitentiary legislation, as amended several times, has significantly eased the conditions and procedure for the detention of lifers in accordance with the principle of humanism and international legal standards. However, on the other hand, the CEC did not acquire clarity and systemic legal balance both between the norms contained in Chapter 22 «Procedure and conditions of execution and serving a sentence of life imprisonment» and in relation to the criminal-executive provisions that regulated the procedure and conditions of execution and serving a sentence of imprisonment for a certain period. Further improvement should take place in two areas: a more in-depth systematization of criminal enforcement provisions and clarification (specification) of their content.

## Recommendations

Clarity, completeness and system-legal balance will be facilitated by the formal reproduction in the law of the classification of all criminal executive norms of Chapter 22 of the CEC (on the basis of a certain criterion) into norms of general and special significance, which in turn should be divided into the following subtypes.

General penitentiary provisions, which determine the initial legal status of persons sentenced to life imprisonment, provide a list and features of the rights, legitimate interests, responsibilities of convicts, ways (mechanism) to comply with safe conditions of detention, etc. General penitentiary provisions, which define the basic principles for the implementation of changes in detention conditions during execution and serving a sentence (essence, tasks, forms, general requirements for material grounds for application, procedural issues of progressive system implementation, definition of disciplinary system).

Two subtypes of special penitentiary provisions, which provide a procedure definition and conditions of execution and serving a sentence in the form of life imprisonment, the progressive system's specifics (bases and forms of changing the custody conditions of within one penitentiary institution and by transfer to another institution) for men and women. Particular attention to specific gender characteristics is determined, among other things, by

the different levels of security of the institutions where the punishment takes place, and accordingly by the different procedures and detention conditions, the legal status of convicts.

If we are guided by the understanding that changes in the custody conditions of convicts, depending on compliance with the regime requirements, the degree of correction and the sentence are the essence of a progressive system of execution and serving a sentence of imprisonment, it is appropriate to project the current problems of criminal law execution and serving of life imprisonment. And such problems today are: clarification of convict's legal status at each stage of the person's isolation; determination of criteria for establishing the minimum necessary limits of the initial (strictest) stage of stay in the institution; compliance with the ratio of the scope of legal restrictions with the socio-demographic and psychophysical characteristics of convicted; proper reproduction of committed act gravity, antisocial guidance of the person in the requirements for formal grounds for acquiring the right to transfer to more favorable conditions of detention in the institution; taking into account the peculiarities of execution regime of punishment in the form of life imprisonment in terms of formulating requirements for the conduct and degree of correction of the convicted person as a material basis.

As a component of these problems there is a question of expediency (inexpediency) of determination of the bases and application conditions of replacement of punishment on other softer ones, conditional early release as the last final stages of progressive system of execution and serving of punishment in the form of life imprisonment. In our opinion, this problem is quite complex and multifaceted, it needs more in-depth study and solution at the criminal law level. However, the basis for further reform of criminal law should be the concept of developing tools to achieve the correction and re-socialization of convicts who are in the most severe isolation.

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