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LIFE IMPRISONMENT: IS THERE A POSSIBILITY TO PROTECT HUMAN RIGHTS?

This short report raises the question of the execution of one of the most painful types of punishments – life imprisonment. This is a very controversial and debatable topic, which is related to the observance of human rights and their protection. In Europe, there is no unity of opinion on this subject, but the answer to the question remains indisputable: should human rights be observed during the execution of this punishment and should we strive to change the person who felt the influence of this maximum form of state coercion.

The system of execution of punishments In Ukraine Is distinguished by a high degree of risk and the presence of human rights violations.

The problems that exist in the field of conditions of detention, torture of convicts, restrictions on access to medical care are, unfortunately, commonplace classics of the Ukrainian penitentiary system.

A separate, quite specific category is punishment in the form of life imprisonment. In addition to the general list of complications and violations, the execution of this punishment has a number of negative features and features.

In particular, Ukrainian legal reality actually makes life imprisonment a punishment that is imposed “behind the bars” not only of the penitentiary system, but also of the criminal justice system and society as a whole. The problem lies in the impossibility of revising sentences involving life imprisonment and the possibility of release for those sentenced to these types of punishment.

Regarding the chance of release: on March 12, 2019, the European Court of Human Rights issued a decision in the case "Petukhov v. Ukraine (No. 2)" (application No. 41216/13). This decision became special for Ukraine, as it determined that in the national legal system and law enforcement practice there is a systemic problem of the immutability of punishment in the form of life imprisonment. Such a state of affairs may indicate a violation of Art. 3 of the Convention on the Protection of Human Rights and Fundamental Freedoms.

In particular, the Court noted that it cannot but come to the conclusion that the regime available in Ukraine for those sentenced to life imprisonment is incompatible with the goal of rehabilitation" (§§ 181, 182, 184 of the Decision).

Later, this issue became the subject of study by the Constitutional Court of Ukraine. The result of the review was the determination that life imprisonment of a person without the possibility of further release means equating the term of life imprisonment with deprivation of liberty until the end of a person's natural life, and therefore negates not only the purpose of punishment (rehabilitation – author), but also the very essence of human dignity, calls into question its absolute nature and constitutes a violation of the state's positive duty to protect human dignity, and therefore does not correspond to the Constitution of Ukraine. The Constitutional Court of Ukraine indicated that it is the duty of the Verkhovna Rada of Ukraine to legislatively ensure a realistic prospect of releasing persons sentenced to life imprisonment from further serving such a sentence by normalizing the procedure for replacing life imprisonment with a milder punishment or parole. At the same time, it should be taken into account that the replacement of the unserved part of the sentence in the form of life imprisonment with a milder punishment should not be a prerequisite for parole.

The Verkhovna Rada of Ukraine made"chan'es to the Criminal Code of Ukraine, but they did not eliminate all contradictions and problematic aspects of the existing system of execution of punishment in the form of life imprisonment.

Therefore, today the problem of implementation of the EctHR Decision "Petukhov v. Ukraine" (No. 2) has not been resolved. In addition, the issue of exclusion from the legislation of provisions that contradict the Constitution of Ukraine has not been resolved.

Regarding the possibility of appealing sentences involving life imprisonment. The criminal procedural legislation of Ukraine does not provide for the possibility of reviewing decisions after the verdict has entered into force. This is a general rule that is uniform for the vast majority of legal systems in the world. It allows to ensure the authority, reliability and stability of decisions of national courts. But the practice of sentencing to life imprisonment in Ukraine shows that there are cases when there are reasonable grounds to consider the sentence to be erroneous, incorrect or even unjust. The national legislation does not respond to such challenges, making human life the price of the issue.

Therefore, in Ukraine, there has been a public human rights initiative for a long time to implement a special procedure that would, under certain conditions, provide the opportunity to review sentences up to life imprisonment (as a special category of proceedings) in which there are reasonable fears of an error, abuse or even an offense. In addition, the problem is complicated by the fact that a large number of people are serving sentences based on sentences that were handed down according to Soviet, quite punitive, standards. Such people, after changes in the legislation, did not get a chance to review their sentences and apply to them more democratic standards of proving guilt and assigning punishment.

We present below o some results of research conducted by public human rights defenders (in particular, the Public Organization "Kharkiv Human Rights Group"): 599 convicts agreed to take part in the survey, which is more than a third of the total number of life convicts (1544); At the same time, 371 gave their surnames; The youngest of the respondents is 22 years old, the oldest is 69; The shortest duration of the sentence is 7 years and , the longest is 28; 191 respondents were sentenced to death; Among those interviewed, 491 were convicted under the

1961 version of the Criminal Code and 108 – in the 2012 version; 297 people pleaded guilty in court; 275 pleaded not guilty; 167 respondents consider themselves innocent; 378 states that the punishment is too severe; 30 respondents (5%) noted that the punishment is adequate; 130 respondents claim that they did not commit a crime; 367 believe that the qualification of the incriminated crime was incorrect; 74 respondents answered that the qualification of the crime was correct; 439 interviewees claim that they were tortured during the investigation; and 134 interviewees noted that torture was not applied to them; 108 respondents answered that during the investigation in the case they did not have a lawyer at all; and only 32 convicts are satisfied with the work of their lawyers [1].

As we can see, there is a situation that indicates a violation of one of the fundamental human rights, namely the right to a fair trial.

Today, they are trying to correct this situation by expanding the powers of the Ombudsman of Ukraine. Public activists and human rights defenders, together with the Office of the Ombudsman, are trying to prepare and submit to the Verkhovna Rada of Ukraine a draft law that would enable the human rights commissioner to submit complaints to courts regarding human rights violations.

This normative act is able to correct the situation, at least in some part.

The implementation of such a mechanism will make it possible to level the situation when one of the punishments completely falls out of the general context of the goal pursued by the criminal punishment, namely, the effort to return to society a person who is able to comply with generally accepted norms of coexistence.

References:

1. “Death by instalments in the name of Ukraine”: the results of a study of the situation with life prisoners. URL: https://www.radiosvoboda.org/a/dovichno-zasudzheni-doslidzhennya/31705160.html