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СОЦІАЛЬНО ПРАВОВИЙ АНАЛІЗ ПРИЗНАЧЕННЯ ТРИВАЛИХ ТЕРМІНІВ ПОКАРАННЯ ЯК АЛЬТЕРНАТИВИ ДОВІЧНОМУ ПОЗБАВЛЕННЮ ВОЛІ

Анотація. *Особливу увагу та науковий дискурс як науковців так практиків і представників громадських й релігійних організацій викликає питання щодо доцільності збільшення верхньої межі покарання у виді позбавлення волі на певний строк. Воно розглядається крізь призму двох паралельно протилежних підходів, що з одного боку прагнуть здійснити реформу в даному напрямку виключно з метою посилення покарання, а на противагу йому, з іншого боку, запроваджуючи таку ініціативу, розглядають можливість використання її як альтернативи, до довічного позбавлення волі. Об'єктивно, на даний момент, питання пов'язанні з довічним позбавленням волі, та особами засудженими до такого виду покарання в Україні найменш врегульовані по відношенню до норм міжнародного законодавства та світової в'язничної практики. Україна, чи не єдина європейська держава, де й досі не існує механізму умовно-дострокового звільнення для довічно засуджених, незважаючи на те, що це питання давно та успішно вирішується в інших країнах. Натомість, в українському суспільстві серед громадян спостерігаємо запит на кару (каральну політику), безпечне ув'язнення злочинців за високими парканами, без бажання усвідомлювати, що після відбуття покарання вони повернуться в суспільство, і без належної корекційної та реабілітаційної роботи, ефективної діяльності пенітенціарної пробації, підтримки з боку місцевих громад, вони будуть не готові до правослухняної поведінки. Все вищевикладене обумовлює актуальність даного питання та вимагає проведення послідовного та ґрунтовного наукового дослідження можливості підвищення верхньої межі кримінальних покарань за особливо тяжкі злочини, як альтернативу довічному позбавленню волі. Розумне запровадження такої ініціативи дозволить застосовувати покарання до особи, що вчинила злочин, з мінімальною шкодою*

для її особистості, сприятиме повноцінній ресоціалізації та поверненню особи до суспільства, й як наслідок, дозволить знизити рівень злочинності та підвищити стан національної безпеки в цілому.

Ключові слова: верхня межа покарання, ресоціалізація, кримінальна репресія, смертна кара, анкетування.

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SOCIO-LEGAL ANALYSIS OF THE IMPOSITION OF HEAVY TERMS OF IMPRISONMENT AS AN ALTERNATIVE TO LIFE IMPRISONMENT

Abstract. *Both scholars and practitioners and representatives of public and religious organizations give particular attention and focus scientific discourse on the matter of expedience of increasing the upper limit of punishment in the form of imprisonment for a specified period. It is considered through the lens of two antipodal approaches that seek, on the one hand, to carry out reforms in this direction solely for the purpose of adding greater punitive measures, and, on the other hand, by introducing such an initiative, consider the possibility of using it as an alternative to life imprisonment. Objectively, at present, matters connected with life imprisonment and persons sentenced to this type of punitive measures in Ukraine are the least regulated in relation to the provisions of international legislation and world prison practice. Ukraine is not the only European country where there is still no parole mechanism for life sentences, despite the fact that this issue has long and successfully been resolved in other countries. Instead, in Ukrainian society we see a demand for punishment (punitive policy) amongst citizens, the secure confinement of criminals behind bars, without the desire to realize that after serving their sentence, they will return to society, and without proper corrective and rehabilitation work, effective activities of penitentiary probation, support from local communities, they are not going to be ready to exercise law-abiding behaviour. All of the above determines the relevance of this issue and requires a consistent and thorough scientific study of the possibility of raising the upper limit of criminal penalties for particularly serious crimes, as an alternative to life imprisonment. Reasonable implementation of such an initiative will allow to administer punishment to the perpetrator with minimal harm to their personality, facilitating an appropriate reintegration of the person into society, and as a result, will reduce the crime rate and improve the state of national security at large.*

Keywords: maximum punishment, reintegration into society, criminal persecution, death penalty, polling.

INTRODUCTION

Issues of parole for persons convicted to life imprisonment or of improving the mechanism for replacing life imprisonment with milder punitive measures are constantly being scrutinized by scholars and practitioners alike. An important step in the consideration of this matter was the decision of the European Court of Human Rights of April 12, 2019, in the case of *Petukhov v. Ukraine* (No.2). Thus, the European Court of Justice ruled that currently in Ukraine every life-term prisoner is suffering without the “right to hope” of ever being released. The current presidential pardon system is neither transparent nor predictable. Prisoners do not know what they need to do to hope for release¹. As a consequence, Ukraine, being the number one person in Europe in terms of life sentences, violates the right of these persons not to be subjected to torture and other ill-treatment or punishment (Article 3 of the Convention). Academic community, practitioners, representatives of state and non-governmental organizations that have long been researching this issue, understanding this state of affairs, in 2017 have sponsored a Draft Law of Ukraine “On Penitentiary System” No. 2679-VIII dated February 7, 2019², which could solve this problem, but, unfortunately, it has not been yet considered or accepted for unknown reasons.

With that, in attempts to provide the courts of Ukraine with the opportunity to refer to the case of ECHR “*Petukhov v. Ukraine*” in their decisions, one of the innovations that is planned to be implemented is the draft law “On Regulation of Criminal Penalties for Extremely Grievous Crimes” [1]. This bill envisages amendments to the Criminal Code of Ukraine (hereinafter referred to as the CCU)³ and the Penal Code of Ukraine (hereinafter referred to as the PCU of Ukraine)⁴, aimed at streamlining the conditions of detention of persons in custody, serving sentences by convicts of imprisonment, imprisonment for a fixed term, and life imprisonment [2; 3]. Amendments to Articles 64 and 68 of the CCU⁵ are designed to improve the sentencing procedure in the form of life imprisonment, eliminating the possibility of punishing women and persons accused of committing or attempting to commit a crime, including accomplices who did not directly participate in commission of a crime. This will ensure a more differentiated approach to the selection of punitive measure and adherence to the principle of fairness and protection of sensitive categories of offenders. It is also proposed to introduce the possibility of replacing a remanent in the form of life imprisonment with a

¹ Judgment of the European Court of Human Rights N 43374/02 The case of *Petukhov v. Ukraine*. Retrieved from https://zakon.rada.gov.ua/laws/show/974_638

² Draft Law of Ukraine “On the Penitentiary System” No. 2679-VIII. (2019, February). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62965

³ Criminal Code of Ukraine (2019, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>

⁴ Criminal Procedure Code of Ukraine (2018, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15>

⁵ Criminal Code of Ukraine. (2019, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>

milder punitive measure and parole of such convicts (amendments to Articles 81, 82 of the CCU). The proposed wording of Article 18 and the proposal to exclude Article 152-2 of the PCU are intended to bring the provisions of this Code in line with other amendments. Amendments to Part 7 of Article 154 of the PCU establish a mechanism for reconsideration of issues of parole in the event of a prior refusal¹.

The necessity of this initiative is fuelled by the fact that nowadays there is a hyperbolized and subjective perception of punitive measures (which, according to the respondents, should be as severe as possible) and its real potential to influence the crime rate. Therefore, the state is trying to restrain the growth of crime with severe punitive measures [4-7]. On the surface it seems like a faster and cheaper way. However, even with increasing the number of sentences to more severe punishments, the positive effect is not observed [8; 9].

However, at the moment, society is ambiguous about such legislative initiative due to its overly tolerant attitude towards prisoners, as against a public request for punishment [10-14]. Nowadays, few people realize that penal law and the policy of executing sentences, including those not connected with imprisonment and further rehabilitation of persons serving sentences, cease to exist solely within the legal framework and the scope of responsibility of executive bodies implementing the national policy on execution of punitive measures and probation, and transcend into the socio-legal framework, becoming the responsibility of the entire society [15; 16].

Within the framework of such legislative initiative, at the meeting of the subcommittee on reform of the penitentiary system, activities of the bodies of execution of punitive measures and probation of the Verkhovna Rada of Ukraine Committee on Legislative Support of Law Enforcement together with the Ministry of Justice of Ukraine, on June 21, 2018, the decision was adopted to conduct an opinion poll of law enforcement workers, scholars, and the public so as to identify the expedience of aggravating the maximum punishment in the form of imprisonment for a specified period. The survey was carried out using the Google Forms Online Survey between July and August 2018.

1. THEORETICAL OVERVIEW

1.1 Current state of affairs upon the administration of a sentence of imprisonment for a specified period

As of the beginning of 2019 in Ukraine, according to statistics of various executive bodies, public, and international organizations, the number of persons sentenced to life imprisonment in Ukraine is approximately 2000 persons (absolute figure is impossible to indicate, since the data of different sources varies and the specified

¹ Explanatory Note to the Draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on the Administration of Life Imprisonment Sentence. Retrieved from <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=52660&pf35401=318463>

indicators fluctuate from 1548 in one case to 1809 in the other; unfortunately, official statistics are not yet published). With such index, Ukraine ranks first among European countries [17–18]. For comparison, there are only four countries in Europe that have a situation similar to the one in Ukraine in terms of life imprisonment: Turkey (126 people are imprisoned for life), Lithuania (118), Hungary (41) and Bulgaria (24). That is, Turkey is the closest second, and even then it has 12 times less “futureless” lifers. At the same time, Ukraine is ranked in the top five by the same indicator in the world. Only the USA (53 290 convicts), Kenya (3676), Thailand (3176) and Argentina (2282) pass the country, which, in contrast to Ukraine, have already implemented a certain mechanism of early release [19]. By years, life imprisonment sentence was administered: in 2016 – for 27 persons, in 2017 – for 21 persons; pardoned: in 2006 – 1018 persons, in 2007 – 962 persons, in 2008 – 855 persons, in 2009 – 573 persons, in 2010 – 146 persons, in 2011 – 4 persons, in 2012 – 21 persons, in 2013 – 16 persons, in 2014 – 2 persons, in 2015 – 67 persons, in 2016 – 67 persons, in 2017 – 139 persons [20].

No proper conditions of detention have been created for this category of convicts yet. Currently, convicts sentenced to life imprisonment serve their sentences in 12 colonies (sectors) and 22 detention centres. And life imprisonment, unlike all other types of sentences, has a unique property – a constant increase in the number of convicts (an average of 100 persons per year). The punitive practices of the judiciary also contribute to the unjustified increase in the number of convicts sentenced to life imprisonment. The increase in this category of convicts will inevitably affect the views of the population, as more and more citizens from the closest social environment are actually drawn into the field connected with administration of this punitive measure. The revision also requires the existing possibility of applying life imprisonment to women, which has long been abolished in all European countries. There are currently 23 convicted women in Ukraine, meaning that this practice fails to perform significant proactive or preventive function.

Therefore, the separate issues of executing this sentence and considering the possibility of early release or replacement of the undeliverable part of the sentence with a milder sentence for life imprisonment convicts requires the search for new forms of implementation.

1.2 International practices of administering a sentence of imprisonment for a specified period

As defined by experts in international standards for treatment of convicts, the decision as to whether a life-term prisoner poses a threat to society is always controversial. One of the most important steps in identifying an effective life imprisonment policy is to develop a fair, well-considered and humane procedure that will evaluate the readiness of a life-long prisoner to be released. International documents, unlike

Ukrainian national legislation, do not contain any obstructions to the premature release of such a person. The idea behind such an initiative is consistent and falls in line with the requirements of international standards in this field. Since 1976, the Committee of Ministers of the Council of Europe has adopted a series of resolutions and recommendations on long-term and life sentences for prisoners, which include rules on the possibility of early parole of all categories of prisoners.

Furthermore, the requirement of a real possibility of early release is a component of the provision enshrined in the case law of the European Court of Human Rights regarding Article 3 of the European Convention for the Protection of Rights and Fundamental Freedoms (*László Magyar v. Hungary*, 20 May 2014 (claim no. 73593/10), (*Vinter v. the UK* (no. 66069/09, 130/10 and 3896/10), *Kafkaris v. Cyprus* (Grand Chamber, no. 21906/04), *Léger v. France* (19324/02) [1]. In these judgments, the European Court concluded that, when domestic legislation does not provide for a revision of a life-term imprisonment sentence or the possibility of an early parole, life imprisonment would not meet the standards of Article 3 of the Convention.

The requirement to provide for the possibility of early parole of convicts sentenced to life imprisonment is also contained in the standards developed by the European Committee for the Prevention of Torture (Memorandum on “Actual/Real Life Imprisonment” (CPT (2007) 55) and many other standards. This requirement is also justified from the standpoint of safety of society, which has been confirmed and validated by scientific research in the field of criminology. Life sentences are the only category of convicts who cannot be released on early parole, despite the fact that this issue has long and successfully been resolved in other countries. Thus, according to statistics published by Council of Europe experts, convicts sentenced to life imprisonment, who are subject to early parole, are least likely to be repeatedly put behind bars, as they are well aware that if they deviate from the straight line they are required to follow, they will be sentenced again, and this time to death. Furthermore, they are aging, and therefore it has to be considered that age also cures villainy [3].

In most countries where life imprisonment may be administered, there are established mechanisms of consideration of a proposal regarding the revision of a sentence after serving a minimum period of imprisonment established by law. Such mechanism is integrated within the framework of law and sentencing practice, is provided for in the legislation of thirty-two countries: Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Belgium (15 – with an extension to 19 or 23 years for repeat offenders), Bulgaria (20), Cyprus (12), Czech Republic (20), Denmark (12), Estonia (30), Finland (12), France (usually 18, but 30 years for certain murders), Georgia (25), Germany (15), Greece (20), Hungary (20, unless adjudged otherwise), Ireland (preliminary examination by the Parole Board after 7 years, with the exception of particular cases of murder), Italy (26), Latvia (25), Liechtenstein (15), Luxembourg (15), Moldova (30), Monaco (15), Poland (25), Romania (20), Russia (25), Slovakia (25), Slovenia (25),

Sweden (10), Switzerland (15 years that are reduced to 10 years), the former Yugoslav Republic of Macedonia (15) and Turkey (24 years, 30 years for aggravated life imprisonment and 36 for the total sentence with aggravated circumstances of life imprisonment). In Scotland, upon sentencing to life imprisonment, the judge is obliged to set a minimum term, despite the likelihood that such a period would exceed the rest of the natural life of the prisoner [20].

Thus, it can be concluded that effective mechanisms of settlement of this issue have long existed in a number of foreign countries for a long time, and considering the peculiarities of the national model of the State Penal Service of Ukraine and probation may be integrated into the Ukrainian legislation.

2. MATERIALS AND METHODS

In accordance with the stated purpose and tasks, the author used a set of both general scientific and special methods and techniques of scientific cognition, the use of which allowed to thoroughly analyse the range of issues related to the purpose of punishment. The statutory basis for the study consists of the Constitution of Ukraine, the Criminal and Penal Codes¹, the current legislative acts and their delegated legislation, draft regulations governing relations in the field of execution and service of criminal sentences.

The methods of comparative law and documentary analysis were used to identify the shortcomings of the legislation governing the order of sentencing and relief from punishment in the form of life imprisonment, both in Ukraine and in the world. The statistical method enabled the analysis of statistics on persons sentenced to life imprisonment and the practices of administering the sentence in the form of life imprisonment. With the help of the analytical method, the results of the survey were analysed as to the expediency of increasing the maximum punishment in the form of imprisonment for a specified period. The method of statistical analysis allowed to examine the survey results in detail by each section, and the comparative law method allowed to compare them according to particular criteria. In this regard, the paper not only reveals the respondents' opinions on the questions asked, but also traces the relationship of the answer depending on a number of factors, such as the job title (line of work). The prognostic method is applied to forecast the legal regulation of this issue in the future. In addition, the method of legal forecasting is used, which forms the possibility to continue the study of this issue on the basis of previously obtained results, and as a consequence, the implementation of international provisions in the legislation. 804 specialists took part in the survey (Tables 1, 2).

¹ Constitution of Ukraine. (2019, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>; Criminal Code of Ukraine (2019, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>; Criminal Procedure Code of Ukraine (2018, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15>

Table 1. Number of respondents

Job title (line of work)	Number	Percentage
Advocacy	61	7.60%
Universities	6	0.70%
Public organizations	1	0.10%
Public activists	1	0.10%
State Penal Service	83	10.30%
National Police of Ukraine	165	20.50%
NGO	1	0.10%
Convicted	1	0.10%
Political party	1	0.10%
Prosecutor's Office	392	48.70%
Security Service of Ukraine	65	8.00%
Court	27	3.40%

Table 2. Respondents' length of service

Years	Number	Percentage
1–3	94	11.7%
4–8	223	27.8%
9–15	267	33.1%
over 15	220	27.4%

3. RESULTS AND DISCUSSION

On the basis of the Verkhovna Rada of Ukraine Committee on Legislative Support of Law Enforcement and the Ministry of Justice of Ukraine, in the task force on penitentiary reform, in order to study the expedience of solving the issue of increasing the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes, an initiative was proposed to research the opinions of scholars, representatives of public and religious organizations, lawyers and law enforcement officials [21]. In reacting to the question “In your professional opinion, is the maximum limit of imprisonment for a specified period of 15 years established by the Criminal Code of Ukraine sufficient?”, respondents' answers are indicated in Table 3.

Table 3. Answer to the question: “In your professional opinion, is the maximum limit of imprisonment for a specified period of 15 years established by the Criminal Code of Ukraine sufficient?”

Answer options	Number	Percentage
Yes	231	28.7%
no, it's worth raising	495	62.3%
no, it's worth reducing	7	0.8%
difficult to answer	49	6.1%
No answer	5	0.6%
this is not a priority issue, crime prevention first	2	0.2%
Return the death penalty	1	0.1%
Increasing the punishment limit is impractical because of the negative conditions of serving the sentence for convicts, which aggravates their psychological state	2	0.2%
Increase for cumulative sentences	1	0.1%
The limit is acceptable because a punitive measure can be administered in the form of life imprisonment	2	0.2%
It depends on the totality of the circumstances: the type of crime, the gravity, the recurrence, etc., the personality of the offender, the circumstances in which the crime was committed	11	1.4%

The following question of the survey was posed to judges, prosecutors, advocates. In your activity, did a situation occur that, upon adjudging, sentencing to 15 years of imprisonment was considered to be insufficient due to the gravity of the crime committed, while life imprisonment was considered too harsh of a sentence? (Figure 1). Instead, answers to the question “Is it advisable to increase the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for punishment in the form of life imprisonment?” formed as follows (Table 4).

Table 4. Answer to the question: “Is it advisable to increase the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for punishment in the form of life imprisonment?”

Answer options	Number	Percentage
Yes	481	60%
No	245	30.5%
Difficult to answer	63	7.8%

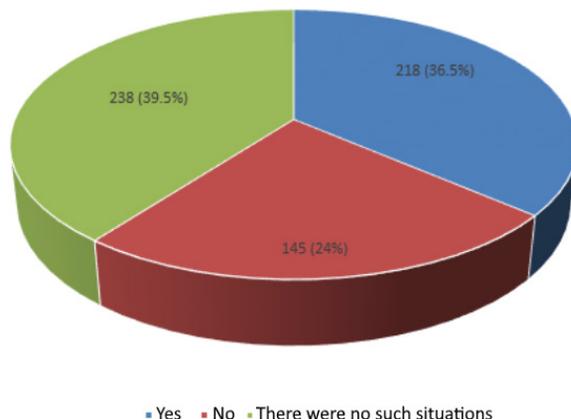


Figure 1. Answer to the question: “In your activity, did a situation occur that, upon adjudging, sentencing to 15 years of imprisonment was considered to be insufficient due to the gravity of the crime committed, while life imprisonment was considered too harsh of a sentence?”

Some respondents, upon answering “No” pointed out that this is connected with the fact that currently the state has absolutely no right to administer punishment in the form of life imprisonment, as there is no effective protection of the defence party and lack of trust in court. There are also answer options: not to increase maximum punishment, but to widen the range of crimes for which it would be possible to administer a punishment in the form of a life imprisonment. Some respondents supported the return of the death penalty. In contrast, an opinion was expressed that life imprisonment is a disguised version of a death penalty, and that is why life imprisonment must be abandoned and maximum punishment be increased. There are also propositions for the use of life imprisonment only in individual cases for crimes against a person. The range of such answers is 0.1% – 0.3%.

In turn, the range of answers to the question “What maximum period of imprisonment would be expedient?” was considerably wider (Table 5).

Table 5. Answers to the question: “What maximum period of imprisonment would be expedient?”

Answer options	Number	Percentage
15 years.	17	2.1%
20 years.	115	14.3%
25 years.	274	34.1%
30 years.	150	18.6%
up to 35 years.	1	0.1%

Answer options	Number	Percentage
35 years.	2	0.2%
40 years.	1	0.1%
45 years.	2	0.2%
50 years.	4	0.4%
60 years.	1	0.1%
Difficult to answer.	2	0.2%
Answer is “no”	22	2.7%
Life-term.	6	0.6%
Death penalty	5	0.5%

A number of respondents to this question stated that the punishment boundary was irrelevant; the penitentiary system requires to be reformed as it does not provide for correction as of today. There were also options that suggested a maximum period only for cumulative sentences, or for their particular type, or only for a specific category of persons. That is, a total of 52.7% of respondents suggested increasing the maximum period of imprisonment to 25 – 30 years. Answers to the question “Is it advisable to increase the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for punishment in the form of 15 years of imprisonment?” were as follows (Figure 2):

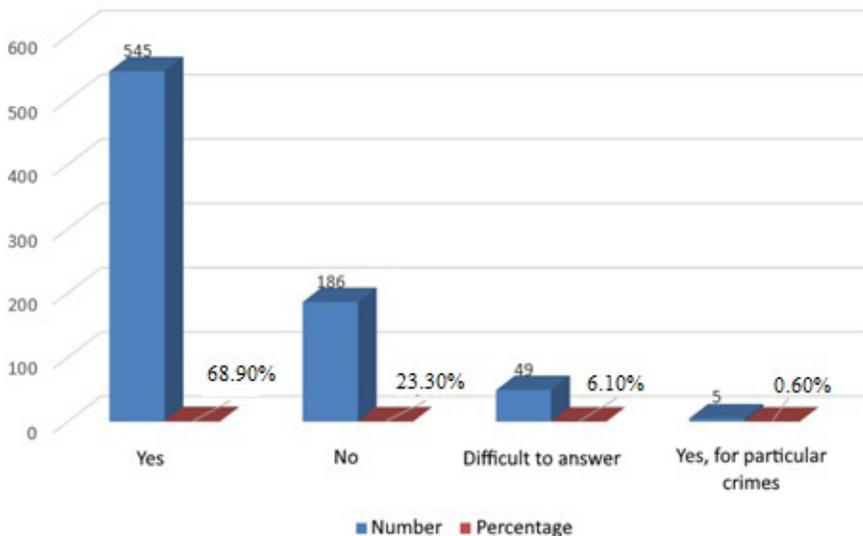


Figure 2. Answer to the question: “Is it advisable to increase the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for punishment in the form of 15 years of imprisonment?”

A number of respondents, in answering this question, reiterated the above opinion that from a psychological standpoint a person is corrected or not corrected within three years, and therefore increasing the maximum punishment is inexpedient. Again, some noted that this issue was not a priority. Respondents were also able to propose a maximum period of imprisonment that would be appropriate (Table 6).

Table 6. Respondents' versions regarding the maximum period of imprisonment

Answer options	Number	Percentage
15 years.	19	3.03%
20 years.	169	26.9%
25 years.	263	42%
30 years.	142	22.6%
up to 35 years.	–	
35 years.	–	
40 years.	–	
45 years.	1	0.15%
50 years.	3	0.47%
60 years.	1	0.15%
Difficult to answer.	2	0.31%
Answer is “no” (not needed; not expedient)	24	3.83%
Life-term.	3	0.47%
Death penalty	1	0.15%
Total:	626	

Particularly noteworthy are the questions:

“I support the increase of the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for life imprisonment because”: (Table 7).

Table 7. Analysis of respondents' answers regarding the maximum punishment

Answer options	Number	Percentage
No (I do not support it)	52	15.3%
Not enough (15 years is too few and life-term is too long)	106	31.2%
Difficult to answer	2	0.59%
Such an increase will promote individualization upon sentencing	13	3.83%
Increasing the maximum punishment will facilitate correction	40	11.7%

Answer options	Number	Percentage
This is fair	15	4.42%
For the purpose of complete isolation from society	5	1.4%
This will reduce recurrence rates	13	3.8%
This will be fair	21	6.1%
This will affect the crime rate	6	1.7%
I support it	6	1.7%
This is the experience and practice of European countries	4	1.1%
This will allow to administer alternative punitive measures	11	3.2%
This will allow to administer punitive measures depending on the gravity of the crime and the offender's personality	41	12%
Return the death penalty	4	1.1%

Many options were not justified in any way, such as, for instance, “such are the modern realities”, “this is the way”, “it is better this way”, etc. “I do not support the increase of the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for life imprisonment because”: (Figure 3).

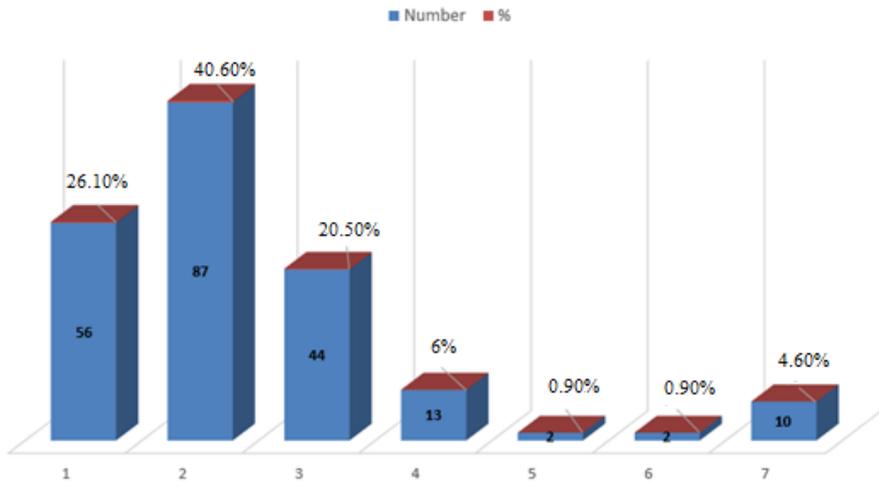


Figure 3. Response to the statement “I do not support the increase of the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for life imprisonment because...”: 1 – I do not support it (dash); 2 – 15 years is sufficient for correction; 3 – I support it; 4 – because there is already a higher limit which is life imprisonment; 5 – only if the moratorium on the death penalty is lifted; 6 – difficult to answer; 7 – the conditions of sentence and the judiciary require improvement.

“I support raising the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for a maximum sentence of 15 years of imprisonment because”: (Table 8). A number of respondents, upon answering the question, stated that any changes should consider the gravity of the crime and other specific cases. Some answers do not carry any scientific load and justification, such as “for God will forgive”.

Table 8. Analysis of responses to the statement: “I support raising the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for a maximum sentence of 15 years of imprisonment because...”

Answer options	Number	Percentage
I do not support (dash)	60	21.5%
15 years of imprisonment is not enough for correction	71	25.4%
I support it	25	8.9%
Possibility of individualization of punishment	7	2.5%
Only if the moratorium on the death penalty is lifted	2	0.7%
Difficult to answer	3	1.07%
The crime rate will change	10	3.5%
International experience	3	1.07%
The punishment must correspond to the gravity of the crime	17	6.09%
I think so	30	10.7%
Negative effect of Savchenko’s law	5	1.7%
Will promote correction and reintegration in society	32	11.4%
Life imprisonment is too severe, while 15 years of imprisonment is not enough	14	5.01%

And with regard to the question “I do not support raising the maximum punishment in the form of imprisonment for a specified period for extremely grievous crimes in articles that provide for a maximum sentence of 15 years of imprisonment because” no detailed answer was given, which evidences that all 100% of the respondents conscientiously support the increase of the maximum punishment, which will lead to the possibility of creating a more differentiated approach to administration of punishment.

With regard to the question: “In your opinion, what are the consequences of increasing a maximum punishment in the form of imprisonment for a specified period?” (several options could be chosen), the answer options were as follows (Table 9):

Table 9. Answers to the question “In your opinion, what are the consequences of increasing a maximum punishment in the form of imprisonment for a specified period?”

Answer options	Number	Percentage
The number of convicts sentenced to 15 years of imprisonment or more will increase;	368	52.8%
The number of sentences to life imprisonment will decrease;	307	44.1%
Both options	5	0.7%
Nothing will change	14	2.01%
Difficult to answer	2	0.28%

A number of respondents indicated that the main negative consequences of increasing the maximum punishment are: 1) the convicted person will be unable to reintegrate into society after serving their sentence, 2) administration of punishment in the form of imprisonment for over 15 years for the totality of crimes committed may not be proportionate to the criminal offenses committed, 3) retribution will become the only purpose of the punishment. Some believe that this will only lead to additional costs.

Instead, when answering the question “Is it expedient to increase the maximum punishment for an accumulation of sentences for extremely grievous crimes in articles that provide for punishment in the form of life imprisonment?” the respondents noted as follows (Table 10):

Table 10. Answers to the question “Is it expedient to increase the maximum punishment for an accumulation of sentences for extremely grievous crimes in articles that provide for punishment in the form of life imprisonment?”

Answer options	Number	Percentage
Yes	488	62.6%
No	216	27.7%
Difficult to answer	71	9.1%
Punishment without limits.	4	0.5%

Other respondents believe that such actions are inexpedient, either because of the ineffective judiciary or due to poor conditions of imprisonment that do not facilitate correction. There are also unsubstantiated answers. Attitude towards the most appropriate period in such cases is as follows (Table 11):

Table 11. Analysis of the distribution of respondents regarding the most expedient term of sentence

Answer options	Number	Percentage
Gave no answer	4	0.7%
15 years.	9	1.6%
20 years.	10	1.8%
25 years.	215	38.4%
30 years.	152	
up to 35 years.	–	
35 years.	142	27.1%
40 years.	2	0.35%
45 years.	–	
50 years.	8	1.4%
60 years.	2	0.35%
70-75 years.	2	0.35%
200 years.	1	0.17%
Difficult to answer.	1	0.17%
Answer is “no” (not needed; not expedient)	5	0.89%
Life-term.	4	0.7%
Death penalty	2	0.35%

A number of respondents indicated that sentence may be adjudged by cumulative sentences, or by factoring in all the circumstances of the case. Therefore, the largest number of responses (215) relates to the increase of the maximum period of imprisonment for up to 25 years. However, the law already provides for such a period: “In the event of punishment in the form of imprisonment, the total period of punishment finally adjudged for an accumulation of sentences shall not exceed fifteen years, and in the event that at least one of the crimes is extremely grievous, the total period of imprisonment may be more than fifteen years, but it should not exceed twenty-five years” (Part 2 of Art. 71 of the CCU¹). The same applies to the answers to the question “Is it advisable to increase the maximum punishment for cumulative sentences for extremely grievous crimes in articles that provide for a maximum sentence of 15 years of imprisonment?” (Table 12)

¹ Criminal Code of Ukraine (2019, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14>

Table 12. Answer to the question: “Is it advisable to increase the maximum punishment for cumulative sentences for extremely grievous crimes in articles that provide for a maximum sentence of 15 years of imprisonment?”

Answer options	Number	Percentage
Yes	564	71%
No	144	18.7%
Difficult to answer	50	6.5%
Life-term imprisonment	3	0.39%
I do not support it	7	0.9%

A number of respondents indicated that punishment could be adjudged for cumulative sentences, or factoring in all the circumstances of the case. Accordingly, the respondents indicated the most expedient adjudication for cumulative sentences or factoring in all the circumstances of the case with such changes (Table 13):

Table 13. Maximum period regarding the adjudging for cumulative sentences, or factoring in all the circumstances of the case

Answer options	Number	Percentage
Gave no answer	1	0.16%
15 years	11	1.78%
20 years	15	2.43%
25 years	294	47.8%
30 years	139	22.6%
up to 35 years	-	
35 years	128	20.8%
40 years	1	0.16%
45 years	-	
50 years	7	1.1%
60 years	1	0.16%
70-75 years		
200 years		
Difficult to answer	6	0.9%
Answer is “no” (not needed; not expedient)	5	0.81%
Life-term	5	0.81%
Death penalty	2	0.32%

In addition, the answers given by the respondents to the question “In your opinion, what purpose of punishment, first and foremost, is being realized in Ukraine upon servicing long periods punishment in the form of imprisonment? Please indicate in order of importance:” should be noted, as, despite the humanization of the punitive process, the majority still believes that its main purpose is punishment (Table 14).

Table 14. Answers to the question: “In your opinion, what purpose of punishment, first and foremost, is being realized in Ukraine upon servicing long periods punishment in the form of imprisonment?”

Answer options:	Primary importance	Must be implemented upon executing the sentence	Not important
Retribution	479	179	40
General prevention	207	267	177
Special prevention	160	296	90
Corrections of convicts	274	320	71

The answers to the question “Do you support the opinion that long punishment sentences complicate reintegration into society for a convict in Ukraine?” are also quite debatable, as most respondents are aware of the criminal risks associated with the increase of the maximum term of imprisonment. However, they the increase maximum punishment is supported, and thus, by comparing the answers to this question and the answers to the question of increasing the maximum punishment in the form of imprisonment, their contradiction becomes apparent (Figure 4).

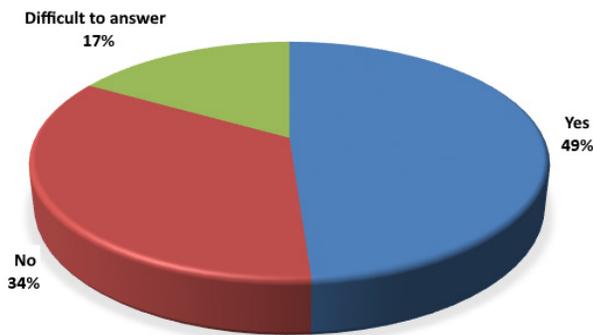


Figure 4. Answers to the question: “Do you support the opinion that long punishment sentences complicate reintegration into society for a convict in Ukraine?”

A number of respondents note that imprisonment of a person for any period would require them to reintegrate into society, regardless of the sentence period. Some say that if a person committed a crime, they have already “fallen out” of society, and some,

on the contrary, believe that the role of the sentence in the reintegration of a person into society is greatly exaggerated. There are also some who believe that the reintegration of individuals into society, regardless of the period of punishment, is the jurisdiction of penal institutions. (We should also highlight the opinion of those who state that the conditions in which a person serves a sentence and the national policy that comes into force after the release of a person from institution of confinement are also important for reintegration). A separate questionnaire block covered the study of the mechanisms of release of convicts sentenced to life-imprisonment. Answers to the question “Is the sole mechanism of pardons sufficient for convicts sentenced to life imprisonment?” were as follows (Table 15):

Table 15. Answers to the question “Is the sole mechanism of pardons sufficient for convicts sentenced to life imprisonment?”

Answer options	Number	Percentage
Yes	387	49.5%
No	300	38.4%
Difficult to answer	82	10.4%
Even the pardon is redundant	6	0.76%
Illness	3	0.38%
Not to release at all	3	0.38%

A number of respondents noted that the pardon mechanism is ineffective and new institutions need to be put in place for the release of persons sentenced to life imprisonment, but certain abuse may arise due to imperfect judicial and penitentiary systems. But the opinion of the ineffectiveness of the institution of pardon remains more than controversial. This, of course, does not mean that the said institution is immaculate and there is no need to improve the legal regulation of the pardon procedure. It also remains unclear what “new institutions should be introduced to release convicts sentenced to life imprisonment”? Do you support the provision of other possibility for release of persons sentenced to life imprisonment, except for pardon, having served a certain period and under certain conditions?” (Table 16)

Table 16. Answers to the question: “Do you support the provision of other possibility for release of persons sentenced to life imprisonment, except for pardon, having served a certain period and under certain conditions?”

Answer options	Number	Percentage
Yes	285	36.3%
No	430	54.9%
Difficult to answer	66	8.4%

Answer options	Number	Percentage
Only where the degree of involvement in the crime was small or partial. If such as in organized crime groups where the crime is committed by a serial killer, then no. If this is a crime of negligence or criminal omission, then yes	2	0.25%

Do you support providing life-term prisoners with the opportunity to change their conditions of detention after serving a certain period and under certain conditions? (Table 17):

Table 17. Answers to the question “Do you support providing life-term prisoners with the opportunity to change their conditions of detention after serving a certain period and under certain conditions?”

Answer options	Number	Percentage
Yes	442	56.8%
No	269	34.6%
Difficult to answer	66	8.4%

A number of respondents support the specified approach, but on the following condition: only after correction of such convicts, on the one hand, and upon overcoming negative consequences in the state (such as corruption and abuse of authority), on the other hand. In your opinion, is it appropriate to introduce a mechanism for reviewing sentences of persons convicted for extremely grievous crimes at any stage of serving their sentence? (Table 18):

Table 18. Answers to the question: “In your opinion, is it appropriate to introduce a mechanism for reviewing sentences of persons convicted for extremely grievous crimes at any stage of serving their sentence?”

Answer options	Number	Percentage
Yes	214	27.2%
No	474	60.3%
Difficult to answer	70	8.9%
Yes, but only after a certain period (10 years, 15 years, 25 years, 2/3 of the sentence)	25	3.1%
Review for newly discovered circumstances.	3	0.38%

Do you support the principle of saving repression and promoting the practice of applying alternative sanctions? (Table 19):

Table 19. Answers to the question “Do you support the principle of saving repression and promoting the practice of applying alternative sanctions?”

Answer options	Number	Percentage
Yes, because the minimum necessary punitive measure should be applied	45	6.1%
Yes, because the main thing is not to punish the criminal, but to protect and restore the rights and interests of citizens who were violated as a result of their criminal assault	197	26.8%
No, because the punishment must correspond to the gravity of the crime and be as severe as possible	349	47.5%
In part, because imprisonment is the main way to influence crime rates	143	19.4%

A number of respondents noted that the principle of saving criminal repression can take place, but without violating the basic principles of sentencing, guaranteeing the rights and freedoms of all participants, both criminal and penal legal relations, and ensuring the security of society [22].

CONCLUSIONS

Having considered the results of the study, the following conclusions were drawn:

1. Respondents, upon answering the questions asked, somewhat distort the notion of the purpose of punishment, placing the emphasis on the retribution. Furthermore, in their opinion, it is achieved by placing a person in penitentiary institutions for as long as possible, which is exactly the main purpose of punishment and is carried out solely with the aim of isolating socially dangerous elements until their reintegration into society in order to ensure the safety of latter.

2. That is why nowadays it should be emphasized that the decisive factor for determining the content and orientation of the doctrine of criminal law is the state’s approach to understanding the essence of punishment, its purpose, system and types, grounds for release and other related issues. In evaluating the current situation, it should be acknowledged that in the future, the national penal policy should be based on the refusal from a correctional labour approach to punishment and the transition to a modern rehabilitation (restoration) system, which in the course of the corrective influence on the convicted person will induce them to first change their behaviour from unlawful to acceptable in the society. And in the future, such “law-abiding” behaviour could cause them to be psychologically prepared for future positive changes in their consciousness as well. The probation service, especially the penitentiary, lacks dynamic development, where volunteers, representatives of local self-government authorities, communities,

social educators, psychologists, etc., should work alongside the employees of the authorized body, facilitating the person's adaptation even after serving a long-term sentence.

3. Unfortunately, among the interviewed scope of persons, there are widespread anti-humanistic sentiments regarding penal legislation. Firstly, this is connected with the fact that the respondents are predominantly prosecutors, investigators, workers of the State Penal Service and Security Service of Ukraine (87.5%), they do not consider the global tendency (if we consider the legislation of developed democracies, of Western Europe in particular) and the direction of domestic criminal policy to humanize the criminal liability of persons convicted for commission of crimes. This refers to, for instance, the Law "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine Regarding the Humanization of Criminal Liability" dated April 15, 2008, including the introduction of the category of misdemeanour offense. In turn, there are also answers that state that even 15 years of imprisonment is too short of a term for reintegration into society, although multiple studies confirm that the longer a person is in places of incarceration, the more difficult it is for them to maintain socially meaningful relationships and return to the law-abiding lifestyle.

4. Respondents' answers to the main questions of the survey are often contradictory, they do not consider the current rules on the possibility of punishment in the form of imprisonment for up to 25 years. By the way, there are no examples of adjudging of such sentences in Ukraine. Furthermore, a number of respondents take the term "life imprisonment" too literally, which is actually a conditional title, since everyone should be aware of the possibility of release, which is now contained in many of the standards developed by the European Committee for the Prevention of Torture (Memorandum "Actual/real life imprisonment"(CPT (2007) 55) and many other international standards for life sentences, therefore it would be advisable to consider changing the title from "life imprisonment" to "unlimited term imprisonment". And instead of increasing the maximum punishment period, it seems expedient to consider imposing a sentence for a specific type of crime without being tied to a specific numerical term, and considering all the circumstances of the case and the possibility of a differentiated approach to reviewing the case, which will allow to continue the implementation of the Concept of humanization of the process of enforcement of criminal punishments, and take the Ukrainian legislative system one step closer to the international one.

5. Today, the system of punishment and probation should be human-oriented. It is the individual, whether the offender, the victim, or the employee, who must become the nucleus (cornerstone) of system reforms. And respect for human rights, the imposition of a just punishment, the system of release from it and recovery of damages, the correctional work, psychological support and social patronage must become the granite foundations of the doctrine of penal law.

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