

grounds of interference in res judicata principle. Moreover, without having at that grounds of special and insuperable character which justify reversal of the decision which is in legal force after long time after its resolution. However, even then the possibility of updating will not be limited as far as parties at reasonable intervals of time have to take measures to know about the state of litigation proceedings.

In this way, in each case national courts have to check if the grounds for renewal of terms for claim justify interference in res judicata principle, whereas intervention with legal certainty principle which specifies following res judicata principle – finality of the decision can lead to the delinquency Article 6 part 1 of the Convention of human rights and principal liberties and cancelling of the final and obligatory decision.

References:

1. Convention of human rights and principal liberties. [Electronic resource] // Access mode // . – https://zakon.rada.gov.ua/laws/show/995_004
2. Pokrovsky I.A. Lectures on the history of Roman law. 3 e. Publishing house – M.: Stok, 1907. – [Electronic resource] // Access mode// . – http://www.pseudology.org/Legis/Istoriya_Rimskogo_Prava.pdf.
3. Constitution of Ukraine. [Electronic resource] // Access mode// . – <https://zakon.rada.gov.ua/laws/show/254к/96-вр>.
4. Law of Ukraine “On fulfillment of decisions and use of European Court of human rights practice” – [Electronic resource] // Access mode // <https://zakon.rada.gov.ua/laws/show/3477-15>
5. Code of Commercial Procedure of Ukraine. – [Electronic resource] // Access mode // <https://zakon.rada.gov.ua/laws/show/1798-12#n3837>
6. [Electronic resource] // Access mode // <http://reyestr.court.gov.ua>

STEPANENKO A. S.

National University «Odesa Law Academy»,
Associate Professor at the Department of Criminal Procedure,
PhD in Law

LIFE-IMPRISONMENT PENALTY IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW: UKRAINE PERSPECTIVE

The article is dedicated to the issue of the sentence of life imprisonment in Ukraine and the scope of Article 3 of the Convention on Human Rights and Fundamental Freedoms. The relevant case law of the European Court of Human Rights is analyzed where several principles could be articulated in this regard.

Key words: *a whole-life sentence, life imprisonment, right to review sentence, ECHR, inhuman treatment.*

Right to have one's conviction or sentence reviewed is a fundamental human right that enshrined in Article 2 of Protocol No. 7 to the Convention for the protection of human rights and fundamental freedoms ('ECHR). It is particularly acute for the persons who were sentenced to life imprisonment as such a sentence can potentially violate Article 3 of the ECHR.

Despite the fact that life imprisonment is a relatively new form of punishment for the Ukrainian criminal system that has become a substitute to death penalty (from February 22, 2000 [1]), according to the data provided by public human rights organization 'Donetsk Memorial' [2] as at January 1, 2018, there are 1 572 prisoners sentenced to life-imprisonment in Ukraine. It should be noted that if compared to the overall number of prisoners in Ukraine which is approximately 57 100 persons, then the number of prisoners sentenced to life-imprisonment accounts for 2,75% of sentenced prison population or 3,7 per 100 000 of the national population.

At the same time, the numbers are quite different among other member countries of the Council of Europe. According to the last report (as at 2018) produced by researchers from University of Lausanne (Marcelo F. Aebi and Mélanie M. Tiago) on behalf of the Council of Europe ('SPACE I – 2018') the total number of sentenced prisoners, prisoners sentenced to life imprisonment and percentage ratio are the following: *Germany* – 50 328, 1 831, and 3,63%; *Italy* – 37 724, 1 727 та 4,57%; *Poland* – 66 137, 397, and 0,6%; *Romania* – 21 072, 161, and 0,76%; *Moldova* – 6 294, 123, and 1,95%; *England and Wales* – 74 803, 7 427, and 9,93% [3, p. 46-47]. Data for *France* and *Russia* is incomplete (and for *Turkey* there is no data) in the report, however according to another research produced by Bromley Trust and The Prison Reform Trust ('Bromley Briefings Prison Factfile') the numbers (as at 2016) are the following: as to *France* – 489 prisoners sentenced to life imprisonment or 0,9% of the total number of sentenced prisoners; as to *Russia* – 1 766 or 0,4%; and as to *Turkey* – 7 303 or 6,0% respectively [4, p. 6].

Thus, Ukrainian figures concerning absolute number of prisoners sentenced to life imprisonment are almost identical to figures of Germany, Italy, and Russia, however, the relative number of the prisoners is lower if compared to Germany and Italy, and much lower than the figures of Turkey, and England and Wales which are considered leaders in Europe. Although Ukrainian figures are moderate but if compared to neighboring countries they are much higher both in absolute and relative numbers, indicating that there is an urgent need for a shift in the state sentencing policy, especially in the area of life imprisonment penalty. Another problem, even more pressing, in this regard relates to a low number of prisoners who were released from the sentence of life imprisonment. As for now, it is known only of one instance of release from life imprisonment, it is a case of Liubov Kushynska who spend 27 years and 9 months in prison [5].

The possibility of release of a person sentenced to life-imprisonment is set out in Article 87 Para. 2 of the Criminal Code of Ukraine, which provides that clemency may consist in replacing a life sentence imposed by a court by a sentence of fixed-term imprisonment for no less than twenty-five years. Meanwhile the procedure of presidential clemency is prescribed by

Presidential Decree No. 223/2015 of April 21, 2015, which states that the release from life imprisonment is possible under two conditions: 1) a life prisoner may lodge an application for clemency after having served at least 20 years of life imprisonment, and 2) a life prisoner or his/her defender, parent, spouse, child or other family member have lodged an application for clemency. At the same time Para. 5. of Decree has the following rule, 'persons convicted for serious or particularly serious crimes, or on two or more counts of premeditated crimes ... may be granted clemency in exceptional cases and subject to extraordinary circumstances'. However, what constitute the 'exceptional case' or 'extraordinary circumstances' is unclear from current legislation and thus a life prisoner does not know what attitude should be taken in order to be granted clemency.

Such ambiguity was one of the reasons the Grand Chamber of the European Court of Human Rights ('Court') found a violation of Article 3 of the Convention in the case *Petukhov v. Ukraine (No. 2)*. The Court in § 173 and 174 pointed at vague criteria used in Ukrainian legislation regarding the procedure of release life prisoners as there is no link to the penological grounds for keeping someone in prison and what actions should be taken by prisoners to be considered for release and what conditions. Moreover, Court argued that the procedure of presidential clemency in itself is open to different interpretations as to both the starting point of calculation of 20 years' imprisonment (§ 176) and absence of an obligation in the President of Ukraine and his subordinate authorities to give reasons in their decisions on clemency requests and absence of any judicial review of those decisions (§ 179). Eventually, Court concluded that 'the presidential power of clemency is a modern-day equivalent of the royal prerogative of mercy, based on the principle of humanity, rather than a mechanism, based on penological grounds and with adequate procedural safeguards, for review of a prisoner's situation' (§ 180). For these reasons, the Court has found the violation of Article 3 of ECHR on account of the applicant's irreducible life sentence [6].

It should be noted that the Court has developed several principles and standards regarding the imposition of a sentence of life imprisonment. The Court recognizes states' margin of appreciation as regards to the right to impose punishment to perpetrators and ECHR does not prohibit the imposition of a life sentence on those convicted of especially serious crimes and this mere fact does not constitute the violation of Article 3 of ECHR. In the meantime, Court stated that such sentence should be must be reducible de jure and de facto, meaning that there must be both a prospect of release for the prisoner and a possibility of review [7, § 100]. Other principles should include: 1) principle of legality («rules having a sufficient degree of clarity and certainty», «conditions laid down in domestic legislation»); 2) principle of the assessment of penological grounds for continued incarceration, on the basis of «objective, pre-established criteria», which include resocialisation (special prevention), deterrence (general prevention) and retribution; 3) the principle of assessment within a pre-established time frame and, in the case of life prisoners, «not later than 25 years after the imposition of the sentence and thereafter a periodic review»; 4) the principle of fair procedural

guarantees, which include at least the obligation to give reasons for decisions not to release or to recall a prisoner; 5) the principle of review [6, § 168, 178; 7, § 99-100]. As to the last principle, it should be noted that whether the review must be necessarily of judicial form is subject to debate as was underlined by Judge Pinto De Albuquerque in his partly concurring and dissenting opinion in the case of *Petukhov v. Ukraine (No. 2)* [6].

Thus, Ukrainian penal policy as regards to a sentence of life imprisonment should take these principles seriously and introduce an effective mechanism of review of that category of sentences with clear rules and conditions which provide the possibility of release. Considering the procedure of release of life imprisonment in Ukraine, the review mechanism should be at least of administrative form.

References:

1. Про внесення змін до Кримінального, Кримінально-процесуального та Виправно-трудоного кодексів України: Закон України від 22 лютого 2000 року № 1483-III. *Верховна Рада України*. URL: <https://zakon.rada.gov.ua/go/1483-14> (дата звернення: 18.04.2019)
2. Кримінально-виконавча система України в 2017 році. Статистичний огляд. (фрагмент доповіді «Дотримання прав ув'язнених в Україні в 2017 році»). *«Донецький Меморіал»*. URL: <http://ukrprison.org.ua/articles/1520330768> (дата звернення: 16.04.2019)
3. Aebi, M. F., & Tiago, M. M. (2018). SPACE I – 2018 – Council of Europe Annual Penal Statistics: Prison populations. Strasbourg: Council of Europe. URL: http://wp.unil.ch/space/files/2019/04/FinalReportSPACEI2018_190402.pdf (дата звернення: 18.04.2019)
4. Alex Hewson, Emily Knight. Bromley Briefings Prison Factfile. Autumn 2018. *Prison Reform Trust*. URL: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Autumn%202018%20Factfile.pdf> (дата звернення: 18.04.2019)
5. Після помилування звільнили вперше засуджену в Україні до довічного покарання жінку. *Радіо Свобода*. URL: <https://www.radiosvoboda.org/a/news/29156481.html> (дата звернення: 19.04.2019)
6. *Petukhov v. Ukraine (No. 2)* [GC], Judgment of 12 March 2019, Application no. 41216/13. URL: <http://hudoc.echr.coe.int/eng?i=001-191703> (дата звернення: 19.04.2019)
7. *Murray v the Netherlands* [GC], Judgment of 26 April 2016, Application no. 10511/10. URL: <http://hudoc.echr.coe.int/eng?i=001-162614> (дата звернення: 19.04.2019)