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Shabal V. S.**Шабаль В. С.****PROSPECTS OF LIFE PRISONING
AS A KIND OF PUNISHMENT****ПЕРСПЕКТИВЫ ПОЖИЗНЕННОГО ЗАКЛЮЧЕНИЯ
КАК ВИДА НАКАЗАНИЯ**

Abstract. The organization of a sentence execution of life imprisonment in the Republic of Belarus and life imprisonment in the Russian Federation are examined in the article. The legislation was analyzed, and the international experience of execution of these types of punishments was studied. The statistical data necessary for the analysis are provided. Proposals are made to improve the execution of a life sentence. Based on the research, the author comes to the conclusion that the sentence of life imprisonment has a large number of shortcomings that need to be solved. This makes it necessary to improve its execution or cancel this punishment. In order to increase the effectiveness of the considered punishment, the author suggests differentiating the approach to applying parole to prisoners sentenced to life prisoning: reduce the terms of possible release, provide for a gradual change in conditions (a system of social elevators), establish lifelong supervision of the behavior of convicts after release (in case of violation of the rules of supervision, the convict can be returned to a correctional institution for further serving a life sentence).

Keywords: life imprisonment, crime prevention, death penalty, correction, parole.

Аннотация. В статье исследуется организация исполнение наказания в виде пожизненного заключения в Республике Беларусь и пожизненного лишения свободы в Российской Федерации. Проведен анализ законодательства, изучен международный опыт исполнения данных видов наказаний. Приводятся необходимые для анализа статистические данные. Вносятся предложения по совершенствованию исполнения наказания в виде пожизненного заключения. На основе проведенного исследования автор приходит к выводу о том, что наказание в виде пожизненного заключения имеет большое количество недостатков, требующих решения. Это обуславливает необходимость совершенствования его исполнения либо отмены данного наказания. В целях повышения эффективности рассматриваемого наказания автор предлагает дифференцировать подход к применению досрочного освобождения от наказания к пожизненно осужденным: снизить сроки

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возможного освобождения, предусмотреть поэтапное изменение условий (система социальных лифтов), устанавливая пожизненный надзор за поведением осужденных после освобождения (в случае нарушения правил надзора осужденного могут вернуть в исправительное учреждение для дальнейшего отбывания пожизненного заключения).

Ключевые слова: пожизненное заключение, предупреждение преступлений, смертная казнь, исправление, досрочное освобождение.

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In the Republic of Belarus, one of the penalties is life imprisoning. In the Russian Federation there is a similar penalty – life imprisonment. In addition, the death penalty is applied in the Republic of Belarus, which is subject to a moratorium in the Russian Federation. The penalty of life imprisonment is popular all over the world, but in contrast to our countries its application has certain differences.

In accordance with article 172 of the Penal Code of the Republic of Belarus (hereinafter – the PC of the RB) convicts sentenced to life imprisonment and convicts whose death sentences by pardon were replaced by life imprisonment are put either in a correctional institution of special regime or into a prison. However, it should be noted that at least the first ten years of the term the convict is serving his sentence in the cell-type facility and only in case of observance of the established order of sentence and conscientious attitude to work can be transferred to the premises of the correctional institution of special regime. In the Russian Federation those sentenced to life imprisonment are placed in cells for the entire term.

Also, the Republic of Belarus and the Russian Federation provide for the possibility of parole for prisoners sentenced to life imprisonment: after 25 years of serving their sentence in accordance with Part 5 of Article 79 of the Criminal Code of the Russian Federation; in accordance with Part 4 of Article 58 of the Criminal Code of the Republic of Belarus (hereinafter – the CC of the RB), after 20 years the sentence of life imprisonment can be replaced by imprisonment for a term not exceeding 5 years. That is, in the Republic of Belarus a convicted person can be released in 20.5 years (since the minimum term of imprisonment in the Republic of Belarus is 6 months).

In the Republic of Belarus, more than 160 convicts serve life sentences ('In Belarus 160 people are serving life sentences', *TUT.BY*, 2019, 26 February). This is a small number in

the total number of people serving sentences. In the Russian Federation according to statistics (01. 08. 2019) 2015 convicts were serving sentences of life imprisonment and persons who had the death penalty sentenced to life imprisonment ('Life imprisonment in Russia', *Wikipedia is free encyclopedia*, 2020, 24 July). That is, in these two countries, the proportion of convicts who are assigned an exceptional penalty is insignificant.

In accordance with the legislation of the Republic of Belarus and the Russian Federation, correction and general and specific warnings are used as the purposes of applying punishment. Speaking about the purpose of correction in relation to life imprisonment, its existence raises a certain question, which we will discuss below. To a greater extent, there is still a general and private warning. As A. V. Shidlovskiy notes, with a life sentence "the goals of criminal responsibility assume... achieving the maximum preventive effect... as well as the corrective process minimized by law..." (Shidlovskiy, A. V. 2019, p. 97).

In the criminal legislation of the Republic of Belarus, as an alternative to life imprisonment, there are long terms of imprisonment: for some particularly serious crimes up to 25 years; for a set of sentences in accordance with Part 3 of Article of the CC of the RB up to 30 years. This period is sufficient for achieving preventive measures and organizing the correctional process in order to form a readiness to lead a law-abiding lifestyle. A convicted person serving even 30 years of imprisonment may realize that after a certain period of time, the conditions of serving the sentence may be changed, the institutions of early release, amnesty and pardon may be applied (for example, replacing the unserved part of the sentence with a milder punishment may be applied after serving at least two-thirds of the sentence). That is, the convicted person, theoretically, will be able to be released in 20 years (if an amnesty or pardon was applied then even earlier).

When long terms of imprisonment are imposed, convicts still have significant incentives to behave law-abiding both during the period of serving their sentence and after their release, which contributes to their correction. When serving a life sentence, convicts are aware of the fact that they are kept in correctional institutions until their death (currently, early release institutions are rarely applied to this category of convicts). Numerous studies show that the majority of those sentenced to life imprisonment consider the punishment unfair, disregard the rules of morality and life in society, are cruel, sadistic, suffer from mental disorders, etc. In other words, the majority of convicts are practically incapable to correction even after serving a long term, which, in fact, implies that the institutions of early release are not applied to them.

If we consider prevention as the purpose of applying life imprisonment, there are certain points of discussion. Thus, private prevention is certainly present, since the convicted person is serving a sentence all his life and has almost no opportunity to commit a new

crime (except for the institution in which he is located). In the case of general prevention, numerous studies noted that the presence of life imprisonment in the penal system either does not affect the level of crime, or has a negligible effect. Criminals (even before they are convicted) respond equally to both long prison terms and life sentences. In other words, most people perceive imprisonment for 20–30 years as a life sentence. This is also justified by the fact that the average age of a criminal serving a life sentence is more than 30 years. Therefore, a term of 30 years for the offender means that he will be released when he is about 60 years old or more, when he is already elderly. At the same time, the very fact that the term is limited in time (for example, 20 years) contributes to law-abiding behavior.

These judgments are supported by statistical data on crime in the Republic of Belarus presented in Table 1.

If we consider statistical data in the Russian Federation for the same period, we get the following data, shown in Table 2

Table 1

Number of registered serious and especially serious crimes in the Republic of Belarus

Year	Number of registered serious and especially serious crimes	Percentage of the total number of registered crimes
2005	20708	10.6
2010	12542	8.9
2011	11317	8.6
2012	8500	8.3
2013	9265	9.6
2014	10842	11.5
2015	12390	12.8
2016	12277	13.2
2017	11733	13.6
2018	11245	13.4
2019	10175	11.5

Note. The table is based on data from the official website of the Ministry of Internal Affairs of the Republic of Belarus, <https://www.mvd.gov.by/ru/page/statistika>, viewed 7 February 2020.

Table 2

Number of registered serious and especially serious crimes in the Russian Federation

Year	Number of registered serious and especially serious crimes	Percentage of the total number of registered crimes
2005	1076988	30.3
2010	684347	26.0
2011	607507	25.3
2012	569804	24.8
2013	537664	24.4
2014	531388	24.3
2015	519655	21.8
2016	457779	21.2
2017	437303	21.2
2018	448174	22.5
2019	494092	24.4

Note. The table is based on data from the official website of the Ministry of Internal Affairs of the Russian Federation, <https://мвд.рф/reports/item/19412450/>, viewed 8 February 2020.

Analysis of statistical data may indicate that the existence of life imprisonment and the death penalty in the system of punishments does not significantly affect the level of commission of serious and especially serious crimes. At the same time, it should be taken into account that in the Russian Federation only life imprisonment is applied, and in the Republic of Belarus the death penalty is also applied, and the dynamics remains approximately at the same level. In the Republic of Belarus, the increase in the level of commission of serious and especially serious crimes in 2014–2018 is mainly due to the change in criminal policy towards stricter treatment of crimes related to illicit trafficking in narcotic drugs, psychotropic substances, their precursors and analogues.

Considering prevention as the purpose of applying the death penalty, it is implemented more effectively, since the criminal is physically eliminated (private prevention is achieved “absolutely”), and the commission of particularly serious crimes is prevented by the fear of losing his life. Naturally, if we compare

the general prevention of life imprisonment and the death penalty, it is actually at the same level, since criminals when sentenced to both these punishments perceive them as “the end of life”. That is, their life plans are completely broken and can not be implemented in the future.

It should also be taken into account that the execution of a life sentence requires significant financial costs, since it is necessary to create appropriate institutions, a system of protection and supervision, etc.

There are certain problems with the organization of work of prisoners sentenced to life imprisonment, which is associated with their first time in cells (in the Russian Federation constantly). During the prison regime, it is possible to create production workshops, but there are a number of problematic issues:

firstly, they occupy a certain area of the prison (a separate cell) in which convicts could be placed;

secondly, the profitability of such workshops is usually lower than the factory-type production in correctional institutions;

thirdly, the organization of proceedings for life prisoners entails increased risks of their committing violations of the established order of serving their sentence, as well as crimes and suicides.

Based on the above, it should be noted the cost-effectiveness of applying a sentence of life imprisonment. It turns out that in comparison with incarceration, it is difficult to organize the work of those sentenced to life imprisonment (especially profitable), and the cost of maintenance is significant. For example, in the Russian Federation, approximately one billion Russian rubles are spent annually on the maintenance of life-sentence prisoners (Iksanov, R. A., Sultanbekova, E. L. & Kharisova, K. A. 2018, p. 202). That is, on average, about 500,000 Russian rubles per convicted person. At the same time, taking into account the salaries of employees in institutions (which in special regime institutions are significantly more than in other correctional institutions) where convicts are placed, this amount is approximately doubled (Iksanov, R. A., Sultanbekova, E. L. & Kharisova, K. A. 2018, p. 204–205). These calculations do not yet take into account current repairs, depreciation of buildings and structures, possible benefits from the employment of employees of institutions in the industry, and so on. In other words, this type of punishment is economically ineffective.

Thus, based on the achievement of the goals of criminal responsibility and economic efficiency, the sentence of life imprisonment has a large number of disadvantages that need to be addressed. All this makes it necessary either to improve its implementation or to cancel it. Thus, A. V. Shidlovskiy notes the need to apply a progressive system of punishment execution in relation to life prisoners (Shidlovskiy, A. V. 2019, p. 101). A similar opinion is expressed by A. A. Tit, who believes that it is necessary to further “divide the process of serving a sentence into stages that improve the situation of the convicted person” (Tit, A. A. 2019, p. 226). That is, the implementation of a system

of social lifts for them with a gradual change in the conditions of serving a sentence up to parole. To develop proposals for improving the execution of this type of punishment, it is necessary to refer to international experience.

Currently, some forms of life imprisonment are provided by criminal laws in about 75% of the world's countries (Shidlovskiy, A. V. 2019, p. 98). In some of them, it is “really” served for life, in some certain terms.

Many countries around the world have abandoned the use of life imprisonment. Thus, “Uruguay and Bosnia and Herzegovina refused this type of punishment” for the reason of ensuring the goal of social rehabilitation of convicts (Dikaeva, M. S. 2015, p. 391). There is no life sentence in Brazil, Croatia, Colombia, Portugal, Spain, Norway, etc. (Dikaeva, M. S. 2015, p. 101). In Greece, life imprisonment is defined as imprisonment for 25 years with the right to parole after 16 years, in the Federal Republic of Germany 25 years, the average term of served sentence is 17–18 years (Kornilova, T. V. 2018, p. 392). In Sweden, a convicted person can be released in 10 years, in Switzerland at least 15 years, in France 18 years. In the United States, depending on the state, those sentenced to life in prison can be released no earlier than 10 years later. In Canada, there are several options for life imprisonment with different terms of possible early release (3, 7, 10, 25 years). Early release is also applicable in Hungary, Finland, Australia, etc. (Gorbach, D. V. & Kutakov, N. N. 2017, p. 158).

If we study the positive experience of execution of a sentence of life imprisonment in other foreign countries, it is interesting to see the experience of Great Britain, where the right to early release of a convicted person is obtained after 14 years of serving the term. At the same time, a so-called license is signed with the convict before release, in which he agrees to lifelong supervision of his behavior (a probation officer is assigned) (Gorbach, D. V. & Kutakov, N. N. 2017, p. 157). This experience should be recognized as

positive due to the fact that “recidivism among this category of supervised persons is the lowest” (Kornilova, T. V. 2018, p. 392). Thus, the following options for improving the execution of a sentence of life imprisonment are presented:

1. Exclude life imprisonment from the system of punishments.

2. Differentiate the approach to the application of parole from punishment to life prisoners (reduce the terms of possible release, provide for a gradual change in conditions (a system of social elevators), establish lifelong supervision of behavior after release (in case of violation of the rules, a return to serving a life sentence should occur).

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