

Mostepaniuk Liudmyla, Associate
Professor of the Department of
Criminal Law of the NAIA, PhD in
Law, Associate Professor

RECONSIDERATION OF NOTIONS ABOUT LIFE
IMPRISONMENT AND CAPITAL PUNISHMENT IN THE
HISTORY OF UKRAINE

Domestic criminal-legal science upon legislative recognition and definition of one or another type of punishment cannot ignore its own experience of legislation. Namely for that, the purpose of this work is to be defined as development of periodization for life imprisonment as a type of punishment which had passed a certain stage of its development.

History of domestic legislative regulation for punishment issues begins from *Ruska Pravda* (The Russian Justice) - a legislation monument of Ancient Kievan Rus' in which a close relationship with folk customs and traditions was quite distinctive. It was expressed in the possibility of blood vengeance or implementation of so called *lex talionis* which was related to existence of a quite powerful blood relation of families. In times of

great Kievan princes Oleg and Igor, blood vengeance was in no way restricted but instead sometimes even promoted. In some time a field of crimes for which blood vengeance could be applied was narrowed. Limitation of blood vengeance resulted in its restriction by legislative means in XI century. Therefore, blood vengeance may be considered a prototype of capital punishment in times of formation and development of Kievan Rus'.

Further expansion of capital punishment in Rus' was favored by Tartar and Mongolian conquerors whose habits and written laws often considered this type of punishment.

Statutable return of capital punishment to our territory occurred at the end of XIV century. It was later itemized in Soborne Ulozhennya from 1649 which foreseen capital punishment for a great deal of crimes and as well contained provisions about imprisonment. In our opinion, prison confinement may be regarded as a first prototype of life imprisonment.

In such a manner, capital punishment was applied in XVII century and first half of XVIII century, which was explained by borrowing separate criminal legislation provisions from Lithuanian statute and Western European military statutes as well as by criminalization of many crimes and immediate expansion of capital punishment application.

A significant event in the history of applying capital punishment was a moratorium for execution of capital punishment sentences, declared by Empress Elizabeth of Russia in 1744. Despite the fact that capital punishment moratorium was disregarded in the following years it had a quite positive impact on development of domestic legislation.

In such a manner this was a first attempt to cancel the capital punishment and alter it with a life imprisonment, role of which was played by imprisonment at hard labor at penal servitude. This type of penal servitude could be terminated upon death or unfitness for works due to age or permanent injury.

Code of criminal laws 1832 was the first document which provided clear limits of capital punishment application: it could only be applied in case of most severe offenses against the state, was permitted for quarantine crimes, specified in Quarantine Statute

(1832), as well as for military crimes, committed during military campaigns. Besides that, at the same time permanent penal servitude and exile became widely used.

Provisions about criminal punishments and correction (1845) as well as Criminal provisions from 1903 did not foresee a capital punishment for murder, except infringement on life of the emperor or members of his family. Since 1893 field of application for capital punishment was expanded again.

In such a manner criminal legislation at the end of XIX century had foreseen life imprisonment only in a way of permanent penal servitude.

At the beginning of XX century Russia began attempts to cancel capital punishments by means of adopting decisions from First and Second State Duma, but in both cases - law projects were not approved by State Council of Russia and did not receive the status of laws. Since then application and revocation of capital punishment were altered almost each three months.

First Criminal code of Ukrainian Soviet Socialist Republic was approved in 1922. It did not contain a number of punishments caused by civil war circumstances in judicial and punitive politics of Soviet government (outlawing, declaring a person as an enemy of the revolution or the people, declaration of boycott). Capital punishment was not included to the general list of punishment types, but according to special decree was included to separate section with specification «temporary application as an exceptional punitive measure».

Another attempt of canceling the capital punishment was made on 26th of May 1947. By decree of Presidium of High Council of Ukrainian Soviet Socialist Republic «About cancelling capital punishment», according to which, full restriction of capital punishment was in effect during the times of peace, which was foreseen under laws valid in USSR.

Concerning the criminal legislation of Ukrainian Soviet Socialist Republic adopted in 1960, it foreseen and exclusive and strict list of punishments, categorized in order from severe to least severe. Among punishments but outside their system, criminal legislation foreseen capital punishment which in the form of

exclusive measure and temporarily with a trend to its complete restriction, was applied to persons found guilty in committing most severe crimes.

After declaring the independence of Ukraine a field of application for capital punishment was significantly narrowed in comparison to CC of Ukrainian Soviet Socialist Republic. CC of Ukraine from 1960 (as of 1st of February 1993), foreseen the capital punishment for commitment of 22 crimes. And after adoption of active Criminal code of Ukraine in 2001, criminal legislation of Ukraine had completely eliminated capital punishment as a punitive measure and adopted life imprisonment instead.