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**TRADITION OF THE DEATH PENALTY IN CRIMINAL LAW  
MONGOLIA AND THE CURRENT LEGAL REGULATION**

© **Byambazhav Odontungalag**

Doctor of Law,  
Mongolian State University  
Mongolia, Ulaanbaatar, st. Universitetskaya, 1  
odontungalag\_b@num.edu.mn

**Abstract.** Centuries ago, when the first states were formed, the death penalty was an important component of state policy. It was usually used to punish especially dangerous criminals who committed such crimes as rebellion, betrayal of the motherland, conspiracy against state power, and murder. All these deeds were considered as crimes against the Eternal Blue Sky, the people saw justice in this. Traditionally, the Mongolian state widely used the death penalty, thus protecting the state and religious and national foundations.

The first special criminal law of Mongolia was adopted in 1926, which provided for the death penalty — execution. Changes in the criminal code, made in 1934, secured that the death penalty does not apply to minors and pregnant women. Additions to the Criminal Code of Mongolia from 1961 established a special regime for the application of criminal punishment, including the death penalty, to persons over 60 and under 18.

The Criminal Code, adopted after the adoption of the new democratic constitution of Mongolia in 1992, significantly expanded the list of acts that could lead to the death penalty. Pardon is the prerogative of the President of Mongolia and is replaced by imprisonment for a term of 30 years. Mongolia amended its Criminal Law in 2015 to abolish the death penalty. This change is in line with global trends. At the same time, it is envisaged to replace it with life imprisonment. In the legal literature, there are different opinions about the essence of life imprisonment, the fundamental differences between deprivation of liberty and imprisonment.

**Keywords:** criminal policy, criminal law, criminal, crime, punishment, death penalty, life imprisonment, imprisonment.

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The capital punishment is one of the ancient traditional punishments of Mongolia, and it has been developed from the ancient tradition of blood mercy. For Mongolians, the capital punishment is not considered the maximum punishment, but it is an expression of fair punishment, a form of punishment and responsibility set by the decree of the blue sky. In other words, the intention and motive to commit the crime, rather than the consequences and harm of any crime, was considered a sinful act that is seriously contrary to the law of heaven.

Therefore, the use of the capital punishment remained stable for many years, and the content and importance of the law regarding the capital punishment was always recognized and followed.

In the history of Mongolia, the grounds and basic principles for imposing the capital punishment reflected the characteristics of nomadic customs and had a very strict policy. Moreover, the king used to impose the punishment for disobeying the state, insulting family customs, and stealing livestock. The capital punishment was carried out by beheading, strangulation, stoning, and etc.

Common characteristic of the tradition of the Mongolian ancient laws:

First: The capital punishment was relatively and commonly used.

Second: The penalty was used to outrage offenders, deter offenders, and serve as a lesson to others.

Third: The capital punishment was imposed on those who seriously violate national customs, culture and religion, and those who do not respect family rules.

In 1926, Mongolia approved an independent special criminal law, and the criminal laws of 1926, 1929, 1934 and 1942 legalized the capital punishment as a punishment of "shooting".

However, in the Criminal laws of 1961 and 1986, it is expressed as "execution". The 1926 Criminal law did not specify who was ineligible for the capital punishment, or that it applied to everyone. The Criminal laws of 1934 and 1942 prohibited the punishment of 18 minors and pregnant women. The Criminal laws of 1961 and 1986 set out sentences for men and women over the age of 60 and under the age of 18. Combined with the new democratic constitution in 1992, the Criminal law of 1986 was amended in 1993, retaining the capital punishment.

The Criminal law, repealed in 2002, carries the capital punishment for seven crimes. These include: attacks on the lives of government or social workers, sabotage, harassment, homicide, rape, extermination, and terrorism.<sup>1</sup> Compared to the 1987 Criminal law, the 2002 Criminal law expanded the capital punishment. According to the Constitution of Mongolia, pardoning convicts is the prerogative of the President of Mongolia, and the Criminal Law of 2002 stipulates that if the President of Mongolia pardons, he or she will be sentenced to prison for up to 30 years.

Mongolia amended its Criminal law in 2015 to abolish the capital punishment. This change is in line with global trends. In January 2012, Mongolia acceded to the Second Additional Protocol to the International Covenant on Civil and Political Rights and ratified it, becoming the 140th country in the world to officially abandon the capital punishment.

After the capital punishment was abolished, creating a new penalty to replace the capital punishment has become one of the urgent issues of Mongolia's future penalty policy. The 2015 Criminal law legalized life sentences in lieu of the capital punishment, the researchers argued. On the one hand, the sentence is economically costly, and on the other, it is a life-long limitation of the most precious thing to any person: freedom. So, in some respects, it may be a more deterrent than the capital punishment.

In 1764, Cesare Beccaria in his book "Crime and Punishment" proposed the first idea to abolish the capital punishment, arguing that the capital punishment is cruel and does not deter people from committing crimes [2].

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<sup>1</sup>Criminal code of Mongolia 2002 // Sherlock: сайт. URL: [https://sherloc.unodc.org/cld/uploads/res/document/mng/2001/criminal\\_code\\_of\\_mongolia\\_html/Mongolia\\_Criminal\\_Code\\_2002.pdf](https://sherloc.unodc.org/cld/uploads/res/document/mng/2001/criminal_code_of_mongolia_html/Mongolia_Criminal_Code_2002.pdf) (дата обращения: 01.12.2022).

This theory is supported by many scientists such as J. Howard, M. Liepmann, E. H. Sutherland, and Montesquieu. There are quite a few countries that have successfully implemented the abolition of the capital punishment and the comprehensive study of life imprisonment.

From a lexical point of view, the idea of life freedom limitation has been translated as "Life imprisonment". The Cambridge English Dictionary defines the term as the imprisonment of a person for a long period of time without a fixed term or release date, or the imprisonment of someone until death. In the Black's law dictionary, the life imprisonment is an indeterminate sentence for an offender, and in some jurisdictions, the offender can be released after good behavior and positive change [1].

Among the terms of Anglo-American law is the word "Life sentence", which is similar to the basic content of life imprisonment. But the law is applied differently. While "Life sentence" is commonly used in court section, "Life imprisonment" is used as prison sentence or prison.

In the Criminal law of foreign countries, for example, Article 44 of the Criminal law of the Russian Federation provides "life imprisonment", Article 33 of the Criminal law of the People's Republic of China provides "indefinite imprisonment", and Article 38 of the Criminal law of the Federal Republic of Germany " "life imprisonment" is legalized in Article 5.6 of the Criminal law of Mongolia as "life imprisonment". From this point of view, the concept of life imprisonment first applies to people who commit serious crimes, secondly refers to imprisonment in a certain place and deprivation of personal freedom, thirdly life imprisonment as an independent type of punishment, and fourth is coercion of deprivation of liberty, use and enjoy some kind of labor legalization in prison.

Today, in the countries of the world, punishments that limit freedom occupy a central place. According to scientists, the punishment of freedom is expressed in terms of physical freedom, and it manifests itself in the form of depriving the prisoner of his freedom, confining him in a certain place, and imposing criminal liability. On the other hand, personal freedom has also been understood as a penalty [3].

First of all, the basic content of the punishment of liberty is the loss of liberty of the individual. Although there are differences in the nature and methods of punishment from time to time and from country to country, one thing in common is that each type of punishment has a content that reflects a certain amount of pain to the criminal. For example, the capital punishment is the life of the criminal, the fine is the confiscation of property, and the liberties limit the freedom of the person. Therefore, the difference between liberties and other punishments lies in the content.

Secondly, the punishment of liberty is a temporary punishment. Depending on the circumstances of the crime, the nature of the consequences, the personality of the person who committed the crime, and the mitigating and aggravating circumstances of the criminal responsibility, it is possible to impose the punishment differently and clearly divide it. The longer the period of imprisonment, the heavier the punishment. Time can be different depending on the characteristics of the country and is counted in hours, days, weeks, months and years. At the same time, time has a beginning and an end. Time is a quantitative factor in the penalty of freedom.

Third, the penalty of imprisonment requires a specific place to serve the sentence. Criminals are locked up somewhere so that they are cut off from the outside world.

Fourth, the penalty of liberties cannot be applied equally to all people, and is imposed only on those who have committed a crime and have been found guilty by a court. A judge exercises this prerogative within the jurisdiction of the court.

Fifth, the purpose of the punishment of freedom is to educate, correct, and enlighten the person who committed the crime, and the prison is not only a place of imprisonment, but also educates and improves the person.

Imprisonment is provided for in Article 5.6 of the Criminal law of Mongolia, and in the cases prescribed by the Criminal law, offenders shall be isolated in closed prisons and sentenced to life imprisonment. After a person sentenced to life imprisonment has served 25 years, the court shall decide whether to release him or not, taking into account the circumstances of the crime, the nature of the damage and injury caused and the character of the offender. If the offender is not released, it is revisited every two years. It is stipulated that those who commit crimes under the age of 18 shall not be sentenced to life imprisonment. In the Mongolian Criminal law, there are 15 offenses punishable by life imprisonment.

The content of life imprisonment is not the concept of imprisoning criminals for life/until death/. Whether the most severe punishment of life imprisonment is imposed on criminals is different from other crimes of this type, and whether there is a situation that stipulates the most severe criminal responsibility, the court should make a conclusion. Determined by law.

In other words, it is necessary to assess whether the circumstances of aggravating criminal responsibility detailed in the Criminal law are established. Reform in the area of criminal justice is an urgent priority, with a flexible reform of the criminalization and sentencing policy regime based on humanitarian principles.

In accordance with accepted principles of international law, Mongolia abolished the capital punishment and legalized life imprisonment, resulting in the following social, political, moral and legal changes.

First, a legal framework has been established to enable every Mongolian citizen to enjoy the basic right to life.

Second, the case where the violated rights of a person sentenced to death cannot be restored is deleted.

Thirdly, the abolishment of the capital punishment in Mongolia conforms to the trend of abolishing the capital punishment in the world and becomes an important step in developing relations and cooperation with other countries.

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ТРАДИЦИЯ СМЕРТНОЙ КАЗНИ В УГОЛОВНОМ ПРАВЕ МОНГОЛИИ  
И ДЕЙСТВУЮЩЕЕ ПРАВОВОЕ РЕГУЛИРОВАНИЕ

*Одонтунгалаг Бямбажав*

доктор юридических наук,  
Монгольский государственный университет  
Монголия, г. Улан-Батор, ул. Университетская, 1  
odontungalag\_b@num.edu.mn

*Аннотация.* Столетия назад, когда формировались первые государства, важной составляющей государственной политики была смертная казнь. Обычно использовалось для наказания особо опасных преступников, совершивших такие преступления как бунт, предательство родины, заговор против государственной власти, и убийство. Все эти деяния рассматривались как преступления против Вечного Синего Неба, народ видел в этом справедливость. Традиционно Монгольское государство широко применяло смертную казнь, защищая таким образом государство и религиозные и национальные устои.

Первый специальный уголовный закон Монголии был принят в 1926 г., в котором была предусмотрена смертная казнь — расстрел. Изменения в уголовном кодексе, внесенные в 1934 году, закрепили, что смертная казнь не применяется к несовершеннолетним и к беременным женщинам. Дополнения к УК Монголии от 1961 установили особый режим применения уголовного наказания, в том числе смертной казни, лицам, старше 60 лет и младше 18.

Уголовный кодекс, принятый после принятия новой демократической конституции Монголии 1992 года, значительно расширил перечень деяний, совершение которых могло повлечь применение смертной казни. Помилование является прерогативой Президента Монголии и заменяется лишением свободы на срок 30 лет. Монголия внесла поправки в свой Уголовный закон в 2015 году, чтобы отменить смертную казнь. Это изменение соответствует мировым тенденциям. Вместе с тем предусмотрена ее замена пожизненным заключением. В юридической литературе высказываются различные мнения о сущности пожизненного заключения, принципиальные отличия лишения свободы и тюремного заключения.

*Ключевые слова:* уголовная политика, уголовное право, преступник, преступление, наказание, смертная казнь, пожизненное заключение, лишение свободы.

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