

COUNTRY FACTSHEET

Sentence Adjustment Mechanisms in Europe
Procedural Barriers & National Contexts

UKRAINE

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1. Introduction

In Ukraine, sentence adjustment system was entrusted to the judiciary from 14 July 1954, when the Presidium of the Supreme Council of the USSR issued the Decree "On the Introduction of Conditional Early Release (Parole) from Places of Imprisonment". Jurisdiction of court included the same issue in accordance with the Criminal Code of the Ukrainian SSR, which was in force from 1961 to 2001. And since its adoption in 2001, the Ukrainian Criminal Code still provides that the rules relating to the adjustment and reduction of sentences are entrusted to the judiciary.

From an institutional point of view, the State Department for the Execution of Sentences was created in 1998 as a central executive authority. In 2005, the *Verkhovna Rada* passed the Law on the State Criminal Enforcement Service, which defined the structure of the criminal enforcement system. By late 2010, the State Department for the Execution of Sentences was reorganized into the State Penitentiary Service, a central executive authority under the supervision of the Minister of Justice. In 2016, the State Penitentiary Service was dissolved, and its responsibilities were transferred to the Ministry of Justice.

The texts governing sentence adjustments are primarily legislative in nature. The key legislative acts include:

- Criminal Code: Chapter XII, titled "Exemption from Sentence and Its Serving";
- Criminal Procedure Code: Article 537, "Issues Decided by Court During Execution of Sentences";
- Criminal Executive Code: Chapter V, "Exemption from Serving Sentence, Assistance to Persons Exempted, and Their Supervision and Control";
- Law on Probation.

Additionally, courts refer to the Resolution of the Plenum of the Supreme Court on "Parole from Serving a Sentence and Replacing the Unserved Portion of a Sentence with a Milder One" (2002) when addressing sentence adjustment matters.

Ukrainian criminal executive law generally takes a neutral stance on the use of sentence adjustments. While it establishes procedures and conditions under which these measures can be applied, it does not actively encourage their use. For example, according to §2 of Article 81 of the Criminal Code, parole may be granted if the convict demonstrates reformation through conscientious behavior and a positive attitude toward work. Similarly, §3 of Article 81 states that replacing the unserved portion of a sentence with a milder one is possible if the convict shows progress toward reformation.

2. Overview of Ukraine's Penal and Prison System

By a process that remains to be determined and analysed in the next part of the research, Ukraine divided its population by almost 4 between 2014 and 2022, and by almost 5 since

2004 – this decrease not being the only effect of the war, since the ratio was already 1 to 3 between 2012 and 31 January 2022, just before the Russian invasion (SPACE I).

A number of decisions have been handed down by the ECHR in recent years, including:

- 2024, **Medvid v. Ukraine** (no. 745323): violation of Article 3 as regards an unconditional sentence of life imprisonment.
- 2022, **Yakovlyev v. Ukraine** (no. 42010/18): force-feeding of prisoner on hunger strike, in protest against prison treatment, subjecting him to excessive physical restraint and pain;
- 2022, **Kupinskyy v. Ukraine** (no. 5084/18): upon prisoner's transfer, of foreign reducible life sentence into irreducible one owing to unavailability of parole for life prisoners in his home State
- 2020, **Sukachov v. Ukraine** (no. 14057/17), pilot judgement: Ukraine required to reduce prison overcrowding, improve conditions of detention and introduce preventive and compensatory remedies;
- 2019, **Radyukin v. Ukraine**, (no. 27805/18): applicant was kept in detention in poor conditions: overcrowding, lack of fresh air, lack of or insufficient electric light, mouldy or dirty cell, poor quality of food, inadequate temperature;
- 2019, **Petukhov v. Ukraine (No. 2)** (no. 41216/13): since sentence in form of life imprisonment cannot be reduced, this is a violation of Art. 3 of the Convention;
- 2013, **Yuriy Illarionovich Shchokin v. Ukraine** (no. 4299/03): violation of Articles 2 and 3 of the Convention due to death of a convict in penal colony as a result of torture and lack of a proper investigation;
- 2012, **Kaverzin v. Ukraine** (no. 23893/03): failure to provide proper medical care and failure by authorities to conduct effective investigation into applicant's complaint of torture;
- 2012, **Yermolenko v. Ukraine** (no. 49218/10): deficiencies in medical care contrary to Article 3.

Fair Trial Guarantees

Domestic law **does consider** that ordinary law requirements of a fair trial apply to sentence adjustment procedures.

According to the Criminal Procedure Code, when considering request on sentence adjustment, **convicted person, his defense attorney, legal representative, and prosecutor** are summoned to court hearing. Following consideration of request, court issues **decision that may be appealed**. In case of court decision refusing to grant sentence adjustment becoming effective, consideration of repeated request on the same issue for persons sentenced to life imprisonment, as well as for persons sentenced for serious and especially serious crimes to imprisonment for term of at least 5 years, may take place **no earlier than one year** from date of court decision on refusal, and for persons convicted of other crimes and juvenile convicts - **no earlier than six months**.¹

Ukrainian national case law **does not uphold applicability of provisions of articles 5(1) and 5(4) of ECHR** in sentence adjustment area. **Legality of convicts' stay in prison is not contested because sentences against them have become final.**

¹ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(5-7)

At the same time, provisions of **Article 6(1) of ECHR apply to sentence adjustment**. Requests for sentence adjustment are considered in **fair and public hearing within reasonable time by independent and impartial court established by law**.

3. Overview of Ukraine's Sentence Adjustment Mechanisms

a. Institutional architecture

- **Ministry of Justice :**
 - Develops and implements state policies in the fields of sentence execution and probation;
 - Supervises the Department for Execution of Criminal Sentences.
- **Department for Execution of Criminal Sentences:**
 - Represents the State Criminal Enforcement Service;
 - Exercises the Ministry of Justice's powers regarding criminal sentence enforcement.
- **State Criminal Enforcement Service:**
 - Consists of various bodies and institutions involved in sentence enforcement;
 - Does not function as a separate legal entity.

b. Players in the system

The following parties are involved in Ukraine's sentence adjustment system:

- **Central Body of Executive Power:**
 - Implements state policy on criminal sentence execution and probation.
- **Territorial bodies:**
 - Handle the regional implementation of sentence execution and probation measures.
- **Authorized probation bodies:**
 - Oversee probation-related activities.

c. Types of sentence adjustments

Ukraine's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- Parole;
- replacement of sentence or its unserved part with a milder one;
- parole for military service;
- exemption from serving sentence of pregnant women and women who have children under the age of three;
- exemption from sentence due to illness;
- exemption from serving sentence due to transfer of convict for exchange as a prisoner of war.

The norm on sentences adjustment/reduction is entrusted to judiciary and contained in the Criminal Code of Ukraine since its adoption in 2001.

d. Criteria for granting sentence adjustment

i. Parole

The court can grant conditional early release when a prisoner's attitude, personal circumstances, the nature of the crime, and behaviour during their sentence suggest that they will abide by the law and not commit new offenses after release.

- **Time threshold for eligibility:** Prisoners may apply after serving a minimum of:
 - half of the sentence: for criminal misdemeanor or minor crime, except for corruption and traffic safety-related, as well as for reckless serious crime;
 - two-thirds of term of sentence: for non-serious corruption crime or traffic safety-related, intentional serious crime or reckless especially serious crime, as well as if person previously served sentence of imprisonment for intentional crime and committed intentional crime again before conviction was served or expunged, for which he/she was sentenced to imprisonment;
 - three quarters of term of sentence: for intentional especially serious crime, in case of replacing life imprisonment with sentence in form of imprisonment for certain period, as well as sentence assigned to person previously released on parole and committed intentional crime again during unserved part of sentence.
- **Assessment criteria:**
 - Parole may be granted if a sentenced person displays decent behaviour and diligence in work by way of proof of his or her reformation.

ii. Replacement of sentence or its unserved part with a milder one

The court may replace the unserved portion of a sentence with a milder one. The duration of the milder sentence is calculated from the day the original sentence is replaced. This new sentence is imposed within the limits specified in the Criminal Code for that type of sentence and cannot exceed the remaining unserved portion of the original sentence.

- **Time threshold for eligibility:** Prisoners may apply after serving a minimum of:
 - a third of the sentence: for criminal misdemeanor or a minor crime, except for corruption and traffic safety-related, as well as for reckless serious crime;
 - half of term of sentence: for non-serious corruption crime or traffic safety-related, intentional serious crime or reckless especially serious crime, as well as if person previously served sentence of imprisonment for intentional crime and committed intentional crime again before conviction was served or

expunged, for which he/she was sentenced to imprisonment;

- two-thirds of term of sentence: for intentional especially serious crime, as well as sentence imposed on person previously released on parole and committed new intentional criminal offense during unserved part of sentence.

- **Assessment criteria:**

- The person needs to be on the path to reformation

iii. Exemption for pregnant women and mothers

Court may exempt from serving sentence within term for which, according to the law, woman can be released from work due to pregnancy, childbirth and until child reaches age of 3.

- **Time threshold for eligibility:** none.

- **Assessment criteria:**

- Concerns women who became pregnant or gave birth to children while serving sentence may be exempted from serving sentence;
- Doesn't apply to women sentenced to imprisonment for term of more than 5 years for serious and especially serious crimes;
- The woman needs to have family or relatives who have given consent to live together with her, or to prove ability to independently provide adequate conditions for raising a child.

iv. Exemption for ill persons

Person can be released from sentence if while serving sentence he/she fell ill with mental illness which deprives him/her of ability to be aware of his/her actions (inaction) or to control them.

- **Time threshold for eligibility:** none.

- **Assessment criteria:**

- Gravity of committed crime, nature of disease, personality of convicted and other circumstances of the case are taken into account.

v. Parole for military service

During mobilization and/or martial law, court may release imprisoned persons on parole to perform contract military service. Application of parole is possible if convict has expressed will to perform military service and meets requirements for military personnel. This type of parole cannot be applied to those convicted of certain types of crimes (against national security, some violent and grave corruption crimes).

vi. *Exemption in war context*

Convict, in respect of whom decision has been made to hand him over for exchange as a prisoner of war and who has given written consent to such exchange, shall be released by court from serving sentence.

e. Procedure for applying

After convict has served prescribed part of sentence, administration of penal colony is obliged to consider within a month issue of possibility of starting procedure of parole or replacing unserved part of sentence with a milder one. If procedure can be started for convicted person, administration of penal colony sends request to court within a month.

In other cases, administration of penal colony sends requests to court with relevant additional documents: medical report, report on convict's degree of reformation, convict's statement about his will to serve military service, etc.

Issues of sentence adjustments/reductions are considered by courts within 10 days from day of receipt of request, except cases of exemption from serving sentence due to transfer of convict for exchange as a prisoner of war when request is considered on the day of reception. Court issues decision which can be appealed in appeal procedure.

5. Recall

There are some legal mechanisms to review decisions made to recall prisoners to custody who have been granted early release.

Women who became pregnant or gave birth to children while serving sentence and were exempted from serving sentence, may be returned to prison. After child reaches age of 3 or in case of his/her death, court, depending on behavior of convicted woman, may exempt her from sentence or replace it with a milder one or send convicted woman to serve imposed sentence. In this case, court may fully or partially count time during which convicted woman did not serve sentence into term of serving sentence. If convicted woman who has been exempted from serving her sentence abandons her child, places her in orphanage, disappears from her place of residence, or evades raising or caring for her child, or systematically commits offenses that have resulted in administrative penalties and indicate unwillingness to embark on path of reformation, court may, upon motion of supervisory authority, send convicted woman to serve imposed sentence.²

Also, in case of recovery of persons exempted from serving sentence due to illness, they must be sent to serve their sentence, unless statute of limitations has expired or there are no other grounds for exemption from sentence.³

If exchange of convict who was exempted from serving sentence by court due to transfer of him/her for exchange as a prisoner of war has not taken place, court, at request of

² Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83

³ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84(4)

prosecutor, shall make decision to send convict to further serve previously imposed sentence.⁴

Procedural guarantees are similar to those available during trial on issue of sentence reduction/adjustment.

6. Statistics

a. Lack of unified criminal statistics system

In Ukraine, there is no centralized system for compiling criminal statistics. Data on the prison system is neither publicly accessible nor consistently available. While it is possible to request specific statistical information from the Department for the Execution of Criminal Sentences under the Law *on Access to public information*, obtaining such data is challenging. This is because the Department does not regularly collect or organize statistical data.

Under the same law, public information is defined as pre-existing, fixed data created or received by a public authority in the course of its duties. Since the law does not mandate authorities to perform generalizations, calculations, or compile information based on requested criteria, agencies such as the Department for the Execution of Criminal Sentences often reject detailed statistical requests, claiming it would require the “creation of new information.”

b. Sentence adjustments statistics

i. Data from the Department for the execution of criminal sentences (2024 and 2014)

- In 2024, courts replaced the unserved portion of sentences with milder alternatives for 288 convicts.
- In 2014, this measure was applied to 2,911 convicts.
- Parole releases (including those sentenced to correctional labor, service restrictions for military personnel, restriction of liberty, disciplinary detention, or imprisonment):
 - 2014: 4,595 convicts.
 - 2004: 8,975 convicts.

⁴ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84¹(2)

ii. *Judicial statistics report (2023, 2014 and 2008)*

	Received			Pending			Considered			Granted		
	2023	2014	2008	2023	2014	2008	2023	2014	2008	2023	2014	2008
Parole requests	5,316	18,701	28,453	5,940	-	-	5,484	18,512	28,316	3,445	16,908	27,979
Requests to replace unserved portions of sentences with milder ones	1,153	3,409	5,574	1,319	-	-	1,154	3,366	5,497	523	2,870	5,366
Requests for exemptions for pregnant women or women with children under 3	30	68	68	37	-	-	32	68	69	20	55	48
Requests for exemptions due to illness	270	930	1,340	319	-	-	285	917	1,288	138	569	904

iii. *Observations*

The data highlights a notable decline over time in the number of parole requests and other sentence adjustment measures granted by Ukrainian courts. This trend reflects changes in judicial practices, legislative reforms, or shifts in criminal justice policies. The lack of a unified criminal statistics system continues to hinder transparency and access to detailed data.

6. Procedural and substantial barriers

a. Substance of decisions

The Expert Center for Human Rights, in its *Analysis of the Practice and Prospects of Parole for Convicted Persons (2021)*, identified one of the most persistent challenges in the application of parole as the varying interpretations of legal norms among stakeholders. It highlighted the need to refine criminal, criminal-executive, and other related legislation to ensure a more coherent and consistent approach to parole decisions.⁵

Lawyer Serhii Skvortsov, in his article *Practical Problems of Parole (2019)*, underscores the lack of clear legislative definitions for key concepts such as "conscientious behavior" and "conscientious attitude to work." This ambiguity makes it difficult to determine the required

⁵ Expert Center for Human Rights (2021) 'Analysis of the practice and prospects of parole for convicted' (*Аналіз практики та перспектив умовно-дострокового звільнення засуджених*), available at: <https://ecpl.com.ua/news/analiz-praktyky-ta-perspektyv-umovno-dostrokovoho-zvylnennia-zasudzhenykh/>

level of such behaviour needed to demonstrate a convict's rehabilitation, leading to inconsistencies in parole decisions.⁶

Professors Serhii Diomenko and Olena Riabchynska of the Classical Private University (Zaporizhzhia), in their 2023 article *The Latest Methods of Assessing the Correction of a Convicted Person in the Process of Serving a Sentence*, analysed the *Procedure for Determining the Level of Reformation of a Convict* and the *Methodology for Determining the Level of Reformation of a Convict*. They concur with expert opinions that the current system of qualitative and quantitative indicators used to assess rehabilitation presents significant challenges. These criteria do not always allow for an objective evaluation of a prisoner's transformation in terms of both consciousness and behaviour.⁷

b. Access to legal assistance and representation

In accordance with Art. 110 of the Criminal Enforcement Code, in order to receive **legal aid** and **confidential legal consultations**, convicted persons, on their own initiative or on initiative of their relatives or lawyer, have right to urgent visits without any time or number restrictions on working days, weekends, holidays, and non-working days at any time from 8 a.m. to 8 p.m. with **lawyer**. That is, convict **can receive legal assistance at any stage, but only in form of meetings with lawyer**.

Lawyer is also present at hearing of sentence adjustment case by court.

Convicted person **can receive paid legal aid** on basis of contract with lawyer in accordance with the Law "On Advocacy and Legal Activities". Also, in accordance with Art. 14 of the Law "On Free Legal Aid", **those sentenced to imprisonment and life imprisonment** have right to free secondary legal aid, that is, **lawyer at expense of state**. Prisoners submit request for free secondary legal aid to **free legal aid center** through administration of sentence execution institution. Free legal aid center, within **10 working days from date of receipt of request** makes decision on providing free secondary legal aid and **appoints lawyer who is included in the Register of lawyers providing free secondary legal aid**.⁸

c. Interpretation

In accordance with the Law *On Free Legal Aid*, if a person entitled to free secondary legal aid does not speak Ukrainian and/or has a hearing impairment, the Free Legal Aid Center arranges for an interpreter, including a sign language interpreter, in the language the applicant can communicate in, at the state's expense.⁹

d. Access to case files

A prisoner participates in drafting the conclusion on their level of reformation. If a prisoner refuses to take part in this process or provide the necessary information, they must confirm

⁶ Skvortsov, S. (2019) 'Practical Problems of Parole' (*Практичні проблеми умовно-дострокового звільнення*), available at: <https://pravo.ua/praktichni-problemi-umovno-dostrokovogo-zvilnennja/>

⁷ Diomenko, S., Riabchynska O. (2023) 'The Latest Methods of Assessing the Correction of a Convicted Person in the Process of Serving a Sentence', *Legal Scientific Electronic Journal*, No. 8, p. 352

⁸ Ukraine, Law 'On Free Legal Aid' (*Закон «Про безоплатну правничу допомогу»*), Kyiv, 3640-VI, 2 June 2011, Articles 18, 19, 21

⁹ Ukraine, Law 'On Free Legal Aid' (*Закон «Про безоплатну правничу допомогу»*), Kyiv, 3640-VI, 2 June 2011, Art. 19(7)

their refusal with a written statement, which is then attached to their personal file.¹⁰ If a prisoner wishes to personally apply to the court for sentence adjustment, they must submit a written request to the administration of the sentence execution institution. The administration is required to provide the prisoner with copies of relevant documents, including the conclusion, free of charge within 30 days for submission to the court.

The prisoner is given access to the draft conclusion. If they disagree with the content or any specific information within it, they have the right to submit a written, reasoned objection.¹¹

The prisoner also has the opportunity to review their case file, including assessments and conclusions, both during the drafting of the conclusion and during court proceedings. They may call witnesses to testify or request a second opinion if they contest the findings of a forensic expert assessment. These rights are provided under the trial procedures set out in the Criminal Procedure Code.

e. Public access to proceedings

Hearings for sentence adjustment procedures are held in court and are open to the public.

A person held in a sentence execution institution may participate in the court hearing via video conference from within the institution, using its technical facilities and their own qualified electronic signature. If they do not have a qualified electronic signature, participation via video conference is facilitated through the institution's electronic office or the office of an authorised official.

Video conference participation is permitted in cases where direct attendance is not possible due to health or other valid reasons, the need to ensure the efficiency of proceedings, the imposition of martial law, or quarantine measures established by the Cabinet of Ministers. The court may also determine other sufficient grounds for remote participation.¹²

f. Duration of proceedings

The duration of the procedure is strictly regulated. The court must consider a request for sentence adjustment within 10 days.¹³ Once a prisoner has served the required portion of their sentence, the administration of the sentence execution institution is obligated to review the matter within a month and submit a request to the court for the application of parole or the replacement of the sentence, or the unserved portion, with a milder one.

However, there are no penalties for failing to comply with these timeframes.

¹⁰ Ukraine, Procedure for Determining Level of Reformation of Convict approved by the Order of the Ministry of Justice of Ukraine (*Порядок визначення ступеня виправлення засудженого, затверджений наказом Міністерства юстиції України*) Київ, № 294/5, 19 January 2023, para. 6

¹¹ Ukraine, Procedure for Determining Level of Reformation of Convict approved by the Order of the Ministry of Justice of Ukraine (*Порядок визначення ступеня виправлення засудженого, затверджений наказом Міністерства юстиції України*) Київ, № 294/5, 19 January 2023, para. 6

¹² Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 336

¹³ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(3)

g. Access to appeal

Following the court's consideration of a request for sentence reduction or adjustment, a decision is issued, which may be appealed. A prisoner, their lawyer, or their representative may challenge the decision before the court of appeal in accordance with the procedure set out in the Criminal Procedure Code.

The prosecutor also has the right to appeal a decision on sentence reduction or adjustment. If a prosecutor appeals a court decision granting parole or replacing the unserved portion of a sentence with a milder one, its execution is automatically suspended.¹⁴

There are no separate statistics on appellate reviews of decisions concerning sentence reduction or adjustment. The *Judicial Statistical Report 2023* provides only the total number of appeals against court decisions related to the execution of sentences, which includes not only sentence reduction or adjustment but also postponements of sentence execution, applications of forced treatment and/or feeding of prisoners, and the resolution of doubts or contradictions arising during sentence execution. In 2023, courts of appeal received 2,131 such appeals (396 from prosecutors), with a total of 2,834 appeals under consideration. Of these, 1,884 appeals were reviewed, resulting in 14 first-instance court decisions being modified and 481 being overturned.¹⁵

According to the Expert Center for Human Rights, in 2019, prosecutors filed 180 appeals against decisions granting parole at the first-instance level, of which 104 were upheld (representing 1% of the total 6,500 court decisions on parole that year). In 2020, prosecutors filed 235 appeals, of which 127 were upheld (2% of the total 6,400 court decisions). Meanwhile, prisoners and other participants in the process filed 542 appeals against parole decisions in 2019, of which 100 were successful (18.5% of appeals or 1.5% of total court decisions). In 2020, 578 such appeals were filed, with 69 granted (11.2% of appeals or 1% of total court decisions).¹⁶

An appeal against a first-instance court decision on sentence reduction or adjustment must be filed within seven days from the date the decision is announced. The appeal is submitted through the first-instance court that issued the decision. Three days after the appeal period expires, the first-instance court forwards any received appeals, along with the case materials, to the court of appeal.¹⁷

The court of appeal reviews the first-instance court's decision within the scope of the appeal. However, it may go beyond the appeal claims if doing so does not worsen the prisoner's situation. At the request of the parties, the court of appeal must re-examine circumstances established during the trial if they were assessed incompletely or with procedural violations

¹⁴ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(6)

¹⁵ Ukraine, State Court Administration, 'Report of the courts of appeal on the consideration of appeal complaints in criminal proceedings; 2023' (*Звіт судів апеляційної інстанції про розгляд апеляційних скарг у порядку кримінального провадження за 2023 рік*), available at: https://court.gov.ua/userfiles/media/new_folder_for_uploads/main_site/2-k_4_2023_2.xls

¹⁶ Expert Center for Human Rights (2021) 'Analysis of the practice and prospects of parole for convicted' (*Аналіз практики та перспектив умовно-дострокового звільнення засуджених*), available at: <https://ecpl.com.ua/news/analiz-praktyky-ta-perspektyv-umovno-dostrokovoho-zvylnennia-zasudzhenykh/>

¹⁷ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 397

at the first-instance level. The court may also consider new evidence that was not examined by the first-instance court, provided that a request to examine such evidence was made during the original trial or that the evidence only became known after the contested decision was issued.¹⁸

The appeal hearing follows the same procedural rules as trials in the first-instance court, adhering to the principles of equality before the law, adversarial proceedings, and the parties' freedom to present evidence and argue its persuasiveness before the court.

The Criminal Procedure Code does not specify strict time limits for the appeal process. Instead, the general requirement under Article 318 of the Code—that proceedings be conducted within a reasonable timeframe—applies.

h. Access to cassation

On October 13, 2016, the Supreme Court of Ukraine ruled that decisions of appellate courts regarding issues related to the execution of sentences could be appealed through cassation proceedings.

However, in 2019, the Supreme Court determined that following legislative changes made to Article 129 of the Constitution of Ukraine, Part 2 of Article 424, and Part 6 of Article 539 of the Criminal Procedure Code, decisions of first-instance and appellate courts on matters related to the execution of sentences are no longer subject to cassation appeal.

As a result, there is currently no practice of the Supreme Court addressing such issues, apart from outdated resolutions of the Plenum from 2002 and 1973.

i. Delays in transmitting court decisions on sentence adjustment

In his article, Serhii Skvortsov highlights the issue of delays in sending court decisions on sentence reduction or adjustment to sentence execution institutions. According to Article 153(5) of the Criminal Executive Code, early release from imprisonment must be carried out on the day the relevant documents are received. If the documents arrive after the end of the working day, the release should occur in the first half of the following day.¹⁹

However, due to the heavy workload of court staff, there are cases where court decisions cannot be transmitted to the sentence execution institution on the same day. Even if the decision is sent on the day it is announced, it typically takes at least 3–4 days to reach the institution. As a result, during this period, the prisoner remains unlawfully detained.

Additionally, the absence of individuals who were duly notified of the time and place of the hearing does not prevent the trial from proceeding, except in cases where the court deems

¹⁸ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 404

¹⁹ Skvortsov, S. (2019) 'Practical Problems of Parole' (*Практичні проблеми умовно-дострокового звільнення*), available at: <https://pravo.ua/praktichni-problemi-umovno-dostrokovogo-zvillnennja/>

their presence mandatory or where the individual provides valid reasons for non-attendance.²⁰

7. Differential Impact for Categories of Prisoners

Certain categories of prisoners and specific legal provisions prevent access to some sentence adjustment mechanisms.

Parole for military service is not available to the following categories of prisoners:²¹

1. Those convicted of crimes against Ukraine's national security.
2. Those convicted of the intentional murder of two or more people, or murder committed with particular cruelty, in conjunction with rape or sexual violence.
3. Those convicted of particularly serious corruption offences.
4. Those convicted of rape, sexual violence, coercion into sexual activity, sexual acts with a person under 16, the corruption of minors, or child sexual harassment.
5. Those convicted of terrorist offences.
6. Those convicted of traffic-related crimes committed while intoxicated, if the offence resulted in multiple fatalities.
7. Those convicted of attacking or endangering the life of a law enforcement officer, a member of a public security formation, or military personnel.
8. Officials who held especially high-ranking positions and were convicted of offences related to their duties.

Additionally, minors are ineligible for the replacement of an unserved portion of their sentence with a milder one.²²

Exemption from serving a sentence due to pregnancy or having a child under the age of three does not apply to women sentenced to more than five years' imprisonment for intentional serious or particularly serious crimes.²³

a. Pregnant women and mothers of young children

A special mechanism allows for the exemption of pregnant women and mothers of children under the age of three from serving their sentences. To qualify, the prisoner must meet the following criteria:²⁴

- They must have been sentenced to no more than five years of imprisonment for an intentional serious or particularly serious crime.
- They must have family or relatives who have consented to live with them or must be able to independently provide suitable conditions for raising the child.

²⁰ Ukraine, Criminal Procedure Code (*Кримінальний процесуальний кодекс України*), Kyiv 4651-VI, 13 April 2012, Art. 539(5)

²¹ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 81¹

²² Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107(4)

²³ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83(1)

²⁴ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 83(1, 2)

Once the child reaches the age of three or in the event of the child's death, the court may, depending on the prisoner's behaviour:

- Exempt them from serving the remainder of their sentence,
- Replace the sentence with a milder one, or
- Order them to serve the original sentence.

In making this decision, the court may fully or partially count the period during which the sentence was not served toward the total sentence duration.

If a prisoner who has been exempted from serving their sentence **abandons the child, places the child in an orphanage, disappears from their place of residence, evades parental responsibilities, or repeatedly commits offenses leading to administrative penalties that indicate an unwillingness to reform**, the court may, upon the request of the supervisory authority, order them to serve the original sentence.²⁵

The court grants release based on a request from the administration of the sentence execution institution and the supervisory commission.²⁶

b. Minors

Parole for individuals who committed crimes under the age of 18 is granted based on proof of their reformation through conscientious behaviour, attitude toward work and education, and completion of a required portion of their sentence.

Parole may be applied if the prisoner has served:

- **At least one-third** of their sentence for a non-serious crime or a reckless serious crime.
- **At least half** of their sentence for an intentional serious crime or a reckless especially serious crime. This also applies if the prisoner had previously served a sentence for an intentional crime and, before their criminal record was expunged or removed, committed another intentional crime under the age of 18, resulting in a new sentence of imprisonment.
- **At least two-thirds** of their sentence for an intentional especially serious crime. The same threshold applies if the prisoner had previously served a sentence, was granted parole, and, before completing the unserved portion of their sentence and before reaching the age of 18, committed another intentional crime leading to a new prison sentence.²⁷

Minors are not eligible for the replacement of an unserved portion of their sentence with a milder one.²⁸

²⁵ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 84(4, 5)

²⁶ Ukraine, Criminal Executive Code (*Кримінально-виконавчий кодекс України*) Kyiv, 1129-IV, 11 July 2003, Art. 154(10)

²⁷ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107.

²⁸ Ukraine, Criminal Code (*Кримінальний кодекс України*), Kyiv 2341-III, 5 April 2001, Art. 107(4).

c. Lifers

A key decision was issued by the Constitutional Court on September 16, 2021, in a case concerning the review of the sentence of a person sentenced to life imprisonment. The Court declared §1 of Article 81 and §1 of Article 82 of the Criminal Code unconstitutional because they prohibited parole and the replacement of life imprisonment or its unserved portion with a milder sentence for individuals sentenced to life imprisonment.

The Court emphasized that life imprisonment is an indefinite sentence, causing unique suffering as it denies the prisoner any certainty about a future release date. Within Ukraine's constitutional framework, the relationship between hope for release and human dignity is reflected in the right to free development (Article 23 of the Constitution). The Court found that Articles 81 and 82 of the Criminal Code lacked a proper mechanism for early release from life imprisonment, depriving individuals of the opportunity for such consideration. Consequently, the Constitutional Court mandated the Verkhovna Rada (Parliament) to amend the provisions of Articles 81 and 82 to align with the Constitution.

As a result of this ruling, the Parliament adopted Law No. 2690-IX, amending Article 82 of the Criminal Code to allow for the replacement of life imprisonment with a fixed term of 15 to 20 years.

However, as the Donetsk Court of Appeal noted on 10 February 2022, no changes have been made to the legislation and Article 81 of the Criminal Code remains unchanged, continuing to prevent individuals sentenced to life imprisonment from being eligible for parole.



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