Proceedings of the 4th International Conference on Global Politics and Socio-Humanities
DOI: 10.54254/2753-7048/2026.36993

The Interpretation Theory of the Life Imprisonment System - Centered on the System Connection Between Article 50 and Article 383 of the Criminal Law

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Abstract. The legal nature and application logic of the life imprisonment system added to the Criminal Law Amendment (IX) are highly controversial in the academic circle. This paper focuses on the system connection between Article 50 and Article 383 of the Criminal Law and uses the method of legal dogmatics to conduct an interpretive study of the life imprisonment system. Life imprisonment is not an independent form of punishment. In nature, it is a suspended death sentence, and in effect, it is a special form of life imprisonment. And a person sentenced to life imprisonment may apply the "commutation of sentence" rule in both Article 50 and Article 78 of the Criminal Law. For cases of corruption and bribery crimes that occurred before the promulgation of the Criminal Law Amendment (IX), the new law and the old law should not be applied concurrently. To sum up, this article has achieved a precise definition in the study of the nature of life imprisonment and has drawn dialectical thinking in the application of the retroactive effect of life imprisonment, that is, the principle of applying the old and the lesser.

Keywords: Life imprisonment, Commutation, The principle of following the old and the lesser

1. Introduction

The system of life imprisonment originated from the promulgation of the Criminal Law Amendment (IX), which includes: Article 383, Paragraph 4 of the Criminal Law: The people's court may, in light of the circumstances of the crime and other circumstances, concurrently decide that after the two-year reprieve period expires and the sentence is commuted to life imprisonment in accordance with the law, life imprisonment shall be imposed without the possibility of commutation or parole. There are mainly disputes among scholars regarding the nature of the life imprisonment system, its logic of application, and its retroactive effect. To clarify this series of issues, this paper adopts the method of legal dogmatics, taking the internal logic between Article 50 and Article 383 of the Criminal Law as the research object, and comprehensively uses the methods of textual interpretation and systematic interpretation, combined with classic cases such as the Bai Enpei case, to conduct an interpretation study of the life imprisonment system on the basis of existing doctrines. The current distribution of camps in the academic circle on three core issues is as follows: In terms of nature, Professor Huang

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DOI: 10.54254/2753-7048/2026.36993

Jingping holds the view of intermediate punishment [1], Professors Huang Yongwei and Yuan Dengming hold the view of partial immediate execution of death penalty as an alternative measure [2], Professor Li Hong holds the view of essential death penalty [3], and Professor Zhang Mingkai holds the view of independent punishment [4]. In terms of the logic of application, Professors Huang Jingping, Ouyang Benqi and Zhang Mingkai have disputes over the scope of "no commutation of sentence". On the issue of retroactive effect, Judge Huang Yingsheng and Professor Huang Jingping supported the Interpretation of the Supreme People's Court on the Time Effect of the Amendment (IX) to the Criminal Law of the People's Republic of China [5], while Professor Zhang Mingkai opposed it. This article is largely a re-discussion with Professor Zhang on the system of life imprisonment, a further extension and revision of his existing interpretation. The consensus between this article and Professor Zhang is that life imprisonment is an independent penal measure, and offenders who have been decided to serve life imprisonment may have their sentences commuted, even if they have made significant meritorious contributions during their sentences, but this does not apply to the circumstances of "commutation of sentence" as stipulated in Article 78 of the Criminal Law. The differences are mainly in the following aspects: whether life imprisonment is the death penalty; The connection between significant meritorious service and personal danger; Whether the principle of following the old and lenient takes precedence over the principle of proportionality between crime and punishment; Can the old and new laws be combined and applied under the principle of applying the old and the lenient? This paper presents at these points the positive correlation between significant meritorious service and personal danger, the equality between the principle of applying the old law and the principle of proportionality between crime and punishment, and the inability to apply the old and new laws together, along with their arguments. To sum up, this paper first sorts out the nature dispute and establishes the position, then analyzes the application logic and three legal outcomes based on the system correlation of Article 50 and Article 383, and finally focuses on the retroactive effect dispute and analyzes from the relationship of proportionality between crime, responsibility and punishment and the old law with leniency.

2. The nature of the life imprisonment system

In the field of criminal law, life imprisonment is recognized as a non-independent form of punishment, but there is much debate about its specific legal nature. Professor Huang contends that life imprisonment is an intermediate form of punishment [1], a form of punishment or special punishment measure between the most severe form of punishment, namely the immediate execution of the death penalty, and the less severe form of punishment, namely the pure suspended death penalty. It is not an independent form of punishment, but its influence is very close to that of an independent form of punishment. Professor Zhang Mingkai opposed this view and argued that, first of all, life imprisonment is not a method of carrying out the death penalty because Article 263 of the Criminal Procedure Law stipulates that "the death penalty shall be carried out by shooting or injection", and the life imprisonment system does not include such methods of carrying out the death penalty. And life imprisonment is not a method of carrying out life imprisonment, as life imprisonment is premised on being sentenced to death with a two-year reprieve. Secondly, the establishment of the concept of intermediate punishment is based on the existence of two separate types of punishment before and after, but in the context of life imprisonment, immediate execution of the death penalty and pure death penalty with reprieve are both forms of execution of the death penalty and not separate types of punishment. Third, there are restrictions on commutation of sentence between immediate execution of the death penalty and pure suspended death penalty, not just life imprisonment. This article supports Professor Zhang Mingkai's criticism of the intermediate

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penalty theory, but questions the logic of his reasoning: First, the methods of carrying out the death penalty are not fully listed in Article 263 of the Criminal Procedure Law, and it is too forced to exclude the method of life imprisonment by only using shooting and injection. And with the advancement of the rule of law civilization, it is highly likely that life imprisonment will serve as a spiritual form of death penalty, making the death penalty more civilized. And there is an element of restriction on commutation in the immediate execution and pure reprieve of death penalty, which alone cannot rule out the possibility of a life imprisonment system in between. And Professor Zhang pointed out that "life imprisonment is an appositive to restricted commutation and parole," indicating that the two are similar and interchangeable in content, which contradicts the argument that life imprisonment is excluded because restricted commutation exists between death penalty and suspended death sentence.

Professors Huang Yongwei and Yuan Dengming pointed out that life imprisonment is an alternative measure to the immediate execution of some death sentences based on considerations of legislative purposes and death penalty policies [2]. Professor Huang Jingping also believes that life imprisonment is an alternative measure to abolish and restrict the death penalty. Professor Zhang Mingkai opposed this, arguing that, first, the abolition of immediate execution of the death penalty does not require any alternative measures because it is difficult to compare that alternative measures must be less painful than immediate execution of the death penalty. Secondly, in terms of legal provisions, it is the commutation of a death sentence with a reprieve to life imprisonment, so logically life imprisonment is subordinate to death sentence with a reprieve, which is not an alternative to immediate execution of the death penalty, nor is the life imprisonment system. Thirdly, why is life imprisonment only used as an alternative to immediate execution of the death penalty in cases of corruption and bribery, and not as an alternative to all criminal cases where the maximum penalty is the death penalty? And in practice, immediate execution of the death penalty is rarely applied in cases of corruption and bribery, and there is no necessity for life imprisonment to be an alternative. This article agrees with Professor Zhang's criticism of the nature of life imprisonment as an alternative measure for some cases of immediate execution of the death penalty, but considers that there are parts of his reasoning that can be deepened: The mistake in considering life imprisonment as an alternative measure lies in not recognizing that it is premised not on the death penalty but on the death sentence with reprieve and commutation to life imprisonment, which is clearly reflected in Article 383, Paragraph 4 of the Criminal Law: The article states, "The people's court may, in light of the circumstances of the crime, decide that after the two-year reprieve of the death penalty expires and it is commuted to life imprisonment in accordance with the law, life imprisonment shall be imposed without the possibility of commutation or parole. It shows that life imprisonment can be decided simultaneously when a death sentence with a two-year reprieve is imposed, without the consideration of hierarchy, that is, the law does not explicitly stipulate that in certain circumstances a death sentence should be imposed but is intended to be life imprisonment. By analogy, the appositive of life imprisonment, "restricted commutation of sentence," is not an alternative measure to the death penalty, but rather a separate penalty measure that can be set simultaneously based on the circumstances of the crime and the eight special charges. In conclusion, both life imprisonment and restricted commutation are separate measures, and the relevant provisions do not have a similar provision that "in certain circumstances, life imprisonment or restricted commutation may replace the death penalty." Furthermore, the independence of life imprisonment reflects the purpose of punishment for the crime of embezzlement. In corruption crimes, lawmakers weigh the contributions and damages to the state and government of the corrupt state functionary, considering political sensitivity and national interests, and believe that the criminal

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state functionary should not be sentenced to death but to life imprisonment, and that depriving the offender of life rather than life is more appropriate. If it is regarded as an alternative measure, it affirms that it is equivalent to the death penalty in terms of the purpose of punishment and contradicts the original intention of designing the life imprisonment system.

Professor Li believes that life imprisonment is essentially a form of death penalty, a different way of carrying out [3]. Zhang Mingkai acknowledged the partial reasonableness of the statement that life imprisonment could be regarded as the death penalty, but still thought some expressions were questionable: life imprisonment could be considered the death penalty, but unlike the immediate execution of the death penalty, it was only a case of the application of the suspended death. Because a life sentence does not necessarily mean death, it has changed the ways of carrying out a death sentence from two in the past, namely restricted commutation and unrestricted commutation, to three now. And life imprisonment is not necessarily a form of execution of the death penalty, because a person sentenced to death with a reprieve will not be executed if they do not commit an intentional crime during the two-year probation period, and life imprisonment, which is subordinate to death with a reprieve, is not a form of execution of the death penalty either. This article still adheres to the view that life imprisonment is independent of the death penalty, arguing that equating the two would be contrary to the legislative intent.

In conclusion, this article holds that in terms of nature, life imprisonment is an independent penal measure, on an equal footing with non-commutation of sentence or parole and having the same meaning, which emphasizes the purpose of punishment for the crime of embezzlement and is in line with China's national conditions.

3. The logic of the application of the life imprisonment system

The specific application of life imprisonment is not, as the public believes, a "long prison term". This article, based on the analysis of the legal provisions system, finds that there are still multiple outcomes after being sentenced to life imprisonment. According to Article 383 of the Criminal Law, life imprisonment is a form of punishment that is carried out only after the two-year reprieve of the death penalty expires and is commuted to life imprisonment. According to the systematic understanding of the legal provisions, the "in accordance with the law" specifically refers to the application of the first paragraph of Article 50 of the Criminal Law. Since Article 50 is applied, can a prisoner sentenced to life imprisonment be commuted to 25 years of fixed-term imprisonment after having a significant meritorious performance? In other words, the "life imprisonment" mentioned in Article 383, There is controversy over whether "no commutation of sentence or parole" is absolutely non-commutation of sentence or parole, or whether the first paragraph of Article 50 can be applied relatively, but this article is in line with Professor Zhang Mingkai's position on this issue. Professor Zhang Mingkai holds that: First, Article 383 is the application of Article 50 to specific charges, that is, a prisoner who has passed the two-year reprieve of death sentence and has made significant meritorious service may be commuted to 25 years' imprisonment, but a prisoner who has passed the two-year reprieve of embezzlement and has not made significant meritorious service will be sentenced to life imprisonment. These two provisions complement each other. That is, the relationship between the general and the exceptional is not one of opposition and exclusion. To put it specifically: First, in terms of the way of handling it, if Article 50 is not applied and it is considered that commutation of sentence is absolutely not allowed, then Article 50 is not truly applied because it clearly states in this law that a prisoner whose sentence has been commuted to life imprisonment can be commuted to fixed-term imprisonment if he has made significant meritorious service, then it can be analogized that Article 383 does not reduce death with reprieve to life imprisonment. Instead,

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it is reduced to a state of both death penalty with reprieve and life imprisonment, but this state is not explicitly stipulated in the law and cannot still be classified as death penalty with reprieve, because death penalty with reprieve is only an intermediate state that cannot exist for a long time and will inevitably lead to two final states: commutation to life imprisonment or execution of death penalty. Secondly, logically speaking, Article 383 does not have such explicit provisions as "even if a criminal has performed significant meritorious deeds, etc., commutation of sentence or parole shall not be granted", and in accordance with the value of "what is not prohibited by law is permissible", it should still be presumed that Article 50 can be fully applied. Thirdly, in terms of substance, Professor Zhang Mingkai believes that the original intention of the legislator has been outdated since the enactment of the law and should be adjusted according to practice, seeking the preventive and punitive significance of the law itself rather than exploring the outdated and changed ideas of the legislator. To sum up, Professor Zhang believes that there are three possible directions for criminals after being sentenced to life imprisonment: 1. Intentionally committing a crime during the two-year probation period of the death penalty, the death penalty is carried out directly. 2. Those who pass the two-year probation period and have made significant meritorious contributions at the same time will be commuted to 25 years of fixed-term imprisonment. 3. Those who pass the two-year probation period but do not perform significant meritorious service shall be sentenced to life imprisonment. This article largely affirms Professor Zhang Mingkai's reasoning, but it is questionable in terms of the legislative intent. Professor Zhang argues that the original intention of one of the legislators is a fictional concept because there are many legislators in the same code and it is impossible to determine that each legislator has exactly the same intention. Secondly, the original intention of the legislator itself is flawed, and the successors should not stubbornly cling to it but should promptly correct and adhere to the correct concept. Third, once a law is enacted, it exists alone. It should be judged from an objective perspective rather than from the subjective perspective of the legislator. This paper argues that the fundamental flaw of this view lies in clinging to the "objective meaning of the text" [6], but in fact the objective meaning of the text itself cannot exist independently of the creator. And the legislator's intention encompasses two meanings: one is the legislator's normative purpose for a certain kind of thing, and the other is the legislator's empirical knowledge. In light of the changing times, it is indeed necessary to understand the individualized empirical knowledge of the legislator in a timely manner, but the normative purpose of the legislator should not be set aside. Since Professor Zhang Mingkai himself also mentioned normative purposes such as the theory of the purpose of punishment in his argument, it is even more inappropriate to confuse the normative purpose of the legislator with subjective cognition and put forward views such as not conforming to the legislative intent. Furthermore, if the "objective meaning of the text" is real and not subject to dispute, it should be reflected in judicial practice as the same case, and so on, leaving no room for debate in academic theory. But this is not the case, which also indicates the existence of multiple legal interpretations in reality and the great necessity of legal interpretation.

This is not the case. The above fully demonstrates that if there is a significant meritorious performance during the two-year reprieve of a death sentence, it can be commuted to 25 years of imprisonment. Further discussion: If a prisoner sentenced to life imprisonment has no significant meritorious service during the two-year probation period after being sentenced to death with a two-year reprieve, but has made significant meritorious service during his sentence, can he still be exempted from life imprisonment in accordance with Article 78 of the Criminal Law, which stipulates "commutation of sentence"? There is considerable controversy in the academic community over this.

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Professor Huang Jingping, who holds an affirmative view, believes that: Article 383, Paragraph 4 is not an exception to Article 78, that is, Article 383 is based on the conditions and limits for commutation of sentence as stipulated in Article 78. Therefore, if a criminal sentenced to death with reprieve for embezzlement has made significant meritorious performance during the two-year probation period, it shall be directly commuted to 25 years of fixed-term imprisonment in accordance with Article 50; otherwise, If there is a significant meritorious service during the period of commutation to life imprisonment, the sentence shall be commuted to 25 years of fixed-term imprisonment in accordance with Article 78. Professor Ouyang Benqi is opposed: He argues that Article 383 is an exception to Article 78. And significant meritorious service during the two-year probationary period and during life imprisonment can reflect two different kinds of personal danger. The former, with a short period of reform and significant meritorious service, indicates less personal danger, while the latter does not. Professor Zhang Mingkai takes a compromise: First, he affirms Professor Ouyang Benqi's characterization of "no commutation of sentence" in Article 383 - it must be an exceptional provision because commutation is generally possible, but here it is specifically stipulated "no commutation of sentence". The reasoning is that, from the perspective of the entire legal system of the Criminal Law, no commutation of sentence can be applied to three situations: 1. Commutation of sentence as stipulated in Paragraph 1 of Article 50. 2. Commutation of sentences for criminals sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment as stipulated in Article 78. 3. Commutation of sentences for additional penalties. Rule out the third case for analyzing the nature of the offender sentenced to life imprisonment. And according to the above discussion, Paragraph 4 of Article 383 and Paragraph 1 of Article 50 are used in parallel. Therefore, it can be concluded that "no commutation of sentence" as stipulated in Article 383 is an exception to Article 78. Professor Zhang Mingkai further believes that it is an exception to the "commutation of sentence" in Article 78. The reasons are as follows: First, logically speaking, "not..." Similar expressions are used to exclude "can..." The rule that "should..." The provisions of such expressions are mandatory and strict, and there can be no arbitrary exceptions. Secondly, the complete provision for life imprisonment in Article 383 is that commutation and parole are not allowed, indicating that commutation and parole should be prohibited under the same conditions and exceptions should be made when both are "eligible for commutation and parole". And there is no "parole" provision in the Criminal Law, which, in order to be consistent, confirms again that it is an exceptional provision for "commutation of sentence". However, Professor Zhang Mingkai finds it difficult to agree that the difference in the time of major meritorious service indicates a difference in personal danger. He believes that major meritorious service is not much related to personal danger or the time point, but rather to opportunity. In other words, whether a criminal will perform meritorious service depends on whether he has encountered the circumstances stipulated in Article 78. If not, even if the criminal's personal danger is extremely low, It is difficult to perform meritorious service or prove it. Finally, Professor Zhang Mingkai, out of humanitarian concern and respect for the offender, once again affirmed that a prisoner sentenced to life imprisonment can still be subject to the provisions of Article 78 "commutation of sentence" during the period of serving the sentence. This article shares the views of Professor Zhang in the vast majority of cases, but there are new thoughts on the relationship between significant meritorious service and time, opportunity, and personal danger: First, opportunity is important, but it is undeniable that early meritorious service still holds considerable value. The legal principle and Article 355 of the judicial interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law (2021) restipulate that "in cases of guilty plea and acceptance of punishment, it should be based on the stage of the defendant's guilty plea and acceptance of punishment, as well as the proactiveness, stability, and

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thornness of the guilty plea and acceptance of punishment. There should be differences in the extent of leniency." Similar. While serving a sentence, confessing guilt is no longer meaningful. More emphasis is placed on the repenting and remedial actions of the offender, that is, the earlier the meritorious deeds are undoubtedly the best evidence. Secondly, the presence or absence of opportunities largely determines whether the offender will make a significant contribution, but the decisive factor is whether the offender's personal danger is reduced, that is, whether the offender recognizes his own fault and desires to make up for it by actively helping others and preventing the exposure of others' criminal facts. Take exposing others' crimes as an example. In the vast majority of cases, criminals have very limited knowledge of the latest facts that have occurred outside during their sentences. Therefore, the facts of the crimes exposed are already known to the criminals before they serve their sentences or even before they are arrested, and there is no reporting in the early stage. As reform and education are carried out and their awareness of their own mistakes deepens, criminals voluntarily choose to expose them during their sentences. This reflects the effectiveness of correctional education in reducing the risk to the person. "The system of meritorious service, on the one hand, encourages criminals to repent and break down criminal forces by imposing lenient punishment on them; On the other hand, it is aimed at improving the efficiency of the judiciary." This reflects the judicial department's understanding of the meritorious service system and its recognition of the connection between meritorious service and the repentance of criminals.

The above fully explains how the life imprisonment system applies restricted commutation of sentence. The next question to be discussed is whether prisoners sentenced to life imprisonment can be temporarily released from prison. Professor Zhang Mingkai holds a positive attitude, believing that: 1. Although Article 254 of the Criminal Procedure Law (2012 edition, invalidated, the current effective version is the Criminal Procedure Law 2018 edition) stipulates: A prisoner sentenced to life imprisonment may be temporarily released outside prison only if he is a woman who is pregnant or breastfeeding her own infant. However, this law is enacted to prevent prisoners sentenced to life imprisonment from evading punishment through temporary release outside prison, and a prisoner sentenced to life imprisonment is essentially a prisoner sentenced to death with a reprieve, and therefore is not subject to the constraints of this law. 2. From the perspective of interpretation, Article 254 (1) of the Criminal Procedure Law (2012 Edition) only stipulates the circumstances under which temporary execution outside prison can be applied, but does not stipulate only these circumstances. And criminals sentenced to life imprisonment with serious illness requiring medical parole are not subject to the restrictions of the second paragraph of this article. Emphasizing the equality of life, the lives of infants should be treated equally with those of criminals sentenced to life imprisonment. Since the lives of infants can be protected by Article 254 (1) of the Criminal Procedure Law (2012 edition), criminals who have been sentenced to life imprisonment but are in critical condition should also be protected by temporary execution outside prison. Finally, Professor Zhang Mingkai believes that strictly confining criminals who have been sentenced to life imprisonment and are seriously ill in prison would impose an unnecessary burden on the prison and fail to achieve the purpose of execution. This article is partially opposed to Professor Zhang's view: First of all, it must be affirmed that a person sentenced to life imprisonment is essentially a person sentenced to death with a reprieve. Therefore, the Criminal Procedure Law (2012 edition) does not explicitly stipulate whether a person sentenced to life imprisonment can be temporarily released from prison. However, both the Criminal Law and the Criminal Procedure Law are public laws, and in public law, it is acceptable not to follow what is not prohibited by law. But follow the principle that what is not authorized by law cannot be done. If the former is applied, the authority of public power will be greatly undermined. Secondly, if equality of life is emphasized, there is no legal

DOI: 10.54254/2753-7048/2026.36993

provision to support the application of temporary execution outside prison for pregnant or breastfeeding women who have been sentenced to life imprisonment, where does the conclusion come from that criminals who have been sentenced to life imprisonment but are seriously ill can be temporarily executed outside prison [7]. Furthermore, the inherent flaw of the life imprisonment system is that the existing prison management system and personnel do not have the capacity to provide life imprisonment for criminals. However, the system should not be overturned because of its flaws. To ensure the stability of the law, the prison management capacity should be strengthened or legislative adjustments should be made instead of exploiting loopholes in the law to undermine its authority and stability when applied.

4. Retroactive effect of the life imprisonment system

The retroactive effect of criminal law follows the principle of applying the old and the lesser, but in the life imprisonment system, there is much controversy due to conflicts between judicial interpretations and academic views. Specifically, in response to Article 8 of the "Interpretation of the Supreme People's Court on the Time Effect of the Amendment (IX) to the Criminal Law of the People's Republic of China" (Judicial Interpretation [2015] No. 19, issued on October 29, 2015, effective as of November 1, 2015), Judge Huang Yingsheng holds: For crimes of embezzlement and bribery committed before October 31, 2015, which should be sentenced to death with a reprieve after the entry into force of the Criminal Law Amendment (IX), that is, where the punishment under the Criminal Law after its entry into force is lighter and commensurate with the crime, it includes three situations: 1. Those who should have been sentenced to immediate death under the law before the amendment, but are sentenced to death with a reprieve and life imprisonment under the law after the amendment, which can be punished as appropriate. 2. A death sentence with a reprieve in accordance with the law before the amendment is punishable. 3. Prisoners sentenced to death with a reprieve, excluding the above two cases, including those who have been detained under effective judgments and rulings [5]. The old law is used because a death sentence with a reprieve and life imprisonment at the same time is more severe than a death sentence with a reprieve alone. Professor Huang also agrees with this view, arguing that the purpose of the life imprisonment system is to use the death penalty with caution for serious and extremely serious corruption and bribery offenders, and that the application of the life imprisonment system better reflects the principle of proportionality between crime, responsibility and punishment, and that serious and extremely serious corruption and bribery offenders would be sentenced to immediate execution under the law before the amendment, But the application of the revised law would result in a death sentence with a reprieve and life imprisonment, which also reflects the principle of following the old and the lenient.

Professor Zhang questioned the above views and presented his argument with three questions: First, what is the relationship between the principle of proportionality between crime, responsibility and punishment and the principle of applying the old law with leniency? He argues that the reason why most scholars wrongly believe that the life imprisonment system has retroactive effect is that they first judge whether to apply the new law or the old law based on the principle of proportionality between crime, responsibility and punishment, and then consider the principle of applying the old law with leniency. In fact, the principle of following the old and the lenient is an important part of the principle of the emperor, that is, the principle of legality of crimes and punishments. Even in cases where the legal penalty is disproportionately lenient, the principle of matching crimes, responsibilities and punishments should be subject to it. And in terms of the order of application, only when the corresponding correct legal provisions are determined based on the principle of following the old and lenient can the most appropriate legal sentence be imposed in accordance with

DOI: 10.54254/2753-7048/2026.36993

the circumstances of the crime and the purpose of education. Second, how to determine whether the sentence is lenient or can be judged by comparing the sentencing of the old and new laws. Regarding how to determine a lenient sentence, Professor Zhang Mingkai believes that the method of judgment shown in Article 1 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Article 12 of the Criminal Law, December 31, 1997, is correct but incomplete. The principal punishment and additional punishment, aggravated and mitigated circumstances, that is, all provisions favorable and unfavorable to the defendant should be taken into consideration for judgment. Regarding the possibility of making a judgment by comparing the old and new laws, Professor Zhang first believes that the object of comparison should be the statutory penalties of the old and new laws, which can be combined with the relevant sentencing provisions. The first reason is that the statutory penalty is the prerequisite for sentencing. The second reason is that when judges make sentencing based on the old and new laws, considering many aspects, it is more standardized to determine whether the sentence is lighter or heavier based on the statutory sentence. Secondly, in terms of content, a comprehensive comparison of principal penalties and additional penalties should be made. Third, whether it can be partially applied, that is, only apply the parts of the new law that are favorable to the defendant and apply the old law to the unfavorable parts. In the case of Bai Enpei, Professor Zhang believes that the principle of applying the old and lenient sentence is more severe than a simple death sentence with a reprieve. Therefore, for criminals like Bai Enpei who should have been sentenced to death under the old law for serious embezzlement crimes, only Article 383, Paragraph 1, Subparagraph 3 of the Criminal Law should be applied, not Paragraph 4. The reasoning is as follows: First, the revised law contains both provisions favorable to and unfavorable to the defendant, and when sentencing, the judge should only apply the provisions favorable to the defendant. Since sentencing has a significant impact on the defendant, the outcome of sentencing should be predicted by the defendant. If there is no possibility of prediction, it does not conform to the principle of applying the old sentence and the lighter one. Secondly, Professor Zhang Mingkai believes that both the new and old laws can be applied to one case. He believes that the value of the principle of applying both the old and the lenient law lies in allowing the defendant to break the retroactive effect of the law, regardless of whether the old or new law applies only the provisions that are favorable to him. And there will be no confusion because the old and new laws will only be applied when deciding punishment rather than conviction. Thirdly, even if the old law were applied, it would be difficult for Bai Enpei to be sentenced to death with immediate execution; he would most likely be sentenced to death with a two-year reprieve, and now being sentenced to death with a two-year reprieve along with life imprisonment is undoubtedly a wrong application of the principle of harshness. Fourth, there is no legal basis for sentencing Bai to life imprisonment. At that time, the judge sentenced Bai to life imprisonment based on the Interpretation of Time Effect, but this judicial interpretation itself does not have independent or even higher legal effect than the Criminal Law. When the provisions of Article 8 of the Interpretation of Time Effect conflict with Article 12 of the Criminal Law, the provisions of the Criminal Law shall prevail.

Based on the above viewpoints, the viewpoints of this article are as follows: First, the principle of following the old and being lenient is not approved to take precedence over the principle of proportionality between crime, responsibility and punishment. This article holds that the principle of proportionality between crime, responsibility and punishment is equal to the principle of following the old and applying leniency. Even in some cases the former takes precedence over the latter in the order of application, as is clearly stipulated in Article 8 of the Interpretation of the Effect of Time: For acts of embezzlement and bribery committed before October 31, 2015, which are extremely

DOI: 10.54254/2753-7048/2026.36993

serious, the death penalty with a reprieve under the pre-amended criminal law does not reflect the principle of proportionality between crime and punishment, and the death penalty with a reprieve under the post-amended criminal law simultaneously decides that after the two-year reprieve period expires and is commuted to life imprisonment in accordance with the law, life imprisonment will be imposed, The provisions of Paragraph 4 of Article 383 of the amended Criminal Law shall apply if commutation of sentence or parole is not allowed and the punishment is commensurate with the crime. From this, it can be seen that judicial interpretations with legal effect follow the principle of proportionality to the crime in sequence. If not, they are given priority. Breaking the principle of applying the old law and the milder punishment means applying the old law and giving priority to the death sentence with a two-year reprieve and life imprisonment. Furthermore, from the perspective of the Criminal Law system, the principle of proportionality between crime, responsibility and punishment is in Article 5 of Chapter 1, and the principle of proportionality between old and lenient punishment is in Article 12 of Chapter 1, which should be the basic principle of equal rank of effect, and if the priority of application is distinguished by the order of ranking, the principle of proportionality between crime, responsibility and punishment should take precedence. Secondly, Professor Zhang Mingkai believes that in the case of Bai Enpei, under the old law, he should only have been sentenced to death with a two-year reprieve, and under the new law, with the addition of life imprisonment, the principle of harshness is applied. But because Bai was involved in an amount of 240 million yuan [8], he was the most involved among the "fallen" officials since the 18th National Congress (officials with an amount of over 100 million yuan after the 18th National Congress: Zhou Yongkang 122.77 million, Zhu Mingguo 232 million, Jin Daoming 123 million, Wan Qingliang 111 million, MAO Xiaobing 104.8 million, Jing Chunhua 146 million, Du Shanxue 169 million), and the severity of their crimes can also be seen from the details of corruption disclosed by the Central Commission for Discipline Inspection: Bai Enpei was fond of rosewood and tea, and his wife Zhang Huiqing was passionate about jadeite and jade. The number of collections seized from the Bai family shocked the investigators. According to the investigators from the Central Commission for Discipline Inspection's Discipline inspection and supervision Office, it took them more than ten days just to clear the collection. Therefore, this article holds that if Bai Enpei were sentenced to death with a reprieve under the old law, it would be too lenient; the death penalty would be too severe, and since the principle of proportionality between crime and punishment and the principle of applying the old law with a lighter sentence were not applied first, the principle of proportionality between crime, responsibility and punishment would be followed, and a more severe sentence, namely death with a reprieve and life imprisonment, would be imposed. Thirdly, in terms of determining whether the sentence is severe or not, Professor Zhang Mingkai believes that when determining "a lighter sentence", it should not be based on sentencing, because many factors outside the law can affect sentencing, and incorporating these elements would lead to an unclear standard of judgment. This article agrees that since the details of individual cases vary, in addition to circumstances such as significant meritorious service which can lead to different sentencing, the judge's experience and knowledge, subjective initiative or the extent of the influence of the crime on the public interest of the state will also affect sentencing. Therefore, it is more appropriate to judge based on the theoretical statutory sentence. Fourth, Professor Zhang Mingkai also mentioned that since the new law contains provisions unfavorable to the defendant, there is no possibility for the defendant to predict this, and the sentence cannot exceed the defendant's prediction. Therefore, Bai Enpei cannot be sentenced to life imprisonment. This article argues that the maximum statutory penalty stipulated in the old law was the death penalty, and the new law does not stipulate a higher statutory penalty. Bai Enpei was expected to be sentenced to death when he

DOI: 10.54254/2753-7048/2026.36993

committed the acts of corruption and bribery, so life imprisonment, which is obviously lighter than the death penalty, was actually predictable. Fifth, in terms of practical application, I do not agree with Professor Zhang Mingkai's practice of combining the new and old laws for application [9], such as applying the lighter statutory penalty rule of the new law and the lighter sentencing rule of the old law. Because Professor Zhang also acknowledged in his article that it is not standardized to use sentencing to compare the lighter and heavier penalties of the old and new laws. Since there are too many factors influencing sentencing in practice, the principle of applying both the old and the lighter one does not need to consider the sentencing principle but only the statutory penalty rule. If one is obsessed with maximizing leniency for the defendant, there will be opportunities for lawbreakers or corrupt judges to take advantage.

5. Conclusion

This paper systematically expounds the life imprisonment system in three aspects: nature, application logic, retroactive effect. In terms of legal nature, this paper sorts out and evaluates the intermediate penalty theory, the death penalty alternative measure theory, the death penalty execution method theory, and the death penalty suspended application situation theory to draw the conclusion that life imprisonment is an independent penalty measure, and opposes the view that life imprisonment is a death penalty alternative measure. In terms of the logic of application, this paper analyzes the connections between Article 383, Article 50 and Article 78 of the Criminal Law, and concludes that the circumstances of "commutation of sentence" as stipulated in Article 50 and Article 78 of the Criminal Law can be applied simultaneously, and opposes the view represented by Professor Zhang Mingkai that life imprisonment offenders should be subject to temporary execution outside prison. In terms of retroactive effect, this paper, by analyzing the Interpretation of the Effect of Time and the views of scholars, ultimately concludes that life imprisonment has retroactive effect and questions Professor Zhang and other scholars regarding the combined application of the new and old laws. The system of life imprisonment originated from the West and can be regarded as an import. It is bound to have "incompatibility" when transplanted into the legal soil of China. But in order to enter the post-death penalty era and civilize penalties, the legal profession community should strive to integrate the life imprisonment system with Chinese characteristics and incorporate it into China's independent legal system.

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