

LIFE IMPRISONMENT- WORLD SITUATION AND EXPERIENCE IN EXECUTION¹²⁶

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Abstract

In the second half of the 20th century, the tendency to abolish the death penalty influenced to an increased use of life imprisonment. According to available data, about half a million people in the world today are serving a life sentences in prison. Out of 216 countries and territories, life imprisonment is imposed in 183. Between 2004 and 2015, there was an increase in the imposition of these sentences of about 84%. Life imprisonment, with the exception of countries where the death penalty is applied, is imposed as the maximum punishment for the perpetrators of the most serious crimes. In different countries, life imprisonment is imposed with different options: with or without the possibility of parole depending on the severity of the crime and the social risk of the crime, the minimum sentence served, etc.

A particular problem is the execution of this criminal sanction from the aspect of: application of the treatment, preservation of security in the institution both personal and general, preservation of the minimum level of mental health of convicts, accommodation of these convicts - individually or in a group with other categories of convicts, etc. International organizations dealing with human rights of prisoners recommend that prison institutions take advantage of all the opportunities that treatment provides in order to, as far as possible, preserve health, moral and spiritual strength of every prisoner who is serving a life sentence in prison, as a human, moral and civilized act of society.

Keywords: *life imprisonment, convict, treatment, social reaction, prison.*

1. INTRODUCTION

The long history of the development of criminal law offers a wide range of different types of penalties that were applied to perpetrators of criminal acts and which should have: to prevent such persons from re-committing a crime and to "educate" other citizens by publicly and cruelly execution in order to make them fear of punishment¹²⁷. Under the influence of the classical school, in the criminal legislation was introduced imprisonment, which was a substitute for the death penalty as inhumane and useless punishment. In all modern penal systems, imprisonment occupies a central place. The most crimes are

¹²⁶ The work was created as a result of research engagement according to the Plan and work program of the Institute for Criminological and Sociological Research for 2021., which is funded by the Ministry of Education, Science and Technological Development of the RS.

¹²⁷ Jovašević, D.& Stevanović, Z. (2012), Punishments as a form of social reaction to crime, Institute for Criminological and Sociological Research, Belgrade, page 16

threatened by this punishment, because it provides the highest opportunities to achieve the purpose of punishment, which consists in re-education and re-socialization of the convict and his re-inclusion in normal social life¹²⁸. Liberty deprivation is imposed in different time durations, depending on the severity of the crime and the degree of social danger. For the most serious crimes and the most dangerous perpetrators of these crimes, all contemporary criminal laws provide: 1) long-term imprisonment (for a period of thirty, forty years or more) and 2) a sentence of life imprisonment (long-term).

Life imprisonment is introduced en masse after the global trend towards universal abolition of the death penalty. At the same time, international human rights standards related to prison are developing dramatically, but mainly focus on the treatment of prisoners and prison management, rather than on the issue of life imprisonment.

The significance of life imprisonment is that the convicted person shall remain in isolation (prison) until the end of his biological life. In contemporary comparative legislation and theory, it is considered that only the death penalty is more severe than this punishment. It has been introduced into the legislation in many countries as a "humane" substitute for the death penalty. Also, life imprisonment is the most effective kind of special prevention, because it permanently (lifelong) prevents the convict from repeating the crime. On the other side, many legal systems introduce the possibility of releasing convicts after a longer period of serving a sentence of life imprisonment (parole). In these cases, convicts are released when it is estimated that for good behaviour, old age, or other reasons, they no longer pose a danger to society and therefore is no reason to continue serving their sentences. However, in the common law system, there is also life imprisonment without the possibility of privileges in terms of the duration of the sentence (amnesty, parole, etc.). In the second half of the 20th century, life imprisonment was criticized in many countries. It was considered as "inhumane" and an ineffective punishment, as convicts were considered permanently expelled from society and they lost any interest in reintegrating into society. In the 19th century, Spain and Portugal removed life sentences from their systems and the same practice spread to Latin American count.

Later, many European countries began to abolish this sentence, and prison sentences ranging from 20 to 40 years were introduced as a substitute for life imprisonment. Today, life imprisonment exists in most North American countries, a small number of South American countries, in the countries of the Australian continent, in the majority of European and Asian legislations and on the African continent it is represented in only a few legislations.

There was no such punishment in the legislation of the former Yugoslavia. It is important to note that the death penalty was abolished in 1990, and efforts to introduce life imprisonment as an alternative to the death penalty provoked harsh reactions of liberal public and human rights activist, and as a substitute for the death penalty was imposed a prison sentence for 20 years. Life imprisonment is gradually being introduced in some republics of the former Yugoslavia. The first country that introduced life imprisonment from the former Yugoslavia was Slovenia. Most countries in their legislation have penalties that are, by duration, close to life imprisonment. For example, in Bosnia and Herzegovina, there is a sentence called "long-term imprisonment", with a legal maximum of 45 years. In Republika Srpska is imposed the penalty of life imprisonment. Also, in North Macedonia is introduced a sentence of life imprisonment that may be reconsidered after 25 years of imprisonment.

¹²⁸ Ibid, pp. 31.

The sentence of life imprisonment is being served in The Idrizovo Penitentiary, where there are more than 40 convicts who have been sentenced to life imprisonment.

2. INTERNATIONAL STANDARDS AND TENDENCIES RELATING TO CONVICTED PERSONS TO LIFE IMPRISONMENT

The UN Committee and the European Court of Human Rights have imposed on member states the obligation that convicts to life imprisonment have the possibility of parole. In the 2003, the Committee of Ministers of the Council of Europe recommended that the legislations should allow all convicts to be released on parole, including convicts serving life imprisonment. European Prison Rules of the Council of Europe has also determined to, as soon as possible after admission of prisoners, make statements about their personal situation, proposed programs serving a sentence for each individual and the strategy of preparation for their release, and that prisoners will be encouraged to participate in preparing their individual programs serving a sentences, that these programs include, as far as possible, work, education, other activities and preparation for release, that social work, health and psychological care may be included in the regime for prisoners and to pay special attention to determining appropriate programs and regimes for serving life imprisonment and other long-term sentences¹²⁹. The rights of convicts serving life imprisonment and the state's obligations arising from the above-mentioned norms and *ius cogens* prohibition of torture, inhuman or degrading treatment or punishment, have been further developed through the practice of the European Court of Human Rights.

According to this court, to prescribe and impose a life imprisonment sentence, in accordance with an Article 3 of the European Convention on Human Rights, it is necessary that the national law provides mechanism that allows the competent national authorities, after no more than twenty-five years since its pronouncements, to examine whether the convict has positive changes in behavior and if there are real basis for successful social integration. The opinion of the Committee of Ministers of the Council of Europe is that cannot be reasonably claimed that any person will forever remain a danger to society and their recommendation on parole since 2003, indicates that the law should allow all prisoners to be released conditionally, including convicted on a life imprisonment¹³⁰. Conditions of detention and treatment of prisoners serving life imprisonment are often worse than those for the rest of the prisoners and are more likely to fall below international human rights standards. Life imprisonment, particularly in prison without the possibility of parole, contributes to excessive use of imprisonment, which is a phenomenon that is based on the belief that prisons are the only mechanism of society for the problems of crime and social control. Prisoners sentenced to life imprisonment should be entitled to the same rights as other categories of prisoners, and they should be in accordance with the standards of the United Nations (UN) human rights, including the Standard of Minimum Rules for the Treatment of Prisoners. In different countries, serving a sentence of life imprisonment is regulated differently. The minimum time a prisoner must serve before being able to take parole is 12 years (e.g. Denmark and Finland) and 15 years (e.g. Austria, Belgium, Germany, Switzerland), and the maximum is 40 years (e.g. Turkey, in the case of multiple crimes).

¹²⁹ European Prison Rules (rules No. 103.1-103.8), <http://www.hraction.org/wp-content/uploads/Evropska-zatvorska-pravila.pdf>

¹³⁰ Recommendation of the Committee of Ministers of the Council of Europe, <https://www.npm.rs/attachments/Kompilacija%20dokumenata%20SE-zatvori.pdf>

Most countries where life imprisonment is imposed, have a minimum time of sentence of between 20 and 30 years. In the United Kingdom jurisdictions, the minimum time of sentence of imprisonment is pronounced by judge in charge during sentencing; the law does not provide an absolute minimum of time in this regard. Several other countries (e.g. Belgium, the Netherlands, Lithuania, Malta and for certain crimes Hungary, Slovak Republic and Turkey) have no system of parole in the case of prisoners sentenced to life imprisonment, so that literally means life imprisonment for lifetime. On the other side, it should be noted that some member states of Council of Europe do not have a life imprisonment in their Constitution. Instead, for the most serious crimes, they have defined long sentences that usually range from 20 to 40 years. Based on a sample of 22 countries, in relation to which relevant data are available for a longer period of time, the number of prisoners sentenced to life imprisonment increased by 66% from 2004 to 2014¹³¹.

The report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) about the visit of a significant number of prisons in Europe, where prisoners are sentenced to life imprisonment, indicates that the conditions in which these prisoners are accommodated are considerably different from one to another institution. In many countries, prisoners serving life imprisonment are usually placed together with other convicted prisoners and enjoy the same rights in terms of modes (work, education and recreation) and contact with the outside world as well as other convicted prisoners. Also, in many countries - including Azerbaijan, Bulgaria, Georgia, Armenia, Lithuania, Moldova, Romania, the Russian Federation, Turkey (only prisoners sentenced to severe life imprisonment) and Ukraine - prisoners sentenced to life imprisonment are, as a rule, separated from the other convicted prisoners. In several countries, the CPT noted that prisoners sentenced to life imprisonment were also in the impoverished treatment and under draconian security measures¹³².

According to this report, in some countries, prisoners sentenced to life imprisonment were locked in their cells (alone or in pairs) 23 hours a day, they were not allowed to contact with others, even prisoners sentenced to life imprisonment from other cells (not even during outdoor exercise), they were not allowed to work outside their cell and were not offered any purposeful activities. Also, in several countries, prisoners sentenced to life imprisonment were systematically handcuffed and/or searched naked whenever they left the cell. In some institutions, these prisoners were additionally accompanied by two prison officers with a dog during any movement out of the cells. In many visited institutions, prisoners were subjected to anachronistic rules, whose only goal was to further punish and humiliate the prisoners.

This situation in the sphere of punishing criminals and the introduction of severe and long prison sentences raises an ethical question: how far have we really moved away from past examples in the history of punishment, and have we really become more humane in our treatment of convicts or we just take a hypocritical stance of advocating for the human rights of convicts and just speaking about it, or when great forces "discipline" small nations and their leaders¹³³.

3. THE SITUATION IN THE WORLD

¹³¹ The situation of prisoners sentenced to life imprisonment, Extract from the 25th General Report, published in 2016, <https://rm.coe.int/16808ef55c> -

¹³² The situation of prisoners sentenced to life imprisonment, Extract from the 25th General Report, published in 2016, <https://rm.coe.int/16808ef55c> -

¹³³ Igrački, J. (2020), The effects of prison in resocialization of convicts, Institute for Criminological and Sociological Research, Belgrade, page 136.

In many countries, life imprisonment was introduced as a substitute for the death penalty, which was deleted as "inhumane" from the most criminal laws in the world and in all countries of the Council of Europe¹³⁴. Sentencing to life imprisonment varies considerably from country to country. From 216 countries and territories, life imprisonment exists in 183, from which 149 countries have this punishment as the most severe. It is also the most severe punishment that can be imposed by the court. In 144 from the 183 countries, convicts sentenced to life imprisonment have the possibility of parole. The lower limit of time of the served sentence, when the convict is given an opportunity of parole, varies from country to country. Most often, the minimum length of time served a prison sentence ranging from 15 to 30 years, when the convicted person has the right to appeal for parole.

A life imprisonment is abolished in South and Central America, Honduras, Nicaragua, El Salvador, Costa Rica, Venezuela, Colombia, Uruguay, Bolivia, Ecuador and the Dominican Republic, but is prescribed a maximum sentence up to 75 years in El Salvador, 60 in Colombia, 50 in Costa Rica and Panama. Since 2000, the number of convicts sentenced to life imprisonment almost doubled. Currently it is estimated that worldwide, around 536 000 convicts are sentenced to life imprisonment. In the United States, there are 162,000 convicts serving life imprisonment¹³⁵. Per 100,000 inhabitants, 50 convicts are sentenced to life imprisonment, including a large number of minors¹³⁶. In some known cases of multiple murders are imposed several life sentences, which means that getting out of prison "in this life" is not possible. In the United States, the number of imposed life imprisonment increased by 328% between 1992 and 2016. Characteristic for the United States is that the sentence of life imprisonment is also imposed for minors and currently are about 2 300 persons in prisons who have been sentenced to life imprisonment as minors. In South Africa, the number of the sentence of life imprisonment has increased enormously – even for 818%. In Germany, there are 1,831 people¹³⁷ (1,720 men and 111 women) serving life imprisonment, and this sentence, like in most countries, assumed the role of the death penalty. Considering human dignity, the legislation provided that even those sentenced to life imprisonment, have a concrete chance to be released someday. The law allows them to apply for parole if it can be ascertained that the convicted person does not represent a danger to society any more.

In Canada, life imprisonment is imposed for multiple forms of murder, high treason, piracy, hijacking, endangering aircraft or airports, forcibly taking control of a ship or platform, illegally handling explosive and radioactive materials that lead to serious consequences, various terrorist activities and other crimes.

Life imprisonment exists in several European countries. The Criminal law of the Russian Federation prescribes that for an attack on the statesman or public figure, can be imposed a sentence of prison up to 20, life imprisonment or the death penalty. The French Penal Code prescribes this punishment for several crimes against international law, special forms of murder, torture and barbarism, severe forms of rape, drug trafficking, hijacking of a plane, ship, or other means of mass transport of people, blackmail committed by an organized group and other serious crimes. As a rule, the sentence of life imprisonment is imposed as the only punishment, without ancillary punishments, without other obligations

¹³⁴Only Belarus in Europe has the death penalty in its legislation

¹³⁵This number also includes convicts who have more life sentences and very long-term sentences that, realistically, do not allow them to get out of prison.

¹³⁶<https://qz.com/974658/life-prison-sentences-are-far-more-common-in-the-us-than-anywhere-else/>

¹³⁷ According to data from March 2017

for the convict and without a special enforcement regime. There are legislations that are an exception in that sense as well. The Criminal Code of the Republic of Turkey from 2016, prescribes two types of this punishment. The first is the "classic" life imprisonment, which lasted until biological death of the convicted. The second is called a severe sentence of life imprisonment, it also lasts until the biological death of the convict, but it is carried out under strict security regime measures, which are defined by law and other regulations.

This means that one cannot be pardoned or amnestied, serving the sentence in solitary confinement, and the rights of visit and communication are reduced to a minimum. No species is destructive like human aggression and violence, that is presented in all stages of development of human civilization and there is constantly social activity to reduce human aggression and violence, both towards others and towards oneself¹³⁸.

In 2015, Hungary brought a new law that reorganizes the entire system of life imprisonment. The Criminal Code has not been changed, but has introduced a process of forced pardon if the convict served 40 years in prison (this does not mean that it must be pardoned, but only the procedure for deciding whether to convict to be pardoned is required). Besides, there is also the parole board. The Hungarian Constitutional Court declared that with the introduction of mandatory presidential pardons, the Hungarian legislation became harmonized with the requirements of the European Court of Human Rights. But even after the introduction of the new legislation in 2015, reports were submitted to the European Court of Human Rights. In the case of T.P. and A.T. v. Hungary (nos. 37871/14 and 73986/14), the Court ruled on the compliance of the Hungarian regime of 2015 with the European Convention on Human Rights (judgment of 4 October 2016). This case referred to the new legislation introduced in Hungary in 2015 for the review of life imprisonment. The applicants of compliance alleged that, despite the new law, which has introduced an automatic review of life sentences - a mandatory procedure of parole - after 40 years, their sentence are inhumane and degrading, because they had no hope of release. The Court concludes that there has been a violation of Article 3 of the Convention. In particular, the Court found that forcing prisoners to wait 40 years before they could expect to be first discussed a pardon was too long and that, in any case, there was a lack of sufficient safeguards in the remainder of the proceedings. The Court is, therefore, not convinced that the new law would, at the time of the passing judgment in the case, be considered to provide possibility of release or possibility of a review of the sentence of life imprisonment of applicants, so the legislation is therefore not compatible with Article 3 of the Convention¹³⁹. In some countries, it is noticed that from year to year increases the length of stay in prison this category of prisoners. Thus, in England and Wales, the average time spent in prison has doubled from 9 years in 1979 to 18 years in 2013.

¹³⁸ Igrački, J. (2014), Criminal law aspects and criminological aspects of violence and violent behavior, Journal of Institute of Criminological and Sociological Research, No. 1, p. 147, Belgrade

¹³⁹ An example of Hungary shows what kind of problems the state can have if its regulation is not in accordance with the standards arising from international legal acts and the case law of the European Court of Human Rights

4. LIFE IMPRISONMENT IN THE REPUBLIC OF SERBIA

The criminal legislation of Serbia in 2019¹⁴⁰ introduced life imprisonment instead of a prison sentence of 30 to 40 years. The new legal solutions in criminal legislation of Serbia are introduced for the most serious crimes. Life imprisonment is predicted for aggravated murder, rape, sexual intercourse with a minor person, a pregnant woman and a helpless person, and it was initiated by the Foundation "Tijana Juric" in 2017. and it was supported by the signatures of nearly 160,000 people. Life imprisonment has been extended to all other crimes punishable by 30 to 40 years, such as the murder of representatives of the highest state authorities, a serious act against the constitutional order and security of Serbia, conspiracy to commit crimes, genocide, crimes against humanity, war crimes against civilians and other serious crimes. The legislator has foreseen the possibility of parole convicts to life imprisonment after 27 years serving sentence, except for the five most serious and brutal crimes (aggravated murder, rape resulting in death, sexual intercourse with a helpless person resulting in death, sexual intercourse with a child with a fatal outcome and adultery by abusing a position with a fatal outcome). The Court will not be able to impose a sentence of life imprisonment for those who were under the age of 21 at the time of the crime, as well as in situations where there is possibility for mitigation or even release from punishment (exceeding the limits of necessary defense, significantly reduced mental capacity, etc.).

In Serbia, the first life imprisonment, first instance, was imposed on January 5, 2021.¹⁴¹

5. CONCLUSION

Life imprisonment is introduced en masse after the global trend towards universal abolition of the death penalty. On the website of the association Serbia Against the Death Penalty¹⁴² states that it was carried out in 20 countries (less than 10%) during 2019. In 2019, the countries that carried out the most executions were China, Iran, Saudi Arabia, Iraq and Egypt. At the same time, international human rights standards relating to prison are developing dramatically, but mainly focus on the treatment of prisoners and the prison management. In many countries, life imprisonment was introduced as a substitute for the death penalty, which was deleted as "inhumane" from the most criminal laws in the world and in all countries of the Council of Europe. Sentencing to life imprisonment varies considerably from country to country. From 216 countries and territories, life imprisonment exists in 183, from which 149 countries have this punishment as the most severe. It is also the most severe punishment that can be imposed by the court. The lower limit of time of the served sentence, when the convict is given an opportunity of parole, varies from country to country. In some countries, it is noticed that from year to year increases the length of stay in prison this category of prisoners. Thus, in England and Wales, the average time spent in prison has doubled from 9 years in 1979 to 18 years in 2013. In the second half of the 20th century, life imprisonment came under attack from critics in many countries, who considered

¹⁴⁰ Law on Amendments to the Criminal Code, Official Gazette of the Republic of Serbia, No. 35/2019, in use since December 2019. https://www.paragraf.rs/izmene_i_dopune/210519-zakon-o-izmenama-i-dopunama-zakonika-o-krivicnom-postupku.html

¹⁴¹ Sentenced for kidnapping and abusing a twelve-year-old girl

¹⁴² <http://www.smrtnakazna.rs/sr-latn-rs/uvod.aspx>

it "inhumane" and an ineffective punishment, as convicts are considered permanently expelled from society and lost any interest in reintegrating into society.

The development of penal policies in Europe talks about the growing importance of reintegrating convicts into society after serving long-term sentences, which is assisted by "promotion system": convicts should move progressively through the penitentiary system, from the early days of punishment, when the emphasis is on punishment and retaliation, to the last stage, when the emphasis should be on his preparations for release. A significant number of international institutions call on Member States to review their treatment of prisoners sentenced to life imprisonment to ensure that it is in line with the individual risk that inmates are both in prison and in the outside community, not only in response to the punishment that they pronounced. In particular, all interested Member States should take steps to abolish the legal obligation to keep prisoners sentenced to life imprisonment separate from other prisoners sentenced to other (long-term) prison sentences and to end the systematic use of security measures such as handcuffing. Also, it is necessary to make every effort to provide prisoners sentenced to life imprisonment regime tailored to their needs and to help them reduce the level of risk they pose, to minimize the harm necessarily caused by indefinite sentences, to provide prisoners contact with the outside world, to offer the possibility of release to the community under certain conditions, and to allow the granting of a request for release on the basis of reliable criteria, at least in most cases. For this purpose, it is necessary to introduce procedures that allow review of the sentence. The results of criminological research so far have never confirmed the hypothesis that harsher punishment achieves a significant effect in terms of general prevention. It is well known that potential perpetrators fear the certainty of the application of punishment (any) more than the severity of the punishment, otherwise the long practice of public execution of corporal mutilation and the death penalty would have made humanity wiser by now. Therefore, the introduction of life imprisonment cannot be expected to have the desired effect in terms of general prevention.

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