Prof. Vid Jakulin, PhD
Law Faculty, University of Ljubljana

COMPLIANCE OF THE PROVISIONS OF THE SERBIAN PENAL CODE GOVERNING CONDITIONAL RELEASE FROM LIFE IMPRISONMENT WITH THE RELEVANT INTERNATIONAL STANDARDS

Summary

Prohibition of torture and inhuman or degrading treatment or punishment undoubtedly derives from all **the main international human rights instruments**. Unlike the death penalty, which is undesirable and has already been abolished in the member states of the Council of Europe and the European Union, the sentence of life imprisonment is not in itself prohibited and does not constitute a violation of Article 3 of the European Convention on Human Rights if the legal order gives the convicted person hope that he or she will ever be released again.

When it comes to the **ECtHR jurisprudence** the life imprisonment itself is not prohibited and necessarily incompatible with the Article 3 of the Convention. A life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review, both of which must exist from the imposition of the sentence. A life sentence has to be reducible *de iure* and *de facto* through the review which should entail either the executive giving reasons or a judicial review, so that even the appearance of arbitrariness is avoided. Access to judicial review on whether conditions and reasons (not) to be released have to be pre-established, objective and known to prisoners. Those reasons and conditions should be based on legitimate penological grounds and the review process itself should be accompanied by sufficient procedural guaranties. Since the penological grounds for the life prison vary through the time/ not necessarily exist all the time a review

process should provide for periodical check of their existence, starting no later than (approx) 25 years from the deprivation of a liberty. Considering this, prisoners cannot be denied the possibility of rehabilitation and thus the state has a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation.

Based on what have been said, the analysis shows that in order to comply with Article 3 of the Convention and the jurisprudence of the European Court of Human Rights, **national legislation** should provide for the possibility of early release from a penitentiary for persons sentenced to life imprisonment - through conditional release or some other effective remedy. Currently, that is not the case with the valid text of the RS Criminal Code.

Having this in mind, in order to prevent from the possible decision on noncompliance rendered by ECtHR, **we recommend two possible alternative solutions** to improve current situation and to ensure a full compliance with the Art. 3:

- **To amend Criminal Code** in order to enable all prisoners sentenced to life imprisonment to initiate parole procedure after expiring certain period previously determined in the Criminal Code together with objective criteria and adequate procedural guaranties to be applied in the procedure of rendering decision of such petition.
- To keep existing provisions of the Criminal Code, but **to amend Criminal Procedure Code** in order to introduce the Request for extraordinary mitigation of the sentence, as a procedural mechanism which allows reduction of the life imprisonment based on penological grounds, namely, the progress made in treatment which resulted in reasonable believe that the purpose of punishment could be achieved by sentence shorter that life imprisonment.

I. Introduction

By signing the contract No. SER-MDTFJSS-TF097118-SSS-CS-19-90 with the Ministry of Justice of the Republic of Serbia I undertook to examine the compliance of the provisions of the Serbian Penal Code governing conditional release from life imprisonment with the relevant international standards . Particular attention will be paid to relevant international standards based on the legal sources of the Council of Europe (CoE), the United Nations Organisation (UN), the European Union (EU) and the relevant case law of the European Court of Human Rights (ECtHR). The report will present the arrangements for conditional release from life imprisonment in the criminal codes of the four member states

of the Council of Europe and the European Union. The report will also present the possibility of adapting the Criminal Procedure Act of the Republic of Serbia.

In the light of the results of the comparison, a proposal will also be made to bring the relevant provisions of the Serbian Penal Code into line with international standards and the case law of the European Court of Human Rights.

The drafting of the report involved the participation of Prof. Dr. Stanko Bejatović and Asist. Prof. dr. Milica Kolaković - Bojović, to whom I would like to give my sincere thanks for their assistance.

II. International standards as derived from relevant documents of the United Nations Organisation, the European Union and the Council of Europe

Let us first look at the international standards deriving from the relevant legal acts of the United Nations Organisation, the European Union and the Council of Europe.

We have reviewed the following UN legal acts:

- Universal Declaration of Human Rights[1]
- International Covenant on Civil and Political Rights[2]
- Optional Protocol to the International Covenant on Civil and Political Rights[3]
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty[4]
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[5]
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.[6]

We have also reviewed the Charter of Fundamental rights of the European Union,[7] The Convention for the Protection of Human Rights and Fundamental

1 Adopted by the United Nations General Assembly on 10 December 1948 in Paris.

2 Adopted by the United Nations General Assembly Resolution 2200 A (XXI) on 16 December 1966, in force from 23 March 1976.

3 Adopted by the United Nations General Assembly Resolution 2200 A (XXI) on 16 December 1966, in force from 23 March 1976.

4 Adopted by the United Nations General Assembly Resolution 44/128 on 15 December 1989, in force from 11 July 1991.

5 Adopted by the United Nations General Assembly on 10 December 1984 in New York, in force from 26 June 1987.

6 Adopted by the United Nations General Assembly on 18 December 2002 in New York, in force from 22 June 2006

7 Official Journal of the European Union C 202/389 from 7.6.2016.

Freedoms (better known as the European Convention on Human Rights) with all the Protocols[8] and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with both two protocols.[9]

The international standard prohibiting torture and inhuman or degrading treatment or punishment undoubtedly derives from these documents.[10] What the European Court of Human Rights considered a violation of Article 3 of the Convention will be clarified in a review of the case law of this Court.

Unlike the death penalty, which is undesirable[11] and has already been abolished in the member states of the Council of Europe and the European Union,[12] the sentence of life imprisonment is not in itself prohibited and does not constitute a violation of Article 3 of the European Convention on Human Rights if the legal order gives the convicted person hope that he or she will ever be released again.[13]

As early as 1977, the Constitutional Court of the Federal Republic of Germany faced the question of whether life imprisonment without the possibility of conditional release was in accordance with the Constitution of the Federal Republic of Germany. The Federal Republic of Germany abolished the death penalty with the May 1945 constitution. It was replaced by the sentence of life imprisonment. In 1977, the Constitutional Court of the Federal Republic of Germany had to decide whether the mandatory imposition of life imprisonment, without the possibility of conditional release provided for in Article 211 of the then applicable Criminal Code of the Federal Republic of Germany, was in accordance with the Constitution.[14] The Constitutional Court ruled that such an arrangement was

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8 Opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

9 European Treaty Series No. 26, opened for signature on 26 November 1987 and came into force on 1 February 1989.

10 See e.g. Article 4 of the Charter of Fundamental Rights the European Union or Article 3 of the European Convention on Human Rights: "No one shall be subjected to torture or to inhuman and degrading treatment or punishment."

11 See: - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

12 See: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, Article 1: "The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

13 See e.g. judgment of the European Court of Human Rights in case »Harakchiev and Tulumov v. Bulgaria« (8 July 2014) and judgement of the Grand Chamber of the European Court of Human Rights in case "Hutchinson v. the United Kingdom" (17 January 2017).

14 **Section 211 Murder under specific aggravating circumstances (Mord)**
(1) Whoever commits murder under the conditions of this provision incurs a penalty of imprisonment for life.
(2) A murderer under this provision is someone who kills a person out of a lust to kill, to obtain sexual gratification, out of greed or otherwise base motives, perfidiously or cruelly or by means constituting a public danger or to facilitate or cover up another offence.

in conflict with Article one of the Constitution of the Federal Republic of Germany, which guarantees the right to human dignity.[15] Human dignity belongs to every individual, including to convicted persons. On this basis, the Constitutional Court adopted the position that every convicted person should at least have hope that he or she will ever be released again. The mere possibility of receiving pardon does not meet this condition. The legislator must determine by law the conditions under which and when a convicted person will be given the opportunity to be released.[16] Based on this Constitutional Court's decision, the German legislator amended the Criminal Code. In December 1981, Article 57a of the German Criminal Code was adopted, laying down the conditions for the conditional release of convicted persons sentenced to life imprisonment. Article 57a of the German Criminal Code will be presented below. In the cases dealt with after the amendment of the Criminal Code in 1981, the Federal Constitutional Court of the Federal Republic of Germany ruled that Article 57a of the German Criminal Code was in conformity with the Constitution.

III. Conditional release from life imprisonment in the Federal Republic of Germany, the Federal Republic of Austria, the Republic of Slovenia and the Republic of Hungary

To compare the arrangement of conditional release from life imprisonment, we chose the arrangement in the Federal Republic of Germany, the Federal Republic of Austria, the Republic of Slovenia and the Republic of Hungary. All four countries are members of the Council of Europe and of the European Union. The Federal Republic of Germany is one of the leading countries in the field of law not only in Europe but also in the world. The Federal Republic of Austria belongs to the circle of countries that have traditionally been under the influence of the German legal system. In addition, it is a country that belongs to the circle of countries with a European legal tradition and is also comparable to the Republic of Serbia in terms of population. The Republic of Slovenia has also traditionally

15 **Article 1 [Human dignity – Human rights – Legally binding force of basic rights]**
(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.
(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.
(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

16 See judgement in case 1BvL 14/76 from 21 June 1977. See also: Donald P. Kommers and Russel A. Miller: The Constitutional Jurisprudence of the Federal Republic of Germany, Third edition, revised and expanded, Duke University Press, Durham and London, 2012, pp. 363 - 368.

been under the influence of the German legal system; moreover, the Republic of Serbia and the Republic of Slovenia have been part of the former common state of Yugoslavia for more than 70 years and had the same legal system. Serbia and Slovenia shared a common legal system for more than 70 years. On the other hand, The Republic of Hungary is a country against which most appeals have been lodged with the European Court of Human Rights over its arrangements for conditional release from life imprisonment.

Conditional release from life imprisonment is regulated in Article 57a of the Criminal Code of the Federal Republic of Germany.[17] The court may conditionally release a person sentenced to life imprisonment in the following cases:

1. If the convicted person has served fifteen years of his or her sentence,
2. if a particularly high level of guilt does not prevent parole and
3. if the conditions referred to in points 2 and 3 of paragraph one of Article 57 of the Criminal Code are met.

In this regard, the provisions of the second sentence of paragraph one of Article 57 of the Criminal Code and paragraph six of this Article shall apply *mutatis mutandis*.[18]

The European Court of Human Rights has so far heard two appeals against a decision of German courts refusing parole to two convicts sentenced to life imprisonment (applicants). The applicants applied to the courts in the Federal Republic of Germany for parole after having served 15 years of their sentence of imprisonment. The competent German courts rejected their appeals because they considered that there was a high risk of re-committing criminal offences after their release. The applicants appealed to the European Court of Human Rights. They claimed that such a decision by the German courts violated Article 3

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17 **Suspension of remainder of imprisonment for life**
(1) The court suspends enforcement of the remainder of a sentence of imprisonment for life on probation where
1. 15 years of the sentence have been served,
2. the particular severity of the convicted person's guilt does not require its continued enforcement and
3. the conditions of section 57 (1) sentence 1 nos. 2 and 3 are met.
Section 57 (1) sentence 2 and (6) applies accordingly.
(2) Any deprivation of liberty suffered by the convicted person as a result of the offence qualifies as a sentence served within the meaning of subsection (1) sentence 1 no. 1.
(3) The probation period is five years. Section 56a (2) sentence 1, sections 56b to 56g and section 57 (3) sentence 2 and (5) sentence 2 apply accordingly.
(4) The court may fix terms not exceeding two years before the expiry of which an application by the convicted person for the suspension of sentence on probation is inadmissible.

18 The provisions of Articles 56a to 56g and Article 57 referred to in Article 57a are attached to this report.

of the European Convention on Human Rights (prohibition of inhuman and degrading treatment).

The European Court of Justice has ruled that both appeals were inadmissible as they were manifestly ill-founded. The Court established that the applicants had not been deprived of the hope that they would ever again be released because the German law governs parole and the applicants had the opportunity to lodge a new application for parole.[19]

In the Federal Republic of Austria, conditional release is governed by Article 46 of the Criminal Code. Conditional release from life imprisonment is regulated by paragraph six of the same Article.[20] A person sentenced to life imprisonment may be released on parole if he or she has served at least 15 years in prison and cannot be expected to repeat criminal offences.[21] The European Court of Justice has not yet heard an appeal against a decision of the Austrian courts alleging a violation of Article 3 of the European Convention on Human Rights in relation to life imprisonment.

In the Republic of Slovenia, conditional release is regulated by Article 88 of the Criminal Code. Conditional release from life imprisonment is regulated by paragraph three of the same Article.[22] A person sentenced to life imprisonment may be released on parole after having served 25 years in prison if it can be reasonably expected that he or she will not commit new criminal offence after release.[23] The European Court of Human Rights has so far not heard an appeal against the decision of Slovenian courts due to an alleged violation of Article 3 of the European Convention for the Protection of Human Rights in relation to life imprisonment.Speaking the truth, the courts of the Republic of Slovenia have not imposed a sentence of life imprisonment since its introduction in 2008.

The Republic of Hungary has an interesting arrangement for conditional release. An entire subsection of the 2012 Criminal Code (Act C of 2012) is dedicated to conditional release from life imprisonment.[24] The most controversial Article was Article 42, which also provided for life imprisonment without the po-

19 See Streicher v. Germany from 10 February 2009 (decision on the admissibility) and Meixner v. Germany from 3 November 2009 (decision on the admissibility).

20 A person who has been sentenced to imprisonment for life may only be released conditionally if the person has served a minimum of 15 years of the sentence and if it can be presumed that the person will not commit any further offences.

21 The provisions of Articles 46 and 50 to 52 referred to in Article 46 are attached to this report.

22 The convicted person who has been sentenced to life imprisonment may be released on parole after he has served twenty-five years in prison.

23 The provision of Article 88 is attached to this Report.

24 The provisions of Articles 42 to 45 are attached to this report.

ssibility of parole.[25] The crucial role was played by the judgment of the European Court of Human Rights in the case of László Magyar v. Hungary (judgment from 20 May 2014).

The applicant was convicted of murder, robbery and several other offences and was sentenced to life imprisonment without eligibility for parole. Although the Hungarian Fundamental law provided for the possibility of a presidential pardon, since the introduction of whole life terms in 1999, there had been no decision to grant clemency to any prisoner serving such a sentence. The applicant complained mainly that his imprisonment for life without eligibility for parole amounted to inhuman and degrading treatment as it was irreducible.

The Court held that there had been a violation of Article 3 of the Convention as concerned the applicant's life sentence without eligibility for parole. It was in particular not persuaded that Hungarian law allowed life prisoners to know what they had to do to be considered for release and under what conditions. In addition, the law did not guarantee a proper consideration of the changes in the life of prisoners and their progress towards rehabilitation. Therefore, the Court concluded that the sentence of the applicant could not be regarded as reducible, which amounted to a violation of Article 3.

Moreover, the Court held that this case disclosed a systemic problem which could give rise to similar applications. Therefore, for the proper implementation of the judgment, it invited Hungary, under Article 46 (binding force and execution of judgments) of the Convention, to put in place a reform of the system of review of whole life sentences to guarantee the examination in every case of whether continued detention is justified on legitimate grounds and to enable whole life prisoners to foresee what they must do to be considered for release and under what conditions. The Court also reiterated that States enjoyed wide discretion ("margin of appreciation") in deciding on the appropriate length of prison sentences for specific crimes. Therefore, the mere fact that a life sentence could eventually be served in full, did not make it contrary to Article 3 of the Convention. Accordingly, review of whole life sentences did not necessarily have to lead to the release of the prisoners in question.[26]

Following this judgment of the European Court of Human Rights, Hungary adopted a new legislation in 2015 to overhaul the entire system of life imprisonment. The Criminal Code has not been amended, but a compulsory pardon

25 Very similar is the provision of the paragraph 5 of Article 46 of Serbian Criminal Code (life imprisonment without conditional release for selected criminal offences).

26 European Court of Human Rights: Life imprisonment, Factsheet, December 2019, p. 5.

procedure has been introduced if a convict has served 40 years in prison (this does not mean that he must be pardoned, only a procedure in which it is decided whether the convict will be pardoned is mandatory). In addition, a pardon committee has been set up. The Hungarian Constitutional Court and the Council of the Curia have stated that with the introduction of compulsory presidential pardons, Hungarian legislation has become compliant with the requirements set by the European Court of Human Rights.[27]

However, even after the introduction of the new legislation in 2015, applications have been lodged with 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 2015 Hungarian regime with the European Convention on Human Rights (judgment from 4 October 2016).

This case concerned new legislation introduced in Hungary in 2015 for reviewing whole life sentences. The applicants alleged that despite the new legislation, which introduced an automatic review of whole life sentences – via a mandatory pardon procedure – after 40 years, their sentences remained inhuman and degrading as they had no hope of release.

The Court held that there had been a violation of Article 3 of the Convention. It found in particular that making a prisoner wait 40 years before he or she could expect for the first time to be considered for clemency was too long and that, in any case, there was a lack of sufficient safeguards in the remainder of the procedure provided by the new legislation. The Court was not therefore persuaded that, at the time of its judgment in the case, the applicants' life sentences could be regarded as providing them with the prospect of release or a possibility of review and the legislation was not therefore compatible with Article 3 of the Convention.[28]

Eight more appeals against Hungary are pending before the European Court of Human Rights.[29]

The example of Hungary shows what problems a country can have if its regulation does not comply with the standards deriving from international legal acts and the case law of the European Court of Human Rights.

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27 Nagy A.: Release from "Prison" in Hungary, Zbornik radova Pravnog fakulteta u Novom Sadu, No. 4/2015, pp. 2019-2020.

28 European Court of Human Rights: Life imprisonment, Factsheet, December 2019, p. 7.

29 European Court of Human Rights: Life imprisonment, Factsheet, December 2019, p. 10.

IV. ECtHR jurispridence toward the life imprisonment

The life imprisonment itself is not prohibited and necessarily incompatible with the Article 3 of the Convention. A life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review, both of which must exist from the imposition of the sentence. A life sentence has to be reducible *de iure* and *de facto* through the review which should entail either the executive giving reasons or a judicial review, so that even the appearance of arbitrariness is avoided. Access to judicial review on whether conditions and reasons (not) to be released have to be pre-established, objective and known to prisoners. Those reasons and conditions should be based on legitimate penological grounds and the review process itself should be accompanied by sufficient procedural guaranties. Since the penological grounds for the life prison vary through the time/ not necessarily exist all the time a review process should provide for periodical check of their existence, starting no later than (approx) 25 years from the deprivation of a liberty. Considering this, prisoners cannot be denied the possibility of rehabilitation and thus the state has a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation.

European Court of Human Rights (hereinafter: ECtHR, Court) has established a comprehensive and clear jurisprudence[30] toward the life imprisonment sentence in the context of (non)breaching Art. 3 of the Convention.

The very first issue raised by the Court was an **allowance/prohibition of the life imprisonment itself.** In this regard, the Court has a strong position that the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see *Kafkaris*, cited above, § 97, and references cited therein), provided that it is not grossly disproportionate (see *Vinter and Others*, cited above, § 102). The same position was reiterated in *Murray v. the Netherlands* ([GC], no. 10511/10, 26 April 2016), par. 99 and T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14. par. 38.

However, this does not mean that the parties to the Convention are free to prescribe in their national legal systems a life imprisonment without fulfilling any further conditions without breaching the Art. 3 of the Convention. Contrary, the ECtHR has developed a set of clear and comprehensive criteria to be met in order

30 The full list of the decisions that have been analysed for the purpose of drafting this document, could be found at the end of this chapter.

to comply with the Art. 3 of the Convention in relation with *de iure* and *de facto* status of the life imprisonment. As the Court has found in *Vinter and Others* that **a life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review**, both of which must exist from the imposition of the sentence (see *Vinter and Others*, cited above, §§ 104-118 and 122). The same position Court took in *Murray v. the Netherlands* ([GC], no. 10511/10, 26 April 2016), par. 99 and T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14. par. 38.[31]

When it comes to the prospect to release, probably, the most important requirement of the Court is a **reducibility of the life sentence *de iure* and *de facto*.** According to the ECtHR, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (see *Kafkaris*, cited above, § 97). A life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is *de jure* and *de facto* reducible (see *Kafkaris*, cited above, § 98, and *Vinter and Others*, cited above, § 108).[32] In practice, this means that's not enough to include legal guarantees and mechanisms in the national legislation- they need to prove their functionality in practice. This opens further of issue of **whether the life sentence is reducible *de facto***. In assessing whether the life sentence is reducible *de facto* it may be of the relevance to take account of statistical information on prior use of the review mechanism in question, including the number of persons having been granted a pardon (see *Kafkaris*, cited above, § 103; *Harakchiev and Tolumov*, cited above, §§ 252 and 262; and *Bodein*, cited above, § 59).[33]

One of the issues that have been frequently raised by the Court is a **minimum time period elapsed before review is done.** In T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14. par. 42. the Court recalled that in *Bodein v. France* (no. 40014/10, 13 November 2014) it was called upon to examine the French system of reducibility of whole life sentences, in particular whether the possibility of a review of life sentences after thirty years of imprisonment remained compatible with the criteria established in *Vinter and Others*. In finding that it did, the Court gave particular weight to the fact that the starting point for the calculation of the whole-life term under French law included any deprivation of liberty, that is to say,

31 In the Pethukov v. Ukraine, the main focus of the case at hand was the clemency route. The Court therefore analysed whether the applicant in this case had at his disposal a real "prospect of release" through the opportunity to obtain presidential clemency. Ultimately, it found that he did not, and found that Ukraine had breached Article 3 as a result. (Petukhov v. Ukraine (No. 2), 12. March 2019, No. 41216/13)

32 The same in *Murray v. the Netherlands* ([GC], no. 10511/10, 26 April 2016), par. 99 and T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14. par. 38.

33 *Ibidem*.

even the period spent in pre-trial detention. Since the applicant in that case was thus able to apply for parole twenty-six years after the imposition of his life sentence, the Court concluded that the punishment in his case was to be considered reducible for the purposes of Article 3 (see *Bodein*, cited above, § 61). Also, in par. 45, the Court noted that forty years during which a prisoner must wait before he can for the first time expect to be considered for clemency is a period significantly longer than the maximum recommended time frame after which the review of a life sentence should be guaranteed, established on the basis of a consensus in comparative and international law (see *Vinter*, cited above, § 120). It is also hardly comparable with the twenty-six-year period that the applicant in *Bodein* had to wait before being eligible to apply for parole (see § 42 above and *Bodein*, cited above, § 61).

In addition to the prospect to release itself , the Court has addressed a **type of review procedure, mostly from the perspective- judicial or non-judicial.** Therefore, the Court concluded that it is for the States to decide – and not for the Court to prescribe – what form (executive or judicial) that review should take (see *Kafkaris*, cited above, § 99, and *Vinter and Others*, cited above, §§ 104 and 120).[34] Consequently, the most frequently analysed mechanism was **a presidential clemency.** The Court has held that presidential clemency may thus be compatible with the requirements flowing from its case-law (see *Kafkaris*, cited above, § 102).[35] "In order to guarantee proper consideration of the changes and the progress towards rehabilitation made by a life prisoner, however significant they might be, the review should entail either the executive giving reasons or a judicial review, so that even the appearance of arbitrariness is avoided" (Petukhov v. Ukraine § 178). Here, the lack of any obligation to provide reasons for the clemency decision was a factor in finding a breach, which was further aggravated by a lack of access to judicial review (Petukhov v. Ukraine § 177-179)

When it comes to the requirements to be followed in order to keep review procedure in line with the Art. 3, the prisoner's right to a review entails an actual assessment of the relevant information, based on objective, pre-established criteria, accompanied by sufficient procedural guaranties. Thus, a possibility of being granted a pardon or release on compassionate grounds for reasons related to ill-health, physical incapacity or old age does not correspond to the notion of "prospect of release" as formulated in the *Kafkaris* judgment (see *Vinter and Others*, cited above, § 127, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, § 203, 18 March 2014). A Chamber of the Court held in a recent case that the assessment must be based on objective, pre-established criteria (see *Trabelsi v. Bel-*

34 *Ibidem*.

35 *Ibidem*.

gium, no. 140/10, § 137, ECHR 2014 (extracts)). The prisoner's right to a review entails an actual assessment of the relevant information (see *László Magyar*, cited above, § 57), and the review must also be surrounded by sufficient procedural guarantees (see *Kafkaris*, cited above, § 105, and *Harakchiev and Tolumov*, cited above, § 262).[36] Furthermore, an access to judicial review on whether conditions and reasons (not) to be released needs to be known to prisoners. To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review (see *László Magyar*, cited above, § 57, and *Harakchiev and Tolumov*, cited above, §§ 258 and 262).[37] The Court also required that any prisoners should be able to have "precise cognisance" (*Trabelsi v Belgium* at [137]) of the conditions determining their release, from the outset of their sentence. Whilst the Ukranian rules provided "some guidance" (Petukhov v. Ukraine § 173) the Court was concerned with the vagueness of terms like "exceptional cases" and "extraordinary circumstances", as well as a lack of clarity concerning the applicable tariff period (Petukhov v. Ukraine § 175-176). This was enough to create a situation where "prisoners who receive a whole life sentence do not know from the outset what they must do in order to be considered for release and under what conditions" (Petukhov v. Ukraine § 174).

In *Murray v. the Netherlands* ([GC], no. 10511/10, 26 April 2016), par. 100, the Court has found that a prisoner cannot be detained unless there are legitimate penological grounds for incarceration, which include punishment, deterrence, public protection and rehabilitation. While many of these grounds will be present at the time when a life sentence is imposed, the balance between these justifications for detention is not necessarily static and might shift in the course of the execution of the sentence. The penological grounds for the life prison vary through the time-not necessary exist al the time. Therefore, review process should provide for periodical check of their existence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence, that these factors or shifts can be properly evaluated (*Vinter and Others*, cited above, § 111). The review required in order for a life sentence to be reducible should therefore allow the domestic authorities to consider whether, in the course of the sentence, any changes in the life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds (ibid., § 119). This assessment must be based on rules having a sufficient degree of clarity and certainty (ibid., §§ 125 and 129; see also *László Magyar v.*

36 *Ibidem.*

37 *Ibidem.*

Hungary, no. 73593/10, § 57, 20 May 2014, and *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, §§ 255, 257 and 262, ECHR 2014 (extracts)) and the conditions laid down in domestic legislation must reflect the conditions set out in the Court's case-law (see *Vinter and Others*, cited above, § 128). and T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14. par. 38. It is illustrating that, exploring the system of presidential clemency which exists in Ukraine, the Court concluded that this mechanism was "based on the principle of humanity, rather than… penological grounds" (Petukhov v. Ukraine, §180).

In line with the Court's position regarding penological grounds for the reduction of the life imprisonment is Finally, the principle strongly endorsed in *Murray v the Netherlands*, establishing that prisoners "cannot be denied the possibility of rehabilitation" and thus the state has "a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation and enable such prisoners to make progress towards their rehabilitation" ([181]). Effectively, this means that the state must ensure, whatever conditions it chooses to set for prisoner release, that these conditions are obtainable in practice and that prisoners retain "a chance, however remote, to someday regain their freedom" (*Harakchiev and Tolumov v Bulgaria* at [264]). Given that the Applicant in the current case faced total segregation for 23 hours a day, the Court doubted whether he could ever have a legitimate opportunity to prove to the authorities that any of the penological grounds necessary for his release had been met (*Petukhov,* § § 182 and 183).

LIST OF REFERENCES

1. T.P. and A.T. v. Hungary, 4. October 2016, Nos. 37871/14, 73986/14.
2. Vinter and Others v. the United Kingdom, Nos. 66069/09, 130/10, 3896/10, 9.7.2013.
3. Murray. v. the Netherlands, 26. April 2016, No. 10511/10.
4. Harakchiev and Tolumov v. Bulgaria, 8. July 2014, Nos. 15018/11 i 61199/12.
5. Trabelsi v. Belgium, 4. September 2014, No. 140/10.
6. Kafkaris v. Cyprus, 12. February 2008, No. 21906/04.
7. Bodein v. France, 13. November 2014, No. 40014/10.
8. Petukhov v. Ukraine (No. 2), 12. March 2019, No. 41216/13.
9. Matiošaitis and Others v. Lithuania, 3. May 2017, Nos. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 i 72824/13.
10. Öcalan v. Turkey (No. 2), 18. March 2014, Nos. 24069/03, 197/04, 6201/06 i 10464/07.
11. László Magyar v. Hungary, 20. May 2014, No. 73593/10.

12. Stafford v. the United Kingdom, 28. May 2002, No. 46295/99.
13. M. v. Germany, 17. December 2009, No. 19359/04.
14. Glien v. Germany, 28. November 2013, No. 7345/12.
15. Bergmann v. Germany, 7. January 2016, No. 23279/14.

V. Request for extraordinary reduction of the sentence as a way of reduce the sentence of life imprisonment sentenced by a final conviction judgment

One of the most current issues in the criminal policy of every state, including the Republic of Serbia, is the question: How to create a normative basis for mitigating the sentence imposed in a final court decision in cases where the circumstances of a specific criminal matter not only justify but also require it? The answer to the question posed in this way is indisputable and reads: Only with adequate standardization and adequate application of extraordinary legal remedies as the only way of judicial intervention in a final court decision-prejudice. Considering this as a key issue of this character of the positive criminal procedure legislation of the Republic of Serbia, the question is: Is this precondition in the valid text of its Code of Criminal Procedure (hereinafter: CPC RS) and if not what should be done to that end?

When it comes to this issue, first of all it should be stated the fact that unlike the previous criminal procedure legislation which was valid not only in the Republic of Serbia but also in all former Yugoslav republics as well as a number of other positive comparative criminal procedure legislations, recognizes only two extraordinary legal remedies (request for reopening of criminal proceedings and request for protection of legality). In connection with this, as well as the fact that the sentence imposed in a final court decision-judgment can be changed only in the procedure of extraordinary legal remedies, it is logical to put under the question whether the current system of extraordinary legal remedies in the RS CPC represent an adequate normative basis for a possible change of sentences imposed in this case life imprisonment? The issue gained special significance after two key interventions in the RS Criminal Code from 2019. Ie. after the introduction of a life sentence and the exclusion of the possibility of conditional release of a person convicted of certain criminal offenses - ie their individual forms.

The analysis of the issue raised above shows the following:

First, the existing system of extraordinary legal remedies in the RS CPC does not represent an adequate normative basis for the subsequent mitigation of not only life imprisonment, but also imprisonment in cases when the necessary

preconditions are met e.g. when the circumstances of a specific criminal matter indicate that in the time already spent of the convict in the penitentiary, the purpose of punishment from Article 42 of the RS Criminal Code has been achieved.

Secondly, having in mind the criminal policy reasons for justifying the prediction of mitigation of punishment pronounced in the final judgment, the most expedient way of resolving the previously raised issue is the standardization of a special extraordinary legal remedy in the RS CPC - the request for extraordinary mitigation of punishment.

Third, **adequate standardization of the request for extraordinary mitigation of sentence as an stand-alone extraordinary legal remedy would create an opportunity for a person sentenced to life imprisonment, to be subsequently sentenced to a lesser sentence within the RS Criminal Code due to circumstances that did not exist at the time verdict, as well as due to the impossibility of adequate assessment of all circumstances relevant for sentencing at the time of its imposition (case, for example, with circumstances related to the assessment of achieving the purpose of sentencing in a specific criminal matter under Article 42 of the RS CC).**

Fourth, the provision of the possibility of extraordinary mitigation of the sentence has a very great penological significance for the convicted person, not only for the convicted person but also for the institution where the life imprisonment sentence is served. This is primarily the case **if the circumstance/fact that should be taken into account in considering the submitted request for extraordinary mitigation of life imprisonment, is the assessment of whether the purpose of sentencing in a specific criminal matter has already been achieved at the time of deciding on the submitted request.** In view of this, special attention should be paid to this normative elaboration of the initiated extraordinary legal remedy as the most adequate way of mitigating the punishment in a final court decision.

Fifth, in order for the request for extraordinary mitigation of punishment to be in the function that is expected of it - in the function of an adequate penal policy, it must be standardized in a way that will enable it. In view of this, in its normative elaboration, special attention should be paid to the following issues:

The basis of the possibility of filing a request should be based on the occurrence of mitigating or mitigating circumstances that **did not exist before the judgment became final** - circumstances that arose only after that procedural moment **or existed but the court did not know about them at the time of sentencing e.g. the circumstances that indicate the already achieved purpose of punishment in a specific criminal matter**. Circumstances which were known to the court but which it did not take into account (did not assess them at all or did not assess them correctly even though they were known to it) cannot be grounds for mitigating the

sentence. Circumstances that should serve as a basis for extraordinary mitigation of punishment should be all circumstances that, according to the general part of the Criminal Code, affect a lesser measure or type of punishment and make the punishment in a specific criminal matter more lenient. As such, they can be both objective and subjective in nature, which is a matter of a specific criminal case;

– A circle of the holders of the right to file a request should be exhausted with the following: public prosecutor, convict and his defense counsel and persons authorized to file an appeal against the verdict in favor of the accused;
– Impossibility to submit a request for the sentence is served or a sentenced person died;
– Jurisdiction of the court to decide on the request;
– Procedural position of the public prosecutor in the procedure of deciding on the submitted request for extraordinary mitigation of sentence in cases when he is not its holder;
– Mechanisms to prevent abuse in the submission of applications by authorized holders;
– Basis of revocation of the court decision on the filed request for extraordinary mitigation of sentence;
– *Instituta beneficium cohaesionis* in extraordinary mitigation of a sentence.

Sixth, the decision on the submitted request for extraordinary mitigation of punishment is in the exclusive jurisdiction of the court and the assessment of the party that submitted the request is in no case binding on the court.

Seventh, in addition to what have been already said, few additional facts that should be taken into account in making a decision on the criminal policy justification of the standardization of requests for extraordinary mitigation of punishment in the RS CPC:

- **The grounds for the possibility of filing a request for extraordinary mitigation of sentence are different from the grounds for the possibility of filing a request for protection of legality**. Violation of the provisions of criminal procedure cannot be the basis for filing a request for extraordinary mitigation of punishment, which is one in a series of facts that these two extraordinary rights do not exclude each other. The same is the case with the request to repeat the criminal procedure.
- **Extraordinary mitigation of punishment does not exclude the possibility of granting pardon**. This is due to the fact that extraordinary mitigation of punishment is a procedural institute decided by a court that must adhere to the relevant provisions of the general and special part of the Criminal Code in deciding

on the submitted request, and pardon is an act of a non-judicial body issued at its discretion regardless of whether new circumstances have emerged, modifying the sentence imposed at will. **The same is the effect of extraordinary mitigation of sentence on the act of amnesty.**

- The results of the application of the initiated extraordinary legal remedy speak in favor not only of the justification of its standardization but also of the requirement as an important instrument of the **adequacy of the state response to crime**, especially in cases of imposing the most severe criminal sanctions (including the death penalty. life imprisonment).
- The institute of extraordinary mitigation of punishment is independent of the penological instruments of correction of the final sentence imposed on the perpetrator of the criminal offense. However, in addition to its independence**, it can also be an instrument of correction of non-foresight of adequate penological instruments of correction of a final sentence imposed on a perpetrator of a criminal offense**. The case of e.g. with the institute of parole.
- Adequately standardized request for extraordinary mitigation of sentence achieves everything that should be achieved by revision as an **extraordinary legal remedy provided for in the Rome Statute of the International Criminal Court**, which also provides for life imprisonment as a special criminal sanction.

VI. Conclusions and Recommendations

Prohibition of torture and inhuman or degrading treatment or punishment undoubtedly derives from all **the main international human rights instruments** and it is highly accepted and incorporated in the national legislations across the world. Variety of the legal traditions and the trajectories of their evolution have resulted in the significant varieties on how the main guaranties to prevent inhuman and degrading treatment of punishment, including those related to a life imprisonment, have been incorporated in national legislations. Unlike the death penalty, which is undesirable and has already been abolished in the member states of the Council of Europe and the European Union, the sentence of life imprisonment is not in itself prohibited and does not constitute a violation of Article 3 of the European Convention on Human Rights if the legal order gives the convicted person hope that he or she will ever be released again.

When it comes to the **ECtHR jurisprudence** the life imprisonment itself is not prohibited and necessarily incompatible with the Article 3 of the Convention. A life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review, both of which must exist

from the imposition of the sentence. A life sentence has to be reducible *de iure* and *de facto* through the review which should entail either the executive giving reasons or a judicial review, so that even the appearance of arbitrariness is avoided. Access to judicial review on whether conditions and reasons (not) to be released have to be pre-established, objective and known to prisoners. Those reasons and conditions should be based on legitimate penological grounds and the review process itself should be accompanied by sufficient procedural guaranties. Since the penological grounds for the life prison vary through the time/ not necessarily exist all the time a review process should provide for periodical check of their existence, starting no later than (approx) 25 years from the deprivation of a liberty. Considering this, prisoners cannot be denied the possibility of rehabilitation and thus the state has a positive obligation to secure prison regimes to life prisoners which are compatible with the aim of rehabilitation.

Based on what have been said, the analysis shows that in order to comply with Article 3 of the Convention and the jurisprudence of the European Court of Human Rights, national legislation should provide for the possibility of early release from a penitentiary for persons sentenced to life imprisonment - through conditional release or some other effective remedy. Currently, that is not the case with the **valid text of the RS Criminal Code**.

Having this in mind, in order to prevent from the possible decision on non-compliance rendered by ECtHR, we recommend **two possible alternative solutions** to improve current situation and to ensure a full compliance with the Art. 3:

1) **Amendments to the Criminal Code:**

The aim of these amendments will be to enable all prisoners sentenced to life imprisonment to initiate parole procedure after expiring certain period previously determined in the Criminal Code together with objective criteria and adequate procedural guaranties to be applied in the procedure of rendering decision of such petition.

2) **Amendments to the Criminal Procedure Code**

The main idea of this alternative is both- to keep existing provisions of the Criminal Code, but also to introduce correctional mechanism in compliance with international standards and ECtHR requirements. In accordance with this scenario, the Criminal Procedure Coe should be amended by the introduction of the Request for extraordinary mitigation of the sentence, as a procedural mechanism which allows reduction of the life imprisonment based on penological grounds, namely, the progress made in treatment which resulted in reasonable believe that the purpose of punishment could be achieved by sentence shorter that life imprisonment.

Annex no.I – Selected provisions of German Criminal Code

Übersetzung durch Prof. Dr. Michael Bohlander. Vollständige Überarbeitung und laufende Aktualisierung durch Ute Reusch

Translation provided by Prof. Dr Michael Bohlander. Translation completely revised and regularly updated by Ute Reusch

Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 2 des Gesetzes vom 19. Juni 2019 (BGBl. I, S. 844)

Version information: The translation includes the amendment(s) to the Act by Article 2 of the Act of 19 June 2019 (Federal Law Gazette I, p. 844)

Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf www.gesetze-im-internet.de unter „Translations".

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German Criminal Code

(Strafgesetzbuch – StGB)

Criminal Code in the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 19 June 2019 (Federal Law Gazette I, p. 844)

General Part

Chapter 1

The criminal law

Title 1

Scope of application

Section 1

No punishment without law

An act can only incur a penalty if criminal liability was established by law before the act was committed.

Section 2

Temporal application

(1) The penalty and any incidental legal consequences are determined by the law which is in force at the time of the act.

(2) If the threatened penalty is amended during the commission of the act, the law which is in force at the time the act is completed is to be applied.

(3) If the law in force at the time of the completion of the act is amended before judgment, the most lenient law is to be applied.

(4) A law which was intended to be in force only for a determinate time is, as a rule, still to be applied to acts committed whilst it was in force even after it ceases to be in force. This does not apply to the extent that a law provides otherwise.

(5) Subsections (1) to (4) apply accordingly to the confiscation and rendering unusable of objects.

Title 4

Suspension of sentence on probation

Section 56

Suspension of sentence

(1) If a person is sentenced to imprisonment for a term not exceeding one year, the court suspends enforcement of the sentence on probation if there are reasons to believe that the sentence itself will serve as sufficient warning to the convicted person and that the convicted person will commit no further offences even without having to serve the sentence. The court is, in particular, to take account of the convicted person's character and previous history, the circumstances of the offence committed, the convicted person's circumstances and conduct in the period following the offence, and the effects to be expected from the suspension.

(2) Under the conditions of subsection (1), the court may also suspend enforcement of a sentence of imprisonment not exceeding two years on probation if, after an overall evaluation of the offence and of the convicted person's character, special circumstances are deemed to exist. In making its decision, the court is, in particular, to take account of any efforts on the convicted person's part to make restitution for the harm caused by the offence.

(3) Enforcement of imprisonment for a term of at least six months is not suspended if the defence of the legal order so requires. Service provided by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice – www.gesetze-im-internet.de

(4) The suspension may not be limited to a part of the sentence. It is not ruled out by any crediting of time spent in remand detention or another form of deprivation of liberty.

Section 56a

Probation period

(1) The court determines the length of the period of probation. It may not exceed five years nor be less than two years.

(2) The probation period commences when the decision to suspend the sentence becomes final. It may subsequently be reduced to the minimum or extended to the maximum before its expiry.

Section 56b

Conditions

(1) The court may impose conditions on the convicted person which serve to make amends for the harm caused. No unreasonable demands may be made of the convicted person.

(2) The court may require the convicted person

1. to make every effort at restitution for the harm caused by the offence,

2. to pay a sum of money to a charitable organisation if this appears appropriate in the light of the offence and the offender's character,

3. to perform community service or

4. to pay a sum of money to the Treasury.

The court is, as a rule, only to impose a condition as required by sentence 1 nos. 2 to 4 if fulfilment of the condition poses no obstacle to the making of restitution for the harm caused.

(3) If the convicted person offers to render appropriate services for the purpose of making amends for the harm caused, the court typically preliminarily dispenses with imposing conditions if it is to be expected that the offer will be fulfilled.

Section 56c

Directions

(1) The court is to issue directions to the convicted person for the duration of the probation period if that person requires such assistance in order to abstain from committing further offences. No unreasonable demands may be made in respect of the convicted person's lifestyle.

(2) The court may, in particular, direct the convicted person

1. to follow instructions relating to residence, education, work or leisure, or to getting his or her financial affairs in order,

2. to report at certain times to the court or another authority,

3. not to make contact or associate with the injured party or specific persons or persons from a specific group who may induce the convicted person to commit further offences, nor to employ, train or accommodate them,

4. not to possess, carry or entrust to another for safekeeping certain objects which could induce the convicted person to commit further offences or

5. to meet maintenance obligations.

(3) A direction

1. to undergo medical treatment of an invasive nature or addiction treatment or

2. to take up residence in a suitable home or suitable institution

may only be given with the convicted person's consent. Service provided by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice – www.gesetze-im-internet.de

(4) If the convicted person gives assurances relating to his or her future conduct, the court typically provisionally refrains from issuing directions if it is to be expected that the assurances will be fulfilled.

Section 56d

Probation services

(1) The court places the convicted person under the supervision and guidance of a probation officer for all or part of the probation period if this appears necessary to prevent the convicted person from committing criminal offences.

(2) The court typically issues directions as required by subsection (1) if it suspends a sentence of imprisonment of more than nine months and the convicted person is under 27 years of age.

(3) The probation officer offers assistance and support to the convicted person. In consultation with the court, the probation officer monitors compliance with conditions and directions as well as with offers and assurances made and, at intervals determined by the court, reports on the convicted person's conduct. The probation officer must inform the court about serious or persistent breaches of the conditions, directions, offers or assurances.

(4) The probation officer is appointed by the court. The court may give the probation officer instructions in regard to the functions under subsection (3).

(5) The functions of a probation officer are exercised as a main occupation or in an honorary capacity.

Section 56e

Subsequent decisions

The court may also make, modify or set aside decisions pursuant to sections 56b to 56d at a later date.

Section 56f

Revocation of suspension of sentence

(1) The court is to revoke the suspension of the sentence on probation if the convicted person

1. commits an offence during the probation period, and thereby shows that the expectation on which the suspension was based has not been fulfilled,

2. grossly or persistently violates directions or persistently evades the probation officer's supervision and guidance, thereby giving reason to fear that the convicted person will re-offend or

3. grossly or persistently violates conditions.

Sentence 1 no. 1 applies accordingly if the offence was committed in the period between the decision to suspend the sentence being taken and its becoming final or, in the case of subsequent fixing of an aggregate sentence, in the period between the decision to suspend the sentence in a judgment which was included in the aggregate sentence and the date on which the aggregate sentence became final.

(2) The court is, however, not to revoke the suspension of the sentence on probation if it is of the opinion that it would suffice

1. to impose further conditions or issue further directions, in particular to place the convicted person under the supervision and guidance of a probation officer or

2. to extend the probation period or period of supervision of conduct.

In the cases under no. 2, the probation period may not be extended for more than one half of the originally imposed period.

(3) The convicted person is not to be compensated for services rendered in the fulfilment of conditions, offers, directions or assurances. If the suspension on probation is revoked, the court may, however, credit services towards the sentence which the convicted person has Service provided by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice – www.gesetze-im-internet.de rendered to comply with conditions issued under section 56b (2) sentence 1 nos. 2 to 4 or related offers in accordance with section 56b (3).

Section 56g

Remission of sentence

(1) If the court does not revoke the suspension of the sentence, the sentence is to be remitted after expiry of the probation period. Section 56f (3) sentence 1 applies.

(2) The court may revoke such remission if the convicted person has been sentenced to imprisonment for a term of at least six months for an intentional offence committed during the probation period. The revocation may only be declared within one year after expiry of the probation period and six months after the new judgment has become final. Section 56f (1) sentence 2 and (3) applies accordingly.

Section 57

Suspension of remainder of determinate sentence of imprisonment

(1) The court suspends enforcement of the remainder of a determinate sentence of imprisonment on probation if

1. two thirds of the imposed sentence, but at least two months, have been served,

2. this can be justified having regard to public security interests and

3. the convicted person consents thereto.

The decision is, in particular, to take into consideration the convicted person's character, previous history, the circumstances of the offence, the importance of the legal interest endangered should the convicted person re-offend, the convicted person's life circumstances and conduct whilst serving the sentence imposed, and the effects which such suspension are expected to have on the convicted person.

(2) After one half of a determinate sentence of imprisonment has been served, but at least six months, the court may suspend enforcement of the remainder of the sentence on probation if

1. the convicted person is serving a first sentence of imprisonment and the term does not exceed two years or

2. following an overall evaluation of the offence, the convicted person's character and development whilst serving the sentence imposed, special circumstances are deemed to exist

and the remaining conditions of subsection (1) are met.

(3) Sections 56a to 56g apply accordingly; the probation period, even if subsequently reduced, may not be less than the remainder of the sentence. If the convicted person has served at least one year of the sentence imposed before the remainder is suspended on probation, the court typically places the convicted person under the supervision and guidance of a probation officer for all or a part of the probation period.

(4) Where a sentence of imprisonment has been reduced by crediting time served, it is deemed to have been served within the meaning of subsections (1) to (3).

(5) Sections 56f and 56g apply accordingly. The court is also to revoke the suspension of the sentence if, in the period between the conviction and the decision to suspend the sentence, the convicted person has committed an offence which could for factual reasons not be taken into account by the court when deciding to suspend the sentence and which would have led to a denial of such suspension had it been known at that time; the judgment in those proceedings in which the underlying findings of fact were last examined counts as the conviction.

(6) The court may dispense with suspending enforcement of the remainder of a determinate sentence of imprisonment on probation if the convicted person makes insufficient or false Service provided by the Federal Ministry of Justice and Consumer Protection and the Federal Office of Justice – www.gesetze-im-internet.de statements concerning the whereabouts of objects which are subject to confiscation of the proceeds of crime.

(7) The court may fix a term not exceeding six months before the expiry of which an application by the convicted person for the suspension of sentence on probation is inadmissible.

Section 57a

Suspension of remainder of imprisonment for life

(1) The court suspends enforcement of the remainder of a sentence of imprisonment for life on probation where

1. 15 years of the sentence have been served,

2. the particular severity of the convicted person's guilt does not require its continued enforcement and

3. the conditions of section 57 (1) sentence 1 nos. 2 and 3 are met.

Section 57 (1) sentence 2 and (6) applies accordingly.

(2) Any deprivation of liberty suffered by the convicted person as a result of the offence qualifies as a sentence served within the meaning of subsection (1) sentence 1 no. 1.

(3) The probation period is five years. Section 56a (2) sentence 1, sections 56b to 56g and section 57 (3) sentence 2 and (5) sentence 2 apply accordingly.

(4) The court may fix terms not exceeding two years before the expiry of which an application by the convicted person for the suspension of sentence on probation is inadmissible.

Annex No. II
– Selected provisions of Austrian Criminal Code

(German and English (unofficial translation))

Bedingte Entlassung aus einer Freiheitsstrafe

§ 46.

(1) Hat ein Verurteilter die Hälfte der im Urteil verhängten oder im Gnadenweg festgesetzten zeitlichen Freiheitsstrafe oder des nicht bedingt nachgesehenen Teils einer solchen Strafe, mindestens aber drei Monate verbüßt, so ist ihm der Rest der Strafe unter Bestimmung einer Probezeit bedingt nachzusehen, sobald unter Berücksichtigung der Wirkung von Maßnahmen gemäß §§ 50 bis 52 anzunehmen ist, dass der Verurteilte durch die bedingte Entlassung nicht weniger als durch die weitere Verbüßung der Strafe von der Begehung strafbarer Handlungen abgehalten wird.

(2) Hat ein Verurteilter die Hälfte, aber noch nicht zwei Drittel einer Freiheitsstrafe verbüßt, so ist er trotz Vorliegens der Voraussetzungen nach Abs. 1 solange nicht bedingt zu entlassen, als es im Hinblick auf die Schwere der Tat ausnahmsweise des weiteren Vollzuges der Strafe bedarf, um der Begehung strafbarer Handlungen durch andere entgegenzuwirken.

(Anm.: Abs. 3 aufgehoben durch BGBl. I Nr. 154/2015)

(4) Bei Entscheidungen nach Abs. 1 ist auf den Umstand Bedacht zu nehmen, inwieweit durch den bisherigen Vollzug der Strafe, insbesondere auch durch eine während des Vollzugs begonnene freiwillige Behandlung im Sinne von § 51 Abs. 3, die der Verurteilte in Freiheit fortzusetzen bereit ist, eine Änderung der Verhältnisse, unter denen die Tat begangen wurde, eingetreten ist, oder durch Maßnahmen gemäß §§ 50 bis 52 erreicht werden kann.

(5) Verbüßt ein Verurteilter mehrere Freiheitsstrafen, Strafteile oder Strafreste, so ist ihre Gesamtdauer maßgebend, sofern sie unmittelbar nacheinander verbüßt oder lediglich durch Zeiten unterbrochen werden, in denen er sonst auf behördliche Anordnung angehalten wird. Nach spätestens fünfzehn Jahren ist jedoch in jedem Fall über die bedingte Entlassung zu entscheiden. Wurde auf eine Zusatzstrafe erkannt (§§ 31, 40), so sind auch bei unterbrochenem Vollzug alle Strafen maßgebend, auf die beim Ausspruch der Zusatzstrafe Bedacht zu nehmen war; wurde der Verurteilte aus einer dieser Strafen bedingt entlassen, so ist bei Berechnung des Stichtages (§ 46 Abs. 1 und 2) sowie der noch zu verbüßenden Strafzeit die tatsächlich in Haft zugebrachte Zeit in Abzug zu bringen. Eine frühere Strafe, zu der eine Zusatzstrafe

verhängt wurde, hat jedoch außer Betracht zu bleiben, soweit der Verurteilte daraus vor Verbüßung der Hälfte der Strafzeit entlassen wurde.

(6) Ein zu einer lebenslangen Freiheitsstrafe Verurteilter darf nur bedingt entlassen werden, wenn er mindestens fünfzehn Jahre verbüßt hat und anzunehmen ist, dass er keine weiteren strafbaren Handlungen begehen werde.

Conditional release from prison

§ 46.

(1) If a convict has served half of the prison term imposed in the judgment or in the way of grace or the part of such a punishment that was not unconditionally looked after, but has served at least three months, the rest of the punishment must be conditionally determined by specifying a trial period as soon as under Taking into account the effect of measures in accordance with sections 50 to 52, it can be assumed that the convicted person is prevented from committing criminal acts by conditional release no less than by further serving the sentence.

(2) If a convicted person has served half, but not yet two thirds of a prison sentence, he must not be released conditionally, as long as the conditions of paragraph 1 exist, as an exception to the further execution of the sentence, given the seriousness of the crime needed to counteract the commission of criminal acts by others.

(Note: Paragraph 3 repealed by Federal Law Gazette I No. 154/2015)

(4) In the case of decisions pursuant to Paragraph 1, consideration should be given to the extent to which the sentence has been enforced to date, in particular also through voluntary treatment within the meaning of Section 51 Paragraph 3, which the convicted person has to continue at liberty is willing to change the circumstances under which the crime was committed, has occurred, or can be achieved by measures in accordance with sections 50 to 52.

(5) If a convicted person serves more than one sentence, sentences or remnants of sentence, their total duration is decisive, provided that they are served immediately one after the other or are only interrupted by times in which he is otherwise stopped by official order. In any case, a decision on the conditional release must be made after fifteen years at the latest. If an additional penalty was recognized (Sections 31, 40), all penalties that should be taken into account when pronouncing the additional penalty apply, even if enforcement is interrupted; If the convict was released from one of these punishments, the time actually spent in detention must be deducted when calculating the cut-off date (Section 46 Paragraphs 1 and 2) and the time to be served. An earlier sentence imposed, however, must be disregarded if the convict was released from it before serving half of the sentence.

(6) A person sentenced to life imprisonment may only be released under certain conditions if he has served at least fifteen years and it can be assumed that he will not commit any further criminal acts.

Erteilung von Weisungen und Anordnung der Bewährungshilfe

§ 50.

(1) Wird einem Rechtsbrecher die Strafe oder die mit Freiheitsentziehung verbundene vorbeugende Maßnahme bedingt nachgesehen oder wird er aus einer Freiheitsstrafe oder einer mit Freiheitsentziehung verbundenen vorbeugenden Maßnahme bedingt entlassen, so hat das Gericht ihm Weisungen zu erteilen oder Bewährungshilfe anzuordnen, soweit das notwendig oder zweckmäßig ist, um den Rechtsbrecher von weiteren mit Strafe bedrohten Handlungen abzuhalten. Dasselbe gilt, wenn der Ausspruch der Strafe für eine Probezeit vorbehalten wird (§ 13 des Jugendgerichtsgesetzes 1988) oder die Einleitung des Vollzuges einer Freiheitsstrafe, die wegen einer vor Vollendung des einundzwanzigsten Lebensjahres begangenen Tat verhängt worden ist, nach § 6 Abs. 1 Z 2 lit. a des Strafvollzugsgesetzes oder nach § 52 des Jugendgerichtsgesetzes 1988 für die Dauer von mehr als drei Monaten aufgeschoben wird.

(2) Bewährungshilfe ist stets anzuordnen, wenn ein Verurteilter 1. vor Verbüßung von zwei Dritteln einer Freiheitsstrafe (§ 46 Abs. 1), 2. aus einer Freiheitsstrafe wegen einer vor Vollendung des einundzwanzigsten Lebensjahres begangenen Tat, 2a. aus einer Freiheitsstrafe wegen einer strafbaren Handlung gegen die sexuelle Integrität und Selbstbestimmung, 3. aus einer mehr als fünfjährigen Freiheitsstrafe oder 4. aus lebenslanger Freiheitsstrafe bedingt entlassen wird. In den Fällen der Z 1 bis 2 ist von der Anordnung der Bewährungshilfe nur abzusehen, wenn nach der Art der Tat, der Person des Rechtsbrechers und seiner Entwicklung angenommen werden kann, dass er auch ohne eine solche Anordnung keine weiteren strafbaren Handlungen begehen werde.

(3) Weisungen sowie die Anordnung der Bewährungshilfe gelten für die Dauer des vom Gericht bestimmten Zeitraums, höchstens jedoch bis zum Ende der Probezeit, soweit sie nicht vorher aufgehoben oder gegenstandslos werden. Im Fall des Abs. 2 Z 3 ist Bewährungshilfe zumindest für das erste Jahr und im Fall der Abs. 2 Z 4 zumindest für die ersten drei Jahre nach der Entlassung anzuordnen.

Issuing instructions and ordering probation services

§ 50.

(1) If a criminal is condemned to the punishment or the preventive measure connected with deprivation of liberty or if he is released from a prison sentence or a pre-

ventive measure connected with deprivation of liberty, the court must give him instructions or order probation, as far as this is necessary or appropriate is to prevent the lawbreaker from further punishable acts. The same applies if the sentence is reserved for a trial period (section 13 of the Youth Court Act 1988) or the initiation of the execution of a prison sentence that was imposed on an act committed before the age of twenty-one according to section 6 (1) no.2 lit. a of the Prison Act or in accordance with Section 52 of the Youth Court Act 1988 for a period of more than three months.

(2) Probation assistance must always be ordered if a convict 1. before serving two thirds of a sentence (Section 46 (1)), 2. from a sentence for an act committed before the age of twenty-one, 2a. from a prison sentence for a punishable act against sexual integrity and self-determination, 3. from a more than five-year sentence or 4. from life imprisonment. In the cases of Z 1 to 2, the order of the probation officer can only be waived if it can be assumed based on the nature of the act, the person of the lawbreaker and his development that he would not commit any further criminal acts even without such an order.

(3) Instructions and the order of probation apply for the duration of the period determined by the court, but at most until the end of the probationary period, unless they are canceled beforehand or become irrelevant. In the case of paragraph 2 line 3, probation assistance must be ordered at least for the first year and in the case of paragraph 2 line 4 at least for the first three years after release.

Weisungen
§ 51.

(1) Als Weisungen kommen Gebote und Verbote in Betracht, deren Beachtung geeignet scheint, den Rechtsbrecher von weiteren mit Strafe bedrohten Handlungen abzuhalten. Weisungen, die einen unzumutbaren Eingriff in die Persönlichkeitsrechte oder in die Lebensführung des Rechtsbrechers darstellen würden, sind unzulässig.

(2) Dem Rechtsbrecher kann insbesondere aufgetragen werden, an einem bestimmten Ort, bei einer bestimmten Familie oder in einem bestimmten Heim zu wohnen, eine bestimmte Wohnung, bestimmte Orte oder einen bestimmten Umgang zu meiden, sich alkoholischer Getränke zu enthalten, einen geeigneten, seinen Kenntnissen, Fähigkeiten und Neigungen tunlichst entsprechenden Beruf zu erlernen oder auszuüben, jeden Wechsel seines Aufenthaltsortes oder Arbeitsplatzes anzuzeigen und sich in bestimmten Zeitabständen bei Gericht oder einer anderen Stelle zu melden. Den aus seiner Tat entstandenen Schaden nach Kräften gutzumachen, kann dem Rechtsbrecher auch dann aufgetragen werden, wenn das von Einfluß darauf ist, ob es der Vollstreckung der Strafe bedarf, um der Begehung strafbarer Handlungen durch andere entgegenzuwirken.

(3) Mit seiner Zustimmung kann dem Rechtsbrecher unter den Voraussetzungen des Abs. 1 auch die Weisung erteilt werden, sich einer Entwöhnungsbehandlung, einer psychotherapeutischen oder einer medizinischen Behandlung zu unterziehen. Die Weisung, sich einer medizinischen Behandlung zu unterziehen, die einen operativen Eingriff umfaßt, darf jedoch auch mit Zustimmung des Rechtsbrechers nicht erteilt werden.

(4) Das Gericht hat während der Probezeit Weisungen auch nachträglich zu erteilen oder erteilte Weisungen zu ändern oder aufzuheben, soweit dies nach § 50 geboten scheint.

(5) Für Weisungen im Zusammenhang mit der bedingten Nachsicht einer vorbeugenden Maßnahme nach § 45 gilt § 179a des Strafvollzugsgesetzes (StVG), BGBl. Nr. 144/1969, sinngemäß.

Instructions

§ 51.

(1) Instructions and prohibitions come into consideration as instructions, the observance of which seems suitable to prevent the offender from further acts threatened with punishment. Instructions that would constitute an unreasonable interference in the personal rights or in the life of the lawbreaker are not permitted.

(2) The lawbreaker can in particular be ordered to live in a certain place, with a certain family or in a certain home, to avoid a certain apartment, certain places or a certain way of dealing, to abstain from alcoholic beverages, a suitable one Knowledge, skills and inclinations to learn or practice the relevant profession as far as possible, to indicate every change of residence or place of work and to report to the court or another body at certain intervals. The lawbreaker can also be ordered to make amends for the damage he has suffered as a result if this affects whether the execution of the punishment is required to counteract the commission of criminal acts by others.

(3) With his consent, the lawbreaker can also be given the instructions under the conditions of paragraph 1 to undergo weaning treatment, psychotherapeutic or medical treatment. However, the instruction to undergo medical treatment, which includes a surgical intervention, may not be given with the consent of the lawbreaker.

(4) During the probationary period, the court must also issue instructions retrospectively or change or cancel instructions that have been issued, insofar as this appears to be required under § 50.

(5) Section 179a of the Prison Act (StVG), Federal Law Gazette No. 144/1969, applies mutatis mutandis to instructions in connection with the conditional forbearance of a preventive measure in accordance with Section 45.

Annex III – Selected provisions of Slovenian Criminal Code

Disclaimer: All of the translations contained on this web site are unofficial. Only the original Slovene texts of the laws and regulations have legal effect, and the translations are to be used solely as reference materials to aid in the understanding of Slovene laws and regulations. The Government of the Republic of Slovenia is not responsible for the accuracy, reliability or currency of the translations provided on this web site, or for any consequence resulting from the use of information on this web site. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Slovene texts published in the Official Gazette of the Republic of Slovenia.

The unofficial consolidated version of the Criminal Code comprises:

- Criminal Code – KZ-1 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 55/08 of 4 June 2008),
- Corrigendum to the Criminal Code – KZ-1 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 39/09 of 1 July 2008),
- Act Amending the Criminal Code – KZ-1A (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 39/09 of 26 May 2009),
- Act Amending the Criminal Code – KZ-1B (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 91/11 of 14 November 2011),
- Criminal Code – Official consolidated version – KZ-1-UPB2 (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 50/12 of 29 June 2012),
- Corrigendum to the Official consolidated version of Criminal Code – KZ-1-UPB2p (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 6/16 of 29 January 2016),
- Act Amending the Criminal Code – KZ-1C (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 54/15 of 20 July 2015),
- Act Amending the Criminal Code – KZ-1D (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 38/16 of 27 May 2016),
- Act Amending the Criminal Code – KZ-1E (Official Gazette of the Republic of Slovenia [Uradni list RS], No. 27/17 of 2 June 2017).

CRIMINAL CODE

(KZ-1)

(Unofficial consolidated version No. 6)

GENERAL PART

Release on parole

Article 88

(1) The convicted person, who has served one half of his or her sentence of imprisonment, may be released from a penal institution provided that until the expiration of the period of time for which he or she was sentenced he or she does not commit another criminal offence.

(2) The convicted person who has been sentenced to over fifteen years' imprisonment, may be released on parole after he or she has served three quarters of the sentence.

(3) The convicted person who has been sentenced to life imprisonment may be released on parole after he has served twenty-five years in prison.

(4) The law shall determine the body responsible for the granting and denying of parole.

(5) A convicted person may be released on parole when it is reasonable to expect that he or she will not repeat the criminal offence. In considering whether to release the convicted person on parole, one shall take into accountin particular the possibility of re-offending, any criminal proceedings taking place against the convicted person for criminal offences committed before he or she started serving the prison sentence, the convicted person's attitude towards the criminal offence committed and towards the victim, the convicted persons's conduct during imprisonment, the outcome of treatment of addiction, and the conditions for the convicted person's reintegration into the society upon release from prison.

(6) Exceptionally, the convicted person who has served only one third of his or her sentence may be released on parole if he or she meets the condition referred to in paragraph five of this Article and if the special circumstances relating to his or her personality indicate that he or she will not repeat the criminal offence.

(7) The convicted person that is to be released on parole may be placed under custodial supervision by the body responsible for granting and denying parole. Custodial supervision shall be performed by a counsellor who shall have the same duties as in a suspended sentence with custodial supervision.

(8) The body responsible for granting and denying parole instructions may determine the following tasks to be performed by the convicted person on parole:

1) to submit himself or herself to medical treatment in an appropriate institution, including treatment of alcohol or drug addiction with his or her consent;
2) to attend vocational, psychological, or other consultation sessions;
3) to undergo training for a job or to take up employment suitable to his or her health, skills, or inclinations;
4) to spend income according to the duties relating to family support;
5) prohibition of association with certain persons;
6) prohibition of the establishment of direct and indirect contacts with one or more specificn persons, including the use of electronic means of communication;
7) restraining order to keep the perpetrator away from the victim or some other person;
8) prohibition of access to certain places.

(9) The provisions of this Article shall also apply to conditional release from house arrest. In assessing whether a convicted person should be conditionally released from house arrest, compliance with restrictions regarding house arrest shall be taken into account instead of the convicted person's behaviour during the serving of the sentence.

Annex No IV
– Selected provisions of Hungarian Criminal Code

Act C of 2012 on the Criminal Code (as in force on 31 March 2020)
This document has been produced for informational purposes only.
Act C of 2012 on the Criminal Code

The National Assembly, with a view to protecting the inviolable and inalienable fundamental rights of human beings, as well as the independence, territorial integrity, economy and national assets of the country, taking into account the obligations of Hungary under international and European Union law,

for the purpose of exerting the State's exclusive criminal jurisdiction, adopts the following Act:

GENERAL PART

CHAPTER I

FUNDAMENTAL PROVISIONS

Principle of legality

Section 1

(1) The criminal liability of the perpetrator shall be established only for an act which was punishable under an Act at the time of commission, except for acts punishable under the generally recognised rules of international law.

(2) No penalty shall be imposed and no measure shall be applied due to committing a criminal offence if it was not provided for by an Act at the time of commission or, if section 2 (2) is applied, of adjudication.

CHAPTER II

HUNGARIAN CRIMINAL JURISDICTION

Temporal scope

Section 2

(1) A criminal offence shall be adjudicated under the criminal law in force at the time of commission, with the exceptions specified in paragraphs (2) to (3).

(2) If an act is not a criminal offence under the new criminal law in force at the time of adjudicating the act, or is to be adjudged more leniently, the new criminal law shall apply.

(3) The new criminal law shall apply retroactively for adjudicating an act punishable under the generally recognised rules of international law if the act was not punishable under the Hungarian criminal law at the time of commission.

Territorial and personal scope

Section 3 (1) Hungarian criminal law shall apply to

a) criminal offences committed in Hungary,

b) criminal offences committed on vessels flying the flag of Hungary or on aircraft flying the flag of Hungary being outside the territory of Hungary,

Release on parole from life imprisonment

Section 42

(1) If life imprisonment is imposed, the court shall specify in its conclusive decision the earliest date of release on parole, or shall exclude the possibility of release on parole.

Section 43

(1) If life imprisonment is imposed by the court without excluding the possibility of release on parole, its earliest date shall be at least after twenty-five but not more than forty years. The earliest date of release on parole shall be specified in years.

(2) If life imprisonment is imposed, the period of parole shall be at least fifteen years.

Section 44

(1) If life imprisonment is imposed, the court shall be entitled to exclude the possibility of release on parole only with regard to the following criminal offences:

a) genocide [section 142 (1)],

b) crimes against humanity [section 143 (1)],

c) apartheid [section 144 (1) and (3)],

d) aggravated case of violence against a parlementaire [section 148 (2)],

e) violence against protected persons [section 149 (1) to (2)],

f) use of a weapon prohibited by an international treaty [section 155 (1)],

g) other war crimes (section 158),

h) aggravated case of homicide [section 160 (2)],

l) aggravated case of kidnapping [section 190 (3) to (4)],

j) aggravated case of trafficking in human beings [section 192 (6)],

k) changing the constitutional order by force [section 254 (1)],

l) aggravated case of destruction [section 257 (2)],

m) aggravated case of prisoner mutiny [section 284 (4)],

n) terrorist act [section 314 (1)],

o) aggravated case of unlawful seizure of a vehicle [section 320 (2)],

p) aggravated case of causing public danger [section 322 (3)],

q) aggravated case of mutiny [section 442 (4)],

r) aggravated case of violence against a military superior or a serving officer [section 445 (5)], if committed by violence against a person or thing.

(2) The possibility of release on parole shall be excluded if the perpetrator

a) is a violent multiple recidivist, or

b) committed the criminal offence specified in paragraph (1) in a criminal organisation.

Section 45

(1) If, while serving his sentence of life imprisonment, the convict is sentenced to fixed-term imprisonment to be served for a criminal offence committed before being sentenced to life imprisonment, the court shall postpone the earliest date of release on parole for the period of the fixed-term imprisonment to be served.

(2) If, while released on parole from his life imprisonment, the convict is sentenced to fixed-term imprisonment to be served for a criminal offence committed before being sentenced to life imprisonment, the court shall terminate the parole and postpone the earliest date of release on parole for the period of the fixed-term imprisonment to be served.

(3) If, while serving his sentence of life imprisonment, the convict is sentenced to fixed-term imprisonment for a criminal offence committed while serving his sentence of life imprisonment, the court shall postpone the earliest date of release on parole for the period of the fixed-term imprisonment, but for at least five and not more than twenty years.

(4) If, while released on parole from his life imprisonment, the convict is sentenced to fixed-term imprisonment for a criminal offence committed while serving his sentence of life imprisonment, the court shall terminate the parole and postpone the earliest date of release on parole for the period of the fixed-term imprisonment, but for at least five and not more than twenty years.

(5) If the convict is sentenced to fixed-term imprisonment for a criminal offence committed while released on parole from his life imprisonment, the court shall terminate the parole and postpone the earliest date of release on parole for the period of the fixed-term imprisonment, but for at least five and not more than twenty years.

(6) If the earliest date of release on parole from life imprisonment is postponed due to fixed-term imprisonment as per paragraph (1), (2), (4) or (5), the earliest date of release on parole shall be determined with regard to the period served in pre-trial detention and under criminal supervision and credited to the period of the fixed-term imprisonment.

(7) A convict shall not be released on parole if he is sentenced to life imprisonment once more. If his previous life imprisonment has not yet been enforced, the latter life imprisonment shall not be enforced.

Annex NoV- Factsheet – Life imprisonment

Factsheet – Life imprisonment

December 2019

This factsheet does not bind the Court and is not exhaustive

Life imprisonment

See also the factsheet on "Extradition and life imprisonment".

"… [I]n the context of a life sentence, Article 3 [of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment1,] must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.

However, the [European] Court [of Human Rights] would emphasise that, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing …, it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. This being said, … the comparative and international law materials before [the Court] show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter ...

It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.

… Furthermore, … [a] whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration." (Vinter and Others v. the United Kingdom, judgment (Grand Chamber) of 9 July 2013, §§ 119-122).

Kafkaris v. Cyprus 12 February 2008 (Grand Chamber – judgment)

The applicant, who was found guilty on three counts of premeditated murder, complained about his life sentence and continuing detention. In particular, he alleged that his mandatory life sentence amounted to an irreducible term of imprisonment. He also submitted that his continuous detention beyond the date set for his release by the prison authorities was unlawful and that it had left him in a prolonged state of distress and uncertainty over his future.

The European Court of Human Rights held that there had been no violation of Article 3 of the Convention. Concerning the length of the detention, While the prospect of release for prisoners serving life sentences in Cyprus was limited, this did not mean that life sentences in Cyprus were irreducible with no possibility of release. On the contrary, such sentences were both de jure and de facto reducible. A number of prisoners serving mandatory life sentences had been released under the President's

1 Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the European Convention on Human Rights provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

constitutional powers and life prisoners could benefit from the relevant provisions at any time without having to serve a minimum period of imprisonment. Accordingly, although there were shortcomings in the procedure in place and reforms were under way, the applicant could not claim that he had been deprived of any prospect of release or that his continued detention – though long – constituted inhuman or degrading treatment.

See also: Kafkaris v. Cyprus, decision on the admissibility of 21 June 2011 (which declared the application inadmissible because it was substantially the same as the previous one); Lynch and Whelan v. Ireland, decision on the admissibility of 18 June 2013.

Garagin v. Italy 29 April 2008 (decision on the admissibility)

The applicant was sentenced by two different Italian courts in 1995 and 1997 to twenty-eight and thirty years' imprisonment. He could expect to be released in March 2021, or sooner if granted remission of sentence. In 2006, however, the Rome Assize Court of Appeal, referring to the relevant case-law of the Court of Cassation, declared that the applicant should serve a life sentence.

The Court declared the application inadmissible as manifestly ill-founded. It observed in particular that in the Italian legal system a person sentenced to life imprisonment might be granted more lenient conditions of detention, or early relea-

se. Referring to the principles set forth in its Kafkaris v. Cyprus judgment (see above), the Court found that in Italy life sentences were reducible de jure and de facto. It could not be said, therefore, that the applicant had no prospect of release or that his detention in itself, albeit lengthy, amounted to inhuman or degrading treatment. The mere fact of giving him a life sentence did thus not attain the necessary level of gravity to bring it within the scope of Article 3 of the Convention.

Streicher v. Germany 10 February 2009 (decision on the admissibility)

Meixner v. Germany 3 November 2009 (decision on the admissibility)

Sentenced to life imprisonment, the applicants requested a suspension of their sentence after fifteen years' imprisonment. The competent court refused the request, on the grounds that there was a high risk of the applicants again committing crimes when released.

The Court declared both applications inadmissible as manifestly ill-founded, finding that the applicants were not deprived of hope of being released again, as German law provided for a parole system and they could therefore lodge a new request to be released on probation.

Léger v. France 30 March 2009 (Grand Chamber – strike-out judgment)

The applicant was sentenced to life imprisonment in 1966, no minimum term being set. He alleged in particular that in practice his continued detention for more than 41 years was tantamount to a whole-life sentence and therefore constituted inhuman and degrading treatment. Released on licence with effect from October 2005 until October 2015, the applicant died in July 2008.

In its Chamber judgment of 11 April 2006, the Court held, by five votes to two, that there had been no violation of Article 3 of the Convention. Noting in particular that, after 15 years of imprisonment, the applicant had been able to request his release on licence at regular intervals and had been protected by procedural safeguards, the Chamber found that he could not therefore assert that he had been deprived of all hope of obtaining partial remission of his sentence, which was not irreducible. Accordingly, the applicant's prolonged detention had not as such, however long it had been, constituted inhuman or degrading treatment.

In September 2006 the Panel of five judges of the Grand Chamber accepted the applicant's request that the case be referred to the Grand Chamber2. In its judgment of 30 March 2009 the Grand Chamber noted that the applicant had been found dead in his home on 18 July 2008 and that the ensuing request to pursue the proceedings in his place had been submitted by someone who had provided no evidence either of her status as an heir or a close relative of the applicant, or of any legi-

timate interest. Nor did the Grand Chamber consider that respect for human rights required the examination of the case to be continued, given that the relevant domestic law had in the meantime changed and that similar issues in other cases before the Court had been resolved. It therefore decided to strike the case out of its list of cases, in application of Article 37 (striking out applications) of the Convention

Iorgov (no. 2) v. Bulgaria 2 September 2010 (judgment)

Convicted of murder in 1990, the applicant's original death sentence was commuted to life imprisonment without commutation in 1999. He complained in particular that his sentence, which had denied him any possibility of early release, had been inhuman and degrading.

The Court held that there had been no violation of Article 3 of the Convention. The applicant, having been sentenced to life imprisonment without commutation, could admittedly not be released on licence under domestic law, since that measure was applicable only to prisoners serving fixed-term sentences. Nor could his sentence be commuted to a fixed-term sentence. Nevertheless, the possibility of an adjustment of his sentence, and of his eventual release, did exist in domestic law in the form of a pardon or commutation by the Vice-President. It followed that a life sentence without commutation was not an irreducible penalty de jure. In the applicant's case, the Court observed that, by the time he had lodged his complaint in August 2002, he had served only thirteen years of his life sentence. Moreover, he had submitted an application for presidential clemency, which had been examined and rejected by the appropriate committee. Neither the legislation nor the authorities prevented him from submitting a new application to the Vice-President. Accordingly, it had not been proved beyond reasonable doubt that the applicant would never have his sentence reduced in practice and it had not been established that he was deprived of all hope of being released from prison one day.

See also, among others: **Todorov v. Bulgaria** and **Simeonovi v. Bulgaria,** decisions on the admissibility of 23 August 2011; **Dimitrov and Ribov v. Bulgaria,** decision of 8 November 2011; **Iordan Petrov v. Bulgaria,** judgment of 24 January 2012; **Kostov v. Bulgaria,** decision on the admissibility of 14 February 2012.

Törköly v. Hungary 5 April 2011 (decision on the admissibility)

This case concerned a life sentence without any eligibility on parole before 40 years.

The Court declared inadmissible as being manifestly ill-founded the applicant's complaint that the sentence in question amounted to inhuman and degrading treatment. Although the applicant would only become eligible for conditional release in 2044, that is, when he would be 75 years old, it considered that the judgment

imposed on the applicant guaranteed a distant but real possibility for his release. In addition, the Court noted that the applicant might be granted presidential clemency even earlier, at any time after his conviction. It therefore concluded that the life sentence was reducible de jure and de facto.

2. Under Article 43 (referral to the Grand Chamber) of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final.

Vinter and Others v. the United Kingdom 9 July 2013 (Grand Chamber – judgment)

The three applicants in this case had been given whole life orders, meaning they could not be released other than at the discretion of the Justice Secretary, who would only do so on compassionate grounds (for example, in case of terminal illness or serious incapacitation). They complained that their imprisonment for life amounted to inhuman and degrading treatment as they had no hope of release.

The Grand Chamber held that there had been a violation of Article 3 of the Convention, finding that the requirements of that provision had not been met in relation to any of the three applicants. The Court considered in particular that, for a life sentence to remain compatible with Article 3, it had to be reducible, or in other words there had to be a prospect of the prisoner's release and the possibility of a review of the sentence. It noted that there was clear support in European and international law and practice for those principles, with the large majority of Convention Contracting States not actually imposing life sentences at all or, if they did, providing for a review of life sentences after a set period (usually 25 years' imprisonment). In the applicants' case, the Court noted that domestic law concerning the Justice Secretary's power to release a person subject to a whole life order was unclear. In addition, prior to 2003 a review of the need for a whole life order had automatically been carried out by a Minister 25 years into the sentence. This had been eliminated in 2003 and no alternative review mechanism put in place. In these circumstances, the Court was not persuaded that the applicants' whole life sentences were compatible with the Convention. In finding a violation in this case, however, the Court did not intend to give the applicants any prospect of imminent release. Whether or not they should be released would depend, for example, on whether there were

still legitimate penological grounds for their continued detention and whether they should continue to be detained on grounds of dangerousness. These questions were not in issue in this case and were not the subject of argument before the Court.

Öcalan v. Turkey (no. 2) 18 March 2014 (judgment)

The applicant, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained mainly about the irreducible nature of his sentence to life imprisonment, and about the conditions of his detention in İmralı Prison (Bursa, Turkey). Following the August 2002 abolition in Turkey of the death penalty in peace time, the Ankara State Security Court had in October 2002 commuted the applicant's death sentence to life imprisonment.

The Court held that there had been a violation of Article 3 of the Convention as regards the applicant's sentence to life imprisonment without any possibility of conditional release, finding that, in the absence of any review mechanism, the life prison sentence imposed on the applicant constituted an irreducible sentence that amounted to inhuman treatment. The Court observed in particular that, on account of his status as a convicted person sentenced to aggravated life imprisonment for a crime against State security, it was clearly prohibited for him to apply for release throughout the duration of his sentence. Moreover, whilst it was true that under Turkish law the President of the Republic was entitled to order the release of a person imprisoned for life who was elderly or ill, that was release on compassionate grounds, different from the notion of "prospect of release". Similarly, although the Turkish legislature regularly enacted laws of general or partial amnesty, the Court had not been shown that there was such a governmental plan in preparation for the applicant or that he had thereby been offered a prospect of release.

See also: **Kaytan v. Turkey**, judgment of 15 September 2015; **Gurban v. Turkey**, judgment of 15 December 2015; **Boltan v. Turkey,** judgment of 12 February 20193.

3. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

László Magyar v. Hungary 20 May 2014 (judgment)

The applicant was convicted of murder, robbery and several other offences and was sentenced to life imprisonment without eligibility for parole. Although the Hungarian Fundamental law provided for the possibility of a presidential pardon, since the introduction of whole life terms in 1999, there had been no decision to grant clemency to any prisoner serving such a sentence. The applicant complained mainly that his imprisonment for life without eligibility for parole amounted to inhuman and degrading treatment as it was irreducible.

The Court held that there had been a violation of Article 3 of the Convention as concerned the applicant's life sentence without eligibility for parole. It was in particular not persuaded that Hungarian law allowed life prisoners to know what they had to do to be considered for release and under what conditions. In addition, the law did not guarantee a proper consideration of the changes in the life of prisoners and their progress towards rehabilitation. Therefore, the Court concluded that the sentence of the applicant could not be regarded as reducible, which amounted to a violation of Article 3.

Moreover, the Court held that this case disclosed a systemic problem which could give rise to similar applications. Therefore, for the proper implementation of the judgment, it invited Hungary, under Article 46 (binding force and execution of judgments) of the Convention, to put in place a reform of the system of review of whole life sentences to guarantee the examination in every case of whether continued detention is justified on legitimate grounds and to enable whole life prisoners to foresee what they must do to be considered for release and under what conditions. The Court also reiterated that States enjoyed wide discretion ("margin of appreciation") in deciding on the appropriate length of prison sentences for specific crimes. Therefore, the mere fact that a life sentence could eventually be served in full, did not make it contrary to Article 3 of the Convention. Accordingly, review of whole life sentences did not necessarily have to lead to the release of the prisoners in question.

Harakchiev and Tolumov v. Bulgaria 8 July 2014 (judgment)

This case essentially concerned life imprisonment without commutation, which was introduced in Bulgaria in December 1998 following the abolition of the death penalty, as well as the strict detention regime in which life prisoners are held. The two applicants were serving sentences of life imprisonment, the first applicant without commutation, the second with commutation. They both complained of their conditions of detention and of the lack of an effective domestic remedy. In addition, the first applicant maintained that his sentence of life imprisonment without commutation amounted to inhuman and degrading punishment as it implied that he could never be rehabilitated and would have to spend the rest of his life in prison.

The Court held that there had been a violation of Article 3 of the Convention, as concerned the first applicant's inability to obtain a reduction of his sentence of life imprisonment without commutation from the time when it became final. Confirming in particular that the mere imposition of a sentence of life imprisonment was not in itself contrary to the prohibition of inhuman and degrading treatment set out in Article 3 of the Convention, the Court however went on to say that from the ti-

me when the applicant's sentence had become final – November 2004 – to the beginning of 2012, his sentence of life imprisonment without commutation had amounted to inhuman and degrading treatment as he had neither had a real prospect of release nor a possibility of review of his life sentence, this being aggravated by the strict regime and conditions of his detention limiting his rehabilitation or self-reform. During that time, the presidential power of clemency that could have made the applicant's sentence reducible and the way in which it was exercised was indeed opaque, lacking formal or even informal safeguards. Nor were there any concrete examples of a person serving a sentence of life imprisonment without commutation being able to obtain an adjustment of that sentence. Furthermore, whilst there was no right to rehabilitation under the Convention, State authorities were required to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine and tangible, life prisoners had to be given a proper opportunity to rehabilitate themselves. In that context, although a State had a lot of room for manoeuvre ("wide margin of appreciation") to decide on such things as the regime and conditions of a life prisoner's incarceration, those points could not be considered as a matter of indifference. The Court cautioned, however, that the finding of violation could not be understood as giving the applicant the prospect of imminent release. Lastly, the Court did note though that, following reforms in 2012, the manner in which presidential power of clemency was being exercised was now clear, allowing for the prospect of release or commutation. Since that time, therefore, the applicant's imprisonment without commutation could, at least formally, be regarded as reducible4.

See also: **Manolov v. Bulgaria**, judgment of 4 November 2014.

Čačko v. Slovakia 22 July 2014 (judgment)

The applicant in this case alleged that his life sentence without the possibility of release on parole amounted to inhuman and degrading punishment as he saw no prospect of obtaining a presidential pardon or having his sentence commuted. He also maintained that he had not been able to obtain effective judicial review of his life sentence under the national law and practice.

The Court held that there had been no violation of Article 3 of the Convention. It noted in particular that a judicial review mechanism rendering possible a conditional release of whole-life prisoners in the applicant's position after 25-years of service of their term was introduced in January 2010, a relatively short time after the applicant's conviction and the introduction of the application before the Court in October 2008, and that during a substantial part of that period the applicant continued his attempts to obtain redress before the national courts. The Court also held

that there been no violation of Article 13 (right to an effective remedy) taken in conjunction with Article 3 of the Convention.

See also: **Koky v. Slovakia,** decision on the admissibility of 16 May 2017.

Bodein v. France 13 November 2014 (judgment)

This case concerned in particular the applicant's sentence to life imprisonment without any possibility of sentence reduction. The applicant alleged that his sentence was contrary to Article 3 of the Convention inasmuch as, in his view, he had been offered no possibility of any kind of sentence adjustment or any form of release measure.

The Court reiterated, in particular, that a life sentence was compatible with Article 3 of the Convention if it was reducible, or in other words if there was a possibility of reviewing the sentence, of which the prisoner had to be apprised of all the terms and conditions at the outset of his or her sentence. In addition, the form of such review, as well as the question of how much of the sentence had to be served before a review could take place, were matters within the States' own margin of appreciation. Lastly, a clear trend was nevertheless emerging in comparative and international law in favour of a mechanism guaranteeing a review of life sentences at the latest 25 years after their imposition. In the present case, the Court held that there had been no violation of Article 3 of the Convention, finding that French law provided a facility for reviewing life sentences which was sufficient, in the light of the room for manoeuvre ("margin of

4. In this case the Court also held that there had been a violation of Article 3 of the Convention, in respect of both application, on account of the regime and conditions of their detention, and a violation of Article 13 (right to an effective remedy) of the Convention as concerned the lack of effective domestic remedies. Moreover, under Article 46 (binding force and execution of judgments) of the Convention, the Court held that to properly implement this judgment Bulgaria should reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole by addressing, in particular, the imposition of a highly restrictive prison regime and isolation automatically on all life prisoners.

appreciation") left to States in in the criminal justice and sentencing fields, to conclude that the sentence imposed on the applicant was reducible for the purposes of Article 3. The Court noted, indeed, that French law provided for judicial review of the convicted person's situation and possible sentence adjustment after 30 years' incarceration. The Court took the view that such review, which was geared to asse-

ssing the prisoner's dangerousness and considering how his conduct had changed while he served his sentence, left no uncertainty as to the existence of a "prospect of release" from the outset of the sentence. In the applicant's case, after deducting the period of pre-trial detention, he would become eligible for a review of his sentence in 2034, that is to say 26 years after the Assize Court had sentenced him to life imprisonment, and if appropriate, could be released on parole.

See also: **Vella v. Malta**, decision (Committee) of 19 November 2019.

Murray v. the Netherlands 26 April 2016 (Grand Chamber – judgment)

This case concerned the complaint by a man convicted of murder in 1980, who consecutively served his life sentence on the islands of Curaçao and Aruba (part of the Kingdom of the Netherlands) – until being granted a pardon in 2014 due to his deteriorating health –, about his life sentence without any realistic prospect of release. The applicant – who in the meantime passed away5 – notably maintained that he was not provided with a special detention regime for prisoners with psychiatric problems. Although a legal mechanism for reviewing life sentences had been introduced shortly after he lodged his application with the Court, he argued that, de facto, he had no perspective of being released since he had never been provided with any psychiatric treatment and therefore the risk of his reoffending would continue to be considered too high to be eligible for release.

The Court held that there had been a violation of Article 3 of the Convention. It underlined in particular that under its case-law States had a large room for manoeuvre ("margin of appreciation") in determining what measures were required in order to give a life prisoner the possibility of rehabilitating himself or herself. However, although the applicant had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, no further assessments had been carried out of the kind of treatment that might be required and could be made available. Consequently, at the time he lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to his release. Therefore his life sentence had not de facto been reducible, as required by the Court's case-law under Article 3 of the Convention.

T.P. and A.T. v. Hungary (nos. 37871/14 and 73986/14) 4 October 2016 (judgment)

This case concerned new legislation introduced in Hungary in 2015 for reviewing whole life sentences6. The applicants alleged that despite the new legislation, which introduced an automatic review of whole life sentences – via a mandatory par-

don procedure – after 40 years, their sentences remained inhuman and degrading as they had no hope of release.

The Court held that there had been a violation of Article 3 of the Convention. It found in particular that making a prisoner wait 40 years before he or she could expect for the first time to be considered for clemency was too long and that, in any case, there was a lack of sufficient safeguards in the remainder of the procedure provided by the new legislation. The Court was not therefore persuaded that, at the time of its judgment in the case, the applicants' life sentences could be regarded as providing them with the prospect of release or a possibility of review and the legislation was not therefore compatible with Article 3 of the Convention.

5. Two of his relatives subsequently pursued his case before the Court.

6. The legislation was introduced in order to comply with the László Magyar v. Hungary judgment of 2014 (see above) in which the Court found that the system for reviewing whole life sentences in Hungary should be reformed.

Hutchinson v. the United Kingdom 17 January 2017 (Grand Chamber – judgment)

In 1984 the applicant was convicted of aggravated burglary, rape and three counts of murder, the trial judge sentencing him to a term of life imprisonment with a recommended minimum tariff of 18 years. In 1994 the Secretary of State informed the applicant that he had decided to impose a whole life term and, in May 2008, the High Court found that there was no reason for deviating from this decision given the seriousness of the offences committed. The applicant's appeal was dismissed by the Court of Appeal in October 2008. Before the European Court, he alleged that his whole life sentence amounted to inhuman and degrading treatment as he had no hope of release.

The Grand Chamber held that there had been no violation of Article 3 of the Convention. It reiterated in particular that the Convention did not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. However, to be compatible with the Convention there had to be both a prospect of release for the prisoner and a possibility of review of their sentence. In the present case, the Grand Chamber considered that the UK courts had dispelled the lack of clarity in the domestic law on the review of life sentences. The discrepancy identified in in the Vinter and Others judgment of 9 July 2013 (see above) between the law and the published official UK policy had notably been resolved by the UK Court of Appeal in a ruling affirming the statutory duty of the Secretary of State for Justice to exercise the power of release for life prisoners in such a way that it was compatible with the Convention. In addition, the Court of Appeal had brought cla-

rification as regards the scope and grounds of the review by the Secretary of State, the manner in which it should be conducted, as well as the duty of the Secretary of State to release a whole life prisoner where continued detention could no longer be justified. The Grand Chamber also highlighted the important role of the Human Rights Act, pointing out that any criticism of the domestic system on the review of whole life sentences was countered by the HRA as it required that the power of release be exercised and that the relevant legislation be interpreted and applied in a Convention-compliant way. The Grand Chamber therefore concluded that whole life sentences in the United Kingdom could now be regarded as compatible with Article 3 of the Convention.

Matiošaitis and Others v. Lithuania 23 May 2017 (judgment)

The applicants, who have all been sentenced to life imprisonment, claimed in particular that there was no realistic prospect of their sentences being commuted, and that they were therefore imprisoned with no prospect of release. They complained that this punishment amounted to treatment which was in violation of Article 3 of the Convention.

The Court held that there had been a violation of Article 3 of the Convention in respect of six of the applicants, finding in particular that, at the time of the present judgment, the applicants' life sentences could not be regarded as reducible for the purposes of Article 3. As to the two other applicants, the Court decided to strike their applications out of its list of cases, under Article 37 (striking out applications) of the Convention, as the circumstances lead to the conclusion that they did not intend to pursue their application.

Petukhov v. Ukraine (no. 2) 12 March 2019 (Chamber judgment)

This case mainly concerned a prisoner's complaint that Ukrainian law did not provide for release on parole for life prisoners. The applicant, who had been serving a life sentence since 2004, submitted that the only possibility for him to be released was through a procedure of presidential clemency. He alleged that, under that procedure, it was not clear what life prisoners had to do to be considered for release and under what conditions.

The Court held that there had been a violation of Article 3 of the Convention because the applicant had no prospect of release from or possibility of review of his life sentence. In particular, presidential clemency, the only procedure for mitigating life sentences in Ukraine, was not clearly formulated, nor did it have adequate procedural guarantees against abuse. Furthermore, life prisoners' conditions of detention in Ukraine made it impossible for them to progress towards rehabilitation and for the authorities to therefore carry out a genuine review of their sentence. Moreover,

given the systemic nature of the problem, the Court held under Article 46 (binding force and execution of judgments) of the Convention that Ukraine should reform its system of reviewing whole-life sentences by examining in every case whether continued detention was justified and by enabling whole-life prisoners to foresee what they had to do to be considered for release and under what conditions.

Marcello Viola v. Italy (no. 2) 13 June 2019 (Chamber judgment)

The applicant, who was involved in a series of incidents between two rival Mafia clans from the mid-1980s until 1996, complained in particular that his life sentence was irreducible and afforded him no prospect of release on licence.

The Court held that there had been a violation of Article 3 of the Convention. It reiterated in particular that human dignity lay at the very essence of the Convention system and that it was impermissible to deprive persons of their freedom without striving towards their rehabilitation and providing them with the chance to regain that freedom at some future date. Thus, the Court considered that the sentence of life imprisonment imposed on the applicant under section 4 bis of the Prison Administration Act (ergastolo ostativo) restricted his prospects for release and the possibility of review of his sentence to an excessive degree. Accordingly, his sentence could not be regarded as reducible for the purposes of Article 3 of the Convention. Under Article 46 (binding force and execution of judgments) of the Convention, the Court further noted that the Contracting States enjoyed a wide margin of appreciation in deciding on the appropriate length of prison sentences, and that the mere fact that a life sentence might in practice be served in full did not mean that it was irreducible. Consequently, the possibility of review of life sentences entailed the possibility for the convicted person to apply for release but not necessarily to be released if he or she continued to pose a danger to society.

Dardanskiš v. Lithuania and 15 other applications 18 June 2019 (decision on the admissibility)

The applicants, who had all been sentenced to life imprisonment and were serving their sentences in Lithuania, all complained that, at the time they had brought their applications, Lithuanian law had not been amended to bring it in line with the European Court's case-law on life imprisonment. They submitted that their imprisonment for life amounted to inhuman and degrading treatment as they had no hope of release.

The Court decided to strike the applications out of its list of cases, pursuant to Article 37 (striking out applications) of the Convention, finding that the life-sentence commutation procedure and its requirements, as very recently adopted by the Lit-

huanian authorities7, constituted an adequate and sufficient remedy for the applicants' complaint. It concluded that the matter giving rise to the complaint could therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b) of the Convention. Finally, no particular reason relating to respect for human rights required the Court to continue its examination of the application under Article 37 § 1 in fine.

7. In March 2019 legislative changes regarding life prisoners were made to Lithuanian law, allowing a life sentence to be changed to a fixed-term sentence and the prisoner concerned to be released on parole. The legislation also set out the procedure to be used in order to amend sentences, as well as the criteria that a life prisoner has to meet in order to qualify. The explanatory report noted that the criteria to be met were strict, and only persons who had achieved a "considerable improvement" in respect of all the criteria could have his or her life sentence changed to a fixed-term sentence.

Pending applications

Canword v. the Netherlands (no. 21464/15) and **Lake v. the Netherlands** (no. 2445/17)

Applications communicated to the Government of the Netherlands on 20 October 2017

László Magyar v. Hungary (no. 2) (no. 53364/15)

Application communicated to the Hungarian Government on 4 September 2018

Similar applications pending: **Varga v. Hungary** (no. 39734/15) and **Kruchió v. Hungary** (no. 43444/15), communicated to the Hungarian Government on 8 December 2017; **Bancsók v. Hungary** (no. 52374/15) and **Lehóczki v. Hungary** (no. 53441/15), communicated to the Hungarian Government on 13 March 2018; **Horváth v. Hungary** (no. 12143/16), communicated to the Hungarian Government on 12 May 2018; **Á.K. and I.K. v. Hungary** (no. 35530/16), communicated to the Hungarian Government on 14 May 2018; **Rostás v. Hungary** (no. 26804/18), communicated to the Hungarian Government on 6 September 2018.