

**RIGHT TO HOPE? LEGAL ANALYSIS OF LIFE IMPRISONMENT
WITHOUT PAROLE**

By

Agnes Bruszt

Submitted to

Central European University

Department of Legal Studies

In partial fulfilment of the requirements for the degree of LLM in Human Rights

Supervisor: Professor Jeremy McBride

Budapest, Hungary

2009

Executive summary

Life imprisonment without the possibility of release exists in several countries of the Council of Europe. However, serious human rights issues arise, relating to the prohibition of inhuman or degrading treatment or punishment and the right to liberty and security. The paper seeks to assess whether the current practices of actual life imprisonment comply with these requirements. It does so through a comparative analysis of national legislation, based on an original survey conducted by the author. Special attention is given to Hungary, where the possibility of review may be excluded. The presentation of actual practice is followed by the interpretation and critique of the Strasbourg Court's case law. It is argued that actual life imprisonment may amount to inhuman or degrading treatment or punishment in many ways. Moreover, continued detention may become arbitrary, and the absence of regular review concerning the necessity of detention violates the right to liberty of the detainee.

TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER I – REVIEW OF ACTUAL PRACTICE.....	7
1. COMPARATIVE REVIEW OF CURRENT PRACTICES	8
1.1 Countries with actual life imprisonment	8
1.2 Countries without life imprisonment	9
1.3 Mandatory or discretionary nature of imposition of life imprisonment	10
1.4 Release on parole.....	11
1.5 Pardon and amnesty.....	12
2. HUNGARY.....	13
2.1. Legal regulation	13
2.2 Reform of the Criminal Code	16
2.3 Actual lifers in Hungary.....	18
3. UNITED STATES OF AMERICA.....	20
3.1 Life without parole - compliance with the Eighth Amendment.....	20
3.2 Juvenile offenders.....	21
4. INTERNATIONAL CRIMINAL TRIBUNALS.....	23
4.1 Nuremberg Tribunal.....	24
4.2 International Criminal Tribunal for the former Yugoslavia.....	24
4.3 International Criminal Tribunal for Rwanda.....	25
4.4 International Criminal Court	26
5. CONCLUSIONS DRAWN FROM THE PRESENTATION	28
CHAPTER II – LIFE IMPRISONMENT AND HUMAN RIGHTS	29
1. PROHIBITION OF INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	29
1.1 International instruments	30
1.2 Decision of the Federal Constitutional Court	32
1.3 Mere imposition of actual life imprisonment a violation of Article 3?.....	33
a. Case-law of the European Court of Human Rights	34
b. The question of irreducibility in Hungary	37
c. The question of irreducibility in the United Kingdom	38
d. Uncertainty in the case-law.....	39
1.4 Continued detention as violation of Article 3?.....	40
1.5 Conditions of detention as violation of Article 3?	42
1.6 Extradition to country where the prisoner will likely face actual life imprisonment	44
2. RIGHT TO LIBERTY AND SECURITY.....	47
2.1 Resocialisation and reintegration	48
2.2 The scope of the right to liberty in Hungary	49
2.3 Article 5(1) a – The lawfulness of detention.....	49
2.4 Article 5(4) – Right to take proceedings in respect of detention	51
CONCLUSION.....	55
ANNEX NO. 1.....	57
ANNEX NO. 2.....	59
ANNEX NO. 3.....	61
BIBLIOGRAPHY.....	64

INTRODUCTION

Can a person, who has been convicted to life imprisonment for committing a serious crime, claim to have a right to hope for his release? In several jurisdictions today, the answer could well be no. In these countries, the possibility of release on parole may- or must be excluded, therefore sentencing the person to prison for the rest of his/her life. However, there is another approach to this question that claims that the answer is-, or should be definitely yes. In some jurisdictions this answer is laid down in law or high court decisions, while in other parts of the world this argument can only be found in minutes of parliamentary debates, scholarly articles or books. An example is an article written in Hungary by *Juhász*, who concluded that the constitutional right to liberty and the dignity of the person demands a right to hope, meaning eligibility for parole.¹ However, the reality is that for the moment, the possibility of release on parole may-, or in some instances must be excluded in some countries.

This paper will focus on life imprisonment where there is no possibility of release on parole, and where accordingly the prisoner is actually sentenced to prison for the rest of his life. As to its denomination, it may be referred to in many ways, such as actual life imprisonment, life imprisonment without the possibility of release, life without parole, or whole life sentence. A very pertinent definition is given by *Johnson and McGunigall-Smith*² who describe this phenomenon as “*death by incarceration*”, as opposed to death by execution. Nevertheless it must be highlighted that even if the prisoner is eligible for release, it does not necessarily entail his/her, since there are various requirements that must be first met. It only

¹ Juhász Zoltán, „Jog a Reményhez,” *Fundamentum* 2 (2005): 88.

² 2008, 328

gives a certain hope for the person that he/she can be released once again and start a new and hopefully better life.

Life imprisonment without the possibility of release is not the most common punishment. Within Europe, only a few countries have such a disposition. In most countries, the possibility of conditional release cannot be excluded. However, even if the person is released from prison after a certain period of time, the punishment is called life imprisonment. It is of utmost importance to have a clear understanding of the meaning of life imprisonment (or imprisonment for life), since it has several meanings depending on the country. According to the interpretation of the words, one could conclude that it defines an incarceration until the prisoner's death. Yet, upon a closer examination of legislation in this matter, it appears that in most cases there is a possibility to be released on parole after certain period. Thus, life imprisonment is, after all in most cases, not for life. A more precise definition of life imprisonment in these cases would be imprisonment for an indefinite period. Its imposition may in some countries or cases depend on the discretion of the sentencing judge, while in other cases it can also be mandatory, excluding any possibility of individualization through balancing mitigating and aggravating circumstances. The confusion is further enhanced by the fact that imprisonment until the detainee's death might also occur without the imposition of a life sentence. For example, the court can impose a fixed-term sentence that exceeds a normal life span. In some countries, the imprisonment may be imposed for an undetermined period, which might even last until the prisoner's death.

Life imprisonment is often applied as an alternative to death penalty.³ Its justification is partly based on the reasoning that there is a need for a sentence which is more severe than a

³ Leon Shaskolsky Sheleff, *Ultimate Penalties – Capital Punishment, Life Imprisonment, Physical Torture* (Columbus: The Ohio State University Press, 1987), 43, 118, 140.

mere prison sentence. However, many scholars argue that it constitutes an even more severe punishment than the death penalty. Tallack believes that “*absolute life-imprisonment is not so much a substitute of capital punishment, as a slower and more disadvantageous method of inflicting it.*”⁴ Sheleff also considers that a life imprisonment without the possibility of release “*is tantamount to a delayed death penalty*”⁵. Concluding that it is also a “unique” punishment in its severity compared to other forms of imprisonment, and a possibly even “*greater violation of human dignity*”⁶ than capital punishment, he argues for more scrutiny in the sentencing stage and careful weighing of proportionality (1987, 119 and 131). As Sheleff points out in his book, even *John Stuart Mill* argued in favor of the death penalty out of humanistic considerations, raising the question:

[w]hat comparison can there really be, in point of severity between consigning a man to the short pang of a rapid death, and immuring him in a living tomb, there to linger out what may be a long life in the hardest and most monotonous toil, without any of its alleviation or rewards – debarred from all pleasant sights and sounds, and cut off from all earthly hope, except a slight mitigation of bodily restraint, or a small improvement of diet?⁷

Sheleff further refers to *Goldberg’s* and *Dershowitz’s* article⁸, which supports his findings about the similarity between the two punishments. Indeed, as evidenced by the high court decisions of several countries, actual life imprisonment raises serious human rights concerns. It can be argued that imprisonment until the end of one’s life can constitute inhuman or degrading treatment. Moreover, the right to liberty of the person and the right to challenge the lawfulness of their detention can also be violated. Despite such arguments raised against actual life imprisonment, it is applied in several countries in Europe.

⁴ William Tallack, *Penological and Preventive Principles* (London: Wertheimer, Lea and Co., 1888), 152.

⁵ Leon Shaskolsky Sheleff, *Ultimate Penalties – Capital Punishment, Life Imprisonment, Physical Torture* (Columbus: The Ohio State University Press, 1987), 131.

⁶ *Ibid*, 56.

⁷ *Ibid*, 60.

⁸ Arthur Goldberg and Alan Dershowitz, “Declaring the Death Penalty Unconstitutional,” *Harvard Law Review* 83 (1970): 1773

This paper will focus on the compliance of actual life imprisonment with the requirements set down in the European Convention on Human Rights. The presentation of the regulation on life imprisonment will therefore be limited to the Council of Europe's Member States, with a special emphasis on those countries where actual life imprisonment exists. Compliance with the Convention articles will be evaluated through the presentation and analysis of regulation and case law of Hungary. Moreover, a brief presentation will be provided on life without parole in the United States, given the importance of human rights issues that are raised before its Supreme Court.

As to the limits of the present paper, it is to be noted that the comparative analysis of current legislation is not a comprehensive one, as it is based on a research concerning twenty Member States of the Council of Europe. Moreover, the paper excludes among its scope those measures - and not punishments - that might result in a detention for life. Example of such a measure is the preventive detention regime in Germany or the system of '*forvaring*' in Norway.

The relevance of this paper is that it seeks to interpret and clarify the European Court of Human Rights' current approach to life imprisonment without parole, which has an important effect upon the legislation in the Council of Europe Member States. Moreover, it gives an up-to-date presentation and comparison of the current regulation of life imprisonment, release and pardoning practices of several countries. The comparative analysis of current regulation is based on an individual research done by the author, collecting information through questionnaires that have been answered by lawyers of various Member States of the Council of Europe.

It is anticipated that actual life imprisonment is not the best method to punish the most serious criminals, given the various possibilities of human rights violations. First, it may be a disproportionate sentence if the seriousness of the crime is not in line with the severity of the punishment. Second, in the light of all the circumstances of the particular case, actual life imprisonment could be considered as inhuman or degrading. Third, the continued detention of the person may become inhuman in light of changes in circumstances. Imprisonment for many decades without adequate conditions also raises problems. Moreover, continued detention may become arbitrary and thus violate the right to liberty, and finally, lack of the right to challenge the lawfulness of detention is also problematic.

This paper is divided into two main parts. Chapter I introduces the regulation and case law of various jurisdictions. It starts in its first section with a general comparative analysis of the current system of punishments, release and pardon in the Council of Europe Member States. It is followed by the detailed presentation of the regulation in Hungary, together with the description of the ongoing debate as to the necessity of actual life imprisonment in light of the recent reform of the Criminal Code. Section three gives a brief overview of the current issues in the United States of America. In the last section of the chapter, the various ad hoc and permanent international tribunals will be examined in more detail. Chapter II contains the human rights analysis of the paper. Two major issues are examined in more detail, namely the prohibition of inhuman or degrading treatment or punishment, and the right to liberty. The first section starts with a brief overview of the international instruments on the matter, followed by the presentation of the German Constitutional Court's decision. The next three subsections deal with separate issues under Article 3, and finally it looks at the issue of extradition. The second section on the right to liberty is divided into four parts. It starts with the presentation of rehabilitation as an aim of the punishment. The next subsection examines

the scope of liberty within Hungary. The last two subsections deal with different aspects of the right to liberty, namely the lawfulness of detention and the right to challenge the lawfulness of detention.

CHAPTER I – REVIEW OF ACTUAL PRACTICE

Before going into an analysis of the human rights issues surrounding actual life imprisonment, it is useful to present and compare the various legal solutions adopted by the Council of Europe Member States concerning life imprisonment. As it will be pointed out, some countries have actual life imprisonment, while in other states all prisoners are eligible for release after certain time. A third category of countries do not have life imprisonment in their Criminal Codes, but only a fixed term of imprisonment. The present chapter is based on a survey conducted by the author on the diverse national practices.

This analysis will mostly focus on the practices adopted by the Council of Europe Member States. It will have a special emphasis on the regulation in Hungary, where the legitimacy and constitutionality of actual life imprisonment was currently under debate. The discussions on actual life imprisonment in the context of the Criminal Code reform, and two constitutional complaints pending before the Hungarian Constitutional Court are evidence that actual life imprisonment raises serious human rights concerns.

However, a brief description of the current issues arising in the United States helps to indicate the complexity of the human rights problems that arise in the context of life imprisonment without the possibility of release on parole. Its extensive case-law and the heated debates about its constitutionality are worth analyzing. Finally, I will also look at the regulation adopted by international criminal tribunals, since it is important to examine how the international community chose to deal with the punishment of those committing the worst of crimes.

1. *Comparative review of current practices*

The regulation of life imprisonment in various Member States may be grouped in many ways. Some countries don't even have life imprisonment, only imprisonment for a fixed period. Some have actual life imprisonment, while others find it unconstitutional. If release on parole is made possible, regulations differ as to the earliest date of release. A further difference is whether the imposition of a life sentence is mandatory or when it is only one possible punishment among others. I will now present these differences.

1.1 Countries with actual life imprisonment⁹

Among the Council of Europe Member States, most countries enable every prisoner to become eligible for parole after a certain period. However, a few countries have provisions on actual life imprisonment. In **Hungary**, the possibility of release on parole may be excluded upon the discretion of the sentencing judge, or may be imposed mandatorily if a person is sentenced to life imprisonment for the second time¹⁰. The detailed regulation is discussed below. Similar provision is found in the **Slovak** Criminal Code, enabling the judge to exclude release on parole in certain circumstances,¹¹ or excluding it obligatorily if sentenced to life imprisonment twice, or if sentenced to life imprisonment for certain enlisted crimes.¹² The **Russian** Criminal Code also excludes conditional release if the person serving a life sentence commits another grave or especially grave crime.¹³ In other countries, exclusion of conditional release applies mandatorily to certain types of crimes, such as in **Turkey**, where release on parole is not possible if the person is convicted to aggravated life imprisonment for

⁹ See Annex No. 1.

¹⁰ Section 47/A § 1, and 47/C § 2 of the Criminal Code

¹¹ Section 34 § 8 of the Criminal Code

¹² Section 67 § 3 of the Criminal Code

¹³ Section 79 § 5 of the Criminal Code

committing, as part of a group, crimes against the security of the State, crimes against the constitutional order or against national defense.¹⁴ In **Lithuania**, no release on parole exists at all,¹⁵ only a possibility to apply for a Presidential pardon after serving 20 years of sentence.¹⁶ However, according to the statement which is on the State President's official website, *“murderers and other perpetrators of violent crime can hardly expect to be granted a pardon”*.¹⁷ In the **United Kingdom** early release provisions may be excluded by the court if it considers that the seriousness of the crime so requires.¹⁸ There are detailed guidelines as to the assessment of the seriousness of the crime.¹⁹ In case the tariff period lasts until the natural life of the convicted person, it is called a “whole life order”, corresponding to a life imprisonment until death. Finally, the possibility of release on parole may be excluded by the judge in **Bulgaria** for certain crimes, mostly crimes against the person, genocide, apartheid and other serious crimes.²⁰

1.2 Countries without life imprisonment²¹

A few countries only have fixed period of imprisonment. The first country to have abolished life imprisonment was Portugal, in 1884, where the maximum term in prison is 25 years. In Norway, it is only 15 years, with the possibility of prolongation of 6 years in especially severe circumstances. Therefore the maximum period in prison can amount to 21 years. In Bosnia-Herzegovina, even 45 years of imprisonment may be imposed.²² Croatia also

¹⁴ Art. 107 § 12 of Act No. 5275 of 13 January 2007 on Penal Enforcement Law

¹⁵ Section 77 § 3 (2) of the Criminal Code

¹⁶ Article 84 § 23 of the Constitution

¹⁷ http://www.president.lt/en/activities/presidential_clemency.html

¹⁸ Criminal Justice Act 2003, 269 § (2) and (4)

¹⁹ *Ibid*, 143 §

²⁰ Section 38 of the Criminal Code

²¹ See Annex No. 2.

²² Section 42 § 2 of the Criminal Code

has rules that prescribe even 40 years of imprisonment for the commission of the most severe and dangerous crimes.²³

1.3 Mandatory or discretionary nature of imposition of life imprisonment

While in some countries the judge can freely decide between certain punishments, life imprisonment being only one alternative, other countries give no choice on the most suitable punishment and order the imposition of life imprisonment for certain crimes. A third solution is that life imprisonment is mandatory for the most serious crimes, while leaving a choice as to its imposition for less serious crimes. If a mandatory life imprisonment is applied, the individual circumstances of the case cannot be taken into consideration, and thus there is a risk that the punishment will not be proportionate. In case of a discretionary life sentence, the judge is free to decide what punishment would be the best in the particular circumstances of the case. The imposition of life imprisonment is **wholly discretionary** for example in Hungary, Czech Republic, Sweden, Ukraine, Bulgaria, Russia, Lithuania, and Belgium. In other countries such as Turkey, Cyprus and Malta, it is **mandatorily imposed** for certain grave crimes, mostly for genocide, crimes against humanity or crimes against the person causing death. Finally, in Austria, Italy, Romania, Finland, the United Kingdom, and Germany, life imprisonment is the only possible punishment for the most serious crimes, while leaving discretion for the judge in case of less serious crimes.

²³ Section 53 § 3 of the Criminal Code

1.4 Release on parole²⁴

The rules pertaining to release on parole are also diverse. The conditions for such a release usually include the assessment of the prisoner's behavior in prison, the expectation that he/she will live an orderly life, whether the harm or injury had been compensated, his/her attitude towards treatment, or the opinion of the prison director. Most countries fix the minimum period before eligibility for parole in legislation. However, in Hungary the earliest day of eligibility is decided by the sentencing judge within the limits set out by law, while in Malta, the court recommends the Prime Minister the minimum period that should elapse before release. In the United Kingdom, the court sets the minimum period to be served, which is called the "tariff period". It corresponds to the minimum period that the person needs to serve of his sentence as retribution and deterrence. The only justification for the continued detention of a detainee after the tariff period is his/her risk to society.

In some countries considerably long time passes before the convicted person has the chance to leave prison, while other states give a right to review after less time. Rather lengthy minimum period is set for Turkey (in certain circumstances 40 years), Hungary (may amount to a minimum of 30 years), Italy (26 years), Russia (25 years), or Slovakia and the United Kingdom (25 years), compared to 20 years in the Czech Republic and Romania (20 years), 10 or 16 years in Belgium, or 15 years in Germany²⁵ and Austria. In Cyprus, conditional release may be given by the President at any moment. In countries where only fixed-term imprisonment exists, the minimum period for eligibility is usually set by fixing a certain proportion of the sentence that must be served. In Norway and Croatia, release on parole is possible after serving 2/3rd of the sentence, while in Portugal, after having served half of the

²⁴ See Annex No. 3.

²⁵ Section 57a of the Criminal Code

sentence and in Bosnia-Herzegovina after 3/5th. Special rules apply to the elderly in Romania, where eligibility for parole is reduced to 15 years for female prisoners over 55 and male prisoners over 60 years of age.

In almost every country the judiciary decides on conditional release. However, in Cyprus it is the President who decides on early release.²⁶ In the United Kingdom, the Home Secretary makes such a decision. In Belgium, a multidisciplinary committee decides, which consists of magistrates and prison directors. Moreover, conditional release is automatically applied in Portugal – without any assessment of the circumstances – after having served 5/6th of the sentence, irrespective of the crime committed.²⁷ Finally, there are countries where the rules for conditional release are more complex. In Ukraine, release on parole is only possible if the President grants pardon and thereby substitutes life imprisonment with a fixed term of minimum 25 years.²⁸

1.5 Pardon and amnesty

Among the countries examined by the survey, all had dispositions on amnesty and pardon. Amnesty is usually granted by legislation to a group of prisoners who were found guilty of a specific type of crime, while pardon is decided on an individual basis mostly by the President of the Republic. In the United Kingdom pardon is granted by the Home Secretary in case of exceptional circumstances. As it was demonstrated in the case of *R v Bieber*²⁹, prisoners have been released due to terminal illness, bedridden state or if they were otherwise incapacitated. Common feature of both instruments is that there is no enforceable right for

²⁶ Act No. 12(I) of 1997, section 14.

²⁷ Section 61 § 4 of the Criminal Code

²⁸ Sections 81 and 87 of the Criminal Code

²⁹ [2008] EWCA Crim 1601, § 48.

such a measure, and most often no rules or guidelines exist. It is therefore wholly discretionary, without any obligation to justify its refusal. Request for pardon may in most cases be lodged at any time, while in Ukraine and Lithuania it is only possible after 20 years. In certain countries, such as in Ukraine or Russia, there is a Parole Commission that examines the request before submitting it to the President. Moreover, parole may be granted on medical grounds in Bulgaria by a medical commission. In Belgium and Norway Royal pardon exists. In Portugal, a list of prisoners that are granted pardon is published once a year in the Official Gazette.

2. Hungary

The special emphasis given to Hungary derives from several factors. First, it is a country where actual life imprisonment may – and in certain circumstances must – be imposed. Second, the recent reform of the Criminal Code started a heated debate about the necessity and constitutionality of life without parole. Third, not only can it be examined whether such a punishment is in compliance with the European Convention on Human Rights, but also whether it is in accordance with the Constitution, which guarantees everyone's right to human dignity and right to liberty. In the present subsection, I will only present the current and planned regulation of life imprisonment, leaving the human rights analysis to the second chapter.

2.1. Legal regulation

The ultimate penalty in Hungary before the change of regime was capital punishment. However, it was abolished in 1990 following the decision of the Hungarian Constitutional

Court declaring it unconstitutional.³⁰ It was Act No. XVII. of 1993 that first introduced life imprisonment without the possibility of release on parole in case of those who had been sentenced to life imprisonment for the second time. Due to the multiplication of more and more brutal crimes, the Criminal Code reform of 1998³¹ created the possibility for the sentencing judge to exclude release on parole in case of certain crimes.

As concerns the regulation in force at present, section 47/A. § (1) of the Criminal Code declares that in case of imposition of life imprisonment, the court defines in the judgment the earliest date of eligibility for parole, or excludes the possibility of release on parole. Thus, it is the sentencing judge who pronounces the final word whether the prisoner can ever hope to regain his freedom. There is one exception to the judge's discretionary powers. According to section 47/C. § (2), a person sentenced to life imprisonment cannot be released on parole if he is again sentenced to life imprisonment.

If the judge excludes eligibility for parole, the imprisonment of the convicted person will last until his death without any kind of review or hope of release except for the possibility of Presidential pardon. However, if the judge does not rule out eligibility for parole, the possibility of release arises after a minimum of twenty years of imprisonment, or, in case of a crime for which the statute of limitations does not apply, after a minimum of thirty years' detention.³² It is important to highlight that the law only establishes the earliest date of review. However, no upper limit is fixed, leaving the sentencing judge wide discretionary powers. Thus, it would be in compliance with the national law if a judge would fix the date of eligibility for parole after fifty years, making it impossible for an older prisoner to ever regain his/her liberty.

³⁰ Decision No. 23/1990 (X. 31.)

³¹ Act No. LXXXVII. of 1998

³² Section 47/A. § (2) of the Criminal Code

If eligibility for parole was not excluded, then the executing judge decides on the prisoner's release, following the expiry of the period fixed in the judgment.³³ The judge can freely ascertain that the convicted person's continued detention is still necessary, if it is presumed that further imprisonment is required for the protection of society or punishment. As a consequence, it could occur that *de facto* the prisoner spends the rest of his/her life in prison. In this case, the only factual difference between actual life imprisonment and life imprisonment with the possibility of release is that in the latter case the prisoner preserves the hope of being released after a certain time. However, if the executing judge does not release the detainee on parole once the period for eligibility has elapsed, he/she is required to review the possibility two years later the latest, and afterwards every year.³⁴

Even though the sentencing judges are independent and bring their judgments according to their inner conviction, there exist certain guidelines which help them in finding the most suitable and just punishment. According to section 37 of the Hungarian Criminal Code, the aim of punishment is to prevent - in the interest of the protection of the society - that either the perpetrator or any other person commit a crime. Punishment therefore has a double aim, namely protection of the society and deterrence. The imposition of the punishment is further elaborated in section 83 § (1) of the Criminal Code which states that it must correspond with the crime's and the perpetrator's threat to society, the level of guilt and with the aggravating and mitigating circumstances.

At present, there are altogether twenty-eight crimes in case of which life imprisonment may be imposed. These criminal acts may be classified in five categories, namely crimes

³³ Section 8 § (1) of Law-decree no. 11 of 1979

³⁴ *Ibid*, section 8 § (5)

against the State³⁵, crimes against humanity³⁶, crimes against the person³⁷, crimes against public peace³⁸ and finally military crimes³⁹. These latter types of crimes contain the most possibility of life sentence, in case of ten criminal acts. It is interesting to note that the choice to impose actual life imprisonment instead of life imprisonment with the possibility of release is wholly left to the discretion of the sentencing judge (save for the case when the perpetrator is sentenced to life imprisonment for the second time). There are no crimes listed that would be considered so serious that only actual life imprisonment could be imposed. Therefore, even in case of commission of apartheid or genocide, conditional release may be possible. On the other hand, the imposition of actual life imprisonment is possible in case of criminal misuse of narcotic drugs of substantial quantity.⁴⁰

2.2 Reform of the Criminal Code

The necessity of the dispositions on actual life imprisonment was called into question with the planned modification of the Hungarian Criminal Code. It prompted a heated dispute among the legislators whether to keep actual life imprisonment or not. Several drafts had been discussed by the Parliament before the final version was adopted. Some versions even planned to abolish actual life imprisonment.⁴¹ Arguments for- and against actual life imprisonment were also discussed at a Roundtable Meeting organized by the Hungarian Helsinki Committee in February 2009. Politicians, scholars and other stakeholders could put forward their ideas. Those arguing against its need claimed that it violates the right to human dignity and personal liberty. Moreover, from a practical viewpoint, some considered that it is

³⁵ Chapter X.

³⁶ Chapter XI.

³⁷ Chapter XII.

³⁸ Chapter XVI.

³⁹ Chapter XX.

⁴⁰ Section 282/A § (3)

⁴¹ <http://www.mno.hu/portal/393742>

much harder to keep an actual lifer motivated in good prison behavior, considering that they have nothing to lose. Finally, it was pointed out that the cost of keeping a prisoner within the penitentiary premises costs much more than the costs of social support outside the prison.

Those arguing for the need of actual life imprisonment claimed that it is the only real alternative to the death penalty. It was pointed out that fixed-term imprisonment is not sufficient and does not allow proper scaling of perpetrators. Moreover, it was suggested that it is necessary for the protection of society and has a deterrent effect. It was also mentioned that the general public supports actual life imprisonment. There was a draft version that would have kept the possibility of excluding conditional release, but in case of allowing release on parole, it would have fixed an upper limit of 40 years to become eligible for parole. Finally, Act No. LXXX of 2009 on the Modification of the Criminal Code, which was adopted in July 2009, made no changes to the current regulation of actual life imprisonment. However, future developments in the international arena or a decision of the Hungarian Constitutional Court may prompt the legislators to re-evaluate the actual life imprisonment's legitimacy.

There are two constitutional complaints pending before the Constitutional Court that concern the constitutionality of actual life imprisonment. The first complaint was lodged by two attorneys in 2004,⁴² while the second was introduced by the Hungarian Helsinki Committee in 2009,⁴³ which is a human rights non-governmental organization dealing - among others - with the rights of detainees. Both of them asserted that actual life imprisonment violates the right to liberty. The Helsinki Committee emphasized that this punishment cannot be considered as necessary for the prevention of further crimes, taking into consideration the *ultima ratio* character of criminal law and the requirement to impose the

⁴² <http://origo.hu/itthon/20040713eltorolnek.html>

⁴³ http://helsinki.webdialog.hu/dokumentum/MHB_ABinditvany_tesz.pdf

least stringent punishment in the given case. Moreover, it continued by suggesting that actual life imprisonment is neither necessary for the protection of society, since no judge can make a reliable prognosis about a particular person's threat to society decades in advance. In addition, the latter aim may also be protected by the refusal of the executing judge to release the detainee on parole in case the prisoner is found to pose a continued threat to society at the given time of the review. These complaints are now pending before the Constitutional Court. In case of establishment of unconstitutionality of the dispositions in question, the Court has power to quash them.⁴⁴

2.3 Actual lifers in Hungary

Currently there are thirteen prisoners sentenced to actual life imprisonment by a final judgment.⁴⁵ It is useful to examine these cases to see for what crimes the courts found it necessary to exclude the person from society for good, and what were the reasons for imposing the most severe punishment. In most cases actual life imprisonment was imposed for homicide committed on more than one person.

The first person to be sentenced to actual life imprisonment was *Gyula Boi* in April 2000, who severely injured his first wife and sexually harassed his daughter, and after being released from prison, he killed his second wife and their two children in their sleep with an ax. The court believed that it was necessary to isolate him from society in order to make him harmless. The perpetrator later agreed with the judgment and said that he deserved this

⁴⁴ Section 32/A § (2) of the Constitution

⁴⁵ According to Pál Kiszely, commander of the Szeged Prison and Penitentiary as presented at a conference organized by the Hungarian Helsinki Committee on Actual Life Imprisonment, held in Budapest between 9 and 10 February 2009.

punishment.⁴⁶ *Gusztáv Nemeskéri* was convicted for killing four people under the desire for gain, including his own brother.⁴⁷ *Zoltán Szabó* killed five women.⁴⁸ Another judgment reasoned that the actual life imprisonment was applied for the protection of society.⁴⁹ In another case the Budapest Court of Appeal based its judgment on the ground that the punishment was in proportion with the severity of the crime and corresponded to the society's sense of justice.⁵⁰ The most recent conviction to actual life imprisonment was imposed in February 2009 by the Pécs Court of Appeal on *Ferenc Pápics* for brutally killing three elderly. The perpetrator committed the crimes under the desire for gain. The judge explained imposing the most severe form of punishment with the need to protect society.⁵¹

In sum, the courts most often justified the imposition of actual life imprisonment by referring to the society's protection. However, this reason would not require the exclusion of the review of sentence. Considering that conditional release is not a right but a legal possibility, it would mean that the detainee would be released only in case he/she ceases to pose a threat to society. But this factor is subject to change, considering the age, health and emotional development of the person. The reason that thus would justify excluding the review of possibility of release should only be a motive that is not subject to change, such as the gravity of the crime committed, which could justify imposing actual life imprisonment as a punitive measure. The continued detention of the person without a justification of its necessity raises issues under Article 5 of the Convention, and will therefore be discussed in the second chapter.

⁴⁶ <http://www.mtv.hu/magazin/cikk.php?id=21843&offset=3> and <http://www.epa.oszk.hu/00800/00804/00111/7401.html>

⁴⁷ http://www.kisalfold.hu/hirek/bortont_epitettek_a_csillagban/109539/

⁴⁸ *Ibid.*

⁴⁹ Supreme Court, Bf. V. 93/2000, as written by Zoltán Juhász, "Jog a Reményhez" *Fundamentum* 2 (2005): 90.

⁵⁰ *Ibid.*, 1. Bf. 159/2003, BH 2004. 265.

⁵¹ http://index.hu/bulvar/2009/02/10/tenyleges_eletfogytiglant_kapott_a_vardai_rem/

3. *United States of America*

Regulation of criminal policy comes within the State's police powers and may thus vary from state to state. Some even impose the death sentence, while others prefer to impose a life sentence without parole, as an alternative to the death penalty. The 'Sentencing Project', a national non-profit organization in the United States, prepared a comprehensive report in July 2009, which established a growing number of prison population in the United States, owing to the imposition of longer sentences and the more restricted use of release on parole.⁵² The number of people serving life without parole sentences in 2008 (41 102 people) was almost four times as much as the rates five years earlier, the report shows. While most of the States may impose life sentences either with or without the possibility of parole, six States and the federal system only have actual life sentences with no possibility of release on parole, leaving no room for individualization in sentencing. The study demonstrates that where release on parole is made possible, the average period prior to eligibility for parole is twenty-five years.⁵³ The heated debate in the United States concerns several issues, such as whether actual life imprisonment complies with the Constitution's Eighth Amendment on the prohibition of cruel and unusual punishment or whether juvenile offenders should be sentenced to life without parole. I will address these questions separately.

3.1 Life without parole - compliance with the Eighth Amendment

The Eighth Amendment of the United States Constitution prohibits punishments that are cruel and unusual. As it was established in a decision brought in 1910, the sentence must

⁵² Ashley Nellis and Ryan S. King, "No Exit. The Expanding Use of Life Sentences in America", *The Sentencing Project*, July 2009, p. 1, 9.

http://sentencingproject.org/doc/publications/publications/inc_noexitseptember2009.pdf

⁵³ *Ibid*, p. 6.

be proportionate to the gravity of the crime.⁵⁴ An attempt to lay down a test in order to determine the proportionality of a sentence was made in the case of *Solem v. Helm*,⁵⁵ where the Supreme Court had to decide on the constitutionality of a mandatory life without parole sentence on a habitual offender. According to the test, the courts must therefore take into consideration the gravity of the offence, other available sentences for other offences and the punishments that are imposed in other States for the same offence. In the end the Court found that the punishment imposed had been unconstitutional as being disproportionate.

The Supreme Court again had to decide on the constitutionality of a mandatory life sentence without parole in the case of *Harmelin v. Michigan*.⁵⁶ The Court was divided as to the application of the proportionality test, but agreed that the mandatory nature of the sentence cannot be considered as unusual and was therefore constitutional. Recent decisions brought by the Supreme Court evidence that only in the most extreme cases will a punishment be considered as grossly disproportionate. In the case of *Lockyer v Andrade*⁵⁷, the Supreme Court found that there was no “*clear contour*” for the assessment of gross disproportionality, and found that a fifty-years’ sentence imposed on a person with a criminal past who was accused of stealing eleven video tapes according to the Californian ‘three strikes law’ was within the State’s discretionary power.

3.2 Juvenile offenders

Even if life without parole is considered as being in compliance with the Constitution, could it be argued that it is cruel and unusual when applied on juveniles? The United Nations

⁵⁴ See, *inter alia*, *Weems v. United States*, 217 U.S. 349, 367 (1910)

⁵⁵ 436 U.S. 277 (1983)

⁵⁶ 501 U.S. 957 (1991)

⁵⁷ 538 U.S. 63 (2003)

Convention on the Rights of the Child prohibits, in Article 37, the imposition of life without parole on an offender who is below 18 years of age. However, it must be pointed out that the United States has not ratified the Convention. While there are a few States which prohibit imposing life imprisonment without the possibility of parole on offenders younger than 16 at the time of the commission of the crime, the majority of States still apply such sentences on juveniles.⁵⁸ According to the report prepared by *Nellis* and *S. King*, there were 1 755 juveniles serving a sentence of life without parole in 2008.⁵⁹ In 2005 the Supreme Court held in *Roper v. Simmons*⁶⁰ that the imposition of the death penalty on persons under the age of eighteen amounted to cruel and unusual punishment contrary to the Eighth Amendment. Among others, the Court took into consideration that

(...) juveniles still struggle to define their identity [which] means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.⁶¹

However, once the Court accepts that a juvenile has a chance to reform while maturing; the same argument would also raise serious concerns against a life sentence without parole.

Could the young age of the offender be taken into consideration as a mitigating factor? As *Walsh* points out in her study, in most federal cases it is not taken into consideration when applying the proportionality test. Some State courts such as in California or Kansas, however, do assess the age of the offender. Even though the Kentucky Supreme Court upheld the validity of a mandatory life imprisonment without parole for adult offenders, it found that imposing such a sentence on two 14-year-olds “*shocks the general conscience of society today*

⁵⁸ Nancy Walsh, „Life in Prison Without Possibility of Release”, Almanac of Policy Issues, http://www.policyalmanac.org/crime/archive/life_imprisonment.shtml

⁵⁹ Ashley Nellis and Ryan S. King, “No Exit. The Expanding Use of Life Sentences in America”, *The Sentencing Project*, July 2009, p. 3.

⁶⁰ 543 U.S. 551 (2005)

⁶¹ *Ibid*, III B.

and is intolerable to fundamental fairness".⁶² The Supreme Court of Nevada also came to the conclusion that age must be a factor to be included in the proportionality analysis.⁶³ In April 2009 the California Appeal Court held that the imposition of a life sentence without parole on a 14-year-old amounted to cruel and unusual punishment.⁶⁴ However, there are still States where no special consideration is given to the characteristics of the offender. In Washington, the imposition of a life sentence on a 13-year old was held to be constitutional.⁶⁵ The most recent debate concerns whether it is cruel and unusual punishment to impose life without parole on juveniles for crimes other than homicide.⁶⁶ The case is at present pending before the Supreme Court. However, considering the international context, the children's ability of reforming, and the minor threat to society, I would argue that in such cases imposition of actual life imprisonment would be cruel and unusual.

4. International Criminal Tribunals

Following the presentation of regulation in Europe and the United States, it is useful to examine the solutions adopted by the international community to reply to the most serious crimes, such as crimes against peace, humanity, war crimes, ethnic cleansing and genocide. If one adopts the idea that punishment shall be proportionate to the gravity of the offence, it follows that the penalty imposed for the aforementioned crimes shall be the most severe sentence. However, as it can be seen, there is no commonly adopted upper limit concerning punishments. Even so, as international human rights law developed, certain trend in international criminal law emerged. While the Nuremberg Tribunal even allowed for the death penalty, the International Criminal Court laid down a mandatory review after 25 years. A

⁶² *Workman v. Kentucky*, 429 S.W.2d 374, 378 (1968)

⁶³ *Naovarath v. State*, 779 P.2d (1989)

⁶⁴ <http://www.eji.org/eji/node/298>

⁶⁵ *State v. Massey*, 803 P.2d (1990)

⁶⁶ *Sullivan v. Florida* and *Graham v. Florida*, pending on appeal before the U.S. Supreme Court

common feature is that reform and rehabilitation of the perpetrator is not explicitly mentioned as an aim of the punishment in any of the statutes. Perhaps it is due to the fact that given the seriousness of crimes committed, the element of punishment prevails in any sentence imposed. This section will present four *ad hoc* tribunals and a permanent international tribunal, describing their range of punishments and the sentences that have been imposed.

4.1 Nuremberg Tribunal

The Nuremberg Tribunal, which was set up in 1945 with the adoption of the Charter of the International Military Tribunal, enjoyed much discretion as to what punishment it could impose. According to Article 27, the Tribunal could apply the death penalty, “*or such other punishment as shall be determined by it to be just*”. Accordingly, as Van Zyl Smit observed, it imposed death penalty in twelve cases, imprisonment for life in three cases and four criminals were sentenced to a fixed-term imprisonment.⁶⁷

4.2 International Criminal Tribunal for the former Yugoslavia

Developments in the field of international human rights, such as the adoption of the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, led to the rejection of death penalty.⁶⁸ In 2003 the United Nations Security Council established the Criminal Tribunal for the former Yugoslavia.⁶⁹ According to the Tribunal’s Statute, the only punishment it may impose is imprisonment, having “*recourse to the general practice regarding prison sentences in the courts of the former Yugoslavia*”.⁷⁰ However, this

⁶⁷ Van Zyl Smit 2002, 168.

⁶⁸ *Ibid*, 169-170.

⁶⁹ UN Security Council Resolution 827 (2003)

⁷⁰ Art. 24 § (1)

disposition is rather unclear, as it does not specify whether life imprisonment is acceptable, or what the maximum term of imprisonment could be. Given the trend in the international community to abolish the death penalty and that for the most serious crimes, death penalty would have been imposed in the former Yugoslavia, the Tribunal concluded that life imprisonment could be imposed as an alternative to the death penalty.⁷¹ Looking at the judgments delivered so far, only one life sentence had been delivered, but a considerable number of sentences exceeded 15 years of imprisonment.⁷² The question arises why the Tribunal doesn't impose life sentences more often. According to *Van Zyl Smit's* assumption, the court is trying to avoid imposing life imprisonment by sentencing the convicted person to fixed long-term imprisonment that entails similar period of detention.⁷³ He further raised his concerns about the disposition concerning pardon or commutation⁷⁴, highlighting that since there is no uniform rule; disparities exist depending on the law of the State where the convicted person is imprisoned.

4.3 International Criminal Tribunal for Rwanda

Article 23 of the Statute of the International Criminal Tribunal for Rwanda lays down almost identical rules concerning penalties as the Tribunal for the former Yugoslavia. It is important to note that it draws distinction between life imprisonment on the one hand, and imprisonment for the remainder of the prisoner's life on the other hand. In the latter case the prisoner can not benefit from release. The Tribunal so far imposed the latter sentence on eight occasions, while convicting four perpetrators to life imprisonment.⁷⁵ According to Rule 101⁷⁶,

⁷¹ Van Zyl Smit 2002, 181.

⁷² <http://www.icty.org/action/cases/4>

⁷³ Van Zyl Smit 2002, 187.

⁷⁴ Art. 28., Van Zyl Smit 2002, 185.

⁷⁵ <http://www.icty.org/default.htm>

⁷⁶ Rules of Procedure and Evidence, available at <http://www.icty.org/ENGLISH/rules/080314/080314.pdf>

the Tribunal takes into consideration the sentencing practices in Rwanda – where even the death penalty may be imposed –, the individual circumstances of the person and the gravity of the crime committed. Pursuant to Article 27, the convicted person shall only benefit from pardon or commutation of his/her sentence “*if the President of the Tribunal (...) so decides on the basis of the interest of justice and the general principles of law*”.

4.4 International Criminal Court

The permanent International Criminal Court was established by 120 states adopting the Rome Statute in July 1998. This court has jurisdiction over the most severe forms of crimes, namely genocide, crimes against humanity and war crimes⁷⁷. The penalties applicable in case of conviction are imprisonment for a fixed term, but not exceeding thirty years, or life imprisonment, if the extreme gravity of the crime and the individual circumstances of the convicted person justify⁷⁸. Even in case of imposition of a life sentence, the Rome Statute lays down a mandatory review of the sentence after twenty-five years⁷⁹. It then considers whether the prisoner was willing to cooperate with the Court in the investigation process and prosecutions, his assistance in other cases, and whether there were “clear and significant” changes in the circumstances⁸⁰. In case the Court does not find it justified to reduce the sentence, it should nevertheless review this question every three years or even within a shorter period⁸¹. Rule 223 of the Rules of Procedure and Evidence lists those additional aspects which are considered at the review procedure. These include the detainee’s conduct and genuine dissociation from his crime, prospect of resocialisation, possibility of significant

⁷⁷ Art. 5 § (1)

⁷⁸ Art. 77 § 1

⁷⁹ Art. 110 § 3

⁸⁰ Art. 11 § 4

⁸¹ Art. 110. § 5 and Rule 224 § 3 of the Rules of Procedure

social instability upon his early release, victims' incidental compensation, and the detainee's physical or mental health or old age.

It must be emphasized that accordingly even the prisoners found guilty for committing the most heinous crimes have the right for review of their detention and have a hope of regaining their liberty. What was the reason why they did not include actual life sentence as the punishment for those committing the most dreadful crimes? As *Van Zyl Smit* demonstrates in his book, the section on punishments was the result of a major compromise between Member States.⁸² It was clear that in light of the international human rights law developments, death penalty would be unacceptable, so an alternative penalty was required that would be imposed as the ultimate penalty. However, countries such as Portugal or Brazil have expressly banned life imprisonment by their constitutions, and in other countries - like Norway or Spain - only fixed-term imprisonment exists. *Van Zyl Smit* observes that the compromise which was finally reached is threefold.⁸³ First, life imprisonment is to be imposed only if a fixed-term sentence would be insufficient. Second, according to Article 80 of the Statute, which prescribes "non-prejudice to national application of penalties and national laws", countries that still impose death penalty are free to may continue to do so in the future. Finally, contrary to the dispositions in the *ad hoc* tribunal statutes, the Rome Statute establishes in Article 110 that release and any reduction of the sentence are uniformly decided by the Tribunal instead of the Member States.

⁸² Van Zyl Smit 2002, 189-193.

⁸³ Ibid, 191.

5. ***Conclusions drawn from the presentation***

As it may be seen from the presentation of the European regulation of life imprisonment, major differences exist as to the most suitable punishment for the commission of grave crimes. While certain countries reply by incapacitating the person and putting him/her in prison until death, others do not even provide for life imprisonment. Its imposition may vary from being only mandatory or only discretionary to being mandatory for certain types of crimes while being imposed freely for other crimes. The provisions on conditional release are also extremely diverse, not only as to the earliest day of eligibility for parole, but also as to the body deciding on such release. Substantial difference exists between certain countries, such as Germany on one hand and Hungary on the other. In the former, exclusion of release on parole was declared unconstitutional, while in the latter, it is still applied. While life imprisonment for the remainder of the detainee's life is accepted by the Criminal Tribunal for Rwanda, review is mandatory after 25 years before the International Criminal Court. It may therefore be concluded that there is no consensus on how to punish the most serious offenders. This observation corresponds with the one established in the *Kafkaris-case*⁸⁴, namely that

there is not yet a clear and commonly accepted standard (...) concerning life sentences (...) and no clear tendency can be ascertained with regard to the system and procedures implemented in respect of early release.⁸⁵

⁸⁴ *Kafkaris v Cyprus*, Judgment of the Grand Chamber, Application no. 21906/04

⁸⁵ *Ibid*, § 104.

CHAPTER II – LIFE IMPRISONMENT AND HUMAN RIGHTS

In most countries where death penalty was abolished, life imprisonment is considered as the alternative ultimate penalty for the most serious crimes.⁸⁶ However, the prisoner's human rights are affected in many ways and one must keep in mind the boundaries of the State's right to punish. The limits on punishments and more specifically on life imprisonment may be grouped in many ways. I will focus on two major issues that concern actual life imprisonment. First, I will examine whether the prohibition of inhuman or degrading treatment or punishment is observed in case of such a punishment. Since respect for human dignity is closely linked to the previous issue, I will address the specific requirements that derive from it. Afterwards the different aspects of the right to liberty and security will be scrutinized. In both sections, special emphasis will be given to the case law of the European Court of Human Rights and the analysis of current legislation's compliance with these requirements.

1. *Prohibition of inhuman or degrading treatment or punishment*

In this section I will first outline certain international instruments that contain a provision on the prohibition of inhuman or degrading treatment or punishment. Considering that respect for human dignity is one of the underlying values and reasons of such prohibition, I will discuss the notion in more details, presenting the German Federal Constitutional Court's decision on the constitutionality of mandatory life imprisonment. The section will then deal with the four types of cases where Article 3 of the Convention might be engaged. First, the mere imposition of an actual life sentence could raise an issue, since it deprives the convicted

⁸⁶ See *inter alia*: Leon Shaskolsky Sheleff, *Ultimate Penalties – Capital Punishment, Life Imprisonment, Physical Torture* (Columbus: The Ohio State University Press, 1987), 43, 118, 140.

prisoner of the hope of ever being released in the future. Second, even if the mere imposition of an actual life sentence does not raise any legal problems, there might come a point when the continued detention becomes contrary to Article 3 of the Convention. This could occur due to old age or to the detrimental psychological effects caused by long-term imprisonment, such as depression or the loss of any contact with the outside world. The third problem might arise in relation to the conditions of long-term detention. Lastly, extradition to a country where the person is likely to face life without parole also raises problems. In the followings I will separately deal with each issue.

1.1 International instruments

The importance of prohibition of cruel, inhuman and degrading treatment or punishment may be evidenced by the number of international instruments that have incorporated it, such as the United Nations Universal Declaration of Human Rights,⁸⁷ the International Covenant on Civil and Political Rights (hereafter ICCPR),⁸⁸ the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or the European Convention on Human Rights.⁸⁹ According to the well-established case-law of the Strasbourg Court, a punishment is considered as inhuman if it “*deliberately causes severe suffering, mental or physical, which, in the particular situation, is unjustifiable*”,⁹⁰ while it is classified as degrading when the treatment is

such as to arouse in [its] victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.⁹¹

⁸⁷ Art. 5.

⁸⁸ Art. 7.

⁸⁹ Art. 3.

⁹⁰ See, *inter alia*, *Ireland v the United Kingdom*, Application No. 5310/71, 18 January 1978

⁹¹ *Ibid*, § 100.

The Committee of Ministers, aware of the human rights issues surrounding life imprisonment, adopted Resolution (76) 2 on the Treatment of Long-term Prisoners in 1976. It recommended that the possibility of conditional release be examined as soon as possible and the conditional release be ordered if favorable prognosis could be formulated. Moreover, they suggested that the review of life imprisonment take place at regular intervals. The sub-committee which drafted the resolution reasoned that

(...) it is inhuman to imprison a person for life without any hope of release. A crime prevention policy which accepts keeping a prisoner for life even if he is no longer a danger to society would be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of reintegration of offenders into society. Nobody should be deprived of the chance of possible release.⁹²

It can be argued that respect for human dignity lies at the heart of the prohibition of inhuman and degrading treatment and therefore poses a further limit to punishments. As Article 10 § (1) of the ICCPR lays down,

[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

It is evident that every punishment entails a certain amount of embarrassment and affects the dignity of the prisoner, but according to the case-law of the European Court of Human Rights,

the suffering or humiliation must go beyond an inevitable element of humiliation or suffering associated with a given form of treatment or punishment.⁹³

Guidelines as to the treatment of prisoners are also methods to ensure respect for the dignity of the persons. Examples of such guidelines include the United Nations Standard Minimum Rules for the Treatment of Prisoners, which explicitly refers to the prisoners' "*dignity as*

⁹² European Committee on Crime Problems, August 1975, DPC/CEPC XXV (74) 3 § 76. as available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=630538&SecMode=1&DocId=1061896&Usage=2>

⁹³ See, *inter alia*: *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV

human beings".⁹⁴ The Council of Europe's Committee of Ministers adopted various recommendations that relate to prisoners, their detention conditions and treatment. The European Prison Rules serve to guarantee treatment and conditions in prison which respect the inherent dignity of the prisoner.⁹⁵ Its recommendation no. 23 of 2003 on the Management by Prison Administrations of Life Sentence and Other Long-term Prisoners or recommendation no. 22 of 1999 Concerning Prison Overcrowding and Prison Population Inflation both deal with particular aspects of prison life. Although these instruments are not binding upon Member States, they reflect the common understanding that prisoners are also human beings whose dignity shall be respected.

1.2 Decision of the Federal Constitutional Court

In Germany, the prominence given to the inviolability of human dignity is evidenced by their constitution, where it is not only a substantive article placed at the top of the Basic Law, but an underlying value as well.⁹⁶ In its decision of June 1977, the Federal Constitutional Court of Germany had to ascertain the constitutionality of mandatory life imprisonment.⁹⁷ It found that the detainee must retain a hope to be released, since life imprisonment without the possibility of release "*reduces the prisoner to a mere object, thus violating his or her dignity*".⁹⁸ It further pointed out that the imprisonment shall concentrate on the resocialisation of the prisoner and indicated that a possibility of pardon is not sufficient for the purposes of release.⁹⁹ Moreover, it stressed that the conditions and procedure for the

⁹⁴ Section 60 § 1.

⁹⁵ Council of Europe Recommendation No. R (87) 3 of the Committee of Ministers to member states on the European Prison Rules", 12 February 1987

⁹⁶ 2. Evadné Grant, „Dignity and Equality,” *Human Rights Law Review* 7(2007): 299.

⁹⁷ K. C. Horton, "Life Imprisonment and Pardons in the German Federal Republic," *The International and Comparative Law Quarterly* 29 (1980): 530. BVerfGE Bd. 45 187, 1977, S. 228,

⁹⁸ Evadné Grant, „Dignity and Equality,” *Human Rights Law Review* 7(2007): 304.

⁹⁹ BVerfGE Bd. 45 187, 1977, § 238, 245.

release of a lifer shall be clearly laid down by law. Finally, it acknowledged that the punishment imposed shall be proportionate to the severity of the crime and the culpability of the person.¹⁰⁰

1.3 Mere imposition of actual life imprisonment a violation of Article 3?

Following a brief overview of the meaning of inhuman or degrading treatment or punishment, it must now be assessed whether the mere imposition of an actual life sentence may constitute such treatment. I find two reasons to conclude that it could. First, the fact that the person is deprived of all hope of release may in itself cause severe mental suffering. According to a research conducted by *McGunigall-Smith* in the United States Utah State Prison,¹⁰¹ those sentenced to life without parole are confronted with a pointless, empty and repetitive life in prison where they lack autonomy and emotional input. Considering that they have nothing to look forward to and must spend the rest of their lives in such circumstances, this may be considered as inhuman or degrading. As *McGunigall-Smith* evidenced, many offenders in the United States dropped their appeal and chose the death sentence instead of spending the rest of their lives in prison.¹⁰² The second problem lies in the disproportionality of such sentences due to the inherent uncertainty of the period of punishment. Both issues are raised by *Laws LJ*, Administrative Court judge in the United Kingdom, suggesting that

(...) the whole-life tariff is arbitrary: it may be measured in days or decades according to how long the prisoner has to live. It is therefore liable to be disproportionate – the very vice which is condemned on article 3 grounds – unless, of course, the death penalty's logic applies: the crime is so heinous it can never be atoned for. But in that case the supposed inalienable value of the prisoner's life is reduced, merely, to his survival: to nothing more than

¹⁰⁰ Ibid, s. 260

¹⁰¹ Johnson and McGunigall-Smith, 2008, 330-338.

¹⁰² Ibid, 333.

his drawing breath and being kept, no doubt, confined in decent circumstances. That is to pay lip service to the value of life; not to vouchsafe it.¹⁰³

Imposing on a person an empty, meaningless life without giving any motive to live for or release to look forward to, the prisoner is reduced to being an object of punishment, which violates his/her human dignity.

a. Case-law of the European Court of Human Rights

There have been several applications before the European Court of Human Rights in which the applicant complained that the imposition of an actual life imprisonment would violate Article 3. In several judgments, such as in the *Einhorn v. France* case,¹⁰⁴ the Court acknowledged that it

(...) does not rule out the possibility that the imposition of an irreducible life sentence may raise an issue under Article 3 of the Convention.¹⁰⁵

However, the Court has not developed the statement any further, even though it raises various questions, since it is formulated rather ambiguously. When is a life sentence irreducible? In what circumstances does such a sentence raise an issue? Does that mean that an irreducible life sentence can still be considered in compliance with Article 3 of the Convention in certain circumstances? In the case in question, the applicant, an American national, was convicted to life imprisonment in the United States *in absentia* for first-degree murder. He was later arrested in France and his extradition was requested by the United States Government. The applicant complained *inter alia* that he will likely face actual life imprisonment, which is inhuman or degrading treatment or punishment, contrary to Article 3 of the Convention. However, the Court concluded that the Governor's power to commute

¹⁰³ *R (on the application of Wellington)(FC) v Secretary of State for the Home Department (Respondent)* [2007] EWHC 1109, 18 May 2007, § 39(iv)

¹⁰⁴ Admissibility decision, Application no. 71555/01, ECHR 2001-XI

¹⁰⁵ § 27.

actual life sentence into one with the possibility of release is sufficient to rule out the violation of Article 3. Hence, the Court avoided giving answers by finding the applicant's punishment reducible.

The questions imposed previously were afterwards partially answered in the case of *Kafkaris v. Cyprus*.¹⁰⁶ The applicant, similarly to *Einhorn*, was sentenced to mandatory life imprisonment without parole after having been found guilty on three counts of premeditated murder, two of them being children. Following the Cypriot Government's proposition, the Court adopted a test to determine whether a life sentence is to be considered as irreducible. Thus, it must be proved that the punishment was either *de jure* or *de facto* irreducible. First, a sentence is *de jure* irreducible if early release is a "*legal impossibility*"¹⁰⁷. However, the Court adopted a rather wide approach and considered that

[i]n determining whether a life sentence in a given case can be regarded as irreducible the Court has sought to ascertain **whether a life prisoner can be said to have any prospect of release**. (...) where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3.¹⁰⁸ [*Emphasis added.*]

In the given case the Court concluded that the weak hope for the adjustment of life sentence by the President in agreement with the Attorney-General, even without any procedural safeguards and with a number of shortcomings, was sufficient to find that it was not an irreducible life sentence, considering that eleven prisoners have already benefited from this possibility. In sum, what was taken into consideration in both the *Einhorn*-case and the *Kafkaris*-case was whether the theoretic possibility of release, be it only a slight hope for pardon, has been ever used in practice.

¹⁰⁶ Judgment of the Grand Chamber, Application no. 21906/04, 12 February 2008 ellenorizni

¹⁰⁷ § 89.

¹⁰⁸ § 98.

It is important to point out that not all judges of the Grand Chamber agreed with the majority concerning the test to be applied. Five out of seventeen judges believed that *de facto* reducibility can only be established in case of “*genuine possibility of release*”,¹⁰⁹ therefore concluding that the applicant’s sentence was irreducible.

I also find it hard to accept the Court’s interpretation of irreducibility. If one assumes that the possibility of receiving presidential pardon is enough to maintain a hope of being released, then no life sentence can be classified as irreducible. As presented in the previous chapter, every country provides for the possibility of a presidential pardon. Even if the prospects are limited, a theoretical possibility always exists that pardon will be granted, therefore being “reducible” in Strasbourg-terms. However, the problem is that there is no enforceable right to be pardoned. It is an act of clemency which does not form part of the sentencing process. Moreover, there are no written rules on the procedure, the prisoner cannot be heard in person, cannot appeal against the decision and no reasoning is given in case of dismissal.

Another question was answered in the *Kafkaris*-case, although not by the majority, but by the concurring opinion of Judge *Bratza*, who was joined in this respect by the five dissenting judges mentioned earlier. Clarifying the Court’s ambiguous approach to irreducible life sentences, he suggests that

the time has come when the Court should clearly affirm that the imposition of an irreducible life sentence, even on an adult offender, is in principle inconsistent with Article 3 of the Convention.

If the Court would therefore adopt this approach, a finding that a life sentence is irreducible could result in establishing a violation of Article 3. Until present, the Court always concluded

¹⁰⁹ Joint partly dissenting opinion of Judges Tulkens, Cabral Barreto, Fura-Sandström, Spielmann and Jebens, § 2.

that the life sentences in the given cases had not been irreducible, therefore failing to develop its own statement. The question remains open concerning the instances when the irreducible life sentence would “*raise an issue*”. But once a future application reveals that the life sentence imposed is irreducible, the Court will be obliged to give an answer. It is of great importance, therefore, to ascertain whether actual life imprisonment in Member States having such a punishment, would be considered as an irreducible sentence by the Strasbourg organ. I will now examine two among these, actual life imprisonment in Hungary and the whole life order in the United Kingdom

b. The question of irreducibility in Hungary

For those prisoners whose eligibility for release on parole was excluded the only possibility for release would be a presidential pardon. The President of the Republic has discretionary powers to grant pardon and release the convicted person.¹¹⁰ The detailed rules for compassionate release are laid down in sections 597-598 of the Criminal Procedure. Request to grant pardon should be submitted to the first instance court that tried the case. It is then transferred to the Ministry of Justice and Law Enforcement where – based on the documents - the Minister has the power to propose the termination or mitigation of the sentence to the President of the Republic. When bringing a decision, the President is not bound by any rule or circumstances and relies solely on the documents before him.¹¹¹ There is no possibility of an oral hearing. The judgment is in general based on such equitable reasons emerged in relation to the prisoner’s personality or circumstances, which were not evaluated as mitigating circumstances by the courts. The President’s decision, either granting the

¹¹⁰ section 30/A. § (1) subsection k) of the Constitution

¹¹¹ As stated on the Office of the President of the Republic’s official website, available at http://www.keh.hu/kegyelmi_eljaras.html

request or refusing it, is not reasoned and needs to be countersigned by the Minister. There is no possibility of review; however, a new request may be submitted at any time, the consideration of which is completely independent from the earlier requests. It can therefore be established that the sentence is *de jure* reducible, since there is a legal disposition pertaining to pardon, similar to the possibilities mentioned in the *Kafkaris*-case.

As to the *de facto* reducibility, it should be recalled that even if the possibility of release is limited and there is no judicial review of the decision and no reasons are given for rejecting a request, the sentence can still be considered as *de facto* reducible. It must be highlighted that actual life imprisonment in its present form is in place only since 1998, and the first sentence was only imposed in 2000, thus until present the longest time spent in prison after being convicted for actual life imprisonment has been so far nine years. For this reason, there were no cases of granting pardon so far. This issue is likely to emerge when a prisoner will reach an old age or a certain medical state which would raise questions as to the necessity of his continued detention. But at present it would be mere speculation to tell whether the President of the Republic will in the future grant such pardons or not. I do not deem it authoritative to examine the number of pardons granted to prisoners not sentenced to actual life imprisonment but to less severe punishments, since due to the crime they committed or certain mitigating factors, they are not in a comparable situation with actual lifers. For this reason, it is difficult to foresee at present whether their sentence is *de facto* reducible.

c. The question of irreducibility in the United Kingdom

As to the question whether a whole life tariff would be considered as an irreducible life sentence, it is to be observed that the Secretary of State has the discretionary power to

release a person serving a whole life sentence¹¹² and that there had been instances where this power was used. It can therefore be argued that it is both *de jure* and *de facto* reducible sentence according to the definition given by the Strasbourg Court in the *Kafkaris* judgment. This interpretation is supported by the Courts of the United Kingdom which also believe that whole life sentences are not irreducible sentences.¹¹³

d. Uncertainty in the case-law

However, even if it is established that a life sentence is irreducible, it would not automatically give rise to the violation of Article 3. The exact wording of the Court in *Kafkaris v. Cyprus* was that

the imposition of an irreducible life sentence on an adult **may raise an issue** under Article 3¹¹⁴ (emphasis added).

What could be those circumstances that would justify excluding the possibility of release?

In the United Kingdom, judges are required to ensure compliance with the European Convention on Human Rights since the entry into force of the Human Rights Act in 2000. It is of no surprise that the House of Lords has dealt with the compatibility of whole life sentence with Article 3 of the Convention. In several cases the Law Lords concluded that the extreme gravity of the crime could justify the imposition of an irreducible life sentence, provided that the purpose of the sentence was pure punishment. Accordingly, *Lord Steyn* argued in *R v Secretary of State for the Home Department, ex parte Hindley*¹¹⁵ that

¹¹² Section 30 of the Crimes (Sentences) Act 1997

¹¹³ *R v Bieber* [2008] EWCA Crim 1601, § 49.

¹¹⁴ § 97 of the judgment

¹¹⁵ 2001, 1 AC 410, HL

(...) there are cases where the crimes are so wicked that even if the prisoner is detained until he or she dies it will not exhaust the requirements of retribution and deterrence.¹¹⁶

In the given case, the perpetrator was found guilty of abducting, torturing, and murdering two children and was sentenced to whole life imprisonment. It could be argued *a contrario* that an irreducible life sentence would violate Article 3 if it is disproportionate to the gravity of the crime committed.

A second possibility of violation of Article 3 could arise after careful assessment of all circumstances of the case, including the heinousness of the crime committed, mitigating and aggravating factors, domestic or extradition context, or even the age of the perpetrator. In a case which is at present pending before the European Court of Human Rights, the applicant is to be extradited to the United States where he will likely face actual life imprisonment.¹¹⁷ It could be argued that due to the relatively young age of the applicant, who is now 21 years old, his prospect of maturing and reforming would render the imposition of an irreducible life sentence incompatible with Article 3 of the Convention.

The third possibility of finding a violation of Article 3 in respect of an irreducible life sentence relates to the continued detention of the prisoner and is therefore discussed in the following section.

1.4 Continued detention as violation of Article 3?

Assuming that the imposition of an irreducible life sentence is in compliance with the Convention, the question arises whether it will also be in line with human rights requirements

¹¹⁶ *Ibid*, p. 417 H

¹¹⁷ *Edwards v. the United Kingdom*, Application No. 32650/07, lodged on 1 August 2007

after certain time. As time goes by in detention, the circumstances change as well. The prisoner reaches an old age, or might develop mental or physical health problems. The Court nevertheless observed that advanced age does not pose an obstacle to the continued detention of a person.¹¹⁸ However, necessary medical care must be provided and the well being of detainees must be ensured in order to comply with Article 3 of the Convention.¹¹⁹ All circumstances of the particular case – such as the “*age and state of health of the person concerned as well as the duration and nature of the treatment and its physical or mental effects*”¹²⁰ – need to be ascertained in order to determine whether Article 3 had been respected.

The Courts of the United Kingdom believe that the imposition of an irreducible life sentence does not violate Article 3 *per se*, as there might exist certain crimes that are so heinous that the requirement of deterrence and punishment are justified as long as the perpetrator is alive.¹²¹ However, they point out that

[a]ny Article 3 challenge where a whole life term has been imposed should therefore be made, not at the time of the imposition of the sentence, but at the stage when the prisoner contends that, having regard to all the material circumstances, including the time that he has served and the progress made in prison, any further detention will constitute degrading or inhuman treatment.¹²²

Lord Brown agreed with this conclusion, basing his opinion on the argument that

(...) the majority of the Grand Chamber would not regard even an irreducible life sentence (...) as violating article 3 unless and until the time comes when further imprisonment would no longer be justified on any ground – whether for reasons of punishment, deterrence or public protection.¹²³

¹¹⁸ *Sawoniuk v. the United Kingdom*, Appl. No. 63716/00, § 3, 29 May 2001

¹¹⁹ *Kudła v. Poland*, [GC] Appl. no. 30210/96, ECHR 2000-XI, § 94

¹²⁰ See, for example, *the Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 162

¹²¹ *R v Bieber* [2008] EWCA Crim 1601, § 45.

¹²² *Ibid*, § 49.

¹²³ *R (on the application of Wellington)(FC) v Secretary of State for the Home Department*, UKHL 72, 10 December 2008, § 81.

This reasoning is further confirmed in a decision brought by the Namibian High Court, which found that the continued imprisonment for life without any prospect of release irrespective of any change in circumstances would violate Article 8 of their Constitution, which enshrines the obligation to respect human dignity.¹²⁴ The list of possible instances of violation of Article 3 continues with the inadequate conditions of detention, discussed below.

1.5 Conditions of detention as violation of Article 3?

Since the prisoners sentenced to actual life imprisonment spend the rest of their lives in prison and can never leave the penitentiary's premises, the question arises whether their detention conditions are in compliance with the requirements of Article 3? Can it be established that certain prison conditions are appropriate for shorter terms of detention but are degrading for those spending even fifty years or more there? Formulated in another way: can the level of protection guaranteed by Article 3 in respect of prison conditions vary according to the time spent in prison?

As mentioned previously, the Court's well-established case-law points out that the minimum level of severity to be attained depends on the circumstances of each case.¹²⁵ Two factors are decisive in the context of actual life imprisonment. First, the duration of the punishment, in this case detention, which might even be some sixty years as opposed to a few years in prison, and second, its physical or mental effects. As to the latter aspect, it must be pointed out that long-term imprisonment has irreversibly detrimental effects on the person due to institutionalization. Lack of independence, privacy, freedom of movement, social contacts all contribute to a likelihood of a mental illness. Therefore one can conclude that while a

¹²⁴ *State v Tcoeib*, (1997) 1 LRC 90

¹²⁵ See, *inter alia*, *Moldovan and others v. Romania*, Judgment No. 2 (Appl. Nos. 41138/98 and 64320/01), Judgment of 12 July 2005

shorter term of imprisonment in certain detention conditions might not attain the minimum level of severity necessary for Article 3 to come into play, this requirement could be attained in case of an actual lifer detained in the same prison conditions. The violation of Article 3 will depend on all the circumstances of the particular case.

As an example of the prison conditions of actual lifers, it is useful to present the report made by the Council of Europe's Committee for the Prevention of Torture following a visit to Hungary in the beginning of 2007.¹²⁶ The Committee examined the conditions of detention in the Szeged Penitentiary and Prison's Special Regime Unit (hereafter Unit) for prisoners serving lengthy sentences,¹²⁷ where most of the actual lifers are detained. The reason for the creation of this special unit in 2005 was to provide special care to those prisoners who serve lengthy sentences and who therefore have special needs. In its report, the Committee pointed out that

long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, such prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills). Such risks are even higher with respect to "actual lifers" as they are expected to spend all their life in prison. In the Committee's view, the programmes of activities which are offered to HSR prisoners should therefore seek to compensate for these effects in a positive and proactive way. The inmates concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association).¹²⁸

Although it found that the material conditions were satisfactory,¹²⁹ it expressed its concerns in various matters. The fact that the outside exercise area was small and had no bench to sit on was criticized by the Committee, together with the lack of education of the prisoners and the

¹²⁶ Council of Europe, CPT. "Report to the Hungarian Government on the Visit to Hungary Carried Out by the CPT from 30 January to 1 February 2007". 28 June 2007

¹²⁷ „Hosszútartamú Speciális Rezsím részleg”

¹²⁸ *Ibid.*, § 19.

¹²⁹ *Ibid.*, § 13.

absence of psychological support for two months.¹³⁰ The only contact with the outside world is a one-hour visit every month with a dividing wall made of glass and with the presence of staff, and six minutes of telephone calls every week.¹³¹ In my opinion it would be of crucial importance to maintain relations with friends and family from the outside world in order to counterbalance the dissocializing effects of detention. Even if these opportunities are sufficient for a prisoner serving a few years in prison, a person having no hope of being released has this only chance of maintaining his family ties and friendships. However, these short periods of visits and telephone conversations are insufficient to achieve this aim and therefore contribute to the isolation of the actual lifer from the outside world. The CPT also called upon the Hungarian authorities to significantly increase the possibilities of contact with the outside world.¹³²

1.6 Extradition to country where the prisoner will likely face actual life imprisonment

A final aspect of Article 3 in relation to actual life imprisonment is expulsion to a country where the person risks the imposition of such a punishment. It is of great relevance that Article 21 § 3 of the Convention on the Prevention of Terrorism highlights that if the extradition of a person is requested to a country where he/she would face the death penalty or actual life imprisonment, there is no obligation of extradition unless the requesting Party gives assurance that such penalties will not be imposed. There have been several cases recently in the United Kingdom where a convicted person complains that his extradition to a country where he would probably face life imprisonment without the possibility of release would violate his rights under Article 3 of the Convention. In the case of *R (on the application of*

¹³⁰ *Ibid.*, § 18, 20, 23.

¹³¹ *Ibid.*, § 28.

¹³² *Ibid.*, § 28.

Wellington) (FC) v Secretary of State for the Home Department,¹³³ their Lordships were faced with the question whether extradition of a person accused of two counts of murder to a country where the person would likely face mandatory life sentence without the possibility of parole would violate Article 3 of the Convention. They agreed that the sentence in question would classify as a reducible one based on the definition given in the *Kafkaris*-case. The dispute between the Law Lords mostly concerned whether there could be a difference concerning the assessment of inhuman or degrading treatment depending on the country where the risk of inhuman or degrading treatment exists. In other words, if a treatment is considered as inhuman and degrading and thus violating Article 3 within the national dimension, could it nevertheless be argued that a higher threshold is required to establish a violation in the context of extradition? The Law Lords invoked well-established case-law of the European Court of Human Rights in order to answer the question. Thus, in *Soering v United Kingdom*, the Strasbourg Court established the responsibility of the extraditing state for the extradition of an accused if there are

substantial grounds for believing that he [the fugitive] would be in danger of being subjected to torture (...) [or] by a real risk of exposure to inhuman or degrading treatment or punishment (...).¹³⁴

Accordingly, once it is acknowledged that the treatment or punishment amounts to torture or was inhuman or degrading, the prohibition of extradition is absolute.

However, the Law Lords separated the issue of torture from inhuman or degrading treatment or punishment. They concluded that in case of torture, no differentiation can be made whether it would occur in national- or extradition context. Yet, as to the interpretation of inhuman or degrading treatment or punishment, they recalled the well-established case law of the Strasbourg Court, which points out that

¹³³ [2008] UKHL 72

¹³⁴ Application No. 14038/88, 7 July 1989 § 88.

(...) what amounts to “inhuman or degrading treatment or punishment” depends on all the circumstances of the case. (...) ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it **depends on all the circumstances of the case, such as the nature and context of the treatment or punishment**, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim [emphasis added].¹³⁵

The European Court of Human Rights found that one factor to consider was whether such a treatment would occur in an extradition-context. It reasoned that

(...) inherent in the whole of the Convention is a search for a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. As movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interest of all nations that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the State obliged to harbour the protected person but also tend to undermine the foundations of extradition. These considerations must also be included among the factors to be taken into account in the interpretation and application of the notions of inhuman and degrading treatment or punishment in extradition cases.¹³⁶

Accordingly, it could be argued that a treatment which would amount to inhuman or degrading treatment within a national setting could nevertheless comply with Article 3 in case of extradition. This “relativist approach” to inhuman or degrading treatment was adopted by *Lord Hoffmann*, joined by *Baroness Richmond* and *Lord Carswell*. They considered that it is the desirability of the extradition which must be weighted to determine whether Article 3 was violated.¹³⁷ Therefore, in case the perpetrator could be punished without being extradited to a country where he/she would likely face inhuman or degrading treatment, that solution should be adopted. However, if one would need to choose between extradition and leaving the criminal unpunished, a risk of inhuman or degrading treatment would not necessarily violate Article 3. *Lord Hoffmann* concluded that even if the sentence imposed by the requesting state

¹³⁵ *Ibid.*, § 100.

¹³⁶ *Ibid.*, § 89.

¹³⁷ *R (Wellington) v Secretary of State for the Home Department* - § 24-26.

would be an irreducible life sentence, it would not amount to inhuman or degrading treatment within the extradition context, provided that the sentence was not “*grossly disproportionate*” to the seriousness of the crime committed.¹³⁸

The minority - Lords *Brown* and *Scott* - rejected the relativist interpretation of inhuman and degrading treatment or punishment and suggested that the assessment of whether Article 3 was violated cannot depend on whether it was a domestic- or extradition context. *Milanovic* also found the majority’s conclusion “*troubling*”, considering that the prohibition of inhuman treatment should be universal.¹³⁹ I also believe that no difference can be made as to the different forms of ill-treatment in the extradition context. If a certain form of treatment is considered as inhuman or degrading, I find it hard to imagine how that could change simply because of the risk of its imposition being in another country. Therefore I agree with the absolutist approach presented by the minority in this case.

2. *Right to liberty and security*

Leaving behind the examination of inhuman and degrading treatment, I will now focus on the right to liberty, which is also affected due to an actual life imprisonment. It is a right which is guaranteed by various international instruments such as the International Covenant on Civil and Political Rights¹⁴⁰ or the European Convention on Human Rights.¹⁴¹ The duty to resocialise prisoners can be considered as a necessary accessory to the right to liberty. This requirement is formulated in several international texts and in criminal codes. Following its presentation I will look at the scope of the right to liberty in the light of the Hungarian Constitutional Court’s case law. Finally, two aspects of the right to liberty will be examined,

¹³⁸ *Ibid.*, § 35.

¹³⁹ *Milanovic* 2009, 251.

¹⁴⁰ Article 9.

¹⁴¹ Article 5.

namely the lawfulness of detention and the right to take proceedings in respect of detention, which are closely linked.

2.1 Resocialisation and reintegration

The states have a duty to orient the prisoner towards their resocialisation and reintegration into society. Article 40 of the UN Convention on the Rights of the Child clearly refers to the “*desirability of promoting the child’s reintegration (...) in society*”. Moreover, Article 10(3) of ICCPR also highlights that the main goal of the treatment of detainees is “*their reformation and social rehabilitation*”. Van Zyl Smit observed in his book that many constitutions have similar dispositions, and an enforceable right to rehabilitation exists in Spain and Italy.¹⁴² Even if no such express provision is laid down, a right to rehabilitation and reintegration may be inferred from the dispositions on the aim of punishment. For example, the Hungarian law decree on the Enforcement of Punishments and Measures clearly states that one of the aims of the enforcement of imprisonment is to promote the prisoner’s reintegration into society following his/her release.¹⁴³ Without the willingness to reform the prisoner and a constant effort to prepare him/her to a life outside prison, the person is degraded to being the subject of law-enforcement, a person who suffered a “*civil death*”.¹⁴⁴ The Council of Europe’s Recommendation No. 23 of 2003 asserts that the aim of long-term imprisonment and lifelong imprisonment is – among others – to strengthen their possibilities in order to be able to reintegrate into society. The question thus arises whether reform shall always be a necessary element of the punishment. In my opinion, there are certain criminals whose acts are so grave that the element of punishment in their sentence could last until their death.

¹⁴² Van Zyl Smit 2002, 13.

¹⁴³ Law decree No. 11 of 1979, section 19.

¹⁴⁴ Johnson and McGunigall-Smith, 2008, 329.

2.2 The scope of the right to liberty in Hungary

In Hungary, right to liberty is enshrined in section 55 § (1) of the Constitution. It is the Constitutional Court of Hungary that develops the meaning of each constitutional right and fills them with content through its decisions. Therefore one must look at the decisions brought by this body to assess compliance of actual life imprisonment with the Constitution. Right to liberty is a basic right whose limitation must meet certain requirements. First, the substance of such a right cannot be limited.¹⁴⁵ Moreover, limitation can only take place for the protection of another basic right or fundamental value and must be necessary and proportionate to the aim pursued.¹⁴⁶ However, it may be raised that an actual life imprisonment which excludes all possibility of release limits the substance of the right to liberty. While *Tóth* argues in his article¹⁴⁷ that the substance of this right is the right to human dignity and the prohibition of torture and inhuman or degrading treatment or punishment, *Juhász* believes that the substance of a right is one with which the right can still fulfill its main function.¹⁴⁸ According to the former interpretation, a life imprisonment without parole could still be considered as constitutional, while the latter explanation necessarily entails a violation of the substance of the right to liberty. I believe that if a person is deprived of all hope to be released, he/she is also deprived of his right to liberty.

2.3 Article 5(1) a – The lawfulness of detention

This article allows “*the lawful detention of a person after conviction by a competent court*”. While primarily the lawfulness of detention depends on whether the procedural and

¹⁴⁵ Section 8 § 2.

¹⁴⁶ 11/1992. (III. 5.) Decision of the Constitutional Court, ABH 1992, 77, 86-87.

¹⁴⁷ Tóth Gábor Attila, „A Személyi Szabadsághoz Való Jog az Alkotmányban,” *Fundamentum* 2 (2005): 8.

¹⁴⁸ Juhász Zoltán, „Jog a Reményhez,” *Fundamentum* 2 (2005): 88.

substantive rules have been observed, the purpose of Article 5 must also be respected, which is “*to protect the individual from arbitrariness*”.¹⁴⁹ Therefore, even if the national rules governing deprivation of liberty have been formally complied with, Article 5 (1) a) may be violated if the detention is arbitrary. What are the circumstances which could render a detention arbitrary?

Before having been struck out of its list of cases by the Grand Chamber, the Chamber in the *Léger-case*¹⁵⁰ had to decide whether the applicant’s continued detention of 41 years had been arbitrary. The *Van Droogenbroeck* judgment points out that

(...) in assessing the arbitrariness of a person’s detention, it must be ascertained whether there was a sufficient casual link with the initial conviction. (...) with the passage of time the link between his decisions not to release or to re-detain and the initial judgment gradually becomes less strong. The link might eventually be broken if a position were reached in which those decisions were based on grounds that had no connection with the objectives of the legislature and the court or on an assessment that was unreasonable in terms of those objectives. In those circumstances, a detention that was lawful at the outset would be transformed into a deprivation of liberty that was arbitrary and, hence, incompatible with Article 5.¹⁵¹

The Court, however, found that the “link” existed, given the gravity of the applicant’s crime, and that his continued detention was necessary due to his threat to society.

In sum, the nature and purpose of the detention must be examined in order to assess whether continued imprisonment is arbitrary. If the purpose is wholly punishment, then no problem arises. However, if detention is based on other purposes such as the protection of the society or the reform of the prisoner, then there may come a point when the continued detention becomes arbitrary in the absence of any assessment of the need for detention. The

¹⁴⁹ *Inter alia*, *Winterwerp v. the Netherlands*, Application No. 6301/73, 24 October 1979, § 39.

¹⁵⁰ *Léger v. France*, Application No. 19324/02, 11 April 2006 – referred to Grand Chamber

¹⁵¹ *Van Droogenbroeck v. Belgium*, Application No. 7906/77, 24 June 1982

protection from society is based on the assumption that the perpetrator poses a threat due to his/her dangerousness. However, as this feature is subject to change with the lapse of time, dangerousness must be assessed on a periodic basis. If no such review is granted, the detention may become arbitrary, since the grounds for detention are no longer consistent with its objectives, namely protection from society and rehabilitation.

In the United Kingdom, the tariff system makes it clear that the tariff period corresponds to the punishment-element of the sentence. Thus, a whole life tariff signifies that the punitive part of the sentence lasts until the death of the convicted person. Therefore, continued detention may be justified under Article 5 (1). But in other countries with actual life imprisonment, no such obvious distinction exists between the different elements of the punishment. Certainly there are such grave crimes that justify detention until death, but that does not apply to every case. Upon examination of the justification given by the Hungarian courts on the imposition of actual life sentences, as presented earlier, the most common reason was not the punishment of the perpetrator, but the protection of society. This raises serious doubts as to the lawfulness of the detention. The point when the detention becomes arbitrary depends on the facts of the individual case.

2.4 Article 5(4) – Right to take proceedings in respect of detention

This article provides a right to challenge the legality of the detention and is therefore closely linked to the guarantee under Article 5(1) a). In essence it can be considered as the *procedural aspect* of the lawfulness of detention, enabling a prisoner to challenge the lawfulness of his/her detention before a competent authority. While in Article 5 (1) a) the violation is in itself the unlawfulness of detention, Article 5 (4) is violated if the person

alleging the unlawfulness of detention cannot have his/her complaints reviewed by the court, irrespective of whether it is a well-founded claim or not.

When the national court establishes a fixed-term imprisonment that serves to punish the perpetrator, no further review of the lawfulness of his/her sentence is required, since the “*supervision required by Article 5(4) is incorporated in the decision*”.¹⁵² In its subsequent case law, the Strasbourg Court nevertheless found that if the detention is no longer based on the necessity for punishment, but on other reasons subject to change, regular review of the necessity of the imprisonment shall be provided. However, the problem with actual life imprisonment is that following conviction by the court, there prisoner has no right to challenge his/her lawfulness, irrespective of changes in circumstances. The same concern was raised by the Council of Europe’s Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (hereafter CPT) upon its visit to Hungary in 2007, pointing out that:

[a]s regards “actual lifers”, the CPT has serious reservations about the very concept according to which such prisoners, once they are sentenced, are considered once and for all to be a permanent threat to community and are deprived of any hope of being granted conditional release. (...) **CPT invites the Hungarian authorities to introduce a regular review of the threat to society posed by “actual lifers”, on the basis of an individual risk assessment, with a view to establishing whether they can serve the remainder of their sentence in the community and under what conditions and supervision measures.**¹⁵³

This recommendation is of particular relevance, given that most of the actual life sentences in Hungary were based on the perpetrator’s threat to society, which is a feature subject to change. The solution to this problem would be to abolish the possibility to exclude

¹⁵² *De Wilde, Ooms and Versyp v. Belgium*, Application no. 2832/66; 2835/66; 2899/66, judgment of 18 June 1971, Series A no. 12, pp. 40-41, § 76

¹⁵³ § 33 of the CPT Report 62/2007 in relation to its visit to Hungary in February 2007, as available at <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.htm>

release on parole, but to put the mandatory review of detention under more scrutiny and to tighten the requirements for conditional release.

A separate problem was raised by two judgments that were discussed earlier; *Léger v France* and *Kafkaris v Cyprus*. In both cases the problem did not concern complete lack of review, but the fact that the review was not made by a judicial body guaranteeing certain due process requirements, but by a political body. As it has been established by the Strasbourg Court, the decision concerning conditional release of lifers must meet certain due process requirements. The judgment brought by a political organ is insufficient to guarantee the detainees' right under Article 5 (4) of the Convention.¹⁵⁴ Although the full spectrum of guarantees afforded by Article 6 need not be met,¹⁵⁵ the body in charge of the review must be a judicial body that is independent and impartial, affords oral hearings and has the power to order the prisoner's release in case it concludes that the detention was unlawful. Judge *Bratza's* observation made in his concurring opinion to the *Kafkaris*-case is pertinent:

[T]he question whether conditional release should be granted in any individual case must, in my view, principally depend on an assessment of whether the term of imprisonment already served satisfies the necessary element of punishment for the particular offence and, if so, whether the life prisoner poses a continuing danger to society. As the *Stafford* judgment makes clear, the determination of both questions should in principle be in the hands of an independent body, following procedures containing the necessary safeguards, and not an executive authority.

As concerns the *Léger*-case, the applicant failed to complain about the fact that until 2001 the decision on his release on parole was made by the Minister of Justice. As *Jean-Paul Céré* rightly raised the question¹⁵⁶, it is rather interesting why Mr. *Léger* failed to invoke a

¹⁵⁴ See, *inter alia*, *T. and V. v. United Kingdom*, § 121, Application no. 24724/94, judgment of 16 December 1999

¹⁵⁵ See, *inter alia*, *Winterwerp v. the Netherlands*, Application No. 6301/73, 24 October 1979, § 60.

¹⁵⁶ Jean-Paul Céré, "Compatibilité d'une Détention de 41 Ans Avec les Articles 3 et 5 de la Conv. EDH," *Recueil Dalloz* 26 (2006): 1800.

violation of his rights in this respect, even though his conditional release between 1979 and 2001 was refused by a political body. Although the applicant in the *Kafkaris*-case did complain about the absence of a parole system, but it was lodged out of time. Judge *Bratza* pointed out in his concurring opinion that this issue might rather raise problems in the context of Article 5 (4) of the Convention, since there are no adequate safeguards as to such a procedure. As it was demonstrated in the first chapter, it is the judiciary which decides on early release in most Member States of the Council of Europe, therefore raising concerns only in a few countries.

CONCLUSION

Life imprisonment without the possibility of release is one of the ways to punish those persons who committed the worst of crimes. Only a few countries in Europe impose such a sentence, while other states provide for a hope to be conditionally released. The regulations on the matter are extremely diverse. On the one end are those countries that may exclude the possibility of release, while on the other are those countries where such a practice is considered as unconstitutional. Several countries do not even have life imprisonment, only fixed-term sentences. The denomination of life imprisonment as such creates confusion, as it is most often an imprisonment for an indeterminate period and not a sentence for the remainder of the person's life. Its duration depends on the earliest day of eligibility for parole and the decision of the body on early release. An example of a country with actual life imprisonment is Hungary, where the recent reform of the Criminal Code and constitutional challenges raised doubts as to its lawfulness. As for the international community's response to the gravest crimes committed, it can be established that the punishments are more and more lenient. While the Nuremberg Tribunal still imposed the death penalty, developments in the field of international human rights law prompted the mandatory review of every life sentence after 25 years.

The compliance of actual life imprisonment with the international human rights norms is not unquestioned. The two major concerns against such a punishment relate to the prohibition of inhuman or degrading treatment or punishment and the right to liberty. As to the first issue, it must be pointed out that every human being has an inalienable right to human dignity. Even the European Court of Human Rights acknowledged that an irreducible life sentence can in certain circumstances violate the Convention. However, it adopted a generous

approach and concluded that the possibility of pardon is sufficient to rule out any violation of Article 3. Even so, an irreducible life sentence may be problematic in many ways. It could occur that it is not proportionate to the gravity of the crime. Moreover, particular circumstances of a given case, such as the young age of the detainee, could also render actual life imprisonment inhuman or degrading. Upon changes in the circumstances due to lapse of time, continued detention may violate Article 3. Certain prison conditions might also pose problems for those who are detained for a long period. Finally, it must be pointed out that actual life imprisonment raises serious concerns in connection with the right to liberty, considering the fact that continued detention may become arbitrary and the detainee can not have recourse to a judicial body challenging the lawfulness of his/her detention. A feasible alternative to actual life imprisonment would be to allow release on parole, but only in certain well-defined circumstances, while putting the process of review under more scrutiny.

Annex No. 1.

Countries With Actual Life Imprisonment

Country	Most severe penalty	Earliest date of eligibility for parole	Who decides on conditional release?	Possibility of pardon or amnesty
Bulgaria	Life imprisonment * Always discretionary	If parole is not excluded, life imprisonment may be substituted with a minimum of 30 years in prison after 20 years * Exclusion of release on parole is always <i>discretionary</i> , decided by the judge	Judge decides * Behaviour in prison	Presidential pardon (section 98 § 11 of the Constitution, section 74 of the Criminal Code) * Parole on medical grounds by a special medical commission
Hungary	Life imprisonment – in case of 28 crimes * Always discretionary	If not excluded, then at a date set by the judge, but minimum 20 years, or 30 years if statute of limitations does not apply * Exclusion of conditional release is <i>mandatory</i> : if sentenced twice to life imprisonment (section 47/C § 2 of CC), otherwise <i>discretionary</i> (section 47/A § 1 of CC)	Executing judge decides, if refused, then mandatory review after 2 years, and then every year	Presidential pardon (section 30/A § 1 subsection k of the Constitution and sections 597-598 of the Code of Criminal Procedure)
Lithuania	Life imprisonment * Always discretionary * Possible for most serious crimes such as genocide, war crimes, murder, etc.	No release on parole exists (Section 77 § 3(2) of Criminal Code)	N/A	Presidential pardon after 20 years (Section 84 § 23 of the Constitution)
Russia	Life imprisonment (section 57 of the Criminal Code) * Always discretionary *	If not excluded, after 25 years (Section 79 § 5 of the Criminal Code) * <i>Mandatory</i> exclusion of release: if commits a new grave or especially grave crime while	Decided by judiciary upon the request of the convict or the administration of the penitentiary * Good behaviour, if	Presidential pardon (Section 89 c of the Constitution and Section 85 of the Criminal Code) * Regional pardoning commissions decide

	For especially grave crimes against life or public safety	serving life sentence	no necessity to serve more	on admissibility * Granted by presidential decree * Amnesty by the State Duma (Section 103 § 19 of the Constitution and Section 84 of the Criminal Code)
Slovakia	Life imprisonment (section 47 of the Criminal Code) * Mandatory, if re-offends in case of certain crimes, otherwise discretionary * May be imposed in case of about 40 crimes	If not excluded, then after 25 years (section 67 of the Criminal Code) * Exclusion of release is <i>mandatory</i> , if sentenced to life imprisonment twice, or if found guilty of certain crimes and sentenced to life imprisonment (section 47 § 2 of the Criminal Code) * Exclusion may also be decided by the judge (<i>discretionary</i> , section 34 § 8 of the Criminal Code)	judge	Presidential pardon (section 102 of the Constitution), countersigned by the Prime Minister * If conditional release is excluded, appeal is possible on points of law (section 371 of Criminal Procedure)
Turkey	Life imprisonment or aggravated life imprisonment (Section 47 of the Criminal Code) * Mandatory for most serious crimes	For aggravated life imprisonment: after 30/36 or even 40 years * For life imprisonment, after 24 years * No possibility of release if convicted to aggravated life imprisonment for certain crimes	court	Presidential pardon (Section 1046 of the Constitution) * In case of permanent illness, loss of mental health, disability
United Kingdom	Discretionary Life imprisonment * Mandatory for homicide/if convicted for a serious offence twice	After the expiry of the tariff period which is set by the Home Secretary * Exclusion of parole in case of whole life tariff	Home Secretary	Home Secretary may grant pardon or release on compassionate grounds at any moment (Section 30 of the Crime Sentences Act)

Annex No. 2.

Countries without life imprisonment

Country	Most severe penalty	Earliest date of eligibility for parole	Who decides on conditional release?	Possibility of pardon or commutation
Bosnia-Hercegovina	Long-term imprisonment, up to 45 years (Section 42 § 2 of the Criminal Code)	after 3/5th of the sentence is served (Section 42 § 7 of the Criminal Code)	Judiciary * Taken into consideration: behaviour, other elements that indicate that the purpose of the punishment is achieved	Amnesty (Section 122) or pardon (Section 123)
Croatia	Maximum 15 years (Article 53 of the Criminal Code) or 20 years if recidivist or 20-40 years of long-term imprisonment (<i>dugotrajni zatvor</i>)	After serving 2/3rd , exceptionally after ½ (Section 55 § 2 of the Criminal Code)	Judiciary * Takes into consideration: previous criminal record, behaviour during imprisonment, expected effect of release * Prisoner, director of prison, public prosecutor and the Center for Social Welfare is heard	Amnesty (Act on Amnesty, Official Gazette No. 31/90) * Pardon (Article 88 of the Criminal Code)
Norway	Imprisonment of max. 15 years (Section 6 of Criminal Code of 2005) * In especially severe circumstances it may be prolonged with further 6 years (Section 79 of new Criminal Code) * discretionary	After serving 2/3rd	judiciary	Royal pardon (Section 20 of the Constitution)
Portugal	No life imprisonment (Section 30 of the	Minimum ½ served, or 6 months (Section	Court (<i>Tribunal de execucao das penas</i> , Section	Presidential pardon once every years

	Constitution) * Maximum of 25 years of imprisonment (Section 41 of the Criminal Code) for aggravated murder	61 § 1 a) of the Criminal Code) * Automatic release after 5/6th (Section 61 § 4 of the Criminal Code)	485 of the Code of Criminal Procedure) * Considered: behaviour, evolution of personality, case, background	* Request for habeas corpus to Supreme Court in case of illegal imprisonment
--	---	--	--	---

Annex No. 3.

Life Imprisonment With Release on Parole

Country	Most severe penalty	Earliest date of eligibility for parole	Who decides on conditional release?	Possibility of pardon or commutation
Austria	Life imprisonment (Section 18 of the Criminal Code) * Discretionary for certain crimes * Mandatory for genocide (Section 321 of the Criminal Code)	After 15 years (Section 46 § 6 of the Criminal Code)	judiciary * if presumed that the person will not reoffend	Presidential pardon (Section 65 § 2 c of the Constitution)
Belgium	Life imprisonment (Section 8 of the Criminal Code) * Always discretionary	After 10 years or 16 years , if already committed for more than one crime	Multidisciplinary committee consisting of magistrates and prison directors	Royal pardon (section 110 of the Constitution)
Cyprus	Life imprisonment for the most serious crimes such as genocide or treason * Mandatory	At any moment	President (Act No. 12 (1)/97, § 14)	Presidential pardon upon recommendation of the Attorney General (Section 53 § 4 of the Constitution) * remittal or commutation
Czech Republic	Life imprisonment * Always discretionary * Only for the most serious crimes such as murder, treason, genocide, but also for certain other crimes, if recidivist	After 20 years	Court * Considered: good behaviour, expectation that he/she will live an orderly life, whether execution started on time, attitude towards treatment, whether compensated the harm, etc.	Presidential pardon (Section 62 § g) of the Constitution)
Germany	Life imprisonment (Section 38 § 1 of the Criminal Code)	After 15 years (section 57 a) of the Criminal Code)	Judiciary * Taken into consideration:	Presidential pardon (Section 60 § 3 of the Basic Law)

	<p>Code) *</p> <p>Mandatory for most serious crimes such as murder or treason *</p> <p>Otherwise discretionary</p>		<p>dangerousness, society's interest, personality, circumstances of the crime, behaviour in prison, release's effect on the prisoner, etc.</p>	
Italy	<p>Life imprisonment (<i>ergastolo</i>, Section 17 and 22 of the Criminal Code) *</p> <p>Mandatory for the most serious crimes such as genocide or aggravated murder *</p> <p>Otherwise discretionary</p>	<p>After 26 years (Section 176 of the Criminal Code) *</p> <p><i>Liberazione anticipata</i>: 45 days of reduction per semester, if participates in rehabilitation programs</p>	<p>Judiciary (<i>magistratura di sorveglianza</i>, Section 682 of the Code of Criminal Procedure) *</p> <p>If damages are paid</p>	<p>Presidential pardon (Section 87 of the Constitution and Section 681 of the Criminal Procedure) *</p> <p>Amnesty granted by the Parliament (Section 174 of the Criminal Code)</p>
Romania	<p>Life imprisonment (Section 53 § 1a) of the Criminal Code) *</p> <p>Mandatory for genocide (Section 357 of the Criminal Code) *</p> <p>Otherwise discretionary</p>	<p>After 20 years (Section 55 § 1 of the Criminal Code) *</p> <p>After 15 years for women over 55 and men over 60</p>	<p>Court decides following a report of the penitentiary commission</p>	<p>Collective pardon or pardon (Act No. 546 of 2002 on Grant of Pardon)</p>
Sweden	<p>Life imprisonment (Chapter 26, section 1 of the Criminal Code) *</p> <p>discretionary</p>	<p>Possibility to apply for conversion to a fixed period after 10 years (Act on Conversion of Life Imprisonment, No. 45 of 2006, section 2 and 3) *</p> <p>Parole after serving 2/3rd of the period *</p> <p>No release on parole (only conversion) if</p>	<p>Decided by Örebro District Court, may be appealed to Göta Court of Appeal and finally to the Supreme Court</p>	<p>Government may remit or reduce the sentence (Governmental decree No. 152 of 1974, Chapter 11 section 13)</p>

		sentenced to life imprisonment		
Ukraine	<p>Life imprisonment (section 51 of Criminal Code)</p> <p>*</p> <p>Discretionary, only for especially grave offences (section 64 § 1), if the court does not find it possible to impose a fixed-term imprisonment</p> <p>*</p> <p>Examples to especially grave offences: qualified murder (section 115 § 2 of CC), terrorist act causing death (section 258 § 3 of CC)</p>	<p>Benefit from parole only after getting the pardon, if 3/4th served (Section 81 of the Criminal Code)</p>	<p>Court</p> <p>*</p> <p>Taken into consideration: personality, behaviour in prison, attitude towards work</p> <p>*</p> <p>Opinion of the prison director, NGOs shall be taken into account,</p>	<p>Presidential pardon, which substitutes life imprisonment with a term of minimum 25 years (Section 87 of the Criminal Code)</p> <p>*</p> <p>Application for pardon after 20 years (Regulation on Applying for Pardon, section 6)</p> <p>*</p> <p>Commission on pardon</p>

BIBLIOGRAPHY

Books

- Dutertre, Gilles. *Key Case-law Extracts. European Court of Human Rights*. Council of Europe: Council of Europe Publishing, 2003.
- Murdoch, Jim. *The Treatment of Prisoners: European Standards*. Council of Europe: Council of Europe Publishing, 2006
- Ovey, Clare, and Robin White. *The European Convention on Human Rights*. Oxford: Oxford University Press, 2006
- Sheleff, Leon Shaskolsky. *Ultimate Penalties – Capital Punishment, Life Imprisonment, Physical Torture*. Columbus: The Ohio State University Press, 1987.
- Tallack, William. *Penological and Preventive Principles*. London: Wertheimer, Lea and Co., 1888.
- Van Zyl Smit, Dirk. *Taking Life Imprisonment Seriously*. The Hague, London, New York: Kluwer Law International, 2002

International instruments

- Convention for the Protection of Human Rights and Fundamental Freedoms
- Council of Europe Convention on the Prevention of Terrorism
- Council of Europe Recommendation No. R (87) 3 of the Committee of Ministers to Member States on the European Prison Rules
- Council of Europe Recommendation No. 22 of 1999 Concerning Prison Overcrowding and Prison Population Inflation
- International Covenant on Civil and Political Rights
- Recommendation Rec (2003)23 of the Committee of Ministers to Member States on the Management by Prison Administrations of Life Sentence and Other Long-term Prisoners
- Rome Statute on the International Criminal Court
- Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda
- Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia
- Statute of the International Criminal Tribunal for Rwanda
- Statute of the International Tribunal for the Former Yugoslavia
- United Nations Convention on the Rights of the Child
- United Nations Universal Declaration of Human Rights
- United Nations Security Council Resolution 827 (2003)
- United Nations Standard Minimum Rules for the Treatment of Prisoners

National legislation

- Act No. IV of 1978 on the Criminal Code (Hungary)
- Act No. XX of 1949 on the Constitution of the Republic of Hungary
- Act No. LXXX of 2009 on the Modification of the Criminal Code (Hungary)
- Act No. XVII. of 1993 (Hungary)
- Act No. LXXXVII. of 1998 (Hungary)
- Act No. XIX. of 1998 on Criminal Procedure (Hungary)

Act No. 5275 of 13 January 2007 on Penal Enforcement Law (Turkey)
 Basic Law for the Federal Republic of Germany
 Crime (Sentences) Act 1997 (United Kingdom)
 Criminal Justice Act 2003 (United Kingdom)
 Law Decree No. 11 of 1979 on the Enforcement of Punishments and Measures (Hungary)

Court judgments

23/1990 (X. 31.) - Hungarian Constitutional Court
 11/1992. (III. 5.) - Hungarian Constitutional Court
 Bf. V. 93/2000 - Supreme Court of Hungary

De Wilde, Ooms and Versyp v. Belgium Application no. Application nos. 2832/66; 2835/66; 2899/66, 18 June 1971
Edwards v. the United Kingdom, Application No. 32650/07, lodged on 1 August 2007
Einhorn v. France, Admissibility decision, Application No. 71555/01, ECHR 2001-XI
Ireland v the United Kingdom, Application No. 5310/71, 18 January 1978
Kafkaris v. Cyprus, Application no. 21906/04, ECHR, 12 February 2008
Kudła v. Poland, [GC] Application no. 30210/96, ECHR 2000-XI
Labita v. Italy [GC], Application no. 26772/95, § 120, ECHR 2000-IV
Léger v. France, Application no. 19324/02, ECHR, 11 April 2006
Moldovan and others v. Romania, Judgment No. 2 (Appl. Nos. 41138/98 and 64320/01), Judgment of 12 July 2005
Sawoniuk v. the United Kingdom, Appl. No. 63716/00, ECHR, 29 May 2001
Soering v United Kingdom, Application No. 14038/88, ECHR, 7 July 1989
T. and V. v. United Kingdom, Application no. 24724/94, ECHR, 16 December 1999
Van Droogenbroeck v. Belgium, Application No. 7906/77, ECHR, 24 June 1982
Winterwerp v. the Netherlands, Application No. 6301/73, ECHR, 24 October 1979

R v Bieber [2008] EWCA Crim 1601
R v Secretary of State for the Home Department, ex parte Hindley, 2001, 1 AC 410, UKHL
R (on the application of Wellington)(FC) v Secretary of State for the Home Department (Respondent) [2007] EWHC 1109, 18 May 2007
R (on the application of Wellington)(FC) v Secretary of State for the Home Department (Respondent), UKHL 72, 10 December 2008

BVerfGE Bd. 45 187. - Federal Constitutional Court of Germany
State v Tcoeib, (1997) 1 LRC 90 – Namibian High Court

Harmelin v. Michigan, 501 U.S. 957 (1991)
Lockyer v. Andrade, 538 U.S. 63 (2003)
Naovarath v. State, 779 P.2d (1989)
Roper v. Simmons, 543 U.S. 551 (2005)
Solem v. Helm, 463 U.S. 277 (1983)
State v. Massey, 803 P.2d (1990)
Weems v. United States, 217 U.S. 349, 367 (1910)
Workman v. Kentucky, 429 S.W.2d 374, 378 (1968)

Articles

- Céré, Jean-Paul. "Compatibilité d'une Détention de 41 Ans Avec les Articles 3 et 5 de la Conv. EDH." *Recueil Dalloz* 26 (2006): 1800-1802.
- Goldberg, Arthur, and Alan Dershowitz. "Declaring the Death Penalty Unconstitutional." *Harvard Law Review* 83 (1970): 1773-1819.
- Grant, Evadné. „Dignity and Equality." *Human Rights Law Review* 7 (2007): 299-329.
- Horton, K. C. „Life Imprisonment and Pardons in the German Federal Republic." *The International and Comparative Law Quarterly* 29 (1980): 530-534.
- Johnson, Robert, and Sandra McGunigall-Smith. „Life Without Parole, America's Other Death Penalty: Notes on Life Under Sentence of Death by Incarceration." *The Prison Journal* 88 (2008): 328-346.
- Juhász, Zoltán. „Jog a Reményhez." *Fundamentum* 2 (2005): 88-91.
- Milanovic, Marko. „Extradition and Life Imprisonment." *Cambridge Law Journal* 68 (2009): 248-251.
- Renucci, Jean-François. „Les Peines Perpétuelles et la Convention EDH: une Question de Principe Non Tranchée Par la Grande Chambre." *Recueil Dalloz* 21 (2009): 1453-1454.
- Tóth, Gábor Attila. „A Személyi Szabadsághoz Való Jog az Alkotmányban." *Fundamentum* 2 (2005): 5-34.

Reports

- Council of Europe, CPT. Report to the Hungarian Government on the Visit to Hungary Carried Out by the CPT from 30 January to 1 February 2007, 28 July 2007
- General Report on the Treatment of Long-Term Prisoners, Sub-Committee No. XXV of the European Committee on Crime Problems, 1975
- "No Exit. The Expanding Use of Life Sentences in America", *The Sentencing Project*, Ashley Nellis and Ryan S. King, July 2009

Papers presented at a conference

- Kiszely, Pál and Robert Volford. "Aspects of Carrying out an Actual Life Sentence in Light of the Operation of the Szeged Special Regime Unit." Paper presented at a professional roundtable meeting on actual life imprisonment organized by the Hungarian Helsinki Committee, Budapest, February 9-10, 2009.

Websites

- <http://www.mtv.hu/magazin/cikk.php?id=21843&offset=3>
- <http://www.epa.oszk.hu/00800/00804/00111/7401.html>
- <http://origo.hu/itthon/20040713eltorolnek.html>
- http://helsinki.webdialog.hu/dokumentum/MHB_ABinditvany_tesz.pdf - Constitutional Complaint of the Hungarian Helsinki Committee

http://www.keh.hu/kegyelmi_eljaras.html - Official website of the Office of the President of the Republic
<http://www.icty.org/action/cases/4> - Official website of the International Criminal Tribunal for the Former Yugoslavia
<http://www.icttr.org/default.htm> - Official website of the International Criminal Tribunal for Rwanda
<http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.pdf> - Council of Europe, CPT's Report on its Visit to Hungary, February 2007.
http://www.policyalmanac.org/crime/archive/life_imprisonment.shtml - Nancy Walsh, "Life in Prison Without Possibility of Release", Almanac of Policy Issues
<http://www.eji.org/eji/node/298> - California Appeal Court Declares Life Without Parole Sentence Unconstitutional for 14-year-old Antonio Nunez
http://www.president.lt/en/activities/presidential_clemency.html - Official Website of Lithuania's President of the Republic
<http://www.mno.hu/portal/393742> - Article in a Hungarian National Online Newspaper on the Planned Reform of the Criminal Code, 25 January 2007
http://www.kisalfold.hu/hirek/bortont_epitettek_a_csillagban/109539/ - Article in a Hungarian Regional Online Newspaper on the Persons Sentenced to Actual Life Imprisonment, 28 October 2005