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LIFE SENTENCE AND THE RIGHT TO LIFE**

In modern criminal legislation, life imprisonment is, after the death penalty, the most severe sanction imposed on persons for the most serious crimes. In the legislation of many countries, it was introduced precisely as a “humane” substitute for the death penalty, because after it, it theoretically assumes the most effective means of special prevention, i.e. preventing a convicted person from repeating criminal acts. On the other hand, many legislations have introduced options that allow convicts to be released, most often in the form of parole, in addition to life imprisonment. In the second half of the 20th century, life imprisonment in many countries, similar to the death penalty, came under the attack of critics who consider it “inhumane” and ineffective, given that life imprisonment by the imposition of that sentence is considered to be permanently expelled from society, i.e. they lose any interest in rehabilitation. In recent decades, international standards in the field of prisoner protection have insisted on creating conditions under which prisoners have access to human rights during the process of execution of the sentence, especially by meeting the requirements for health care of prisoners serving life imprisonment. Those sentenced to life imprisonment have needs and interests as a natural entity, because they are human beings and enjoy natural and objective rights, and the state has the responsibility to ensure such rights, regardless of the extent to which they committed the crime.

Keywords: *life imprisonment, human rights of convicts, international standards, penal legislation*

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1. Introduction

The penalty of deprivation of liberty was introduced into the criminal legislation under the influence of the teachings of the classical school, which advocated the replacement of the death penalty as an inhumane punishment (Igrački, 2020: 17). Carried by the idea of sociological-penological humanism, many countries of the world abolished the death penalty, after which the question remained open, how the state can protect society from the most serious crimes. The answer to this question for the majority of modern criminal legislation was the introduction of life imprisonment (Petrović, Jovašević, 2006: 45). The global position is to abolish and limit the death penalty, and thus in many countries in the world as well as in Europe, life imprisonment has been introduced as the final punishment for the most serious criminals. In Europe, a different criminal policy is being introduced, which is a cornerstone, and emphasis is placed on the absolute prohibition of inhuman and degrading treatment (Jobard, 2017: 12). Prison institutions have a great social responsibility for realizing the purpose and goals of punishing criminals, i.e. the effective execution of pronounced criminal sanctions and crime prevention measures (Igrački, 2019: 395-396).

The situation in the prison system, generally speaking, is very complex: prisons are overcrowded to the limit of endurance, the structure of prisoners is increasingly complex both in the criminological and psychological spheres, the number of drug addicts is increasing, the financial position of both prisons and employees is poor, inadequate personnel potential, unmotivated employees, etc. (Igrački, 2020: 128). The tightening of the penal policy and the application of the repressive concept does not give the expected results in the prevention of crime, on the contrary, crime is increasingly present in the most diverse and brutal forms of manifestation, and the prison population has grown and exceeds 10 million.

The tendency to abolish the death penalty in the second half of the 20th century influenced the increase in the use of life imprisonment. Today, according to available data, about half a million people in the world are serving a life sentence. Life imprisonment is imposed in 183 out of 216 countries and territories, and between 2004 and 2015 there was an increase in the imposition of these sentences by about 84%. Life imprisonment, with the exception of countries where the death penalty is applied, is imposed as the maximum sentence for perpetrators

of the most serious crimes. In different countries, life imprisonment is imposed in different shades: with or without the possibility of parole, depending on the gravity of the crime committed and the social danger of the crime committed, the minimum sentence served, etc. (Igrački, 2021: 264-265). The sentence of deprivation of liberty is imposed for different periods of time, depending on the gravity of the committed criminal act and the degree of social danger. For the most serious crimes and the most dangerous perpetrators of those crimes, all modern criminal legislation provides for: 1) long-term imprisonment (thirty, forty or more years) and 2) life (long-term) imprisonment (Igrački, 2021).

Imposing a life sentence is difficult to reconcile with human dignity, the basic right to life and the right to live without suffering, on the one hand, and on the other hand, the dilemma arises as to how society should respond to inappropriate crimes committed by an individual or a group of people in order to protect the right to the life of the victim and her dignity and integrity. Unfortunately, in reality there are such individuals who are ready to commit incomprehensible crimes against others in a cruel, inhuman and humiliating manner towards the victim. Today, in modern societies, three main goals of punishment stand out: protection of society from criminals, resocialization of criminals and prevention of criminal behavior. Punishment is a consequence of a transgression and a warning to an individual to change his behavior, value system, attitude towards social values. Resocialization is a concept that finds means and methods in order to change the value system and attitude towards social values in criminals. In order to achieve resocialization, it is necessary to individualize the prison sentence, that is, to apply individual prison sentence execution programs, which are implemented in a professional, legal and humane manner with respect for the human rights and dignity of prisoners.

Consequently, international legal standards have strongly developed to ensure that prisoners have access to human rights during the execution process, as well as meeting health care requirements. The CPT¹ briefly addressed the issue of prisoners sentenced to life imprisonment and other prisoners sentenced to long prison terms. More precisely, he expressed his concern that such prisoners are

¹ CPT, 2016. Situation of Life-Sentenced Prisoners. CPT/Inf(2016) 10-par. Extract from the 25th General Report of CPT, from 16 April 2016, <https://www.coe.int/en/web/cpt/life-sentenced-prisoners>

often not provided with appropriate material conditions, activities and human contact, as well as that they are often exposed to special restrictions that can probably increase the harmful effects of their long stay in prison. As McCorkle states, many prisoners believe that unless a prisoner can credibly project an image that conveys the potential for violence, he is likely to be dominated and exploited during his prison term (McCorkle, 1992: 161). Adjustment to prison is almost always difficult, and behaviors may be dysfunctional during and after adjustment to prison. The psychological effects of imprisonment vary from individual to individual, are often reversible, and the effects that remain are atypical of patterns of life.

The abandonment of rehabilitation also led to the erosion of modest protective norms against cruelty to prisoners. Prison staff soon became far less inclined to deal with prison riots, tensions between prisoner groups and factions, and disciplinary infractions in general, through ameliorative techniques aimed at the root causes of conflict and designed to reduce it. The rapid influx of new prisoners, severe shortages of staff and other resources, as well as the acceptance of an overtly punitive approach to correctional institutions led to the “dequalification” of prison staff who often resorted to extreme forms of prison discipline (such as solitary confinement) that had particularly destructive effects on prisoners and suppressed conflicts before resolving them. The result is increased tensions and higher levels of fear and danger.

Although in recent years more attention has been devoted to the emotional, psychological and physical well-being of prisoners, a prison sentence still means that the offender is in prison, sentenced to a life isolated from the rest of society. Prisoners are an isolated minority subject to oppression and discrimination, not only from “the outside”, but also from the strict rules and values of both the authorities and the prison structure and their own codes of silence and loyalty.

2. Life imprisonment in the function of crime prevention

Historically, life imprisonment was equated with the death penalty, and over time it became an alternative punishment for perpetrators of the most serious crimes. The purpose of this substitution, according to the medieval understanding, was not to reduce the sentence of the convicted person, because for perpetrators of criminal acts, life imprisonment with a combination of hard labor and isolation in solitary confinement was considered a less favorable alternative than death itself. There was an argument to retain the death penalty, precisely because life imprisonment with hard labor was a severe punishment that caused more suffering, and was harsher than the death penalty for a convicted person.

In the 1990s, after the ratification of Protocol 6 to the European Convention on Human Rights, which abolished the death penalty, the concept of life imprisonment was adopted. The last execution in a member state of the Council of Europe was carried out in 1997. The death penalty in Serbia was applied from the birth of the modern state in 1804 until 2002, when (February 26) it was abolished by law. The last execution, by firing squad, was carried out on February 14, 1992, and the last death sentences were handed down in 2003. Serbia is bound by the following international conventions that prohibit the death penalty: Second Optional Protocol to the International Covenant on Civil and Political Rights (September 6, 2003) and Protocols no. 6 and 13 of the European Convention on Human Rights (March 3, 2004). According to Art. 24 of the current Constitution (2006). The Constitution of the Federal Republic of Yugoslavia (which consisted only of Serbia and Montenegro) of April 26, 1992 abolished the death penalty for crimes prescribed by federal laws (genocide, war crimes, political and military crimes, etc.), but the federal units retained the right to prescribe the death penalty for acts within their jurisdiction (murder and robbery). Since 2013, Europe has been a legal zone where there is no death penalty (with the exception of Belarus, as a moratorium has been introduced in the Russian Federation).

With the acceptance of the protocol of the European Commission, the death penalty was abolished in the area of the Council of Europe, and the member states began to prescribe the sentence of life imprisonment. Today, it is foreseen in the legislation of all member states of the Council of Europe except Portugal

(Maculan, Ronco, Vianello, 2013). Hence the importance of Recommendation SE (2003)23² on the behavior of the prison administration with regard to life sentences and other prison sentences (Rec (2003)23). The recommendation has three general goals: 1) to ensure the security of prison stay for convicts, employees and visitors, 2) to prevent the harmful consequences of long-term or lifelong imprisonment and 3) to increase and improve the possibility of successful inclusion into the society of those sentenced to long-term or life sentences. The prohibition of torture and inhuman or degrading treatment or punishment undoubtedly derives from all major international human rights instruments. Unlike the death penalty, which is undesirable and has already been abolished in the member states of the Council of Europe and the European Union, life imprisonment.

Based on par. 4 a Recommendations of the SE on conditional release from 2003 (Rec (2003) 22³ on conditional release) stipulates the general principle that, in order to reduce the harmful consequences of deprivation of liberty for the convicted and to enable the progress of the convicted in the treatment, provided that safety is ensured community, the law should provide for the availability of parole for all prisoners, including those sentenced to life imprisonment.

In the 1990s, a prison term of 20 to 35 years was established as a comprehensive minimum for all commuted sentences and new life sentences, without considering individual factors until the end of this period. In some countries, solutions have not been found for prisoners sentenced to life imprisonment tailored to their individual circumstances. All convicted prisoners represented a potential danger, which is why their constant strict control was necessary. After 20 to 25 years, as some prisoners begin to approach the time when they will be able to apply for parole, it is believed that little has been done to give such prisoners

² Rec(2003)23. Recommendation of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, adopted by the Committee of Ministers on 9 October 2003 at the 855th meeting of the Ministers' Deputies.

Dostupno na:

<https://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282003%29+23+on+the+management+of+life+sentence+and+other+long+term+prisoners.pdf/bb16b837-7a88-4b12-b9e8-803c734a6117>.

³ Rec(2003)22. Recommendation of the Committee of Ministers to member states on conditional release (parole) (Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies) <https://rm.coe.int/16800ccb5d>.

realistic hope of reintegration into the community. Long periods of negative treatment in prison, which severely limited the right to maintain relationships with family and friends, as well as the overall lack of release preparation or reintegration planning are likely to seriously reduce the opportunities for prisoners to function in the community. The individualization of the execution of the sentence must enable the progressive progress of the convicted in the execution in order to prepare for life in freedom and to be included in society. The condition is, the prognosis that he does not pose a danger to society and that he will not commit criminal acts (par. 10). Also, in par. 16 Rec(2003)3 emphasizes that risk assessments, needs and opportunities of convicted persons should be periodically corrected in order to achieve the purpose of punishment, because the danger of the convicted person and his criminogenic needs are not constant characteristics. Teaching convicts socially acceptable behavior, through the methods of studying the personality of convicted persons and classification of persons, aims to build and create social responsibility in convicted persons in order to reintegrate them into society as its useful member (Mladenović-Kupčević, 1972: 133-145)

In Europe, the countries that abolished life imprisonment were Spain, Serbia, Croatia, Bosnia, Portugal; of which only Portugal stipulates that the maximum sentence is 25 years, the other countries are 40 years; in Austria, life imprisonment means that the prisoner must be imprisoned until he or she dies. However, essentially around 15 years after conviction, a person can be released after posting bail and undertaking not to continue to break the law. In Belgium, life sentences are automatically commuted to 30 years, and after a convict has served about a third of that time, he can be considered for release; In Norway, life imprisonment is limited to 21 years. In fact, after serving two-thirds of the sentence, I can be pardoned. In Africa, the Republic of Congo is, also, abolished the sentence of life imprisonment and the maximum limit of the sentence is up to 30 years of imprisonment; In South and Central America, Honduras, Nicaragua, El Salvador, Costa Rica, Colombia and Venezuela have abolished life sentences, and the maximum prison sentence in Honduras is 40 years, while in Costa Rica it is 50 years, and in Colombia it is 60 years. Most countries with life imprisonment do not impose this type of sentence on juvenile offenders. For those sentenced to life imprisonment, the sentence represents a real challenge, especially in the psychological sense. Research conducted by Crewe, Hulley and Wright

(2019: 1-2)⁴ comparing young people sentenced to short and long sentences shows that those sentenced to shorter sentences should be helped the most, especially if they are in prison for the first time, because they are in a state of shock for the first time. years, while with a longer stay in prison they somehow mature as individuals, make peace with fate, get used to life in prison and search for the meaning of life.

Prisons are places that are a unique environment, but within the framework of ordinary human experience, therefore its effects are as varied as the effects of any major life change on different groups of people. Some prisoners sink into depression and hopelessness, while others feel comfortable, contented or even happy, although most fall somewhere in between, managing from day to day and minute to minute, and surviving intact more or less.

It should be noted that a number of member states of the Council of Europe do not have a life sentence in their Constitution. Instead, for the most serious crimes, they have defined long sentences that usually range from 20 to 40 years. Based on a sample from 22 countries in relation to which relevant data is available for a longer period of time, the number of prisoners sentenced to life imprisonment increased by 66%⁵ from 2004 to 2014. According to the report,⁶ in some countries prisoners sentenced to life imprisonment were locked in their cells (alone or in pairs) 23 hours a day, they were not allowed to come into contact with others, even with prisoners sentenced to life imprisonment from other cells (including during outdoor exercise), they were not allowed to work outside their cell and were not offered any purposeful activities. Also, in several countries, prisoners sentenced to life imprisonment were systematically handcuffed and/or strip-searched whenever they left their cells. In some institutions, the mentioned prisoners were additionally accompanied by two prison officers with a dog during any movement outside the cells. Since 2000, the number of people sentenced to life imprisonment has almost doubled. Currently, it is estimated that, in the world,

⁴ The survey included 313 respondents, 294 men, 19 women with a total response rate of 69% and 147 qualitative interviews were conducted (126 men and 21 women), along with field work undertaken during 2013-2015.

⁵ Situation of prisoners sentenced to life imprisonment Extract from the 25th General Report, published in 2016, <https://rm.coe.int/16808ef55c>

⁶ Ibid.

around 536,000 convicts have been sentenced to life imprisonment.⁷ There are 162,000 in the United States alone convicts serving life imprisonment.⁸ For every 100,000 inhabitants, 50 convicts were sentenced to life imprisonment, including a large number of minors. There are known cases where several life sentences are given for multiple murders, which means that getting out of prison “in this life” is not possible. In America, in the period from 1992 to 2016, the number of life sentences imposed increased by 328%. It is characteristic for America that life imprisonment is also imposed on minors and that there are currently around 2,300 persons who have been sentenced to life imprisonment as minors. In particular, the number of life sentences imposed in South Africa increased enormously by as much as 818%. There are 1,831 people⁹ (1,720 men and 111 women) serving life sentences in Germany, and this sentence, as in most countries, has assumed the role of the death penalty.

An empirical study of the consequences of long-term incarceration conducted in Canada (John Howard Society of Alberta, 1999: 16) shows that convicts who have been in prison for a long time have developed some way of coping with the experience, while under the stress of being sentenced to long terms, newly accepted for the execution of the sentence. It depends on the structure of the personality whether they will leave the prison rehabilitated, become permanently unable to live independently or angry with society and eager for revenge (John Howard Society of Alberta, 1999: 15). Research data indicate that, at the end of 2010, before this study began, there were over 2,300 prisoners serving an indeterminate sentence of at least 15 years, and in the previous decade, the number of offenders with a sentence (i.e. minimum term) of 15 years or more increased by 240%.¹⁰ Between 2003-2012, the average life sentence for murder rose from 12.5

⁷ This number also includes convicts who have multiple life sentences and very high sentences that, realistically, do not allow them to get out of prison.

⁸ <https://qz.com/974658/life-prison-sentences-are-far-more-common-in-the-us-than-anywhere-else/>

⁹ According to data from March 2017

¹⁰ Information obtained from Ministry of Justice, by Susannah Hulley, Freedom of Information request FOI/68152, December 2010.

years to 21.1 years,¹¹ in large part due to changes in sentencing frameworks resulting from the Criminal Justice Act 2003.¹² Many of these long sentences are handed down to young people: at the end of 2010, for example, 319 of the 2,300 prisoners serving prison terms sentenced to at least 15 years were between the ages of eighteen and twenty.¹³ More recent data shows that at the end of December 2018, there were 9,572 prisoners, including 3,624 with life sentences of 10-20 years, and 1,862 with sentences of more than twenty years (including life sentences).¹⁴

In Canada, life imprisonment is imposed for multiple forms of murder, high treason, piracy, hijacking an aircraft, endangering an aircraft or airport, taking control of a ship by force, or platform, illegal handling of explosive and radioactive substances that lead to serious consequences, various terrorist activities, and other criminal acts. Life imprisonment exists in several European countries. The Criminal Code of the Russian Federation stipulates that for an attack on the life of a statesman or public figure, imprisonment for up to 20 years, life imprisonment, or the death penalty can be imposed. The French Penal Code prescribes this punishment for several crimes against international law, special forms of murder, torture and barbarism, serious forms of rape, drug trafficking, hijacking of an aircraft, ship or other means of mass transportation of people, blackmail committed by an organized group and other serious criminal acts. As a rule, life imprisonment is prescribed as the only punishment, without the application of secondary punishments, the imposition of other obligations on the convicted person and without a special regime of execution. There are legislations that represent an exception in this sense as well. Thus, the Criminal Code of the Republic of Turkey from 2016 prescribes two types of this punishment. The first is the

¹¹Information obtained from Ministry of Justice by Jonathan Bild, Faculty of Law, University of Cambridge: Freedom of Information request FOI/89346.

¹² The Criminal Justice Act 2003 introduced a statutory minimum tariff of 15 years for murder for all cases where the date of offence is on or after 18 Dec 2003.

¹³ Information obtained from Ministry of Justice, by Susannah Hulley: Freedom of Information request FOI/68520/10, January 2011.

¹⁴ Ministry of Justice (2019) Offender management statistics quarterly: July to September 2018. Ministry of Justice.

<https://www.gov.uk/government/statistics/offender-management-statisticsquarterly-july-to-september-2018>

“classic” sentence of life imprisonment, which lasts until the biological death of the condemned. The second is called a severe sentence of life imprisonment, it also lasts until the biological death of the convicted, but is carried out under strict measures of the security regime, which are defined by law and other regulations. This means that he cannot be pardoned or amnestied, he serves his sentence in solitary confinement, and the right to visit and communicate is reduced to a minimum. No species is as destructive as human aggression and violence, which is present in all stages of the development of human civilization, and there is a constant social activity to reduce this human aggression and violence, both towards others and towards oneself (Igrački, 2019: 147).

Amendments to the Criminal Code of the Republic of Serbia (CC RS, 2005) in 2019 changed the existing punishment system by introducing life imprisonment instead of 30 to 40 years in prison. Not only were the changes made ad hoc, but the proposal of the commission for the drafting of the law was corrected by amendments in the adoption process in such a way that the right to parole was excluded for those sentenced to life imprisonment for aggravated murder and the most serious crimes of rape, assault on with a weak face, they cheat with the child and cheat by abusing their position. However, if someone is sentenced to life imprisonment for the crime of genocide or for killing people as a terrorist, he could be released on parole after 27 years if he meets other legal requirements. Certainty of life imprisonment should be ensured by the unconstitutional provision 1 of Art. 108 of the Criminal Code of RS, which stipulates that criminal prosecution and execution of the sentence shall not become statute-barred for all criminal offenses for which the penalty of life imprisonment is prescribed. Against the introduction of the sentence of life imprisonment in the criminal justice system of the Republic of Serbia, the fact remains that the imposition of this sentence in the future will lead to an increase in the number of elderly persons in institutions for the execution of criminal sanctions. One of the reasons for age discrimination is age within one’s own framework. The manifestation of old age today is mainly reflected in the negative social representations of these people, presented as a homogeneous social group in terms of lifestyle and as the embodiment of “problematic” old age, inevitably deficient, dependent or even demented (Igrački, 2023: 472-474). Within the prison population, there are additional differences and needs, physical, psychological and mental abilities of older

convicts. Therefore, older prisoners often represent a group that is additionally threatened in the prison institution (Jovanić, Ilijić, 2015). In Serbia, official statistics show that convicted persons over the age of 50 accounted for 14.7% of the total number of convicted persons accepted to serve a sentence in 1999, 18.8% in 2006, 19.1% in 2015 and 20.1% in 2020, which represents an empirical increase in their percentage representation.¹⁵

Older prisoners have become the fastest growing age group in prison (Doron, Love, 2013; Forsyth et al., 2015; Wilkinson, Caulfield, 2020; B. A. Williams et al., 2012). In the US, the number of elderly prisoners increased by 181% between 2000 and 2010, in contrast to the total prison population, which increased by only 17%.¹⁶ As presented, 19% of the current US prison population is over 50 years of age (Wilkinson, Caulfield, 2020). In Australia, the number of prisoners over the age of 50 increased by 37% between 2000 and 2010, with the largest increase among the over 65s whose proportion increased by 142%, in contrast to a 36% increase in the general prison population (Baidavi et al., 2011).

According to previous studies, the prison environment has been rated as harmful to the health of detainees. Poor health normally thrives in an environment of poverty, conflict, discrimination and apathy, and prison is an environment that concentrates precisely these difficulties. At the same time, prisoners serving a life sentence still have natural needs and interests as a natural entity because they are human beings and enjoy natural, inherent and objective rights. A whole series of international provisions and legal acts is necessary¹⁷ which regulate the standardization of living and working conditions in prison, maintenance of hygiene needs, nutrition and health care, and work and educational training (Pavlović, 2020, p. 54). Ensuring minimum conditions for those serving short prison sentences, as well as for convicts serving life sentences, is a particularly mandatory requirement under both national and international law. Respect for human dignity is a basic principle, which is mostly mentioned in important international documents

¹⁵ Statistical Office of the Republic of Serbia, 2004, 2011, 2016, 2022

¹⁶ Bureau of Justice Statistics, 2011

¹⁷ The Standard Minimum Rules for the Treatment of Prisoners is a document made at the UN level that defines the necessary level of conditions for achieving the goals or aims of penal policy with an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment.

since the Second World War (Obradović, 2020). Accordingly, vocational training, education and recreation should be the focal point of treatment programs that will contribute to reducing recidivism rates. However, the social, educational and recreational programs of prisoners are suitable for younger people (Milićević, Ilijić, 2022). All prisoners should be guaranteed humane, dignified and professional imprisonment for all ages, while rehabilitation, education and recreation programs should be adapted according to individual characteristics, such as physical condition, disability, mental status or risk to everyone (Doron, Love, 2013).

Many prisons are dangerous places from which there is no way out or escape, inmates are irritable and always alert and ready for signs of threat or personal risk. The criminal infection is increasingly pronounced, the formal system is increasingly weak and ineffective, which calls into question the realization of the basic functions of prisons (Stevanović, Igrački, 2011: 411-415). The effectiveness of imprisonment is measured by the recidivism rate, and research shows that it is high. Recently, more and more doubts have been raised the positive effects of prison sentences and institutional resocialization of delinquents, because the results so far indicate that most forms of treatment applied in the resocialization process have not met expectations (Igrački, 2019: 393-395).

It depends on the structure of the personality whether they will leave prison rehabilitated, become permanently unable to live independently or angry with society and eager for revenge (John Howard Society of Alberta, 1999, p. 15). However, recent studies suggest that not only is this deterministic premise too simplistic, but that the methodology employed in many studies has yielded little corroborating, empirical evidence.

Today, there is a widespread understanding that special prevention, and not only that which starts from the idea of resocialization, cannot make a serious contribution to the realization of the protective function of criminal law. This does not diminish the importance of the application of criminal sanctions for the realization of the protective function of criminal law, but not so much for special reasons as for general prevention. Special prevention can have an advantage only in relation to a narrow circle of perpetrators on whom, due to their psychological defects or other reasons, the threat of punishment cannot work, and where other criminal sanctions should be applied independently or in addition to the punishment (Stojanović, 2011: 3-25). In addition to other questions about the role of

general prevention, there is also the question of the legitimacy of the function of general prevention, which consists in intimidation with the threat of punishment. The objection of retributivist theories to general prevention is well known, that no one can serve as a means to intimidate others, that is, that a person cannot serve as a means to achieve utilitarian goals, that he and his goods cannot be sacrificed regardless of what social benefit is achieved. It is widely known that this view originates from Kant and Hegel. Can Kant's attitude cast doubt on the legitimacy of general prevention, which should be achieved through prescribed, threatened punishment? A threat directed at potential perpetrators does not serve anyone to intimidate others, nor is it an instrument for achieving goals outside of the one to whom the threat refers, so Kant's argument can only apply to the application of punishment. If someone is punished only to influence others not to commit criminal acts, then it is an unjust punishment that cannot be justified by utilitarian goals. However, this would be the case only in the case of punishing an innocent person (a hypothetical example that is often encountered in the philosophical literature in the field of the ethics of punishment), or if someone would be punished more severely than what he deserves, i.e. with a more severe punishment than the one required by the degree of his guilt and the gravity of the committed act. Someone is not punished because of others, but because of his actions, because the threat that was addressed to him would be realized (Stojanović, 2011: 3-25).¹⁸

The conditions of detention and treatment of prisoners serving life sentences are often worse than those of other prisoners and are more likely to fall below international human rights standards. Life imprisonment, especially in prison without the possibility of parole, contributes to the overuse of prisons, a phenomenon based on the belief that prisons are society's only mechanism for crime and social control problems. Prisoners sentenced to life imprisonment should have the same rights as other categories of prisoners, and should comply with United Nations (UN) Human Rights standards, including the Standard Minimum Rules for the Treatment of Prisoners. Prisoners sentenced to life imprisonment should have access to as complete an activity regime as possible, and with

¹⁸ Recommendation of the Committee of Ministers of the Council of Europe, <https://www.npm.rs/attachments/Kompilacija%20dokumenata%20SE-zatvori.pdf>

other prisoners under normal circumstances. Convicts should engage in some of the activities that prison has to offer, such as work, education, sports, cultural activities and hobbies, which are crucial in promoting social and mental well-being and providing transferable skills that will be useful during the prison term, but also after that. The involvement of prisoners in these activities, in addition to their participation in interventions against criminal behavior, is an important factor in the ongoing assessment of each person's performance. They allow staff of all categories to better understand prisoners and make informed decisions about when it would be appropriate for a prisoner to progress through the regime and be provided with less secure conditions. The possibility of such advancement is of fundamental importance for the prison administration and for the prisoner. It motivates and rewards the inmate, providing stages in the process, in their otherwise undefined world, and provides a deeper relationship between the assessment staff and the inmate, which contributes to dynamic security.¹⁹

The ECtHR²⁰ considers that life imprisonment is not prohibited and necessarily incompatible with Article 3 of the Convention. A life sentence can remain compatible with Article 3 of the Convention only if there is both the possibility of release and the possibility of review, both of which must exist from the time the sentence is imposed. The life sentence must *de iure* and *de facto* be reduced through such a view, which should entail either executive giving reasons or judicial review, so as to avoid even the appearance of arbitrariness. Access to judicial review whether the conditions and reasons (not) for release must be determined in advance, objective and known to prisoners. Those reasons and conditions should be based on legitimate penological grounds, and the audit procedure itself should be accompanied by sufficient procedural guarantees. Since the penological bases of life imprisonment vary over time / do not necessarily exist all the time, the review procedure should ensure a periodic check of their existence, starting no later than 25 years after the deprivation of liberty. Given this, prisoners cannot be denied the possibility of rehabilitation, and therefore the state

¹⁹ CPT, 2016. Situation of Life-Sentenced Prisoners. CPT/Inf(2016) 10-par. Extract from the 25th General Report of CPT, from 16. 4. 2016., <https://www.coe.int/en/web/cpt/life-sentenced-prisoners>

²⁰ Evropske konvencija za zaštitu ljudskih prava i osnovnih sloboda, ("Sl. list SCG - Međunarodni ugovori", br. 9/2003, 5/2005 i 7/2005 - ispr. i "Sl. glasnik RS - Međunarodni ugovori", br. 12/2010 i 10/2015)

has a positive the obligation to ensure a prison regime for life prisoners that is compatible with the goal of rehabilitation.

3. Imprisonment for life in Serbia

The area of enforcement of criminal sanctions represents an extremely important but also delicate phase in the process of crime control and prevention. Upon sentencing, the perpetrator of the crime is deprived of certain assets. Those goods must be significant enough (life, freedom, property) for the perpetrator and potential perpetrators to understand the extent to which society condemns the crime committed (Ignjatović, 2000: 251). The purpose of punishment is reflected in: 1) preventing the perpetrator from committing criminal acts and influencing him not to commit criminal acts in the future; 2) influencing others not to commit criminal acts; 3) expressing social condemnation for a criminal act, strengthening morale and strengthening the obligation to obey the law; 4) achieving fairness and proportionality between the committed act and the severity of the criminal sanction (Article 42 CC). The way of reacting to crime depends on several factors and changes and adapts to certain social, social, psychological and other circumstances (Igrački, 2019: 394-396).

Today, there is a dual approach to sentencing, whereby severe punishments are provided for criminals who are labeled as dangerous to society, while milder short-term punishments or alternative sanctions are applied to lighter criminals, as well as the process of restorative justice. If we look at the prison sentence as the most severe punishment and its effectiveness through the recidivism of convicts, we can conclude that the effectiveness of the prison sentence is controversial. Namely, the recidivism rate in Serbia is around 60%, and on a global level it is over 60%. We can conclude that individual prevention showed modest results. When it comes to the retributive purpose of punishment, it should be borne in mind that the realization of justice and proportionality of the committed act and the severity of the criminal sanction, which represents a peculiar type of retribution, as the purpose of punishment, is prescribed when the punishment of life

imprisonment is also introduced²¹ The idea of accepting the philosophy of retribution, with our legislator, which is based on the belief that the punishment must be revenge for the damage caused to others, is in accordance with the attitude and belief of the public and political structures of many countries, where, as in our country, in recent decades, became the ruling understanding, with a decreasing orientation towards rehabilitation (Stevanović, 2016: 429).

When we talk about persons who have been sentenced to life imprisonment, for crimes for which it is not possible to be paroled, the request for repeating the criminal proceedings is particularly significant, which, in addition to other reasons for repeating the proceedings, also prescribes the case if new facts are presented or new ones are submitted evidence that was not present when the prison sentence was imposed or the court did not know about it even though it existed, and it would obviously lead to a milder criminal sanction (Article 473 paragraph 1 point 6 of the CPC)²² When we say new facts, we mean the penological reasons, which the advocates of parole emphasize and bring to the fore, when they advocate the possibility of parole for a sentence of life imprisonment, it can be stated that this idea can also be realized through this extraordinary legal remedy.²³

The first life sentence, first degree, in Serbia was pronounced on January 5, 2021.²⁴

Criminal legislation of Serbia in 2019²⁵ a sentence of life imprisonment was introduced to a prison term of 30 to 40 years. New legal solutions in the criminal legislation of Serbia are being introduced for the most serious crimes. Life imprisonment for aggravated murder, rape, sexual intercourse with a minor, a pregnant woman and a helpless person was foreseen, and it was launched by

²¹ Criminal Code Official Gazette of the RS, number 35/19.

²² Criminal Procedure Law, "Sl. Gazette of the RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019.

²³ Ibid.

²⁴ Sentenced for kidnapping and molesting a twelve-year-old girl.

²⁵ Law on Amendments to the Criminal Code, Official Gazette of the Republic of Serbia, No. 35/2019, in use

since December 2019.

https://www.paragraf.rs/izmene_i_dopune/210519-zakon-o-izmenama-i-dopunamazakonika-orkrivicnom-postupku.html

the “Tijana Jurić” Foundation in 2017 and was signed by almost 160,000 people. Life imprisonment has been extended to all other crimes punishable by a sentence of 30 to 40 years, such as the murder of a representative of the highest state authorities, a serious crime against the constitutional order and security of Serbia, conspiracy to commit a crime, genocide, crimes against humanity, war crimes against civilians and other serious crimes. The legislator provided for the possibility of parole for those sentenced to life imprisonment after serving 27 years of the sentence, except for the five most serious and brutal crimes (felony murder, rape resulting in death, sexual intercourse with a helpless person with fatal outcome, sexual intercourse with a child with fatal outcome and adultery abuse of position with fatal outcome). The court will not be able to impose a sentence of life imprisonment for those who committed a crime at the time when they were under 21 years of age, as well as in situations where there is a possibility of mitigation or even exemption from the sentence (exceeding the limits of necessary defense, significantly reduced mental capacity, etc.).

In the past five years, 69 first-instance verdicts were handed down in Belgrade for brutal murders, more specifically for the criminal offense of aggravated murder, among which the largest number of defendants were sentenced to maximum prison sentences or prison sentences close to the maximum. From the total number of convicts for that crime, from 2018 to 2023, the High Court in Belgrade sentenced 36 people to, until recently, the highest possible prison sentence of 30 to 40 years. It has been in Serbia since 2019, when it was introduced life imprisonment, eight such sentences were imposed for the most serious crimes, mostly for brutal murders and rapes. Of the eight verdicts handed down, three are final, while the fourth one was served by Ninoslav Jovanović, better known as the Barber of Malčan, who died in prison last year. Jovanović, otherwise a multiple returnee, was sentenced to life imprisonment for the kidnapping and abuse of a twelve-year-old girl.

4. Conclusion

Encouraged by the ideas of sociological-penological humanism, many countries of the world abolished the death penalty, after which the question remained open as to how the state can protect society from the most serious crimes. The answer to this question for most modern criminal legislations was the introduction of life imprisonment. With the introduction of life imprisonment and the abolition of the death penalty in all but a few criminal laws around the world, prison is a humane response to serious crimes. Although, a long period in prison imposes psychological effects on prisoners that can be cruel as well as physical torture. Long periods in prison seem to have very different effects on the individual reactions of prisoners: some leave prison rehabilitated, others leave dependent and unable to lead productive lives in the community, and a few leave angry and full of revenge. Policy makers must create new ways of managing long-sentence prisons so that these offenders are not returned to the community in a worse state, physically and mentally, than when they entered. Reintegration of offenders is necessary to ensure that offenders can be productive after release. They must also be taught how to live productive lives as law-abiding citizens so that they can reintegrate into society without jeopardizing community safety. These goals can be achieved, but to do so, policymakers must prioritize rehabilitation over retribution and punishment.

There is no doubt that there are life-sentenced prisoners in prisons who are very dangerous. However, the approach should be the same as for other sentenced prisoners, and it includes: detailed assessments of the individual situation of the mentioned prisoners; risk management with plans to address the needs of individuals and reduce the likelihood of reoffending in the long term, while providing the necessary level of protection to others; regular audits of security measures. The goal, as with all dangerous prisoners, should be to reduce the level of danger through appropriate interventions and return the prisoner to normal circulation as soon as possible.

It is necessary to do everything necessary to ensure that those sentenced to life imprisonment have a regime tailored to their needs and to help them reduce the level of risk they pose, to minimize the harm that indeterminate sentences necessarily cause, and to enable prisoners to have contact with the outside world.,

to be offered the option of release into the community on license and to ensure that release can be safely granted, at least in the vast majority of cases. This can be done by introducing a procedure that allows the revision of the sentence. This indicates precisely that it is not enough to have a formal opportunity to submit a request for release after a certain period, but that this opportunity should be realistic and effective.

Research conducted in Europe and Canada indicates that it is necessary to help those sentenced to shorter prison sentences if they are in prison for the first time, because they are in a state of shock in the first years. While with a longer stay in prison they somehow mature as individuals, make peace with fate, get used to life in prison and search for the meaning of life. It depends on the structure of the personality whether they will leave the prison rehabilitated, become permanently unable to live independently or angry with society and eager for revenge.

The development of penal policies in Europe speaks of the growing importance of the reintegration of convicts into society after serving long sentences, which is supported by a “system of progression”: the convict should move progressively through the penitentiary system, from the early days of the sentence, when the emphasis is on his punishment and retribution, until the last stage, when the emphasis should be on his preparation for release., it is necessary to make every possible effort to provide prisoners sentenced to life imprisonment with a regime adapted to their needs and to help them reduce the level of risk they pose, to minimize the harm that indeterminate sentences necessarily cause, to enable prisoners to have contact with the outside world, to be offered the possibility of release into the community under certain conditions, and to enable the approval of requests for release based on reliable criteria, at least in the vast majority of cases. For this purpose, it is necessary to introduce procedures that allow the review of the sentence. The results of criminological research have so far never confirmed the hypothesis that harsher punishment has a significant effect on general prevention.

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