

CURRENT CHALLENGES IN CONFORMING LIFE IMPRISONMENT TO THE INTERNATIONAL AND EUROPEAN STANDARDS

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Abstract

The author analyses the legal and practical aspects of life imprisonment in the international, the European and the Macedonian law. Thus, the author analyses the most important international documents in regards to the treatment of life sentenced prisoners. The author concludes that life imprisonment isn't forbidden according to the international human rights, furthermore is an alternative to death sentence. In many European countries, life imprisonment has been effectively abolished. Despite it's widely use as a punishment in many jurisdictions, life imprisonment is still subject of controversy.

Life imprisonment means different things in different countries. Life imprisonment without the possibility of parole is criticised as a violation of human rights.

In terms of prevention of harmful effects of life imprisonment and other long term prison sentences, life sentenced prisoners should be offered appropriate standards. If national systems that are subject to international and European law do not satisfy these standards in terms of life imprisonment, they can be at risk with the ICCPR and/ or ECHR.

Key words: *punishment, life imprisonment, long sentences of imprisonment, international standards, treatment.*

I. INTRODUCTION

Life imprisonment is allowed under human rights law, and many countries around the world use it to punish some of the most serious crimes. Although each jurisdiction may have its own system of execution of the sentence, international and European human rights laws have set applicable limits.¹

Life imprisonment refers to a situation in which a defendant is sentenced to spend the rest of his life in prison after a conviction for committing a crime.

When it comes to imprisonment, in general, we can point out a number of criticisms regarding the fact that imprisonment is based on repression, retributiveness, punitiveness, and on the other hand, it is applied for the purpose of reintegration of criminals, which are extremely antagonistic goals of imprisonment. Moreover, the pessimism and disappointment

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¹Including the International Convention on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), Council of Europe bodies and national jurisdictions. Public International Law & Policy Group NL (2016) "The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

of its effects are emphasized. Criminal law theory emphasizes the predominantly negative effects of imprisonment. The prison did not achieve the expected positive effects in terms of re-socialization and social adaptation. Prison stigmatizes, spreads "criminal contagion", neutralizes, isolates the convicted person from all positive influences of the community, away from family, work and professional engagement. Prisons are "schools" for convicts. This is especially true for long term imprisonment. It is not only that the imprisonment doesn't have a positive impact in terms of rehabilitation and correction of convicted persons, it also produces recidivists or psychiatric cases. In some cases, there is an adaptation to prison conditions that completely prevents reintegration in society, a phenomenon that in theory is explained as "prisonization." The process of "prisonization" destroys the psychological and emotional well-being of prisoners. According to them, if a prison psychologically destroys convicted persons, then their adjustment after leaving prison can only be negative, and certainly a consequence of returning to crime. Because the prisonization is so strong and has a great impact, which undermines personality and impedes normal behavior and positive social roles. The intense impact of prisonization causes a return to criminal behavior.²

"According to international and European documents, life imprisonment alone does not violate the prohibition of torture, inhuman or degrading treatment. However, both systems have put limits on practice in order to comply with human rights standards. The United Nations Committee on Human Rights and the European Court of Human Rights (ECtHR) have emphasized the need for prisoners serving life imprisonment to be given the possibility of parole. This should be a *de jure* and *de facto* option. Then, rehabilitation measures must be made available to prisoners."³ The general trend of prison systems aimed at rehabilitating prisoners, rather than simply being retributive, was confirmed. Furthermore, there should be a clear and effective mechanism for reviewing life imprisonment. Otherwise, the punishment could be incompatible with the prohibition of torture.⁴

Life imprisonment is the most severe sentence in the Republic of North Macedonia for serious offenses. According to the Criminal Code of the Republic of North Macedonia (CCM),⁵ life imprisonment can be imposed for 25 criminal offenses, with the fact that in our Criminal Code for acts committed intentionally for which the law prescribes a sentence of 20 years imprisonment, for grave forms of these acts, the law alternatively prescribes a sentence of life imprisonment. For offenses punishable with life imprisonment, a term of imprisonment of 40 years may be imposed. A life sentence cannot be prescribed as a capital punishment.⁶ A life sentence cannot be imposed on a perpetrator who, at the time of the offense, did not turn 21 years of age.⁷

Further, the paper analyzes the sentence of life imprisonment in the international, the European and the Macedonian law.

²See: Груевска Дракулевски, Александра (2016) „Затвор и рецидивизам“, Скопје: Студиорум – Центар за регионални истражувања и соработка. (*Gruevska Drakulevska, Aleksandra* (2016) „Zatvor i recidivizam“, Skopje: Studiorum – Centar za regionalni istraživanja i sorabotka).

³ Public International Law & Policy Group NL (2016) “The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law”, Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

⁴*Ibid.*

⁵Criminal Code (“Official Gazette of Republic of Macedonia” No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018).

⁶See: Article 35 Paragraph 1, 2, 3 CCM.

⁷See: Article 35 Paragraph 4 CCM.

II. LIFE IMPRISONMENT IN THE INTERNATIONAL AND THE EUROPEAN LAW

Life imprisonment is not prohibited according to the international human rights and is encouraged as an alternative to the death penalty. However, there are limitations in practice under the international law. Despite its widespread use as a punishment in many jurisdictions, life imprisonment is still controversial. Article 10 (3) of the International Covenant on Civil and Political Rights (ICCPR)⁸ provides that "the penitentiary system shall include treatment of prisoners whose primary objective is their reform and social rehabilitation."

Some scholars believe that life imprisonment is the same as the death sentence because it is a death sentence in itself. Several countries have introduced a life sentence for the replacement of the death penalty, which has been heavily criticized in the international law and forbidden under Protocol 13 of the European Convention on Human Rights (ECHR) in the European system.⁹ Despite life imprisonment being a common sentence around the world, different jurisdictions apply different standards and restrictions on sentencing. There is ambiguity about the definition of life imprisonment itself, as the term "life imprisonment" may mean something significantly different depending on the jurisdiction. Life imprisonment can be mandatory or discretionary and may be with or without a parole. Each penal system has different approaches to the lawfulness of life imprisonment.¹⁰

An analysis of the case law of the European Court of Human Rights on life imprisonment shows that life imprisonment alone does not violate Article 3 of the European Convention on Human Rights (ECHR).¹¹ Member States have discretion in determining the length of the sentence. However, if there is no possibility of release, or there is no clear and effective mechanism for reviewing the sentence of life imprisonment, it will make the sentence inconsistent with Article 3 of the ECHR. The European Court of Human Rights (ECtHR) has

⁸International Covenant on Civil and Political Rights (ICCPR), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. (Accessed: 15.8.2018).

⁹ Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all circumstances art 1 (2002). https://www.echr.coe.int/Documents/Library_Collection_P13_ETS187E_ENG.pdf цит. у Public International Law & Policy Group NL (2016) "The Legality Of Life Imprisonment: Comparative Analysis Of International, European, And Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

¹⁰ Public International Law & Policy Group NL (2016) "The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

¹¹European Convention on Human Rights (ECHR), as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS no. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS no. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS no. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS no. 44) which, in accordance with Article 5 § 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS no. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS no. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) lost its purpose. https://www.echr.coe.int/Documents/Convention_ENG.pdf. (Accessed: 18.9.2018).

held that the prospect of release must exist *de jure* and *de facto*. However, states also have the discretion to determine the form of review of life imprisonment. Similarly, the mere fact that a life sentence can be fully served does not contradict Article 3 of the ECHR. In essence, a reconsideration of a life sentence does not necessarily lead to the release of a prisoner. The ECtHR simply asks that there should be a possibility for the convicted person to be released and that there is a procedure for a clear and effective review of the sentence of life imprisonment.¹²

It should also be noted the reasoning of the Council of Europe's Committee for Prevention of Torture (CPT), which in its report and analysis of life imprisonment in Romania and Switzerland, considered it "inhumane to imprison a person for life without any real hope of release".¹³

Across Europe, life imprisonment is the most severe sentence that can be imposed, unlike on an international level, the death penalty is prohibited. However, similarly as in the international system, the ECtHR and other actors impose restrictions on the use and application of life imprisonment in Europe. The European Court of Human Rights has developed these limitations in its significant jurisprudence on life imprisonment. The restrictions apply to the treatment of prisoners who have been sentenced to life imprisonment, as well as to a periodic review of their sentence. In Europe, the focus is on the rehabilitation of prisoners as opposed to punishment. It is also necessary to ensure that prisoners are given life sentences with a realistic prospect of release. Despite the discretion of States in implementing these standards, if national criminal justice systems across Europe do not meet them, the ECtHR may find that it violates Article 3 of the ECHR.¹⁴

Many European countries abolish life imprisonment and impose long-term imprisonment of 15, 20, 30 and 40 years in prison. In contrast, there are states that have a life imprisonment sentence in their legislation without the right to pardon and without the right to parole. In the Republic of North Macedonia, life imprisonment is pronounced with the possibility of parole after serving 25 years (before the CCM amendment, this formal criteria was set at a minimum of 15 years spent in prison).¹⁵

Given the fact that the death penalty is prohibited in the European system, life imprisonment is the most severe sentence available. As in the international system, restrictions are also imposed on the use and implementation of life imprisonment in Europe. This is mainly envisaged with the European Convention on Human Rights (ECHR).¹⁶

In some states, for example, Canada and some U.S. states, life imprisonment can be imposed even for traffic offenses.¹⁷

¹² Public International Law & Policy Group NL (2016) "The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

¹³ The CPT called on Romania and Switzerland to amend the law to allow certain prisoners to be considered for release. The Committee also went further and stated that prisoners should be able to participate in constructive activities that would allow them to rehabilitate. Cit. in Public International Law & Policy Group NL (2016) "The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

¹⁴ Public International Law & Policy Group NL (2016) "The Legality of Life Imprisonment: Comparative Analysis of International, European, and Dutch Law", Legal Memorandum, May 2016. (<https://pilpnjcm.nl/wp-content/uploads/2016/09/PILPG-NL-Life-Imprisonment-Comparative-Analysis-26.05.16.pdf>) (Accessed: 11.6.2018).

¹⁵ See: Article 36 Paragraph 4 CCM.

¹⁶ https://www.echr.coe.int/Documents/Convention_SRP.pdf. (Accessed: 15.8.2018).

¹⁷ Criminal Code of Canada, <http://laws-lois.justice.gc.ca/eng/acts/C-46/FullText.html>. (Accessed: 25.3.2018).

In many European countries, life imprisonment has been effectively abolished. Many countries whose governments have abolished the sentence of life imprisonment and imprisonment of indefinite duration have been culturally influenced or colonized by Spain or Portugal¹⁸ and have provided for such prohibitions in their current constitutions (including Portugal but not Spain).

Many European countries have abolished all forms of imprisonment for an indefinite period, including Serbia,¹⁹ Croatia²⁰ and Spain,²¹ which have prescribed a maximum sentence of 30-40 years (for each conviction, which in practice retains the principle of life imprisonment under a different name (Bosnia and Herzegovina,²² for a maximum of 45 years, like Portugal, which abolished all forms of life imprisonment in 1884 and prescribed a maximum sentence of 25 years, while Norway (*de jure*) and Spain (*de facto* since 1993 by February 2018, the issue now under discussion is again the introduction of *de jure* life imprisonment, its common practice before becoming a democracy in 1978-1983) abolished life imprisonment, but retained other forms of imprisonment on indefinite period.

In Europe, the only countries where the law explicitly provides life imprisonment without the possibility of pardon are some constituent parts of the United Kingdom (England, which includes Wales because it has not transferred jurisdiction and the legal system of England is still in force in Wales), the Netherlands, Slovakia and Bulgaria.²³

In South and Central America, Honduras, Nicaragua, El Salvador, Costa Rica, Venezuela, Colombia, Uruguay, Bolivia, Ecuador and the Dominican Republic, life imprisonment has been abolished. The maximum sentence is 75 years in El Salvador, 60 in Colombia, 50 in Costa Rica and Panama, 40 in Honduras, 35 in Ecuador, 30 in Nicaragua, Bolivia, Uruguay and Venezuela, and 25 years in Paraguay. Brazil has a maximum sentence of 30 years in accordance with the written death penalty law provided for crimes committed during the war (for war crimes, such as treason, desertion and insurgency).

In the United States, a 2009 report within the Sentencing Project²⁴ suggested to abolish life imprisonment without a parole. However, U.S. law enforcement officials²⁵ opposed the proposal.²⁶

¹⁸ This penalty does not exist in all countries. Portugal is the first country in the world to abolish a life sentence with the prison reform of Sampajo e Melo in 1884. However, in countries where life imprisonment can be imposed, there may be formal mechanisms for seeking parole after a specified sentence. This means that the convicted person has the opportunity to serve the rest of his sentence (until he dies) outside the prison. Conditional release is usually conditional on the convicted person's earlier and future behavior, subject to certain limitations or obligations. In contrast, when a convicted person is serving a full sentence of imprisonment, he is released. The time spent in prison and the conditions for conditional release are different in each jurisdiction. However, the time until one is eligible for parole says nothing about the actual date of parole. In most countries around the world, a person sentenced to probation after serving a life sentence is usually released on parole for the rest of his or her natural life.

¹⁹Article 45, Criminal Code (Official Gazette RS br. 85/05 , 88/05 - amendment, 107/05 - amendment, 72/09 , 111/09, 121/12, 104/13). (<http://www.fb.bg.ac.rs/download/Pitanja/Krivicni%20zakonik%20RS.pdf>). (Accessed: 26.3.2018).

²⁰Article 46, Criminal Code (Consolidated text of the law, NN 125/11, 144/12, 56/15, 61/15, 101/17, effective from 20.10.2017. (<https://www.zakon.hr/z/98/kazneni-zakon>). (Accessed: 26.3.2018).

²¹ file:///C:/Users/User/Downloads/Spain_CC_am2013_en.pdf. (Accessed: 18.9.2018).

²²Article 43, Criminal Code of the Federation of Bosnia and Herzegovina. (<http://www.fbihvlada.gov.ba/bosanski/zakoni/2003/zakoni/47bos.htm>). (Accessed: 26.3.2018).

²³ Criminal Code of Bulgaria (1968, amended 2010), Chapter 4, Section 1, Article 37(2). http://www.legislationline.org/download/action/download/id/7578/file/Bulgaria_Criminal_Code_1968_am2017_ENG.pdf. (Accessed: 25.3.2018).

²⁴<http://www.sentencingproject.org/>. (Accessed: 26.3.2018).

²⁵ Some judgments, especially in the United States, exceed the maximum human life and are therefore considered *de facto* life sentences. In addition, for particularly heinous crimes, courts sometimes add years,

Pope Francis proposed abolishing the death penalty and life imprisonment at a meeting with representatives of the International Criminal Law Association. He also stated that life imprisonment, recently removed from the Vatican's sentencing law, is merely a variation of the death penalty.²⁷

Most discussions on life imprisonment internationally have focused on life imprisonment for juvenile offenders. Several countries around the world allow juveniles to be sentenced to life imprisonment without parole or pardon; for example, Antigua and Barbuda, Argentina (over 16 years old),²⁸ Australia, Belize, Brunei, Cuba, Dominica, Saint Vincent and the Grenadines, Solomon Islands, Sri Lanka and the United States. According to a study by the University of San Francisco School of Law, only the United States had minors serving such sentences in 2008.²⁹ In 2009, Human Rights Watch estimates that there are 2,589 young offenders serving life sentences without parole in the United States.^{30/31} The United States is the leader in life imprisonment (both for adults and minors), with a rate of 50 people per 100,000.³²

1. International standards for the treatment of prisoners sentenced to life imprisonment and other long-term imprisonment

Two international instruments, the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)³³ and the European Prison Rules,³⁴ and in particular

regardless of the sentence of life imprisonment, to ensure that good behavior will not lead to the release of a person. For example, Ariel Castro, who abducted Michelle Knight, Amanda Barry and Gina De Hesus from Cleveland Street, was sentenced to life in 2013 with a life sentence of "plus 1,000 years" for 937 points, including kidnapping, rape and murder. Courts in South Africa have handed down at least two verdicts over a century (Moses Sitole, whose verdict goes beyond two millennia and Eugene de Cock). CNN, By *Elliott C. McLaughlin and Pamela Brown*. "Cleveland kidnapper Ariel Castro sentenced to life, plus 1,000 years - CNN.com" (<https://edition.cnn.com/2013/08/01/justice/ohio-castro/index.html>). (Accessed: 26.3.2018).

²⁶ *Kevin Johnson* (22 July 2009). "Report wants life without parole abolished". USA Today. https://usatoday30.usatoday.com/news/washington/2009-07-22-lifers_N.htm. (Accessed: 25.3.2018).

²⁷ *Francis X. Rocca* (23 October 2014). "Pope Francis calls for abolishing death penalty and life imprisonment". Catholic News Service. (<https://archive.is/20141024002736/http://www.catholicnews.com/data/stories/cns/1404377.htm>). (Accessed: 25.3.2018).

²⁸ *Mecon*, "InfoLEG - Ministerio de Economía y Finanzas Públicas - Argentina". *mecon.gov.ar*. (<https://web.archive.org/web/20160109182945/http://infoleg.mecon.gov.ar/infolegInternet/anexos/110000-114999/114167/texact.htm>). (Accessed: 25.3.2018).

²⁹ "Laws of Other Nations". (https://web.archive.org/web/20150627124859/http://www.usfca.edu/law/jlwop/other_nations/). (Accessed: 26.3.2018).

³⁰ Executive Summary: The Rest of Their Lives: Life without Parole for Child Offenders in the United States", 1 May, 2008. (<https://www.hrw.org/report/2008/05/01/executive-summary-rest-their-lives/life-without-parole-youth-offenders-united>). (Accessed: 26.3.2018).

³¹ "State Distribution of Youth Offenders Serving Juvenile Life Without Parole (JLWOP)". Human Rights Watch. 2 October 2009. Retrieved 3 August 2011. (<https://www.hrw.org/news/2009/10/02/state-distribution-youth-offenders-serving-juvenile-life-without-parole-jlwop>). (Accessed: 26.3.2018).

³² "The Sentencing Project News - New Publication: Life Goes On: The Historic Rise in Life Sentences in America". *sentencingproject.org*. (https://web.archive.org/web/20131018011248/http://www.sentencingproject.org/detail/news.cfm?news_id=1636&id=107). (Accessed: 26.3.2018).

³³ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)]. <https://www.ohchr.org/Documents/ProfessionalInterest/NelsonMandelaRules.pdf>. (Accessed: 30.3.2020).

³⁴ Council of Europe, Committee of Ministers, Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules1 (Adopted by the Committee of Ministers on 11 January 2006 at

the 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, are the most important for the treatment of persons sentenced to life imprisonment and other long-term imprisonment.³⁵

The Standard Minimum Rules for the Treatment of Prisoners (NMR) is the first document to guarantee the legal status of a person sentenced to prison while serving his sentence. Standard minimum rules for the treatment of prisoners are among the first and oldest rules (measures) regarding the treatment of persons sentenced to prison.³⁶ In the same way, they apply to persons sentenced to life imprisonment.

European Prison Rules, in particular in Article 103.8, specify that “Special attention should be paid to determining appropriate programs and regimes for serving life imprisonment and other long-term imprisonment.” Recommendation Rec (2003) 23 was also adopted.

III. LIFE IMPRISONMENT IN THE REPUBLIC OF NORTH MACEDONIA (LEGISLATIVE AND PRACTICAL ASPECTS)

The system of criminal sanctions in the Republic of North Macedonia is defined by the Criminal Code of the Republic of North Macedonia (CCM).³⁷ Thus, criminal sanctions include penalties, alternative measures, security measures and educational measures whose enforcement is regulated by the Law on Execution of Sanctions (LES).^{38/39}

The following penalties may be imposed for criminal offenses: 1) imprisonment; 2) fine; 3) prohibition on practicing profession, performing an activity or duty; 4) prohibition on operating a motor vehicle; 5) expulsion of a foreigner from the country; and 6) prohibition on attending sports competitions.^{40/41}

the 952nd meeting of the Ministers' Deputies). <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>. (Accessed: 30.3.2020).

³⁵ Council of Europe, Committee of Ministers, 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 (Adopted by the Committee of Ministers on 9 October 2003 at the 855th meeting of the Ministers' Deputies). <https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282003%29+23+on+the+management+of+life+sentence+and+other+long+term+prisoners.pdf/bb16b837-7a88-4b12-b9e8-803c734a6117>. (Accessed: 23.3.2018).

³⁶ *Arnaudovski, Lj./ Grujevska-Drakulevski, A.* (2011) „Закон за извршување на санкциите: интегрален текст со предговор, кратки објаснувања и регистар на поимите со прилози“, Скопје: „Студиорум“-Центар за регионални истражувања и соработка. (*Arnaudovski, Lj./ Grujevska-Drakulevski, A.* (2011) „Закон за извршување на санкциите: интегрален текст со предговор, кратки објаснувања и регистар на поимите со прилози“, Скопје: „Студиорум“-Центар за регионални истражувања и соработка).

³⁷ Criminal Code (“Official Gazette of Republic of Macedonia” No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018).

³⁸ Law on Execution of Sanctions (“Official Gazette of Republic of Macedonia” No. 99/2019 и 220/2019).

³⁹ Article 1 Paragraph 2 LES.

⁴⁰ Article 33 Paragraph 1 CCM.

⁴¹ Article 48-a, CCM. The following alternative measures may be applied to offenders of crimes: 1) probation; 2) probation with protective supervision; 3) probationary suspension of the criminal procedure; 4) community service; 5) court reprimand and 6) house arrest.

Article 61, CCM. Offenders may be imposed the following safety measures: 1) compulsory psychiatric treatment and custody in a health institution; 2) compulsory psychiatric treatment in freedom; and 3) compulsory treatment of alcoholics and drug addicts; 4) medical and pharmacological treatment of offenders of sexual assault upon a child of up to 14 years of age.

The imprisonment can be imposed only as a main sentence.⁴² Imprisonment cannot be shorter than 30 days or longer than 20 years. For the crimes for which the law prescribes a life imprisonment, long-term imprisonment of up to 40 years may be imposed.⁴³

If a sentence of 20 years of imprisonment is prescribed for a premeditated crime, a sentence of life imprisonment may be prescribed for severe forms of this crime.⁴⁴

The sentence of life imprisonment may not be prescribed as the only main sentence.⁴⁵

The sentence of life imprisonment may not be imposed to an offender who at the time of the commitment of the crime has not turned 21 years.⁴⁶

The convict sentenced to life imprisonment cannot be released on parole before he serves at least 25 years of imprisonment.⁴⁷

According to the Criminal Code of the Republic of North Macedonia, life imprisonment is provided for the following offenses: murder,⁴⁸ sexual assault on a child under the age of 14,⁴⁹ robbery,⁵⁰ armed robbery,⁵¹ extortion,⁵² attack by aircraft, ships or fixed platform,⁵³ endangering air traffic safety,⁵⁴ recognizing occupation,⁵⁵ murder of representatives of the highest state bodies,⁵⁶ punishment for the most serious forms of crime,⁵⁷ opposing superior,⁵⁸ attack upon a military person while performing his official duty,⁵⁹ not reporting preparation of a crime,⁶⁰ terrorism,⁶¹ genocide,⁶² crimes against humanity,⁶³ war crimes against civilians,⁶⁴ war crimes against wounded and sick,⁶⁵ war crimes against prisoners of war,⁶⁶ use of illegal means of battle,⁶⁷ misuse of chemical or biological weapons,⁶⁸ unlawful killing and wounding of enemies,⁶⁹ international terrorism,⁷⁰ endangering persons under international protection⁷¹ and taking hostages.⁷²

⁴²Article 33 Paragraph 2 CCM.

⁴³Article 35 Paragraph 1 CCM.

⁴⁴Article 35 Paragraph 2 CCM.

⁴⁵Article 35 Paragraph 3 CCM.

⁴⁶Article 35 Paragraph 4 CCM.

⁴⁷Article 36 Paragraph 4 CCM.

⁴⁸Article 123 Paragraph 2 and 3 CCM.

⁴⁹Article 188 Paragraph 2 CCM.

⁵⁰Article 237 Paragraph 5 CCM.

⁵¹Article 238 Paragraph 5 CCM.

⁵²Article 258 Paragraph 4 CCM.

⁵³Article 302 Paragraph 3 CCM.

⁵⁴Article 303 Paragraph 3 CCM.

⁵⁵Article 306 CCM.

⁵⁶Article 309 CCM.

⁵⁷Article 327 Paragraph 2 и 3 CCM.

⁵⁸Article 330 Paragraph 5 CCM.

⁵⁹Article 333 Paragraph 4 CCM.

⁶⁰Article 363 Paragraph 2 CCM.

⁶¹Article 394-b Paragraph 1 CCM.

⁶²Article 403 CCM.

⁶³Article 403-a CCM.

⁶⁴Article 404 Paragraph 1 and 2 CCM.

⁶⁵Article 405 CCM.

⁶⁶Article 406 CCM.

⁶⁷Article 407 Paragraph 3 CCM.

⁶⁸Article 407-6 Paragraph 3 CCM.

⁶⁹Article 409 Paragraph 2 CCM.

⁷⁰Article 419 Paragraph 3 CCM.

⁷¹Article 420 Paragraph 3 CCM.

⁷²Article 421 Paragraph 3 CCM.

Life imprisonment is executed in closed institutions.⁷³ According to the Macedonian legislation, imprisonment for more than three years is executed in closed institutions, as well as sentences of up to one year of prison for recidivists who were previously sentenced to prison.⁷⁴ Only in the Idrizovo Penitentiary there is a special department for women sentenced to prison for the entire territory of the Republic of North Macedonia. Also, the Idrizovo Penitentiary is the only penal institution for life imprisonment imposed on men and women, both for men and for foreign nationals and stateless persons.⁷⁵

Persons sentenced to life imprisonment, serve their sentence in accordance with the provisions of execution of imprisonment, and have all the rights and benefits, except those limited with the House rules of the institution.⁷⁶ Therefore, the provisions of the LES and the bylaws are applied to persons sentenced to life imprisonment, as well.

Persons sentenced to prison are subject to all rules regarding their rights and obligations. For example, they are subject to the same standards for accommodation, nutrition, personal hygiene, rest, health care, educational work, education, leisure, sports and recreation, protection of their rights through the use of legal means, etc.⁷⁷ Also, the same rules of disciplinary liability apply in the event of a disciplinary violation.⁷⁸

But in terms of progression, there is a specificity, that is, sentenced persons to life imprisonment cannot progress from a closed to a semi-open ward.^{79/80}

Then, there are restrictions on the benefits provided for the prison population. Namely, they can not use the benefit which means getting out of prison. Given the fact that the treatment of prisoners sentenced to life imprisonment is in a closed ward classified into V1 groups as very high-risk persons, the following benefits may be used under the Regulation on the Use of Convicts' Benefits: receiving packages with heavier weights (10 and 15 kg), extended visits for 90 minutes, stay with a spouse or a partner in a separate room without supervision. While, unattended telephone calls; off-site visits; free departure from the institution until 7 o'clock; absence of up to 15 days during the year, provided that the absence during the month cannot exceed three days; full or partial use of vacations outside the facility, they cannot use.⁸¹

Next, the basic forms of treatment are applied: work of prisoners, moral and ethical education and training, leisure activities (sports, recreation, cultural and artistic work), prisoners's self-

⁷³Idrizovo Penitentiary and Shtip Penitentiary are closed-type prisons with a high degree of physical and material security. These are prisons for serving prison sentences of more than three years of imprisonment for men and a sentence of more than one year of imprisonment imposed on recidivists who were previously sentenced to prison.

See: *Арнаудовски, Љ./ Груевска-Дракулевски, А.* (2011) „Закон за извршување на санкциите: интегрален текст со предговор, кратки објаснувања и регистар на поимите со прилози“, Скопје: „Студиорум“ - Центар за регионални истражувања и соработка. *Арнаудовски, Љ./ Груевска-Дракулевски, А.* (2013) „Пенологија“ (прв и втор дел), Правен факултет „Јустинијан Први“ во Скопје, 2 Август С Штип, Скопје. (*Arnaudovski, Lj./ Grujevska-Drakulevski, A.* (2011) „Zakon za izvršuvanje na sankciite: integralen tekst so predgovor, kratki objasnuvanja i registar na poimite so prilozii“, Skopje: „Studiorum“ - Centar za regionalni istražuvanja i sorabotka. *Arnaudovski, Lj./ Grujevska-Drakulevski, A.* (2013) „Penologija“ (prv i vtor del), Praven fakultet „Justinijan Prvi“ vo Skopje, 2 Avgust S Štip, Skopje.)

⁷⁴Article 49 Paragraph 1 LES.

⁷⁵ Annual reports of the Directorate for Execution of Sanctions of the Republic of North Macedonia on Work and Status in the Penitentiary Institutions in the Republic of North Macedonia. (<http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv>). (Accessed: 26.3.2018).

⁷⁶Article 49 Paragraph 2 LES.

⁷⁷Article 101-175 LES.

⁷⁸Article 176-191 LES.

⁷⁹Article 154-155 LES.

⁸⁰Rulebook on the time that should be served and the conditions for the sentenced person in the institution of a certain type or in the relevant department of the institution of general type (23.12.2011), Article 10.

⁸¹*Ibid.*

organization and medical psychological treatment of certain categories of prisoners (for some time or for the whole period serving a sentence).⁸² Based on the identified needs that are identified in the individual treatment program, in addition to the general treatment measure, specific treatment measures can be implemented - treatment of prisoners sentenced to life imprisonment.⁸³ Treatment of persons sentenced to life imprisonment is determined by the specific needs and characteristics of those sentenced to life imprisonment and allows for the adaptation of prison conditions of life, reducing the negative effects of length of the sentence and active participation in treatment activities, accepting responsibility for their deviant behavior and learning self-control skills that would reduce the potential risk of injury in prison and reoffending.⁸⁴

What is perhaps most important for people sentenced to life imprisonment is the possibility of parole. According to the CCM, sentenced to life imprisonment cannot be released on parole before serving at least 25 years in prison. Prior to the CCM's amendment, this formal criteria was set at a minimum of 15 years.

Due to the fact that most of the sentences of life imprisonment were pronounced during the validity of this legal decision, the law in force at the time of the commission of the crime applies to these convicts. So far, several convicts have fulfilled a formal criteria, namely, they have already served 15 years in prison, but none have been released on parole. At this point, the possibility of parole is the only hope for this category of inmates and the motivation and incentive to act appropriately in the institution.⁸⁵

Also, according to the CCM and the Law on Pardons,⁸⁶ depending on the crime committed, they can apply for a pardon, which can be replaced by a mitigated sentence.⁸⁷

As for amnesty, neither the latest Law on Amnesty⁸⁸ nor the 1999 Law on Amnesty⁸⁹ and 2002 Law on Amnesty⁹⁰ refers to life imprisonment.

In the period 1991-2011, 30 sentences of life imprisonment were imposed,⁹¹ and today that number is already more than 40 sentenced to life imprisonment. The sentence is imposed solely for serious crimes committed in recent years, so the judges could not impose a lenient sentences. In 2017, one life imprisonment was imposed for murder. In 2016, four sentences of life imprisonment were imposed for murder; in 2015 - three for murder, one for malicious association; no sentence of life imprisonment was imposed in 2014 and 2013; in 2012 - one for murder, in 2011, five life sentences were imposed for committing murder.⁹²

During the analyzed period (1991-2011), there were a total of 29 prisoners sentenced to life imprisonment, who served a sentence of life imprisonment at Idrizovo Penitentiary. Most of

⁸²Guidelines for determining the types and ways of treatment of convicted persons (Official Gazette of the Republic of Macedonia No.173/ 2011).

⁸³*Ibid.*, Article 31.

⁸⁴*Ibid.*, Article 47.

⁸⁵*Gruevska-Drakulevski, Aleksandra* (2014) "Life Sentence Prisoners in the Republic of Macedonia" in *Iustinianus Primus Law Review*, No. 09, volume V, Summer 2014, Skopje: Faculty of Law "Iustinianus Primus" in Skopje. (<http://lawreview.pf.ukim.edu.mk/>). (Accessed: 27.3.2018).

⁸⁶Law on Pardon (Official Gazette of the Republic of Macedonia No.20/1993, 12/2009 and 99/2016).

⁸⁷Article 114 CCM.

⁸⁸Law on Amnesty (Official Gazette of the Republic of Macedonia, 2017).

⁸⁹Law on Amnesty (Official Gazette of the Republic of Macedonia No 6/1999), Article 1: Amnesty shall not apply to persons convicted by a verdict of imprisonment for life imprisonment.

⁹⁰Law on Amnesty (Official Gazette of the Republic of Macedonia No 18/02 of 7 March 2002).

⁹¹*Gruevska-Drakulevski, Aleksandra* (2014) "Life Sentence Prisoners in the Republic of Macedonia" in *Iustinianus Primus Law Review*, No. 09, volume V, Summer 2014, Skopje: Faculty of Law "Iustinianus Primus" in Skopje. (<http://lawreview.pf.ukim.edu.mk/>). (Accessed: 27.3.2018).

⁹² www.stat.gov.mk. (Accessed: 27.3.2018).

them are Albanians (48.2%), followed by Macedonians (37.9%), Roma (10.4%) and Turks (5.3%).⁹³

They all committed at least one murder for which they are sentenced to life imprisonment. None of them were conditionally released. All life prisoners are with a low level of education, most of them have families and children and are not employed. Most of them are not addicted to drugs or alcohol. A high percentage of them are recidivists.⁹⁴

IV. CONCLUSION

Many legal systems around the world use life imprisonment to punish some of the most serious crimes. Life imprisonment refers to a situation in which a defendant is sentenced to spend the rest of his life in prison following a conviction for a crime. Despite widespread use as a form of punishment in many jurisdictions, life imprisonment remains controversial.⁹⁵

Life imprisonment means different things in different countries. In some jurisdictions, this literally means that an inmate will spend the rest of his or her natural life in prison without being released (on parole). In other jurisdictions, prisoners are sentenced to life imprisonment, given the possibility that they may be conditionally released after serving a certain number of years. The sentence of life imprisonment prescribed in international law refers to the sentence of life imprisonment with the possibility of parole. In contrast, life imprisonment without parole has been criticized as a violation of human rights. Namely, it is pointed out that in this way human dignity is violated. Then, life imprisonment without parole is considered a cruel, inhuman and degrading sentence. The right to rehabilitation of prisoners is also questioned, and many believe that the sentence of life imprisonment is equated with the death penalty.

The abolition of the death penalty in the Member States of the European Union has resulted in an increase in the use of life imprisonment. This has additionally led to prison overcrowding, which could impair the effective and humane management of prisoners.

In many European countries, life imprisonment has been effectively abolished. Many European countries abolish life imprisonment and introduce long-term imprisonment of 15, 20, 30 and 40 years. Few countries around the world allow juveniles to be sentenced to life imprisonment without parole or pardon. In some states, for example, Canada and some U.S. states, life imprisonment can be imposed even for traffic offenses.

Life imprisonment is the most severe sentence in the Republic of North Macedonia for serious offenses. According to the Criminal Code of the Republic of North Macedonia, life imprisonment can be imposed for 25 criminal offenses, except that in our Criminal Code for offenses committed intentionally for which the law prescribes a sentence of 20 years imprisonment, for serious forms of these offenses, the law alternatively prescribes a sentence of life imprisonment. For offenses punishable by imprisonment and life imprisonment, a term of up to 40 years may be imposed. A life sentence cannot be prescribed as a capital punishment. The sentence of life imprisonment cannot be imposed on the perpetrator who, at the time of the crime, did not turn 21 years of age.

⁹³ *Gruevska-Drakulevski, Aleksandra* (2014) "Life Sentence Prisoners in the Republic of Macedonia" in *Iustinianus Primus Law Review*, No. 09, volume V, Summer 2014, Skopje: Faculty of Law "Iustinianus Primus" in Skopje. (<http://lawreview.pf.ukim.edu.mk/>). (Accessed: 27.3.2018).

⁹⁴ *Ibid.*

⁹⁵ *Valeska David & Julie Fraser*, *Juvenile Criminal Justice before the Inter-American Court of Human Rights: Aims and Limitations of the Imprisonment of Children*, in *The Inter-American Court Of Human Rights: Theory And Practice, Present And Future* 547, 551 (Yves Haeck, Oswaldo Ruiz-Chiriboga & Clara Burbano Herrera, eds, 1st ed., 2015).

In the Republic of North Macedonia a sentence of life imprisonment with the possibility of parole after 25 years is pronounced (before the CCM amendment, this formal criterion was set at a minimum of 15 years in prison).

An analysis of life imprisonment in the Republic of North Macedonia has shown that although there is a *de jure* possibility of parole, it is almost never granted in practice, hence, potentially rendering it *de facto* ineffective. Moreover, prisoners serving life sentences in the Republic of North Macedonia are excluded from reintegration activities, further reducing the hope of rehabilitation and release.

Concerning the sentence of life imprisonment, particular attention should be paid to the security of the prison. Special measures should be taken to prevent the harmful effects of life imprisonment and other long prison sentences. Particular attention should be paid to promoting contact with the family, other contacts with the outside world must be fostered, and special efforts should be made to allow different forms of escape from prison, something not done in accordance with the current legislation in the Republic of North Macedonia. In addition, prisoners should have access to appropriate counseling, assistance and support. Given that postpenal treatment is very important for successful re-socialization and reintegration back into the society, Recommendation Rec (2003) 23 devotes a special chapter to this issue, as well as to prisoners on parole. The Recommendation emphasizes, among other things, that, given that it is a specific category of prisoner, it is particularly important for the prison administration to make a careful assessment to determine whether certain prisoners pose a risk to themselves and to the others.

Finally, when it comes to imprisonment, in general, we can point to numerous criticisms given the fact that the basis of imprisonment is vindictiveness, retributiveness, punitiveness and, on the other hand, it is applied to re-socialize criminals, which is completely antagonistic goals of imprisonment.

Therefore, to prevent the negative effects of life imprisonment and other long-term prison sentences, prisoners serving life imprisonment and other long prison sentences should be offered adequate material conditions and opportunities for physical, intellectual and emotional stimulation; to develop a comfortable and friendly design of prison premises, furniture and decoration, prisoners should be housed in prisons in the immediate vicinity of their families or close relatives; letters, phone calls and visits should be allowed as often as possible, access to daily press, radio and television and external visitors. Special efforts should be made to allow the release of various forms of imprisonment; then to reduce the risk of suicide, especially immediately after conviction; to eliminate the negative effects of long-term punishment, such as institutionalization, passivity, decreased self-esteem and depression.

If national systems subject to international and European law do not meet these standards regarding life imprisonment, they may contravene the International Covenant on Civil and Political Rights and/ or the European Convention on Human Rights.