



Situation of life-sentenced prisoners

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Preliminary remarks

67. In the 11th General Report on its activities in 2000, the CPT briefly addressed the issue of life-sentenced and other long-term prisoners. In particular, it expressed concern that such prisoners were often not provided with appropriate material conditions, activities and human contact, and that they were frequently subjected to special restrictions likely to exacerbate the deleterious effects of their long-term imprisonment. The Committee considers that the time is ripe to review the situation of life-sentenced prisoners in Europe based upon the experience it has built up on visits over the last 15 years and taking also into consideration developments at the European and universal levels, notably Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe on the management by prison administrations of life sentence and other long-term prisoners.¹

Life sentences

68. For the CPT, a life sentence is an indeterminate sentence imposed by a court in the immediate aftermath of a conviction for a criminal offence which requires the prisoner to be kept in prison either for the remainder of his or her natural life or until release by a judicial, quasi-judicial, executive or administrative process which adjudges the prisoner to no longer present a risk to the public at large. The minimum period required to be served before a prisoner may first benefit from conditional release varies from country to country, the lowest being 12 years (e.g. Denmark and Finland) and 15 years (e.g. Austria, Belgium, Germany, Switzerland) and the highest being 40 years (e.g. Turkey, in the case of certain multiple crimes). The majority of countries imposing life sentences have a minimum period of between 20 and 30 years. In the United Kingdom jurisdictions, the minimum period to be served in prison is determined at the time of sentence by the trial judge; the law does not provide for an absolute minimum period in this regard. Several other countries (e.g. Bulgaria, Lithuania, Malta, the Netherlands and, for certain crimes, Hungary, the Slovak Republic and Turkey) do not have a system of conditional release in respect of life-sentenced prisoners, so that life may literally mean life (see also paragraph 73). On the other hand, it is noteworthy that a number of Council of Europe member states do not have life sentences on the statute book.² Instead, for the most serious crimes they have long determinate sentences usually ranging from 20 to 40 years.

¹ See also the European Prison Rules (2006) and the recently revised United Nations Standard Minimum Rules on the Treatment of Prisoners (*Nelson Mandela Rules* - 2015).

² For example, Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Portugal, San Marino, Serbia, Slovenia and Spain. Further, in practice, life sentences have never been imposed in Iceland and Liechtenstein.

History of the concept of life imprisonment

69. Throughout history, life imprisonment has been intrinsically linked with the death penalty and has progressively become an alternative punishment for the most serious crimes. However, the initial purpose of this substitution was not to mitigate the situation of the convicted person. On the contrary, the medieval view, which persisted for many centuries, was that life-long imprisonment in combination with hard labour and solitary confinement would be seen by offenders as a worse alternative to death. In the same vein, one of the arguments for the retention of the death penalty was precisely that life imprisonment with hard labour was so severe that it would cause more suffering to the individual concerned and be more cruel than capital punishment. From today's perspective, the view that persons serving a life sentence (or for that matter any other sentence) should be additionally punished by the particular severity of conditions in prison is manifestly unacceptable. However, such a view is still deeply entrenched in the public opinion in various European countries.

The concept of life imprisonment was introduced in the 1990s in many member states of the Council of Europe following the ratification of Protocol 6 to the European Convention on Human Rights abolishing the death penalty. The last execution in a Council of Europe member state took place in 1997 and, since 2013, Europe has been a death-penalty free zone in law (with the exception of Belarus).³ However, in many countries it was considered that the public would support the abolition of the death penalty only if its replacement was considered sufficiently punitive. Consequently, persons sentenced to death had their sentences commuted to life imprisonment but little detailed planning appears to have been carried out in relation to the implementation of the life sentences. At the same time, over the 25 years of the CPT's existence, there has been a marked increase in the number of life sentences imposed. This seems mainly to be the result of two factors, the abolition or suspension of the death penalty throughout Europe and sentencing policies across member states in respect of serious crimes. The latest available statistics⁴ show that there were a total of some 27,000 life-sentenced prisoners in Council of Europe member states in 2014. On the basis of a sample of 22 countries in respect of which relevant data are available for a longer period, the number of life-sentenced prisoners had increased by 66% from 2004 to 2014. Further, in 2014, there were about 7,500 inmates held in indeterminate detention for security or public protection reasons in various member states of the Council of Europe (in particular the United Kingdom (England and Wales), Germany, Italy and Switzerland).

70. In the 1990s, the former communist countries of central and eastern Europe specified a period of imprisonment of 20 to 35 years as a blanket minimum for all commuted sentences and new life sentences, without any individual factors being taken into account until this period had elapsed. Equally, many states failed to develop regimes for life-sentenced prisoners tailored to their individual situation. Rather, all such sentenced prisoners were considered to be "dangerous" and in need of ongoing strict control. Now, 20 to 25 years later, as some prisoners start to approach the moment when they may apply for conditional release, there is a realisation that little has been done to give such prisoners a realistic hope of release back into the community. Indeed, long periods of negative treatment in prison, severely restricting the right to maintain relationships with family and friends outside, and a total lack of preparation for release or planning of reintegration are likely to impair seriously the ability of prisoners to function in the outside community.

³ A moratorium has been introduced in the Russian Federation.

⁴ Council of Europe Annual Penal Statistics (SPACE) 2004.8 and 2014.7.

Some of the above-mentioned countries have come to recognise the need to prepare life-sentenced prisoners for release. These countries, as well as those which abolished the death penalty much earlier, have established judicial, quasi-judicial, administrative or executive measures for considering the release of life-sentenced prisoners on an individual basis. Regimes have been developed to address the individual behaviour of the prisoners, offering them education and work. Further, contacts with the outside world, especially with families where possible, have been fostered and outside public and charitable agencies have become involved with them as they progress through their sentence. All this serves both to preserve their “humanity” during the sentence and to prepare them for release. Managing life-sentenced prisoners presents challenges to prison administrations to maintain a positive atmosphere, particularly in the first decade of a life sentence but also as some of these prisoners move into old age. The experience of these states provides a good source of knowledge in proposing techniques to maintain respect for the rights of prisoners facing indeterminate sentences, even though the indeterminacy on its own, no matter how long it may last, creates particular psychological pressures for the prisoner.

The CPT’s findings during visits

71. The CPT has visited a large number of prison establishments across Europe in which life-sentenced prisoners were accommodated. The conditions under which such prisoners were being held varied significantly from one establishment to another. In many countries, life-sentenced prisoners were usually held together with other sentenced prisoners and benefited from the same rights in terms of regime (work, education and recreational activities) and contact with the outside world as other sentenced prisoners.

However, in a number of countries – including Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Moldova, Romania, the Russian Federation, Turkey (prisoners sentenced to aggravated life imprisonment only) and Ukraine⁵ – life-sentenced prisoners were as a rule kept separate from other sentenced prisoners. In several countries, the CPT observed that life-sentenced prisoners were also subjected to a very impoverished regime and draconian security measures. By way of example, life-sentenced prisoners were locked up in their cells (alone or in pairs) for 23 hours per day, were not allowed to associate even with life-sentenced prisoners from other cells (including during outdoor exercise), were not allowed to work outside their cell or were not offered any purposeful activities at all. Further, in several countries, life-sentenced prisoners were systematically handcuffed and/or strip-searched whenever they left their cells. In some establishments, the prisoners concerned were additionally escorted by two officers and a guard dog during any movement outside their cell.

Moreover, in a number of establishments visited, prisoners were subjected to anachronistic rules, the sole aim of which was to further punish and humiliate the prisoners concerned (e.g. prohibition to lie down on the bed during the day, obligation to recite the relevant article of the criminal code under which they had been convicted, each time an officer opened the cell door, obligation to wear a prison uniform of a distinct colour, etc.). In the CPT’s view, such practices clearly have a dehumanising humiliating effect and are unacceptable.

It is also noteworthy that, in some countries, the entitlements of life-sentenced prisoners to contacts with the outside world (in particular as regards visits) were extremely limited and significantly lower than those of other sentenced prisoners.

⁵ In some countries (e.g. the Czech Republic, Lithuania and the Slovak Republic), life-sentenced prisoners must serve a certain period (between 10 and 15 years) in a separate unit before they may be transferred to an ordinary detention unit where they can associate with other sentenced prisoners.

72. In some of the above-mentioned countries, steps have been taken in recent years by the prison authorities to alleviate the detention conditions of life-sentenced prisoners, in particular, by offering the prisoners work and other purposeful activities (including more association with other life-sentenced prisoners) and by following a more individualised approach when it comes to the imposition of security measures. However, much remains to be done to render the situation satisfactory. Regrettably, policies regarding the execution of sentences are still all too often based on the presumption that life-sentenced prisoners are by definition particularly dangerous and that the regime applied to such prisoners should in one way or another also have a punitive character.

The CPT wishes to stress once again that there can be no justification for the systematic handcuffing or strip-searching of prisoners, all the more so when it is applied in an already secure environment. The Committee has also repeatedly stated that the use of dogs inside the detention area is unacceptable. In this connection, the Committee wishes to emphasise that the experience in various European countries has shown that *life-sentenced prisoners are not necessarily more dangerous than other prisoners* (see also paragraph 76). Further, as a matter of fact, life-sentenced prisoners – as indeed all prisoners – *are sent to prison as a punishment and not to receive punishment*.

“Life means life”

73. As indicated above, in several Council of Europe member states, a person may be sentenced to life imprisonment without any prospect of conditional release. This is known as an “actual or whole life sentence”. The CPT has criticised the very principle of such sentences in several visit reports, expressing serious reservations regarding the fact that a person sentenced to life imprisonment is considered once and for all to be dangerous and is deprived of any hope of conditional release (except on compassionate grounds or by pardon). The Committee maintains that to incarcerate a person for life without any real prospect of release is, in its view, inhuman. It is also noteworthy that even persons who are convicted by the International Criminal Court (or special international tribunals) of the most serious crimes such as genocide, war crimes and crimes against humanity may in principle benefit at a certain stage from conditional (early) release.

Indeed, the CPT considers that a prison sentence which offers no possibility of release precludes one of the essential justifications of imprisonment itself, the possibility of rehabilitation. While punishment and public protection are important elements of a prison sentence, excluding from the outset any hope of rehabilitation and return to the community effectively dehumanises the prisoner. This is not to say that all life-sentenced prisoners should be released sooner or later; public protection is a crucial issue. However, all such sentences should be subject to a meaningful review at some stage, based on individualised sentence-planning objectives defined at the outset of the sentence, and reviewed regularly thereafter. This would provide not only hope for the prisoner, but also a target to aim for which should motivate positive behaviour. It would thus also assist prison administrations in dealing with individuals who would otherwise have no hope and nothing to lose.

The European Court of Human Rights has in recent years examined a number of cases where domestic courts had imposed life sentences on prisoners with no possibility for early or conditional release and where, barring compassionate or highly exceptional circumstances, a whole life sentence meant precisely that. The most authoritative judgment of the Court to date, delivered by the Grand Chamber in *Vinter and Others v. the United Kingdom*,⁶ states that it was incompatible with human dignity, and therefore contrary to Article 3 of the European Convention on Human Rights, for a state to deprive a person of their freedom without at least giving them a chance one day to regain that freedom.

⁶ See *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, 9 July 2013.

Three main consequences can be drawn from the existing case-law of the Court. The *legislation* of member states must henceforth provide for a time during the serving of the sentence when there will be a *possibility* to review that sentence. Furthermore, member states must establish a *procedure* whereby the sentence will be reviewed. Finally, detention in prison must be organised in such a way as to enable life-sentenced prisoners to *progress towards their rehabilitation*.

The basic objectives and principles for the treatment of life-sentenced prisoners

74. In the CPT's view, the objectives and principles for the treatment of life-sentenced prisoners enunciated by the Committee of Ministers in Recommendation Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners remains the most pertinent and comprehensive reference document for this group of prisoners. In summary, these principles are:

- *the individualisation principle*: each life sentence must be based on an individual sentence plan, which is tailored to the needs and risks of the prisoner;
- *the normalisation principle*: life-sentenced prisoners should, like all prisoners, be subject only to the restrictions that are necessary for their safe and orderly confinement;
- *the responsibility principle*: life--sentenced prisoners should be given opportunities to exercise personal responsibility in daily prison life, including in sentence planning;
- *the security and safety principles*: a clear distinction should be made between any risks posed by life-sentenced prisoners to the external community and any risks posed by them to other prisoners and persons working in or visiting the prison;
- *the non-segregation principle*: life-sentenced prisoners should not be segregated on the sole ground of their sentence, but be allowed to associate with other prisoners on the basis of risk assessments which take into account all relevant factors;
- *the progression principle*: life-sentenced prisoners should be encouraged and enabled to move through their sentence to improved conditions and regimes on the basis of their individual behaviour and co-operation with programmes, staff and other prisoners.

Establishing these principles in practice

75. Prisons must be safe, secure and ordered, for the sake of all who become involved with them. Since being locked up, especially for an unknown period, is inherently damaging for almost all human beings, steps must be taken to minimise the damage. One important method of achieving this for life--sentenced prisoners is to give them a definite date for the first review for possible release, and a tailored individual programme which provides a realistic series of interventions for each prisoner leading towards that date. Of course, this programme will require regular review, but the objective should always be to engage the prisoner in its development and to provide the prisoner with staging posts and feedback on performance. As a result, such a programme should ensure that all life-sentenced prisoners are given the opportunity to address all aspects of their situation before the date of their first review. This should also entail time spent in less secure conditions, especially on leave in the community towards the end of the period, to ensure that the risk and needs management plan will function outside a secure environment. Continuity of care in the community is crucial to successful re-integration, and a plan for this should be established well before the release date.

Individualisation

76. Meeting these general principles requires individualisation of sentence planning. The CPT proceeds from the knowledge, based on its own experience as well as that of many prison administrations, that life-sentenced prisoners are not necessarily more dangerous than other prisoners (see also paragraph 72); many of them have a long-term interest in a stable and conflict-free environment. Equally, those who start their sentence as dangerous may well become significantly less so, not just with the passage of time during lengthy sentences but also with targeted interventions and humane treatment. After the imposition of the life sentence, individualisation should continue through the process of sentence planning based on an assessment of the individual situation. This requires a lengthy preliminary assessment, preferably conducted in a dedicated place with appropriate staff in the form of experienced and specially trained prison officers, psychologists, educators and social workers. A psychiatrist should also be involved when there are indications of possible mental health issues. The task of that team, working in co-operation with the prisoner, is to develop as full an understanding as possible of the prisoner's situation, both inside a custodial environment and in the community, and the needs the prisoner has for particular interventions to render the stay in prison as beneficial as possible in terms of resolving identified needs and preparation for release. Use should be made of accredited risk and needs assessment instruments, supplemented by professional judgment.⁷ The resulting analysis and plan, which should be shared as far as possible with the prisoner, becomes a source document for all persons working with the prisoner. It should be reviewed on a regular basis, with feedback given to the prisoner.

Implementing the sentence plan

77. *The guiding principles in implementing the sentence plan are very much the same as for all prisoners.* Prisoners should not be subject to any restrictions which are not required for the maintenance of good order, security and discipline within the prison. In particular, the level of security applied to each individual should be proportionate to the risk presented by the person. The nature of the offence is only one factor in assessing this. As a matter of principle, *the imposition of the detention regime of life-sentenced prisoners should lie with the prison authorities and always be based on an individual assessment of the prisoner's situation, and not be the automatic result of the type of sentence imposed* (i.e. the sentencing judge should not determine the regime).

78. Equally, except in the assessment phase, *life-sentenced prisoners should not routinely be kept apart from other sentenced prisoners*, although it would not be objectionable for long-term prisoners to be kept apart from very short-term prisoners. The length of sentence does not necessarily bear any relationship to the level of risk life-sentenced prisoners may represent inside a prison, and the principle of normalisation requires that life-sentenced prisoners can at least associate with other long-term prisoners who have a predetermined release date. The, albeit limited, turnover this can create refreshes the experience of prison for those who are to be incarcerated for a very long time.

Concentrating life-sentenced prisoners in a specialised prison also necessarily results in many such prisoners being kept very far from their families and outside contacts. A life sentence will in any event put a good deal of pressure on these relationships; compounding that by locating the prisoner a significant distance away from home reduces the possibility of maintaining what is a crucial element in promoting resocialisation. Further, no additional restrictions should be imposed on life-sentenced prisoners as compared to other sentenced prisoners when it concerns the

⁷ See Recommendation CM/Rec (2014) 3 of the Committee of Ministers of the Council of Europe to member States concerning dangerous offenders.

possibilities for them to maintain meaningful contact with their families and other close persons. During the first years of imprisonment in particular, restrictions on contacts are likely to disrupt or even destroy such relationships. It is also important that life-sentenced prisoners have genuine access on as regular a basis as possible to visits, telephone calls, letters, newspapers, radio and television to maintain their sense of contact with the outside world.

79. Life-sentenced prisoners should have *access to as full a regime of activities as possible*, and normally in association with other prisoners. Work, education, sports, cultural activities and hobbies not only help pass the time, but are also crucial in promoting social and mental health well-being and imparting transferable skills which will be useful during and after the custodial part of the sentence. The involvement of prisoners in these activities, in addition to their participation in offending behaviour interventions, represents a significant factor in the ongoing assessment of each person's performance. They allow staff of all grades to better understand prisoners and enable the staff to make informed judgments as to when it would be appropriate for the prisoner to progress through the regime and be trusted with lower security conditions. The possibility of such progression is crucial, for the management of the prison and for the prisoner. It motivates and rewards the prisoner, providing staging posts in their otherwise indeterminate world, and ensures a deeper relationship between the assessing staff and the prisoner, which contributes to *dynamic security*.

Indeed, the effective implementation of dynamic security should make a crucial contribution to the process of assessing when it is safe to allow the individual prisoner access to the community, initially in the form of escorted short leave, then moving on to unescorted overnight leave and finally to conditional release into the community. Good staff will have developed an in-depth understanding of the individual, which they can share with decision-making bodies and with those who will take over responsibility for supervision and support in the community. Many existing systems make poor use of staff, especially basic-grade security staff who usually spend by far the most time with the prisoners. They are often discouraged – or forbidden – from getting to know the prisoners and thus a great opportunity for developing positive relationships between staff and prisoners is lost. Such relationships, within appropriate parameters, not only enhance security but can also help motivate prisoners to co-operate with regimes and give staff a much more positive experience of prison work than is available to a prison officer acting purely as a turn-key. Of course, this requires appropriate staff selection, training, supervision and support from other professionals in the system. But the benefits, as experienced by several member states and observed by the CPT, are manifest.

80. There are undoubtedly some life-sentenced prisoners who are very dangerous. However, the approach should be the same as for other sentenced prisoners and includes: detailed assessments of the individual situation of the prisoners concerned; risk management with plans to address the individual's needs and to reduce the likelihood of re-offending in the longer term, while affording the necessary level of protection to others; regular reviews of security measures. The objective, as with all dangerous prisoners, should be to reduce the level of dangerousness by appropriate interventions and return the prisoners to normal circulation as soon as possible.

Conclusion

81. The CPT calls upon member states to review their treatment of life-sentenced prisoners to ensure that this is in accordance with their individual risk they present, both in custody and to the outside community, and not simply in response to the sentence which has been imposed on them. In particular, steps should be taken by the member states concerned to abolish the legal obligation of keeping life-sentenced prisoners separate from other (long-term) sentenced prisoners and to put an end to the systematic use of security measures such as handcuffs inside the prison.

82. Further, all possible efforts should be made to provide life-sentenced prisoners with a regime tailored to their needs and help them reduce the level of risk they pose, to minimise the damage that indeterminate sentences necessarily cause, to keep them in touch with the outside world, offer them the possibility of release into the community under licence and ensure that release can be safely granted, at least in the overwhelming majority of cases. To this end, procedures should be put in place which allow for a review of the sentence. Obviously, having a purely formal possibility to apply for release after a certain amount of time is not sufficient; member states must ensure, notably through the way they treat life-sentenced prisoners, that this possibility is real and effective.