

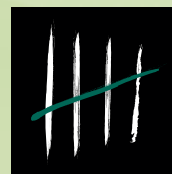
CISST/TCPS

Addressing Prisoners with Special Needs: Life Imprisonment



CISST
CIVIL SOCIETY IN THE PENAL SYSTEM

TCPS
TURKEY'S CENTER FOR PRISON STUDIES



CISST - Addressing Prisoners with Special Needs: Life Imprisonment

By Florian Ldtke & İdil Aydınođlu

Edited by Eva Tanz



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Content

| | |
|--|----|
| I. Introduction | 7 |
| II. Legal Framework..... | 10 |
| The Situation in Europe..... | 10 |
| International Legal Instruments..... | 11 |
| Juvenile Offenders | 12 |
| Mandatory Sentence..... | 14 |
| Conclusion | 15 |
| III. Examples from different countries..... | 16 |
| Explanation of Categorization of the countries | 16 |
| Prison length statistics (SPACE I)..... | 17 |
| Countries: | 18 |
| Albania | 18 |
| Armenia..... | 18 |
| Austria | 19 |
| Azerbaijan..... | 19 |
| Belgium | 20 |
| BiH Bosnia Herzegovina..... | 21 |
| Bulgaria | 21 |
| Croatia..... | 22 |
| Cyprus..... | 23 |
| Finland | 23 |
| France..... | 24 |

Georgia.....24

Germany.....25

Greece.....26

Hungary27

Iceland.....28

Ireland28

Montenegro29

Netherlands29

Norway.....29

Portugal30

Cross-country comparison:.....31

IV. Turkey and Life Imprisonment32

 Brief History of Life Imprisonment in Turkey.....32

 Current numbers of life imprisonment and statistics of prisoners.....34

 Legal Requirements35

 ECHR Judgements Regarding LWOP36

V. Conclusion44

References in the Information Boxes:45

I. Introduction

I feel myself as a point in the middle of the ocean. It is made by failures, sterilities, daily routines, without value. I have chains made by steal inside me and I have to use all of my energy and the strength of my soul to break them. I am losing all of my energy to say that I am here and I exist. This is not enough. My voice cannot find its way out of the prison. because they are long, tortuous as dark labyrinths. Basically, I am in the sea of meaningless and I am the hunter of meaning.

(S.K. Buca F Type Prison, imprisoned since 1998, solitary confinement since 2005, LWOP)

This CISST report *Addressing prisoners with special needs: Life Imprisonment* collects and combines previous knowledge about the legal and socio-political situation of life imprisonment and the current situation of prisoners in Turkey serving a life sentence. It describes global trends and draws conclusions for the future development of the situation in Turkey.

Life imprisonment constitutes usually the maximum punishment for criminal offences; in so far the country does not apply the death penalty. The severity of the crime committed is punished by the state with a removal from society for a longer period of time or even without the possibility of parole (Life without parole, LWOP). Varying between different national legislations, there is a minimum period of imprisonment before the prisoner becomes eligible for an assessment of release. In Germany, for example, the minimum period after which prisoners' punishment is reassessed is 15 years¹². In contrast, in France, prisoners have to serve 18-22 years³, and 30 years in special cases⁴ before their sentence can be reviewed. In the United States, depending on

the respective state, the minimum period varies between 25-40 years. Yet, the American Civil Liberties Union found in 2013 that besides the formal LWOP, only few lifers (short for prisoners serving life imprisonment) are given the actual possibility of parole. For example in 2007, of over 8,800 prisoners eligible for assessment, the board found only 172 suitable for parole, eventually releasing only 37⁵. The time waiting for a subsequent hearing when parole has been denied has also increased. Thus, when assessing life imprisonment a focal point are not only legally defined LWOP, but for example the real implications of the denial of parole.

Vinter and others versus the United Kingdom

"[I]f... a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence. Thus, [a life sentence without the possibility of parole is] a poor guarantee of just and proportionate punishment."

As cited in Turner (2013)

1 StGB (German) §57a

2 The Constitutional Court in Germany decided already in 1977 that it was inhuman and humiliating to imprison people without parole. (BVerfGE 45, 187, 253 ff.)

3 Code penal (France), Art. 132-23

4 Ibid., Art. 221-3

5 Turner, J. (2013). *A Living Death: Life without Parole for Nonviolent Offenses*. New York: ACLU Foundation. [hereinafter Turner]

Besides the many national differences, life imprisonment has been disputed on inter- and intra-national level. In Europe, only few countries, including England and the Netherlands, still allow for LWOP. According to legal provisions in England and Wales, so-called ‘starting points’ of life imprisonment judgments need to be determined, which may reach from 15 years to a ‘whole life order’ (equal to LWOP). In 2013 the European Court of Human Rights (ECtHR) ruled that LWOP in England violates Article 3 of the European Convention on Human Rights (ECHR)⁶ which forbids degrading punishment. The court decision set an important sign for the importance of the possibility of review⁷.

Furthermore, international measurements are providing for legal tools concerning life imprisonment. The United Nations Minimum Rules for the Treatment of Prisoners⁸ demands that prisoners have to know their release date once imprisoned. Moreover, according to the International Criminal Court (ICC), life imprisonment is to be applied only to the perpetrators of most horrendous atrocities, and yet their punishment has to be reviewed after 25 years – establishing an international guideline for provisions of parole.

6 Art 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” European Convention of Human Rights (01.07.2010 [1972]). Retrieved from http://www.echr.coe.int/Documents/Convention_ENG.pdf [hereinafter ECHR]

7 *Vinter and Others v. The United Kingdom*, Application Nos. 66069/09, 130/10, and 3896/10, Eur. Ct. H.R. (July 9, 2013) [hereinafter *Vinter*], This judgment has been rejected by the Court of Appeal in 2014, pointing to the possibility of appeal in exceptional cases.

8 §7 (1) c

Bradley Manning and Penal Severity

The Open Society Justice Initiative undertook a study of the law and practices of 20 European states to ask how states respond differently to a specific crime. While Bradley Manning was punished with 35 years imprisonment in the US for the disclosure of classified national security information in 2013, the study found that “where there is no spying, treason or disclosure directly to a foreign state, the penalties are far less than in the United States: up to two years in Denmark and Great Britain; four years in Spain and Sweden; five years in Belgium, Germany, Poland, and Slovenia; and seven years in France.” Moreover, the study found that prosecutions are rare: In Albania, Belgium, Norway, Romania, Spain, and Turkey no one committing this crime was convicted in the last ten years. Eleven other countries show only rare cases of conviction. “Russia is the only country surveyed in which significant numbers of prosecutions have resulted in penalties of more than three years, including, and disturbingly, for the disclosure of human rights violations.”

Coliver S, (2013).

Life imprisonment is situated within the general developments of prison and punishment. According to UNODC, the size of the world prison population has increased by approximately 10 per cent from 2004 to 2015. Although prisoner numbers and percentages fluctuate and differ greatly between countries, the general trend indicates a drastic increase, parallel to the increase in the United States since the 1970s, making it the country with most prisoners per 100,000 capita. Among the prisoners a small percentage serves a life imprisonment. In comparison of 35 countries, UNODC showed that of the total prison population in 2012 “more than two thirds had received prison sentences of up to five years, while, at the other end of the spectrum, 6.5 per cent had received sentences of more than 20 years, including life sen-

tences, and 0.2 per cent had been given death sentences.”⁹

A reason for the significant increase in the numbers of LWOP, according to Global Prison Trends 2015, is its use as a default alternative sentence to the death penalty when abolished. It serves the same rationale, emphasizing general deterrence purposes of the punishment and completely neglecting rehabilitation aspects. In the words of a German judge: “Regarding the underlying thought of the life imprisonment it has a direct and close connection to the extinctive sentence of earlier times, as well as the death sentence. It has sociopsychologically and psychologically many ties to the death sentence: Especially the motive of revenge and retaliation, a definitive and absolute exclusion from society.”¹⁰

Similarly to this global development, Turkey has seen a high number of prisoners serving a life-time or LWOP as a result of the abolition of the death penalty in 2004. According to the Ministry of Justice, the number of aggravated life prisoners was 1453 in February 2014.¹¹ 126 of them are LWOP and the rest are imprisoned for 30 years before conditional release. Along with being sentenced to life without the possibility of parole, severe conditions in Turkish prisons are punishing prisoners additionally to the legal punishment they received for their crimes (see part IV: Turkey and Life Imprisonment). In Turkey, aggravated life sentence with-

out the possibility of parole is stipulated only for political prisoners.

This report sets out to provide an overview of international, European and examples of national judicial regulation concerning life imprisonment. Thus, a first part outlines the legal framework. A second part will compare different countries and situate them within the legal framework. Thirdly, this report looks at the case of Turkey through a legal and psychological perspective in order to give a more detailed look into one country and the effect it has on prisoners. Serving long sentences in prison up to the impossibility or hope of ever leaving prison, lifers are facing specific issues to their imprisonment. Thus, the particular situation of those prisoners will also be part of the observations and analysis of this report.

David Garland on Death Penalty and Life Imprisonment in the United States

“Capital punishment in America today operates primarily on the plane of the imaginary, and the great majority of its deaths are imagined ones. But the political and economic effects of these grim fantasies are no less real for being imagined. In American criminal sentencing, the availability of the death penalty permits very lengthy sentences of imprisonment, even life imprisonment without parole, to appear comparatively humane, thereby contributing to the nation’s extraordinary rates of imprisonment. In the American political system and in the entertainment zone of popular culture, talk about death permits symbolic acts, exchanges, and representations that are used by groups and individuals in their pursuit of power, profit, and pleasure. That the death penalty is increasingly declaratory and discursive makes it no less powerful in its political, legal, and cultural effects. Nor is it any less lethal for the more than twelve hundred men and women who have been put to their deaths since executions resumed three decades ago.”

Garland, D. (2010). p. 312

9 Allen, R. (2015). Global Prison Trends 2015. Penal Reform International. p.10.

10 Fischer, T. (2015, February 24). Schafft Lebenslang ab! Die Zeit. Hamburg. [hereinafter Fischer]

11 Information gathered through inquiry send by CISST/TCPS within the Right to Information Act (2014). The more recent inquiries send by CISST/TCPS have been left unanswered by the MoJ.

II. Legal Framework

At the heart of any general framework for conditions within prison and national as well as international legal provisions on punishment should be international standards of human rights. Thus, three main principles are core to any discussion of life imprisonment as will be indicated in the further examples:

- Inherent dignity
- Prohibition of torture and inhumane, degrading treatment
- Right to freedom

The Situation in Europe

Trends of the increasing use of life imprisonment, mostly without the possibility of parole, have been met by increasing concern and legal debates about what kind of minimum standards should be adhered to considering the use of life imprisonment as punishment.

In a recent decision, the European Court of Human Rights (ECtHR) decided that LWOP is incompatible with Article 3 of the European Convention of Human Rights (ECHR), which reads: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”¹² For life imprisonment to be compatible with the ECHR, the ECtHR holds that there must be both a possibility of review by the authorities and a prospect of release. Although the decision of *Vinter and Others v. The United Kingdom* (2013)¹³ was recently partly rejected by the Court of Abolition, it is an im-

portant sign against the use of LWOP, which was reaffirmed by *László Magyar v. Hungary*¹⁴. Furthermore, the case of *Trabelsi v. Belgium*¹⁵ in 2014 extended the importance of possibility of release to extradition cases. The court ruled that Council of Europe member states are not allowed to issue extradition if the individual faces life imprisonment without possibility of release or proper review procedures in the country to which they are being sent to. All those legal decisions focus on the aspect of no possibility of parole, which is deemed unworthy and in breach of the prohibition of torture and inhumane, degrading treatment.

In this regard, there are several states in Europe which still punish people for life without parole. England and Wales, Bulgaria, Hungary, France, Slovakia, Switzerland and Turkey are countries which provide for parole, but nevertheless have not abolished LWOP completely. Certain categories of crime may be punished by life imprisonment without parole. Furthermore, Iceland, Lithuania, Malta, the Netherlands and Ukraine make no provision for parole for life prisoners at all. In contrast, several European states have abolished life imprisonment completely: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. Yet, as this report will discuss more intensively, the abolition of life imprisonment did not equally abolish the possibility of very lengthy periods of imprisonment.

12 ECHR, *supra* note 6

13 *Vinter*, *supra* note 7

14 *László Magyar v. Hungary*. Application No. 73593/10. EUR. CT. H.R. (20.05.2014)

15 *Trabelsi v. Belgium*, Application No. 140/10. EUR. CT. H.R. (04.09.2014).

Therein, Germany does provide a clear-cut decision against LWOP. In 1977, the German Constitutional Court decided it unlawful and against the inherent dignity of prisoners to allow for life imprisonment without the possibility of parole (*lebenslange Freiheitsstrafe*)¹⁶. Human dignity requires the law to assure any prisoner the hope and chance of being released from prison. After a maximum sentence of 15 years, the imprisoned have the chance to parole. Thomas Fischer, judge at the Federal Court of Justice of Germany, stresses the importance of that decision in the face of continuous demands for reintroducing life imprisonment: “Any change of the law [concerning life imprisonment] directing towards aggravation would be abolished by the constitutional court. Therefore, any comments are superfluous, and still after 35 years did not realize the major advances of this decision (and following decisions) of the court [in 1977]: The recognition of the citizen within the criminal, the confirmation of the person’s self-responsibility and the re-affirmation of the dignity even of a convicted person. And thus the departure from *motives of destruction* of the past in favor of *rational, empirically argued motives* of criminal justice.”¹⁷

International Legal Instruments

Internationally, different legal and political authorities have set guidelines and objections concerning the use of LWOP. One of the crucial guidelines for criminal law and punishment

is the International Criminal Court (ICC) Statute. Article 77(1)(b) of the Statute provides for a fixed sentence of maximum 30 years or life imprisonment “when justified by the extreme gravity of the crime and the individual circumstances of the convicted person”. According to Article 110(3), such terms are to be reviewed by the court after 25 years to determine whether they should be reduced. Thus, the statute lays out requirement of possibility of parole and a minimum standard for parole. Furthermore, Amnesty International has declared its opposition to the imposition of sentences of life imprisonment without the possibility of parole. Similar to the German constitutional court’s decision, Amnesty International argues that LWOP are inconsistent with the prohibition against cruel, inhuman or degrading punishments and “the principle that incarceration should involve, among other goals, social rehabilitation.”¹⁸

In a much noted statement in 2014 Pope Francis argued that life-long incarceration should be opposed as strongly as the use of capital punishment.¹⁹ Another important international guideline on life imprisonment is the UN Crime Prevention and Criminal Justice Branch’s report ‘Life Imprisonment’ (UN Crime Prevention Report), which acknowledges major human rights problems of life imprisonment and suggests that “the deprivation of liberty may only be justified if accompanied by review

16 BVerfG (21. Juni 1977). Az. 1 BvL 14/76 (Lebenslange Freiheitsstrafe). Retrieved from <https://openjur.de/u/60105.html>

17 Fischer, *supra* note 11

18 Amnesty International. (2014). Fair Trial Manual (2nd ed.). London. p.179. Retrieved from <https://www.amnesty.org/en/documents/POL30/002/2014/en/>

19 N.d. (2014, October 23). Pope Francis blasts life sentences as “hidden death penalty.” The Guardian. London. Retrieved on 10.01.2016 from <http://www.theguardian.com/world/2014/oct/23/pope-francis-life-sentence-hidden-death-penalty-torture>

Pope Francis on Life Imprisonment

“All Christians and men of good faith are therefore called upon today to fight, not only for the abolition of the death penalty – whether it is legal or illegal and in all its forms – but also to improve the conditions of incarceration to ensure that the human dignity of those deprived of their freedom is respected.[...] And this, for me, is linked to life sentences. For a short time now, these no longer exist in the Vatican penal code. A sentence of life (without parole) is a hidden death penalty.[...] In recent decades a belief has spread that through public punishment the most diverse social problems can be resolved, as if different diseases could all be cured by the same medicine. [...] These abuses will only stop if the international community firmly commits to recognising ... the principle of placing human dignity above all else.”¹⁸

and assessment procedures that operate within commonly accepted judicial standards.”²⁰ The report affirms not only that LWOP ignores the principles of rehabilitation and reintegration into society, but “also places heavy financial burdens on taxpayers”²¹ Furthermore, it sets out fundamental principles such as

- (a) imposing life imprisonment “only when strictly needed to protect society and to ensure justice”,
- (b) no life-imprisonment for juveniles under 18 years of age,
- (c) the right to appeal, pardon or commutation,
- (d) possibility of release,
- (e) special security measures only for genuinely dangerous prisoners and

20 UN Crime Prevention and Criminal Justice Branch. (1994). Life imprisonment. UN Document ST/CS-DHA/24. p.16. Retrieved from <http://www.penalreform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf>

21 Ibid., p.16.

(f) ensuring a better understanding of the general public towards problems of lifers²².

Concerning parole, the UN Crime Prevention Report proposes that “early assessment may be vital in that it gives a structured approach to a life-sentence prisoner’s future movement through the penal system.”²³ Thus, all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 and 12 years of incarceration.²⁴ A 2012 report on countries in South Caucasus proposes to apply such standards to countries who replaced the death sentence with life imprisonment.²⁵ Overall, several important international law measurements are in place to assure at least the possibility of parole after a certain amount of years. Other important international actors condemned life imprisonment.

Juvenile Offenders

According to the Convention on Rights of the Child (CROC) and several other international provisions, young people should not be punished by life imprisonment²⁶. In particular, Ar-

22 Ibid.

23 Ibid. p.16

24 Ibid.

25 Khasia, M., & Chanturia, T. (2012). The abolition of the death penalty and its alternative sanction in South Caucasus: Armenia, Azerbaijan and Georgia. (J. Macalesher, Ed.). Retrieved from <http://www.penalreform.org/wp-content/uploads/2013/05/South-Caucasus-Research-Report-Death-Penalty-and-Alternatives-ENGLISH.pdf> [hereinafter Khasia & Chanturia]

26 Convention on the Rights of the Child. (2 September 1990). UN General Assembly. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Article 37 of the CROC states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”, as well as that the imprisonment of a child shall be used only as the last resort and for the shortest appropriate period of time. This prohibition is absolute and sets a clear minimum age for the applicability of life imprisonment and lengthy sentences. According to Amnesty International, international standards, the Committee on the Rights of the Child, other treaty bodies, the UN Human Rights Council and regional authorities focus on three core principles of juvenile justice:

- (1) consistency with the child’s sense of dignity and worth,
- (2) taking into account the child’s age and promotes the child’s reintegration and the child’s adoption of a constructive role in society and
- (3) the prohibition and prevention of all forms of violence.

Those premises stand in stark contrast to the application of life imprisonment in general, and LWOP in particular. In line with these principles, several conventions set a clear boundary between the punishment for offences of adults and for offences committed by individuals below the age of 18: Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), Article 5(3) of the African Charter on the Rights of the Child, Article 4(5) of the American Convention, Rule 17.2 of the Beijing Rules, Paragraph 3 of the Death Penalty

Safeguards, Section O(o)(iv) of the Principles on Fair Trial in Africa, Article 68 of the Fourth Geneva Convention, Article 77(5) of Protocol I and Article 6(4) of Protocol II to the Geneva Conventions.²⁷ Accordingly, the conventions set out prohibitions of life imprisonment sentences for children under the age of 18.

Going beyond the prohibition of LWOP, the Committee on the Rights of the Child strongly recommends the abolition of all kind of life imprisonment for offences committed by people under the age of 18. Even those forms of life imprisonment which already include the possibility of parole pose serious challenges to the principles of juvenile justice, i.e. reintegration and re-socialization.

Nevertheless, countries have different standards for the application of life imprisonment in juvenile justice. Most European countries apply the international standards. For example, in Germany the following standards are applied. While people under the age of 14 are never prosecuted, those between the age of 14 and 18 may receive a maximum sentence of 10 years imprisonment (with possibility of parole) and those between the age of 18 and 21 may receive a maximum of 15 years imprisonment or life in prison. A person between the ages of 18 and 21 can be tried before a Juvenile Court (*Jugendgericht*) or an Adult Court, which is determined by the intellectual development of the accused and the severity of the crime itself.

In contrast, according to the French Penal Code, life imprisonment is only forbidden for

²⁷ Amnesty International (2014). *Amnesty International Fair Trial Manual*. UK. 2 ed., p .204

offences committed by people under the age of 16. Thus, in France minors might be charged with life imprisonment.²⁸ In other countries juvenile justice might comprise older people. For example, in Austria, life imprisonment is forbidden for persons under the age of 21 at the time the crime was committed. In addition to a standard on age of committal, Azerbaijan and Georgia have added that life imprisonment is forbidden for elderly people who have reached the age of 65 at the time of sentencing and those mentally ill. In addition, Azerbaijan does not allow life imprisonment for women.

Mandatory Sentence

Mandatory sentences are on the decline, especially countries carrying out mandatory death penalty. Yet, certain countries including the UK, South Africa, Canada, Turkey or Ireland have certain mandatory life imprisonment for people convicted for particularly grave crimes. The US is often especially discussed concerning this topic, because of the highest percentages of prisoners per capita and the issue of mandatory sentences for minor crimes. In a report issued in 2013, the American Civil Liberties Union (ACLU) found that there are over 3.200 people in the US who are incarcerated for life without parole²⁹. The overwhelming majority (83.4 percent) of those constitute mandatory sentences to LWOP. As ACLU found out in interviews, in these cases, laws requiring

“mandatory minimum periods of imprisonment, habitual offender laws, statutory penalty enhancements, or other sentencing rules that mandated LWOP” left the sentencing judges no other choice.³⁰ Furthermore, the ACLU report revealed that most crimes punished with LWOP were minor crimes; of which 79 percent nonviolent drug crimes. In the report, Federal District Court Judge James R. Spencer, said the following after sentencing a person to LWOP for selling crack cocaine over a period of weeks: “I think a life sentence for what you have done in this case is ridiculous. It is a travesty. I don’t have any discretion about it. I don’t agree with it, either. And I want the world and the record to be clear on that. This is just silly. But as I say, I don’t have any choice.”³¹ Mandatory sentences of life without parole – as practiced for example in the US – constitute a deprivation of consideration of prisoner’s particular case and circumstances.³² While critics of abolishing mandatory sentences argue through the further (additional to the suffering of the crime) suffering inflicted on victims and their families, they stand in contrast to many examples of inadequacy of the punishment. For example, Kevin Ott has already spent 20 years in prison of his LWOP without much hope of release due to the three-strikes law, which allowed for mandatory sentences for several minor offenses, mostly related to drug possession³³. The case of Sharanda Jones, a first-time non-violent offender serving LWOP shows this quite blankly³⁴.

28 Monnin, I. (2014, November 17). *Affaire Agnès Marin: les parents du meurtrier « hantés » par la victime*. *Le Monde*. Paris. Retrieved from http://www.lemonde.fr/m-le-mag/article/2014/11/14/affaire-du-chambon-sur-lignon-les-parents-du-meurtrier-hantes-par-agnes_4522818_4500055.html

29 Turner. (2013).

30 Ibid.

31 Ibid., p.4.

32 Amnesty International (2014). p.179.

33 Rappleye, H. (2015). *They sentenced me to die in Prison*. Retrieved on 04.12.2015 from <http://www.nbcnews.com/news/us-news/they-sentenced-me-die-prison-n459511>

34 Jones, S. (n.d.). *A letter from Sharanda*. Retrieved on

Conclusion

The overall legal situation, internationally and in Europe, provides clear rules and guidelines for life imprisonment, LWOP and certain provision about the possibility of parole as well as punishment for people under the age of 18. Thus it provides the basis for the next part of this report which is taking a closer look at the legal and actual situation in several European countries.

III. Examples from different countries

Explanation of Categorization of the countries

In the following, this report provides an overview of some of the states of the Council of Europe, as well as other selected states, in order to show different levels of application of life imprisonment and the legal provisions. Although countries have very different approaches to sentence lengths and life imprisonment in particular, we have tried to categorize the countries according to the following questions.

1. Has life imprisonment been already abolished?
2. Does a possibility of parole exist? What is the minimum period of imprisonment before the prisoner becomes eligible for an assessment of release?
3. What are the actual numbers of prisoners serving life imprisonment, compared to the European average and compared to the people serving long sentences?
4. What are exceptions to serving life imprisonment? Particularly, are persons under 18 eligible for life imprisonment/lengthy sentences?

According to the evaluation of those factors, we gave four different colors to the countries so they are easily categorized:

Category A: Green = Life imprisonment has been abolished. The number of prisoners serving long sentences is low.

Category B: Yellow = Life imprisonment has been abolished. The number of prisoners serving long sentences is high.

Category C: Orange = Life imprisonment has not been abolished. There is a possibility of parole.

Category D: Red = Life imprisonment has not been abolished. There is no possibility of parole.³⁵

In order to provide an overview of prison length varying between countries, the following statistic from SPACE I focuses on several countries of the Council of Europe. It allows an insight into the range of impacts of the legal situations in the respective countries concerning life imprisonment. In the section thereafter we compiled country profiles of 21 countries (excluding Turkey) which range within the categories A to D. This overview is not intended to be exhaustive, but rather allows for a cross-country comparison which provides an understanding of how international law is applied 'on the ground' as well as how to locate Turkey within this European scope of life imprisonment.

³⁵ Although in some countries there is the possibility for prisoners to be pardoned by the highest representative of the respective state and the courts, it is not accepted by the ECHR as a possibility of parole for prisoners, as it is only for prisoners who have chronic illnesses, disabilities or are of old age.

Prison length statistics (SPACE I)

| | Length of sentences (%s of final sentenced inmates) | | | | | | | | |
|--|---|-------------|-------------|-------------|------------|----------------------------|--------------------------|--|--|
| Country | Fixed-term Sentences | | | | | | Not-fixed-term Sentences | | Total of sentences from 10 years (including life imprisonment) |
| | <1 | 1-3 | 3-10 | 10-20 | >20 | Total fixed-term sentences | Life imprisonment | Security Measurements of indetermined length | |
| Denmark | 33,2 | 31,7 | 22,7 | 9 | 0,1 | 96,6 | 0,9 | 1,8 | 11,7 |
| Finland | 17,1 | 32 | 35,9 | 6,9 | 0 | 92 | 8 | NAP | 15 |
| France | 36,6 | 30,2 | 20,6 | 8,7 | 3,2 | 99,2 | 0,8 | NAP | 12,6 |
| Germany | 43,8 | 19,8 | 31,6 | 1,2 | NAP | 96,4 | 3,6 | NAP | 4,8 |
| Greece | 5,9 | 3 | 41,3 | 18,8 | 18,6 | 87,6 | 10,4 | NAP | 47,8 |
| Italy | 5,7 | 20,4 | 50,5 | 14,3 | 5,1 | 96 | 4 | NAP | 23,4 |
| Netherlands | 44,3 | 23 | 21,7 | 7,3 | 0,5 | 96,8 | 0,5 | NAP | 8,4 |
| Norway | 37,5 | 28,5 | 25,3 | 8 | 0,7 | 100 | NAP | Note 1 | 8,7 |
| Portugal | 6,8 | 14,5 | 54,6 | 14,2 | 2,9 | 93,1 | NAP | 2,1 | 19,3 |
| Russian Federation | 3 | 19,8 | 60,3 | 15,5 | 1,1 | 99,7 | 0,3 | NAP | 16,9 |
| Spain | 8,3 | 20,4 | 51,2 | 15,4 | 4,7 | 99,9 | NAP | Note 2 | 20 |
| Turkey | 40 | 23,3 | 31,1 | 1,3 | 0,1 | 95,8 | 4,2 | NAP | 5,6 |
| UK: England and Wales | 9,4 | 21,7 | 34,6 | 6,4 | 0,6 | 72,7 | 10,7 | 7,9 | 25,6 |
| European Average | 16,6 | 24 | 41 | 10,8 | 2,3 | 94,1 | 3,1 | 1,2 | 15,8 |
| <p>Note 1: persons sentenced to security measures (Forvaring) are included in other items of Table 7 according to the length of the main sentence, which should be equal to the minimum time to be served as specified in the sentence.</p> <p>Note 2: persons sentenced to security measures are included in items of Table 7 according to the length of the main sentence.</p> <p>Source: Executive Summary SPACE I (2013). Retrieved on 20.07.2015 from http://wp.unil.ch/space/files/2015/04/ENG_Executive-Summary_SPACE-2013_150206.pdf</p> | | | | | | | | | |

Countries

Albania

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 25 years.

The Albanian Criminal Code provides for life imprisonment in the case of a committal of a “serious crime”, but is not applied to persons under the age of 18 at the time the crime was committed or to women. The general maximum length for a crime is 35 years and in case of life imprisonment there is possibility of parole after 25 years when “during the period serving his [or her] sentence, the prisoner has had excellent behavior and it is deemed that the educational aim has been achieved”³⁶.

According to Council of Europe’s Annual Penal Statistics (SPACE I)³⁷, in 2013, in Albania there are 151 prisoners serving life imprisonment constituting five percent of the total prisoner population (European average: 3.1%). 21.7 percent are serving above ten years, which is well above the European average of 13 percent.

Armenia

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 20 years. No

mandatory life imprisonment. The percentage of prisoners serving life imprisonment is above the European average. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed, as well as for pregnant women and mentally ill.

The sentence of life imprisonment was introduced into the new Criminal Code in 2003. According to Article 60 of the Criminal Code of the Republic of Armenia, life imprisonment is defined as an “isolation of the convict in a form of keeping him imprisoned in a corrective institution without time-limit, which in cases envisaged in this Code can be assigned for particularly grave crimes.”³⁸ According to the SPACE I, the percentage of prisoners serving life imprisonment is 2.8 (European average: 3.1%). The total number of lifer incarcerated in 2011 was 99³⁹. Most prisoners (95%) serve at least one year, yet of those only 11% a sentence over 10 years (European average: 13%)⁴⁰. The longest term served by a lifer to date is 22 years. The only exceptions to the sentence of life imprisonment are “persons under 18 years of age at the time the crime was committed, and women pregnant at the time the crime was committed or sentencing.” Furthermore, Art 67.6 forbids for additional punishment, instead the new crime committed by a life-server is absorbed by the life sentence.” Most importantly, Art 76. 5

36 Art. 65, Criminal Code of the Republic of Albania, (1995). (non-official translation). Retrieved on 20.07.2015 from <http://www.legislationline.org/documents/section/criminal-codes/country/47>

37 Aebi, M. E., & Delgrande, N. (2015). *SPACE I - Council of Europe Annual Penal Statistics: Prison Populations. Survey 2013*. Strasbourg. (hereinafter SPACE I)

38 Criminal Code of The Republic of Armenia. (2003). (non official translation), Retrieved on 20.07.2015 from

<http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=eng>

39 Khasia, M., & Chanturia, T. (2012).

40 SPACE I (2013)

provides for the possibility of parole: “A life-server can be released on parole, if the court finds that the person does not need to serve the punishment any longer and has in fact served no less than 20 years of imprisonment.”⁴¹

According to a report on the South Caucasus, prison conditions for lifers in Armenia are problematic. Prisoners are kept in a perpetual state of semi-isolation, with only their cell-mate for company 24 hours a day, 7 days a week.⁴²

Austria

Category C: Orange

Life imprisonment has not been abolished. Possibility of Parole exists after 15 years. The percentage of prisoners serving life imprisonment is above the European average. Life imprisonment is forbidden for persons under the age of 21 at the time the crime was committed.

The Austrian Penal Code, determines that grave crimes are to be punished either by a sentences with a fixed term or life imprisonment, whereby the fixed term may range between one day and twenty years.⁴³ Furthermore, a person under the age of 21 at the time the crime was committed may not be given a sentence of more than 20 years, thus forbidding life imprisonment for this group. Most importantly, prisoners serving life imprisonment may con-

ditionally be released if he or she served at least 15 years in prison and if it is assumed that the person will not commit further crime.⁴⁴

According to SPACE I, the percentage of prisoners serving life imprisonment is 2.0 (European Average: 3.1). While the total number of people serving above one year in prison is 78.2% (slightly above the European average), only 7.1% serve more than 10 years in prison (European average 13 %)⁴⁵.

Azerbaijan

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 25 years. No mandatory life imprisonment. Life imprisonment is forbidden for several categories: persons under the age of 18 at the time the crime was committed, women, men who have reached the age of 65 at the time of sentencing and those mentally ill.

In 1998, life imprisonment was introduced in the Criminal Code as a replacement of the death penalty. A life sentence is defined in Azerbaijan as a minimum term of imprisonment of 25 years. Only once the minimum term is served can a prisoner apply for release. According to Article 57(2) of the Criminal Code, life imprisonment is prohibited for women, men below the age of 18 at the time of the crime, or over the age of 65 at the time of sentencing, and those mentally ill. There are currently 244 prisoners serving life imprisonment in Azerbaijan.

41 Criminal Code of The Republic of Armenia. (2003).

42 Khasia, M., & Chanturia, T. (2012).

43 StGB (Austria), (2015, 28.07.), Retrived on 19.07.2015 from <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296>., Art. 18.

44 Ibid. Art. 36, Art. 46 (6).

45 SPACE I(2013).

According to a report on the South Caucasus, life imprisonment's indeterminate length and overly punitive nature in Azerbaijan raises a number of legal and practical concerns⁴⁶. Lifers are "incarcerated in cells for an average of 23 hours a day. There are virtually no out-of-cell activities, and minimal in-cell activities. There is a lack of access to education, employment, or any other rehabilitative programs, and most lifers are only entitled to a small number of family visits per year, often under very restrictive conditions."⁴⁷ Furthermore, life-sentenced prisoners are separated from other prisoners under a strict high-security regime.

Belgium

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 15 years (with an extension to 19 or 23 years for recidivists). The percentage of prisoners serving life imprisonment is slightly above the European average. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed.

Life imprisonment has not been abolished in Belgium and it is the most severe punishment available under Belgian law since the abolishment of the death penalty.⁴⁸ Prisoners sentenced to life imprisonments are eligible to apply for parole. Since 2006, the minimum time

before the possibility of parole is 15 years (in case of no previous conviction), 19 years (in case of previous convictions and if there was at least ten years since the person had served this last sentence), or 23 years (if the person was previously charged by criminal convictions).⁴⁹ Furthermore, the Penal Code forbids sentencing persons under the age of 18 at the time the crime was committed⁵⁰. The sentences to life imprisonment or to detention of twenty to thirty years will be printed and displayed in the town where the crime was committed and in which the judgment is handed down.⁵¹

According to SPACE I, 1.5 % of prisoners in Belgium are serving life imprisonment. Both, the number of people serving more than one year (91.6%) and the people serving more than 10 years (17.6) in prisons are well above the European average (77.5 % and 13.0 % respectively). Additionally worrying is that Belgium is among the five countries with the highest number of prisoners per 100 places. Currently there is an average of 134.2 prisoners per 100 places (European Average: 94.2). There is another particularity to life imprisonment in Belgium. Several prisoners serving life sentence have requested to be euthanized, i.e. because of their psychological suffering due to no hope of release. In September 2014, Belgium's Minister of Justice approved a euthanasia request from a prisoner serving a life sentence, which was later

46 Khasia, M., & Chanturia, T. (2012).

47 Ibid., p. 6.

48 Penal Code of the Kingdom of Belgium. (2010). Retrieved on 19.07.2015 from <http://www.legislationline.org/documents/section/criminal-codes>

49 Moniteur belge (2013). Retrieved on 16.07.2015 from

http://www.ordeexpress.be/UserFiles/ArtikelDocumenten/Wet_2013%2003%2017_Externe%20rechtspositie%20veroordeelden.pdf

50 Penal Code of the Kingdom of Belgium (2010). Art. 12.

51 Ibid., Art. 18.

cancelled.⁵² The prisoner was transferred to a psychiatric prison ward.

BiH Bosnia Herzegovina

Category B: Yellow

Life imprisonment has been abolished. There is a high number of prisoners serving long prison sentences.

According to SPACE I, there is no life imprisonment in Bosnia Herzegovina. Yet, a high number of prisoners are serving long prison sentences. 30.2 % are serving prison sentences of at least 10 years (European average: 13 %) ⁵³. According to the Penal Code of Bosnia Herzegovina provides for long-term imprisonment, which is not clearly defined. The Code reads: “(1) For a criminal offence referred to in Article 156 (Attack on the Constitutional order), 157 (Endangering Territorial Integrity), 161 (Undermining the Military and Defensive Power), 162 (Armed Rebellion) and 163 (Espionage) of this Code, which caused the death of a person or a number of persons, or caused danger to human lives, or was coupled with heavy violence or a large-scale destruction, the perpetrator shall be punished by imprisonment for a term not less than ten years or long-

term imprisonment.”⁵⁴ Furthermore, “(2) if in the course of perpetrating criminal offences referred to in paragraph 1 of this Article the perpetrator intentionally deprived one or more persons of their lives, he shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.”⁵⁵ The Criminal Code assures the possibility of parole: “The person punished by long-term imprisonment may be granted conditional release after three-fifths of the punishment has been served”.⁵⁶

Bulgaria

Category D: Red

Life imprisonment without possibility of parole has not been abolished. In case parole is foreseen for the imprisonment, the minimum sentence is 20 years. Life imprisonment is forbidden for persons under the age of 20 at the time the crime was committed. The percentage of prisoners serving life imprisonment is slightly above the European average.

Article 38 of the Penal Code of Bulgaria determines that extremely grave crimes, only if a milder punishment could not attain the purposes set forth in Article 36 (correction, education, deterrence, deprivation), shall be punished with “life imprisonment without substitution”.

The Penal Code says that “life imprisonment

52 Smits, J. (2014, September 16). Belgium approves euthanasia for rapist serving life sentence. Life Site. Retrieved on 13.07.2016 from

<https://www.lifesitenews.com/news/belgium-approves-euthanasia-for-rapist-serving-life-sentence>.

Waterfield, B., & Marszal, A. (2015, January 6). Belgian serial rapist will not be euthanised. *Telegraph*. Retrieved from <http://www.telegraph.co.uk/news/worldnews/europe/belgium/11327541/Belgian-serial-rapist-will-not-be-euthanised-as-planned.html>

53 SPACE I. (2013).

54 Criminal Code of Bosnia and Herzegovina (2006). Retrieved on 13.04.2016 from http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20BiH%20Criminal%20Code.pdf, Art. 169(1).

55 Ibid., Art. 169(2).

56 Ibid., Art. 44(4).

without substitution shall not be inflictible on any person who had not, at the time of committing the crime, turned 20 years of age, and with respect to servicemen, as well as in wartime 18 years of age. Life imprisonment without substitution shall not be inflictible on a female, who was in the state of pregnancy at the time of perpetration of the crime or of pronouncement of the sentence.”⁵⁷ In the case of life imprisonment with substitution (possibility of parole), the prisoner has to serve at least 20 years.

According to SPACE I, there are 160 inmates (2,4 % of the total prison population) serving life imprisonment including persons sentenced to life imprisonment without the possibility of parole. There is an ongoing project to remove this type of sentence from the penal code, yet today it is still used. In March 2015, a case of a prisoner serving life imprisonment without the possibility of parole came to the European Court of Human Rights, because of claims of violating Article 3 (inhuman and degrading treatment), Article 13 taken in conjunction with Article 3 and Article 8. The Court decided his position of imprisonment to constitute a violation of his human rights, as the prisoner was put into very harsh prison conditions. The ECHR wrote: “The prisoner Hasan has been sentenced 11 times at the end of different sets of criminal proceedings. [...] He has since been serving his sentence in either *Lovech* or *Varna* Prisons. In Bulgaria life prisoners, such as Hasan, are automatically placed un-

57 Criminal Code of Bulgaria (1968). Retrieved on 20.09.2015 from <http://legislationline.org/documents/action/popup/id/8881/preview>

der a heightened security regime and are kept in permanently locked cells.”⁵⁸

The percentage of prisoners on life imprisonment is above European average. The majority of prisoners spends up to three years in prison (63.1 %), which is well above the European average (40.1 %); 10 % spend more than 10 years in prison.

Croatia

Category B: Yellow

Life imprisonment has been abolished. Long-term imprisonment up to 40 years exists. There are a high number of prisoners serving long prison sentences.

There is no life imprisonment in Croatia. It had been firstly introduced in 2013, but declared unlawful by the Constitutional Court in 2014. Imprisonment in Croatia (by the Criminal Code) cannot be shorter than 30 days or longer than 15 years. For the most serious and dangerous forms of criminal offences long-term imprisonment (20-40 years) may be prescribed.⁵⁹ In 2012, 14 people received the maximum sentence of 40 years.⁶⁰

58 ECHR (2015, March 10). *Halil Adem Hasan v. Bulgaria*. Application no. 4374/05

59 Vukadin, I. K., Žakman-Ban, V., & Nišević, A. J. (2010). Prisoner Rehabilitation in Croatia. *Journal of Criminal Justice and Security*, (2), 143–162. Retrieved from <http://www.fvv.um.si/varstvoslovje/articles/VS-2010-2-Croatia.pdf>

60 Jakelić, I. (2012, October 19). Oni su u klubu 40: Do sada izrečeno 14 maksimalnih kazni. *Vecernji List*. Retrieved from <http://www.vecernji.hr/crna-kronika/oni-su-u-klubu-40-do-sada-izreceno-14-maksimalnih-kazni-465996>

According to SPACE I, 4.1 % of the prisoners are serving above 20 years in prison, which is above the European average, also 15.5 % are serving sentences of at least 10 years, equally above the European average. The report furthermore notes that “persons under security measure without any length of sentence imposed are not managed within the prison system.” For several years, Croatia experienced increase in prison population which resulted in overcrowding. According to SPACE I, Croatia’s density indicates overcrowding with 111 prisoners per 100 places (European average 94.3 per 100).

Cyprus

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after a minimum of 12 years.

Cyprus is among the five countries with the highest number of prisoners per 100 places. Currently there are 137.7 prisoners per 100 places (European Average: 94.2).

Finland

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 12 years. The percentage of prisoners serving life imprisonment is well above the European average. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed.

Chapter 2 Sec.3 in the Penal Code of Finland allows for punishment in the form of life imprisonment: “A sentence of life imprisonment shall be passed instead of imprisonment in the penitentiary for life.” Principal forms of punishment are fine, community service and conditional and unconditional imprisonment. On an unconditional basis, sentences of imprisonment may be imposed for a determined period between 14 days and 12 years (or up to 15 years for several offences) or for life. In a book about long-term imprisonment Drenkhahn, Dudeck and Dünkel (2014) find that in practice life imprisonment is only used in murder cases and that prisoners serving life imprisonment spend around 12-14 years in prison⁶¹. SPACE I approximates the length to 14–15 years. Furthermore, Section 10 of the Penal Code of Finland allows for the possibility of parole: “a person sentenced to life imprisonment may be conditionally released at the earliest when he or she has served twelve years in prison. A person sentenced to life imprisonment for an offence committed before the age of twenty-one years may be conditionally released at the earliest when he or she has spent ten years in prison.” All prisoners released from life imprisonment are placed under probation for a period of three years. The decision is taken by the Helsinki Court of Appeal on the basis of the prisoner’s application.

Prior to 2006 prisoners serving life imprisonment were only able to leave prison when par-

61 Lappi-Seppälä, T. (2009). Imprisonment and Penal Policy in Finland. *Scandinavian Studies in Law*, 54, 333–380., p.337.

62 Drenkhahn, K., Dudeck, M., & Dünkel, F. (2014). *Long-term imprisonment and human rights*. Routledge.

done by the President. After the law reform in 2006, release of life prisoners was regarded as part of a standard procedure of parole, the possibility of being pardoned still remains.

The number of prisoners serving life imprisonment rose from 28 in 1990 to 176 in 2012⁶³. According to the authors, this almost five-fold increase can be explained through “changes in the implementation of the provisions about mental capacity and diminished responsibility both by the health authorities and the court.”⁶⁴ While before 2004, lack of full mental capacity diminished the sentence, afterwards offenders convicted of murder were deemed, as a rule, to be fully responsible. Furthermore, the authors argue that “this increase [...] can also be seen as a sign of the decreased tolerance against violence in Finland”, a general trend in the Nordic countries.⁶⁵

Chapter 6, Section 8 of the Penal Code limits imprisonment in case of the prisoner being under the age of 18 at the time of the committal to 12 years maximum and to two years minimum.

France

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 18 years (but 30 for certain types of murders). The percentage of prisoners serving life imprisonment is not above the European average. Life imprisonment is forbidden for persons under the age of 16 at the time the crime was committed.

The French Penal Code provides for life impris-

63 Ibid.

64 Ibid. p. 160

65 Ibid., pp.160-161

onment. Prisoners sentenced to life imprisonment are assured the possibility of parole after at least 22 years⁶⁶, and 30 years in special cases.⁶⁷ This regulation is extended by Article 131-36-1, which issues that “in the case of a felony punishable by life imprisonment, the Cour d’Assises [a criminal trial court with original and appellate limited jurisdiction] may impose a period of socio-judicial probation unlimited in time, subject to the right of the court for the application of penalties to suspend this measure after thirty years.”⁶⁸ Furthermore, the Penal Code issues that life imprisonment is forbidden for persons under the age of 16 at the time the crime was committed. Recently, in 2013 a minor was sentenced to life imprisonment, the first time after 1989⁶⁹. According to SPACE I, 0.8 percent of prisoners in France is imprisoned for life. 11.8 percent are sentenced for over ten years and 3.2 percent over 20 years (European average: 2.3)⁷¹

Georgia

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 25 years (or

66 Code penal (France), Art. 132-23: The length of this safety period may not exceed two-thirds of the penalty imposed, or twenty-two years in the event of life imprisonment.”

67 Ibid., Art. 221-3

68 Ibid., Art. 131-36-1.

69 Platiau, C. (n.d.). French minor given life sentence over rape of 13 year old girl. Retrieved on 01.02.2016 from

<http://www.english.rfi.fr/france/20130630-french-minor-given-life-sentence-over-rape-13-year-old-girl>

70 Monnin (2014), *supra* note 27.

71 SPACE I (2013)

20 years plus five years community service). No mandatory life imprisonment. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed or those who have reached the age of 60 at the time of sentencing, or those mentally ill.

Life imprisonment was formally adopted into the Criminal Code in 1999, and entered into force in May 2000. Article 51(2) of the Criminal Code prohibits life imprisonment for those who were not eighteen at the time the crime was committed, for those who were sixty at the moment a sentence is passed and those mentally ill. Therefore, Georgia is the only country in the Caucasus region where life imprisonment can be imposed on females.

Article 72 of the Criminal Code provides that a life imprisonment necessarily so offer the possibility of parole after having completed 25 years of imprisonment if the local board of the Ministry of Corrections, Probation and Legal Aid does not deem it necessary for the convict to further serve his/her full sentence. Furthermore, an amendment in 2010 stipulates that “life imprisonment can be substituted by community service, if he/she has actually completed a 20 year imprisonment term, and if the local board of the MCLA deems that the convict does not need to further serve his/her sentence”. According to *penalreform* (2013), “to date, no life prisoner in Georgia has completed 20 or 25 years imprisonment; therefore no parole applications have yet been considered. The earliest parole review will be in 2020.” There are currently 91 prisoners serving life imprisonment in Georgia. According to SPACE I, those constitute 1.1

% of the prisoners. 9.7 % prisoners serve more than 10 years in prison, which is below European average. According to a study by *penalreform* (2013)⁷², prison conditions for lifers in Georgia are problematic. Prisoners are kept in a perpetual state of semi-isolation, with only their cell-mate for company 24-hours a day, 7-days a week. “there are no specific rehabilitation programs to prepare lifers for release [and] according to the Law of Georgia “On Imprisonment”, life-sentenced prisoners are incarcerated under special rules. This includes being placed under 24-hour constant surveillance. They are to be housed separately, and are not allowed to communicate with other types of prisoners.”⁷³

Germany

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 15 years. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed.

In 1977, according to a judgment of the Federal Constitutional Court (), life imprisonment without the possibility of parole is anti-ethical to human dignity and therefore was abolished. As the ECHR summarizes: “The court found that the State could not turn the offender into an object of crime prevention to the detriment of his constitutionally protected right to social worth. Respect for human dignity and the rule of law meant the humane enforcement of life imprisonment was possible only when the pris-

⁷² Ibid.

⁷³ Khasia, M., & Chanturia, T. (2012).

oner was given “a concrete and realistically attainable chance” to regain his freedom at some later point in time; the State struck at the very heart of human dignity if it stripped the prisoner of all hope of ever earning his freedom.”⁷⁴

Since then parole is possible after 15 years. According to §57 of the StGB (German Criminal Code), in case of life imprisonment, “the court shall grant conditional early release from a sentence of imprisonment for life under an operational period of probation, if 15 years of the sentence have been served, the particular seriousness of the convicted person’s guilt does not require its continued enforcement and the release is appropriate considering interest of public safety and security (§57 (1) 2); and the convicted person consents. ((1) 3)”. The parole period in the case of life imprisonment is five years (§57a (3)), in which the paroled prisoner must stay in regular contact with a parole helper.

Is the person between the age of 14 and 18 at the time the crime was committed, the prison sentence can only be 10 years maximum, between the age of 18 and 21 either juvenile courts or adult courts (depending on the intellectual development) may give a sentence between 10 or 15 years. For certain crimes, such as aggravated murder, genocide and crime against humanity life imprisonment is a mandatory sentence.

According to SPACE I, 3.6 % of prisoners are serving life imprisonment, which is above the European average, 1.2 are in prison over 10 years (which is well below the European average), while 43.8 prisoners are serving below

⁷⁴ Vinter, *supra* note 7.

1 year in prison, which is equally well above the European average (16.6). This indicates a majority of short prison sentences given and a slightly above European average number of prisoners serving life. In 2014, 1953 prisoners were serving life imprisonment, of which 1849 prisoners are male. In 1980 these numbers were 956 and 918 respectively. In 2014, between the age of 21 and 25 only 6 prisoners served more than 10 years, 15 served life imprisonment.

In a decision in 2010, the Federal Constitutional Court emphasized its own stand on life imprisonment without parole by taking a decision on an extradition case where the offender faced “aggravated life imprisonment until death” (in Turkey). The court refused to allow extradition, because the person to be extradited had no practical prospect of release from Turkish prison. Such a sentence would be cruel and degrading and would infringe the requirements of human dignity provided for in Article 1 of the German constitution.⁷⁵

Greece

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 16 years (20 years if the prisoner received more than one life imprisonment). Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed. Greece has the highest percentage of prisoners serving life imprisonment.

⁷⁵ BverfG (2010, 16 January). 2 BvR 2299/09 - Rn. (1-32), Retrieved on 12.02.2016 from http://www.bverfg.de/e/rk20100116_2bvr229909.html

According to the European Prison Observatory's report on prison conditions in Greece, after the abolition of the death penalty (de jure in 1993 and de facto in 1972), life imprisonment is the most serious criminal sanction in the country's legal system.⁷⁶ The Penal code provides for life imprisonment with the possibility of parole after having served at least 20 years (16 years time served actually in prison and 4 years time earned by work). In some cases these time limits increase to 25 and 20 years respectively. The 1999 Penitentiary Code also provides that lifers, as well as other prisoners, are eligible for semi-liberty, connected with work outside prisons. However, this has been applied, experimentally, only to one inmate serving life imprisonment.⁷⁷ For those under the age of 18, the maximum sentence is 20 years imprisonment.

According to SPACE I, 10.4 % prisoners serve life imprisonment, which is well above the European average; only the UK, Scotland and Northern Ireland have comparable high percentages. Furthermore, 37.4 % prisoners serve more than 10 years, which is equally well above the European average. The percentage of prisoners serving more than 15 years in prison (18.6 %) is the highest in Europe, thus indicating a very high level of prisoners serving long sentences. Greece is among the five countries with the highest number of prisoners per 100 places. Currently there are 133.9 prisoners per 100 places (European Average: 94.2).⁷⁸

76 Koulouris, N. K., & Aloskofis, W. (2013). *Prison conditions in Greece*. Rome: European Prison Observatory.

77 Ibid., p.39

78 SPACE I

Hungary

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 20 years, unless the court orders otherwise. Life imprisonment is forbidden for persons under the age of 20 at the time the crime was committed.

According to the Criminal Code of Hungary, Section 41-44, life imprisonment is an available sentence, which might be applied only to persons over the age of 20 at the time the crime was committed. Furthermore, when life imprisonment is imposed, the court can specify the date of eligibility for parole after serving 25 years or may preclude any possibility of parole (Section 43 (1)). Section 44 of the Code prescribes that the right of parole may be denied for a plentitude of crimes, such as genocide, crimes against humanity, war crimes, as well as aggravated cases of homicide and kidnapping or acts of terrorism. In terms of juvenile law, the maximum term of imprisonment for a person over the age of sixteen at the time the crime is committed is ten years⁷⁹.

According to SPACE I (2013, 2.4 % of prisoners are serving life imprisonment, thus slightly under the European average. 7.5 % prisoners are serving a sentence of more than 10 years, well below the European average. Hungary is among the five countries with the highest number of prisoners per 100 places. Currently there are 144.9 prisoners per 100 places (European

79 Hungarian Criminal Code (2012). [English Version] Retrieved on 12.01.2016 from <http://www.legislationline.org/documents/section/criminal-codes>.

Average: 94.2). In 2015, the Hungarian government stressed once again their will to continue to execute and support “actual life sentence without the possibility of parole”. In their statement, they defend this sentence against EU criticism and ECHR cases by referring to its legitimacy in terms of application only to most horrendous and cruel crimes.⁸⁰ The Ministry of State stated that 41 persons were sentenced to actual life imprisonment and sentences of another seven were not yet final in 2015; of those 25 were sentenced for multiple homicide.

Iceland

Category C: Orange

Life imprisonment has not been abolished. No possibility of parole exists. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed.

According to Art 34 of the Penal Code of Iceland, imprisonment may be imposed for life or for a maximum of 16 years⁸¹. There is no express provision within the Code that allows for the possibility of parole. Instead, prisoners have the possibility of pardon⁸². In Iceland, although it is still available as a sentence, life im-

prisonment has not been imposed since 1945⁸³. A person under the age of 18 at the time the crime was committed cannot be sentenced to life imprisonment.

Ireland

Category C: Orange

Life imprisonment has not been abolished. Possibility of parole exists after 7 years (except for certain types of murder). Unclear whether life imprisonment is possible for persons under the age of 18 at the time the crime was committed.

According to the Penal Code in Ireland, life sentence provides for indeterminate detention which may extend to an entire life. Furthermore, according to the Citizen Information⁸⁴, the Minister for Justice and Equality determines release upon the advice and recommendations of the Parole Board of Ireland, which reviews prisoners after having served seven years. The average period of detention for those serving life sentences is approximately 12 years. It states furthermore that “prisoners serving very long sentences (including life sentences), are normally reviewed on a number of occasions over a number of years before any substantial

80 Ministry of Justice (2015, 20 July). Government continues to defend actual life sentence without the possibility of parole. Retrieved on 12.01.2016 from <http://www.kormany.hu/en/ministry-of-justice/news/the-government-continues-to-defend-actual-life-sentence-without-the-possibility-of-parole>.

81 Iceland General Penal Code (2015 [1940]). Retrieved on 12.01.2016 from <http://www.legislationline.org/documents/section/criminal-codes>.

82 Vinter, *supra* note 7

83 Schartmueller, D. (2015). Life Imprisonment in Scandinavia. The ultimate punishment in the penal environments of Denmark, Finland and Sweden. Dissertation. Northern Arizona University. Retrieved on 12.01.2016 from <http://www.epea.org/wp-content/uploads/LIFE-IMPRISONMENT-IN-SCANDINAVIA.pdf>.

84 Citizen Information (2014). Types of sentences. Retrieved on 08.01.2016 from http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/types_of_sentences.html

concessions would be recommended by the Board. The final decision as to whether a life sentenced prisoner is released, rests solely with the Minister.”⁸⁵ Moreover, life imprisonment constitutes a mandatory sentence for the committal of murder.

According to CRIN, it is unclear whether life imprisonment remains possible for persons under the age of 18, although the Children Act 2001 does not include such provision.⁸⁶ According to SPACE I, in Ireland life prisoners constitute 10,5 percent (European average: 3 percent) of the total prison population and 8,6 percent serve a fixed-term sentence above 10 years.

Montenegro

Category A: Green

Life imprisonment has been abolished. There are a low number of prisoners serving long prison sentences.

According to SPACE I, prisoners serving more than 10 years are 7.3 %, thus below the European average, yet 3.3 % prisoners are serving more than 20 years, which is above the European average (2.3 %).

⁸⁵ Ibid.

⁸⁶ CRIN (2015). Life Imprisonment Of Children In Europe. Retrieved on 12. 01. 2016 from <https://www.crin.org/en/home/campaigns/inhuman-sentencing/problem/life-imprisonment/life-imprisonment-children-europe#sdfootnote123sym>

Netherlands

Category D: Red

Life imprisonment has not been abolished. No possibility of parole, but the possibility to seek for pardon. Life imprisonment is forbidden for persons under the age of 18 at the time the crime was committed.

In the Netherlands, according to 31 (1)(1) of the Penal Code, life imprisonment means that sentenced person is to be imprisoned for the rest of his or her life unless the King grants the prisoner a pardon. There are currently about 30 prisoners in the Netherlands serving life sentences. The last genuine pardon of a lifer took place in the Netherlands in 1986. According to Art. 77a of the Penal Code, persons between the ages of 16 and 18 can be tried as adults in exceptional circumstances, but cannot be sentenced to life imprisonment. The only exception might constitute people sentenced in Aruba and the Netherlands Antilles.

According to SPACE I, 0,6 percent of the total prison population are serving life imprisonment. In European comparison, in the Netherlands there are low numbers of prisoners serving long sentences, more than 40 percent are serving sentences less than 1 year.⁸⁷

Norway

Category A: Green

No life imprisonment. Maximum prison sentence of 21 years.

According to the General Civil Penal Code

⁸⁷ SPACE I (2013).

Section 17, life imprisonment is not a lawful penalty for any offence in Norway, regardless of age. There is a maximum prison sentence of 21 years, which in European comparison is the lowest maximum sentence. For example, in Bosnia Herzegovina the maximum term for imprisonment is 45 years, in Croatia even 55 years.⁸⁸ Additionally, the average time spent in prison is 4,4 months and below the European average of 9,3 months.

Portugal

Category A: Green

No life imprisonment. Maximum prison sentence of 25 years.

According to Art. 41(2) of the Criminal Code, the maximum limit of imprisonment penalty is 25 years, thus excluding the possibility of life imprisonment.

According to SPACE I, the average length of imprisonment in Portugal is 27,6 months and much higher than the EU Average of 9,3 months.⁸⁹

88 Vinter, *supra* note 7

89 SPACE I (2013).

Cross-country comparison:

Category A: Green

Among the countries compared in this report which can be categorized Green are Montenegro, Norway and Portugal. The countries have abolished life imprisonment and only low numbers of prisoners are serving long sentences. Among those countries, Norway has the lowest maximum sentence length among all the countries compared and its prisoner's average length spent in prison is below the European average. In comparison, Portugal's average length is considerably higher.

Category B: Yellow

Among the countries compared in this report which can be categorized Yellow are BiH Bosnia Herzegovina and Croatia. Although life imprisonment has been abolished, the number of prisoners serving life sentences is high. Both countries should be under scrutiny, because of the considerably high prison lengths in a European comparison as well as prison conditions.

Category C: Orange

Most countries compared in this report were grouped under Orange and include Albania, Armenia, Austria, Azerbaijan, Belgium, Cyprus, Finland, France, Georgia, Germany, Greece, Hungary, Iceland and Ireland. In those countries life imprisonment has not been abolished, yet the countries provide for a possibility of parole. As this group is rather large, there are several differences between those countries including the possibility of parole for woman, elderly people and the age limit. Furthermore, numbers of prisoners serving life imprisonment and long prison sentences differ among those countries. Greece is an alarming example of the numbers of life prisoners as it is much higher than the European average.

Category D: Red

The only countries categorized Red in this report are Bulgaria and the Netherlands. In those countries life imprisonment has not been abolished and for some categories of prisoners there is no possibility of parole. Thus, several prisoners are LWOP. Both cases are alarming, although the number of life prisoners in Bulgaria is considerably higher than in the Netherlands.

Shortcomings

The categories are meant to allow for a singling out countries according to their type of sentencing regime concerning life imprisonment. The categorization is not attentive to individual cases from those specific countries and does not excuse the misconduct in individual cases. It is important to keep in mind that those categories are mostly based on legal text and statistics, not on the exact circumstances in the country and the experiences of life prisoners. Furthermore, the country profile did not relate to the situation of political prisoners, although this will be unavoidably a focus of the next session focusing on the Turkish history and situation of life imprisonment.

IV. Turkey and Life Imprisonment

Category D: Red

Brief History of Life Imprisonment in Turkey

Next to the date of release for aggravated life prisoners is written with big letters UNTIL DEATH. This is the reason why the system of punishment is terrible, it means dying every day. Through the execution they can kill us just once but in this way they are killing us slowly every day. (A.R.A. Bolu F-Type, imprisoned since 1998, solitary confinement since 2008, LWOP)

Life imprisonment has always been a part of the legislation of the Republic of Turkey. Life imprisonment with the possibility of parole (LWP) was practiced alongside death penalty until 1984. Hıdır Aslan was the last person to be executed under the punishment of the death penalty on 25 October 1984.⁹⁰ After Aslan, although the capital punishment was still in force, executions of the sentences did not proceed. Alongside with on-going debates on the abolishment of the death penalty in European countries, Turkey declared that the sentence was on moratorium.

ECtHR accepted moratorium valid so that it did not find any violations in applications such as Çınar v. Turkey (17864/91, 5 September 1994) and Sertkaya v. Turkey (77113/01, 11 December 2003) in which applicants were claiming violation against Article 3 because of the fear and anguish they felt on the risk of being executed.

⁹⁰ Ateşoğulları Kamil, *Bir İnsanlık Suçu: Ölüm Cezası*, Doruk Press, 1997, p. 124.

Ocalan v Turkey (46221/99, 12 May 2005) is the only application that ECtHR found violation against Article 3, because of the situation of the applicant who was the most wanted man of the country. According to the Court: “The Grand Chamber agrees with the Chamber that the special circumstances of the instant case prevent it from reaching the same conclusion as that reached in Çınar. (...) In view of the fact that the applicant has been convicted of the most serious crimes existing in the Turkish Criminal Code and of the general political controversy in Turkey-prior to the decision to abolish the death penalty- surrounding the question of whether he should be executed, it is not possible to rule out the possibility that the risk that the sentence would be implemented was a real one.”⁹¹

The declaration of moratorium did not prevented Turkish courts’ verdicts on death penalty but formed a practice. According to Turkish Criminal Code in force, death penalty sentences had to be approved by the Parliament, in order to be executed⁹². Since 1984 death penalty sentences have never been submitted to the Parliament. This practice emerged an ambiguous situation for those who were sentenced to death penalty. Since their sentence neither was approved nor rejected, it was not certain when or if they would be released.

During the membership negotiations with the European Union, Turkey determined a policy

⁹¹ Ocalan v Turkey, no. 46221/99, 12 May 2005, prg 171-172.

⁹² Law No. 765 “Turkish Criminal Code”, dated 13.03.1926, article 12.

to abolish the death penalty on 2001 and took the first step by allowing for death penalty only during war or a close threat of war and/or towards terrorist activities.⁹³ In 2002, Turkish Law No. 4771 abolished death penalty except during times of war or threat of war⁹⁴. In 2004, Turkey declared total abolishment of the capital punishment in the constitution.⁹⁵ Meanwhile death penalty sentences were replaced with aggravated life imprisonment sentences⁹⁶. This code stipulates life sentence with no possibility of parole (LWOP) to aggravated life prisoners whose sentence were regulated from death penalty due to terror crimes.⁹⁷ By this way, ‘punishment until death’ entered into Turkish law for the first time in 2004.⁹⁸

In the evaluation of whether the replacement of death penalty with aggravated life imprisonment violates article 7 and the article 38 of the Constitution which prohibits retrospective application of a provision laying down

a “more severe penalty” and the principle of retrospective enforcement of the “more lenient penalty” Court addresses two different points. Besides its judgement on violation of Article 2 by stating that execution of applicant’s sentence was possible, Court recognises Governments following statement: only persons whose enforcement of penalty formally rejected would have the chance to be released after 36 years whereas applicants have never been submitted to Parliament for approval Court finds no violation.⁹⁹ Court underlines the fact that there was no legal regulation stipulating death penalty convicts’ release. The submission of the Government and the evaluation of the Court imply that LWOP could have been imposed without legislation. Article 107/16 of the Turkish Law on Execution of Sentences and Security Measures No. 5275¹⁰⁰, which entered in force a year later, on 2005, stipulates life imprisonment without the possibility of parole for persons who committed acts under the titles of crimes against the constitution, the state or the nation. Other aggravated life prisoners have the possibility of parole after 30 years if they have not been committed for more than one criminal act. In case of organized crime parole is possible after 36 years. This code continues to set the framework for LWOP in Turkey until today. Normal life prisoners are released after 24 or 30 years depending on their act of crime.

93 Law No. 4709 “The law on the amendment of some articles of the Constitution of the Republic of Turkey”, ” dated 03.10.2001, article 15, <https://www.tbmm.gov.tr/kanunlar/k4709.html>

94 Law No. 4771 “The law on the amendment of some articles of the Constitution of the Republic of Turkey”, dated 03.08.2012, article 1. <http://www.resmigazete.gov.tr/eskiler/2002/08/20020809.htm>

95 Law No. 5170 “The law on the amendment of some articles of the Constitution of the Republic of Turkey”, dated 07.05.2004, article 2,3,5,6, <https://www.tbmm.gov.tr/kanunlar/k5170.html>

96 Law No: 5218 “ The law on the abolishment of the death penalty and amendment of some articles” dated 14.07.2004, <http://www.resmigazete.gov.tr/eskiler/2004/07/20040721.htm#1>

97 Law No. 5218, provisional clause 12/I.

98 The imprisonment duration of death penalty convicts was ambiguous. But it was interpreted that they could have been released after 30 years, like other political life prisoners. (<https://www.tbmm.gov.tr/tutanak/donem21/yil4/bas/b125m.ht>)

99 *Ocalan v Turkey*, prg 177-186.

100 Law No. 5275 entitled “Law on the Execution of Sentences and Security Measures”, dated 01.06.2005, article 107/16, <http://www.mevzuat.gov.tr/Mevzuat-Metin/1.5.5275.pdf>

“(…) life without parole sentence means the prisoner has no hope of release in his or her lifetime, regardless of his or her efforts at rehabilitation. LWOP, like the death penalty, changes the course of an individual’s trajectory by a forfeiture that is irrevocable. Such sentences represent a policy of “permanent exclusion” of the individual from society, and have been likened to a “civil death.”

At an earlier stage, changes in the anti-terror legislation of Turkey were made (1991/§16), which included the limitation of contact with prisoners sentenced under this law.¹⁰¹ Alongside these changes, other important transition within the prison regime set place in Turkey after 2000. Prisons in Turkey started to transform from ward-type prisons, where several prisoners stayed together, into room/cell type prisons, where prisoners were kept in smaller numbers or in isolation. As a result, isolation and bad treatment in prisons have been crucial shortcomings of Turkish prisons. Yet, which is often forgotten, only aggravated life prisoners in Turkey are being kept isolated due to the above-mentioned legislations. Until today, the legal regulation of aggravated life imprisonment prisoners is the worst among prisoners in Turkey.

101 Law No: 3713: Anti-terror law (§16),12.04.1991: “The sentences of those convicted under the provisions of this law will be served in special penal institutions built on a system of cells constructed for one or three people [...] Convicted prisoners will not be permitted contact or communication with other convicted prisoners[...],”
<http://www.mevzuat.gov.tr/MevzuatMetin/1.5.3713.pdf>

Current numbers of life imprisonment and statistics of prisoners

Researchers and human rights activists in Turkey rely heavily on official statistics and numbers made public by the Turkish Ministry of Justice (MoJ). There were 179.611 prisoners at the beginning of 2016.¹⁰² According to the MoJ, the number of aggravated life prisoners was 1453 in February 2014.¹⁰³ Furthermore, of these, 126 were convicted for “terror and other organized crime” and 1327 for other crimes.¹⁰⁴ After 2014, the MoJ did not share any further information to applications made by CISST/TCPS, including the total number of aggravated life prisoners and the number of specific groups regarding gender, sexual orientation and identity, age, health etc. The MoJ stated that the questions require special studies, research and examination. This answer has been interpreted as a will of not sharing any further information about aggravated life prisoners.

The main difference between aggravated life prisoners and other life prisoners is the execution regime imposed to prisoners, which will be elaborated in the next part. Besides that, there is also a difference regarding the time that has to be spent before conditional release. The project Turkey’s Prison Information Network (THEA) within CISST has a special focus on

102 Yildirim, E. (2016). Penal Institutions and Recent Developments in Turkey,. General Directorate of Prisons and Detention Houses (Power Point).

103 Information gathered through inquiry send by CISST/TCPS within the Right to Information Act (2014). The more recent inquiries send by CISST/TCPS have been left unanswered by the MoJ.

104 Ibid.

aggravated life prisoners, therefore we have no information regarding the number of other life prisoners. CISST has tried to reach 220 aggravated life prisoners and corresponded with 182 so far. According to the information gathered, 31 of them will be conditionally released while 126 of them declared they are LWOP. Out of 78 prisoners who have written their arrestment date, 21 are incarcerated for more than 20 years while 32 have been imprisoned between 10-20 years. In 2017, three of the aggravated life prisoners we have been corresponding with have entered their 25th year in prison.

It is possible to say that even though there are more non-political aggravated life prisoners, it is harder to reach them. Since political prisoners keep their relations with each other and the outside world, it is easier to learn their name and address in order to communicate. Therefore, it is important to underline that the isolation towards aggravated life prisoners also limits the possibility of communication even for NGOs. If prisoners do not try to present themselves to the outside world, it is nearly impossible to know that they exist which shows the power of isolation they are living in.

Legal Requirements

In this section, the research draws on its own experiences and reports by prisoners, such as collected through letter exchange and visits. Firstly, the legal requirements will be discussed, which will be followed by an examination of the conditions and problems faced by aggravated life prisoners.

Life imprisonment:

- Life imprisonment for non-political prisoners: Parole after 24 years¹⁰⁵,
- Life imprisonment for political prisoners and organized crime: Parole after 30 years.

For prisoners sentenced to life imprisonment, there exists the right to parole. However, according to Turkish law, there is a regulation that differentiates political and non-political prisoners. Political prisoners must finish three fourth of any sentence before they have the right to parole¹⁰⁶, whereas non-political prisoners have to finish two third of their sentence¹⁰⁷. This rule applies to life imprisonment sentence, too. Therefore, non-political prisoners have the right to parole after serving 24 years while political prisoners are entitled after 30 years.

Life prisoners have the same prison conditions as other prisoners. They have the right to weekly visitations and phone calls, visitation up to 3rd degree family members and three friends, fresh air from sunset until sundown, communication with other prisoners as well as living with other prisoners.

Both life imprisonment and aggravated life imprisonment for non-political prisoners lasts for life with the chance of parole. Nevertheless, the probation system in Turkey does not involve an apprehensive evaluation of the prisoner before the release with parole. A prisoner's release is decided by disciplinary and administrative board of the prison¹⁰⁸ based on whether if they

105 Law No. 5275 article 107/2.

106 Ibid.

107 Ibid. article 107/4.

108 Ibid. article 89.

behaved according to the rules which is mostly decided upon on disciplinary punishments.

Aggravated Life Imprisonment:

- Aggravated life imprisonment for non-political prisoners: Possibility of parole after 30 years.
- Aggravated life imprisonment for non-political organized crime: Possibility of parole after 36 years.
- Aggravated life imprisonment for political prisoners: No possibility of parole.

Aggravated life sentence was stipulated by law in 2004, but conditions regarding the sentence were enacted in June 2005 by article 25 of Turkish Law No. 5275 entitled “Law on the Execution of Sentences and Security Measures”.¹⁰⁹ Alongside the particular regime the most debatable part of the sentence is that it lasts for real life for some prisoners. While ordinary aggravated life prisoners have the right to parole after 30 or 36 years, political prisoners do not have the possibility of release.

ECHR Judgements Regarding LWOP

According to ECHR judgement in 2013¹¹⁰, life imprisonment without the possibility of parole violates Article 3 of the Convention and prisoners have the right to be re-evaluated for parole. Court necessitates a mechanism which

provides an examination for life prisoners after a duration and suggests 25 years as the time-frame. Although there are three ECHR verdicts stating that the Republic of Turkey has violated Article 3 of the Convention¹¹¹ the abovementioned law stipulating no parole for political aggravated life prisoners is still in force.

On cases *Öcalan v. Turkey*¹¹², *Kaytan v. Turkey*¹¹³ and *Gurban v. Turkey*¹¹⁴ Court decided that life with no possibility of parole sentence violates Article 3, referring to *Vinter v. UK* judgement. Although Government asserted presidential pardon and legislatures intervals through general or partial amnesty laws as a possibility of parole Court did not accepted them as “prospect of release” on legitimate penological ground¹¹⁵.

“The Court must concern itself with the law as applied in practice to prisoners sentenced to aggravated life imprisonment. That legislation is characterised by a lack of any mechanism for reviewing, after a specified minimum term of incarceration, life sentences imposed for crimes such as those committed by the applicant with a view to verifying the persistence of legitimate reasons for continuing his incarceration.”¹¹⁶

In the following judgements Court found “no reasons which would require it to depart from

109 <http://www.lawsturkey.com/law/the-law-on-the-execution-of-penalties-and-security-measures-5275>

110 *Vinter v UK*

111 *Ocalan vs. Turkey* (Applications nos. 24069/03, 197/04, 6201/06 and 10464/07), *Kaytan vs. Turkey* (Application no. 27422/05), *Gurban vs. Turkey* (Application no. 4947/04)

112 *Öcalan v. Turkey* (no. 2) nos. 24069/03, 197/04, 6201/06 and 10464/07, 18 March 2014

113 *Kaytan v. Turkey* no. 27422/05, 15 September 2015

114 *Gurban v. Turkey* no. 4947/04, 15 Aralık 2015

115 *Öcalan v. Turkey* (no.2) prg 203-204.

116 *Ibid.* prg 205.

its findings in those (*previous*) judgments.¹¹⁷ According to the Constitution, international agreements acceded by the State have the force of law and “in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.¹¹⁸” Therefore Court’s decisions mentioned above has to be in force as law and LWOP prisoners must have the right to be reevaluated for parole. Nevertheless Court’s decision has not affected the imposition so far, according to the information gathered by CISST/TCPS and there has been no amendment to the law regulating LWOP. CISST/TCPS will be monitoring the procedures of three aggravated life prisoners, who have entered their 25th year in prison.

Prison Conditions and Problems of Aggravated Life Prisoners

The basic differences between the conditions for prisoners sentenced to life imprisonment and those sentences to aggravated life imprisonment stem from the differences between their cells, their rights for visitation, phone calls and access to fresh air.

According to law¹¹⁹ an aggravated life prisoner’s rights are one hour of fresh air, visitation and phone right in every 15 days. The law stipulates solitary imprisonment in a “single room”. Pris-

oners’ connection with other prisoners is highly limited. They can only communicate with prisoners convicted by the same sentence during fresh air or social activities which can only be imposed if the prisoner is in good behaviour¹²⁰ and also if the administration approves. The law necessitates same conditions in order to prolong fresh air which states that these impositions can be considered as conditional improvements rather than the right of a prisoner.

They also have more limited rights to communicate with the outside world. Normally, prisoners can have visits weekly, of up to 3rd degree family members as well as three friends that they can list.¹²¹ They get to have three non-contact and one contact visit in a month. An aggravated life prisoner can be visited only by relatives up to 2nd degree including parents, grandparents, siblings, husband or wife, children, grandchildren and legal guardian which means that there is no possibility to see their nephews and nieces, cousins or also they do not have the right to be visited by friends. Considering the duration of the punishment, limitation of the visitors, the possibility of not being married before or being divorced during the imprisonment, a LWOP can be left totally isolated. Nevertheless only 1 hour on a weekday in 15 days is definitely not enough to connect with the outside world. It is also important to mention that since same-sex marriage is not allowed in Turkey, it is not possible for a gay or lesbian couple to have a visitation right, aside from being the legal guardian.

117 *Gurban v. Turkey* prg 33.

118 Law No:2709 “Constitution of the Republic of Turkey”, dated 7.11.1982, article 90/5. https://global.tbmm.gov.tr/docs/constitution_en.pdf

119 Law No. 5275, article 25/1.

120 A statute that can be forfeited by disciplinary punishment and regained by the end of duration stipulated by law. *Ibid.* article 48.

121 *Ibid.* article 83.

"It was at the beginning of my life imprisonment. When my sister was pregnant, she couldn't visit me. (...) After X was born, her mother decided to come visit me at once. The question and problem was this: Would I be allowed to see my sweet X, who is a part of my heart? Not according to the law. (...) We put our thinking caps on. (...) Finally, my comrade from the neighbouring room said: Come, write a petition, explain your situation, maybe they will accept it. The answer was, as you can guess, the cold concrete wall of the law. I couldn't meet with my sweet darling sparrow. She has grown so much. I think she even started the 4th year of school!" (M.S.D. Sinican F-Type Prison No. 2, imprisoned since 1993, in solitary confinement since 2005, LWOP).

Furthermore, aggravated life prisoners have one non-contact and one contact visit in every 15 days, which leads families who generally live far away from prisons to use only contact visits, which they can have physical contact due to economical reasons and time restrictions. Besides, they are only allowed one visitor at a time. In practice this means that an aggravated life prisoner, if they would have for example ten visitors coming at the same time, could see each of them for only six minutes. Therefore, some prisoners ask their family to come one by one to every visit, so they can spend more time together. But this also means that he or she will see certain family members very rare, in the previous example only once a year, since families don't prefer to use non-contact visit. In contrast, if a prisoner is not married, does not have siblings, children or parents anymore, the system can leave her/him without any visitors. Aggravated life prisoners have the right to phone call 3 different phone numbers out of relatives up to 2nd degree in every 15 days whilst others can call their relatives up to 3rd degree in every week.¹²² Since periods are

122 Ibid. article 66.

very long, prisoners complain about losing the connection with their loved ones.

By law, prisoners sentenced to aggravated life imprisonment are supposed to be housed in a "room" build for one person.¹²³ In reality, the cells that aggravated life prisoners will spend 30 years to all of their life, are built for disciplinary punishment.

According to the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), a prisoner's stay in a cell for solitary confinement, which is defined as "confinement of prisoners for 22 hours or more a day without meaningful human contact", cannot exceed 15 days¹²⁴ and also within Turkish law it should not exceed 20 days.¹²⁵ According to Rule 45: "Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority." Health-care personnel shall pay particular attention to the health of prisoner, visiting daily basis and shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.¹²⁶ Simi-

123 Ibid. Article 25/1-a.

124 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 8 January 2016, Rule 43-44.

125 Law No. 5275, article 44.

126 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 46.

lar rules regarding health-care are stated within the European Prison Rules, on Rule 43.2, 43.3 while Rule 60.5 limits the imposition only as a punishment and for short terms.¹²⁷ The conditions of aggravated life prisoners in Turkey can be considered as solitary confinement according to descriptions written above.

CPT did not use the term “solitary confinement” on 2005, right after the imposition of the new regime enacted although the report stated that isolation-type regimes could lead to inhuman treatment and proposed Committee of Ministers Recommendation Rec (2003) 23¹²⁸ as a support. According to CPT: “(...) the very philosophy underlying Article 25 of the LESSM should be rethought.”¹²⁹ On its 2015 Report CPT stated that aggravated life prisoners are being subjected to solitary confinement.¹³⁰ Report notes favourable examples alongside prisoners subjected to solitary confinement for months and even years.¹³¹

Even though international standards demand short terms of solitary confinement to be imposed only in justifiable cases and with a maximum of 15 days, Turkish law regulates solitary confinement on many sentenced to aggravated life imprisonment which condemns a prisoner’s life into a cell without much contact to others. According to Article 25 of Law 5275, their conditions can be improved, which will be detailed

further, if their behaviour is deemed good by the respective prison management. Nevertheless it is important to underline the fact that the minimum rights of these prisoners are not compatible with international human rights standards.

This new regime was imposed on death penalty prisoners too, since their sentences were replaced with aggravated life sentence by law. Since there was no legislation regarding a particular regime death penalty prisoners had the same conditions as other prisoners until regulation of the aggravated life imprisonment regime in 2005. CPT has reported a few months later that it was objectionable to apply the new provisions to prisoners who, prior to 1 June 2005, shared accommodation with other prisoners and had regular access to communal activities. Referring to the significance of individual risk assessment report asks: “How can it be cogently argued that a prisoner who on 31 May worked in the prison kitchen and was accommodated with several other inmates in the workers dormitory is nevertheless so dangerous as to justify his segregation from other prisoners the following day?”¹³²

Although the law calls them “room”, according to letters CISST/TCPS received prisoners prefer the term “cell”. There are several severe problems with these types of cells, as there are only one to two square meters of space left when there is a bed and other important objects in it, which makes it too small to walk around. Furthermore, there is no direct sunshine or air stream, no place to dry clothes or no possibility to have kitchen facilities in the cell. The toilet in the cell is often used to clean the kitchen supplies, washing

127 See European Prison Rules, 2006.

128 RecommendationRec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, 9 October 2003

129 CPT Report 2006, prg.50-51.

130 CPT Report on visit to Turkey 9-21 June 2013, published on 15 January 2015, prg.78.

131 Ibid. prg 79.

132 CPT Report on visit to Turkey 7-14 December 2005, published 6 September 2006, prg. 50.

clothes, showering, as well as fulfilling the lavatory needs, which creates hygienically problems. Since prisoners have short time for fresh air, they generally have to dry their clothes inside, which causes humidity in the cell. Even though they have a normal size window, it is always across to a tall wall, two or three meters away, which does not allow direct sun light or air to enter the room. Aggravated life prisoners live in a place, which was built for a punishment that supposedly lasts for a very short time.

On top of that, sometimes the time for recreational purposes outside and the time where the prisoner is allowed to get hot water overlaps, which means that prisoners have to choose between the possibility to move or wash their clothes or dishes in their toilet.

Through the lack of movement, rheumatism and arthritis are increased. Furthermore, without air circulation, as there is only one window which air can come into the cells, lung problems increase, which is even intensified through the fact that prisoners often dry their clothes in the cells. Sight problems are more severe with aggravated life prisoners in Turkey, due to the small rooms and the short distances to the walls. For example one prisoner went from being short sided by 3 degrees to 9 degrees within one year.

"If I was out I would get medical help for all of my problems. But now I am scared of a surgery, since the detention wards are underground, dark and they do not allow visitors. For example, if I have a stomach surgery, who is going to take care of me afterwards? I cannot even get my own food from the door, I cannot go to the toilet, I cannot even take a bath." (B.G. Sincan F-Type No 2, imprisoned and in solitary confinement since 2009, LWOP)

In case an aggravated life prisoner needs to get a surgery, needed operations are often abstained and delayed, as prisoner will have no one in their cell to help them out during post-surgery besides prison officers. Officers can't provide a solution since it is not possible for a prison officer to nurse a prisoner at all the time she/he needs.

Nevertheless, according to the letters that CISST/TCPS receives from prisoners sentenced to aggravated life imprisonment, the physical situation is not a priority of what some of the prisoners wish to change. The health risk is a difficult problem, but more often they mention their loneliness. This has serious effects on the prisoners' psychology, from social withdrawal, memory loss, difficulty in speaking and communication, loss of senses, insomnia to serious psychological problems such as schizophrenia.

In letters collected by CISST/TCPS, they generally use the word "surviving" rather than living and refer to the cell as a coffin. Most of the prisoners underline the difference between wards and the isolation they are living in. Prisoners often compare aggravated life imprisonment with death penalty, stating the resemblance. The punishment has been explained as; "dying and being re-born every day", "being outside of space and time", or as "being in a bottomless well", that they are falling in but never reach the bottom. It is not only the loss of abilities they prefer to talk about but the missing of another person while eating, drinking tea or waking up from a dream with no one to explaining it to.

"I am starting to see the same dreams and this is incredible because how is it possible to have the same one every night. Usually I am in the top of the mountain and around me there is the abyss. From the top I cannot go down. In another dream I am in skyscraper which has thousands of floors and there are no stairs to go down...I see those dreams frequently .I seat on the abyss for hours...I just stay there waiting to find a way to escape but it is not possible so I commit suicide. I went to the psychologist but I had no chance to meet him alone. The guards at the meeting room are always present and hear your problems. We are considered criminals and the psychiatrist gave me just anti-depressives medicines. Later I found out that even visiting a psychologist on a regular basis could have fixed my problem" (B.G Sincan F Type Prison No: 2, imprisoned and solitary confinement since 2009, LWOP)

"I have six months left. I am losing my sleep and struggling with questions, since my parole date is getting closer. The main questions is: What will I do? Who will I be? Being exiled for 20 years, how will I adapt? ... I am very scared to leave the prison." (M.A.U. Muğla E-Type, imprisoned since 1996, solitary confinement since 2005, LWP).

It is significant to stress the fact that these expressions are used whether the prisoner is LWOP or a life prisoner with the right of parole. Isolation and long or permanent imprisonment affects prisoner's attitude towards life. Although some prisoners prefer rooms for one person because of troubling relations with other prisoners, they emphasize the need of connection and communication with others, which can be provide during daytime.

Even LWP prisoners do not have the right to live among others or right to attend social activities before their release. There is no special rehabilitation program for prisoners who have been living alone for decades and will be released to the changing and developing world. According to the letters CISST/TCPS receives, release becomes another problem for life prisoners, who are not being prepared for outside world physically, mentally, psychologically, socially or economically.

According to the law, if the prisoner does not get any disciplinary punishment within three months,¹³³ the prison administration has the authority to provide some improvement of their conditions, such as allowing longer time outside, enabling contact with other aggravated life prisoners, and enabling attendance to social and cultural activities.¹³⁴ But the law does not set forth an obligation to the administration which also obstructs the prisoner to demand these as a right. If the administration does not apply these improvements, it would not be considered as violation of a right. In other words, according to law, it is not the State's responsibility to provide fresh air, communication with other prisoners or social activities as a part of rehabilitation. Considering the fact that according to Turkish law¹³⁵ a punishment can only be justified on penological grounds including punishment, deterrence, public protection and rehabilitation,¹³⁶ the ambiguous authority of prison management does not provide prisoners the appropriate tools for rehabilitation.

133 Law No. 5275 article 13

Art. 48 stipulates the duration of the annulment of disciplinary sanctions. The latest duration law sets forth is 3 months besides the actions defined under article 44, which lasts 6 months to 1 year.

134 Ibid. article 25.

135 Vinter v UK., prg 111.

136 Ibid.

“Our good behaviour improvements would be removed automatically and the time to go outside would be lowered to one hour. And in this way, you're forced to spend 23 hours of the day on your own in your very small cell with a closed door. Even to shortly take fresh air, to get outside and see the sky for this short period of time depends on conditions. This kind of practices gives the message that “if you conform to the rules you can somehow survive, otherwise even your most human and indispensable needs will be used as a weapon against you”. (SG Kırıkkale F-Type, imprisoned since 1992, solitary confinement since 2005, LWOP).

Another result is that the imposition of these improvements differs from prison to prison and with every change of manager. While in some prisons, an aggravated life prisoner can visit the library, contact with other aggravated life prisoners during longer (three or four hours) open air time, some prisoners do not get these improvements and have to settle with the minimum rights. Another problem that emerges from the authority of prison administration is the unadjusted power it provides. Remembering the possible negative outcomes of incarceration and unbalanced power relations between officers, managers and prisoners, it is important to mention the absence of detailed and well-supervised legislation. According to the letters gathered by CISST/TCPS, many aggravated life prisoner complains about unjust disciplinary punishments which results with the loss of improvements.

Ibikoglu on Disciplinary Punishment:

“According to the 38th article of the new Law on the Enforcement of Penal and Security Measures (Law No. 2575, December 13, 2004), there are six disciplinary sentences in prisons (ranked in escalating order): warning, detention from certain activities, detention from paid work, complete or limited loss of access to news and communication media, deprivation from receiving visitors, and solitary confinement. Article 48 of the same Act reads: “If someone commits an act that requires a disciplinary punishment while the person was still on probation for a previous disciplinary punishment, that person receives the next higher disciplinary sentence.” It is important to note that “the next higher disciplinary sentence” corresponds to further limitations on the prisoner’s timeout-of-cell and other social interactions. In other words, disciplinary sentences set up significant disincentives against disobedience by threatening to take away what the system perceives to be the most-valued commodity: social interaction and communication. The lesser threat you pose to the system by following the rules, the more you are able to enjoy social interactions and timeout-of-cell [...]”¹³⁷

Another problem arises from the economic situation. Turkish prisons provides only three meals per day and the electricity for the cell light, which indicates that the prisoner has to buy everything beside these. Even though every prisoner has economic problems, aggravated life prisoners have two conditions which make it even harder for them: they are not allowed to work in prisons¹³⁸ and since they live solely, it is very hard to exchange or share their needs with other prisoners. Working conditions in prisons

137 Ibikoglu, A. (2012). *Incarcerating Politics: Prison Reform in Contemporary Turkey*. University of Washington. p. 94.

138 Bylaw on the Center of Observation and Classification, Article 13, <http://www.resmigazete.gov.tr/eskiler/2005/06/20050617-5.htm>

of Turkey has always been highly problematic, but since prisoners only get food and light without any cost, working inside the prison can seem to be a solution, besides being a way to socialize with others. Aggravated life prisoners are dependent on their families or loved ones for money, which can last for life. According to the information gathered by CISST/TCPS they try to earn money by selling handcrafts to outside, which is very hard because of the isolation they are facing.

“I have to pay for my basic needs and for milk, cheese, yoghurt, vegetables etc... My family cannot support me economically, they cannot even come to visit me. I have to live with 100 TL per month (approx. 30 euro, 1 euro per day). With this money I have to pay also the electricity bills, postcards or newspaper” (S. Kırıklar/Buca F-Type Prison, imprisoned since 1998, in solitary confinement since 2005, LWOP)

“Can you understand what does it mean to miss a cup of tea or coffee, just one tomato and one onion? You can understand something by empathy but there is something that you cannot understand without living it (İzmir I F-Type Prison, imprisoned since 2000, in solitary confinement since 2000, LWP).¹³⁹

life prisoners are banned from this opportunity they are economically dependent on their families, either to give them money directly or to help them sell the handcrafts they do in prison.

Aggravated life imprisonment involves solitary confinement almost for life. For those who do not have the possibility of parole and for those who have the possibility to be released, this imposition is meaningless, hurtful and inhumane. Solitary confinement for prisoners facing aggravated life imprisonment constitutes an additional punishment within a punishment and should be abolished alongside with long or endless imprisonment.

“Being an aggravated life prisoner means that you are locked up in a tiny cell for 20 hours. We are unable to explain our pain even to the inmate next to our cell and unable to dry his/her tears, to support each other even if we live the same condition. It means living your pain alone, crying alone” (Sincan Women F-Type Prison, imprisoned since 2006, solitary confinement since 2014, LWOP).

It is important to underline the necessity of supplying the needs of prisoners and providing a working environment for every prisoner without compulsory labour and with equal rights and benefits as others. Since aggravated

139 In spite of the judgement “X vs Turkey” by the ECHR (Application Nr 24626/09) trans prisoners who have not been able to legally change their identification according to their chosen identity, can be kept in solitary confinement for “security purposes”. In a latest judgment from 06.12.2016 the Judge of Execution of Alanya decided that solitary confinement for “security reasons” for trans prisoners is against human rights, referring to “X vs Turkey”. ECtHR, X vs Turkey, No 24626/09, 9 October 2012

V. Conclusion

The information gathered in this report provides a glimpse on the Turkish situation of prisoners serving life imprisonment with or without the possibility of parole. Both, the legal approach to the topic, as well as looking at reports – in the form of letters from prisoners – allows to scrutinize the inhumane condition life prisoners are in. Some spend most of their life and some even the rest of their life under those conditions. In accordance with international law and the dignity of humankind, this report wants to defend a strong standpoint against the legal use of life imprisonment, especially if no chance of parole is granted. The exemplary country profiles show the variety of the way this issue is dealt with. Moreover, it shows that the national legal reality of those countries is in stark contrast to international legal standards. Although, the list of the specific situation within countries of the Council of Europe is not meant to be exhaustive, it provides an important overview of issues such as how many years a prisoners has to spend in prison before being granted the possibility of parole and the age limits of juvenile offenders, as well as other specific groups of prisoners. Furthermore, it provides an insight in how statistical facts may tell a different story to the legal provisions in the country.

Within this spectrum of countries, Turkey does stand out in its way of dealing with life prisoners and with allowing for LWOP. By additionally focusing on the specific conditions life prisoners and LWOP are staying in Turkish prisons, it becomes clear that those prisoners are being punished several times and on several

levels. It is particular to life imprisonment and especially to LWOP that additional to the prison punishment the extraordinary length frustrates and steals the prisoners of any hope and positive thinking. Not only that life imprisonment is already a punishment harshly criticized by international legal provisions, isolation confinement in Turkish prisons puts additional constraints on the inmates. Both, physical and psychological health issues are an immediate result of the situation in Turkish prisons. The letters we collected from life prisoners show the horrific situation most inmates are in and gives a description of the mundane psychological methods used against prisoners.

As mentioned above, the sentence for crimes against the Turkish State and the nation is life imprisonment without the possibility of parole. It is important to underline the fact that after the military coup attempt the number of LWOP prisoners in Turkey may escalate in high numbers. Although it is not possible to say if there will be an improvement on the conditions of the lifers, it seems that the discussion regarding the punishment will proceed.

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