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Guaranteeing the Rights of Persons Sentenced to Life Imprisonment: Normative Framework and Objective Realities

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Abstract: Life imprisonment is a criminal punishment, which consists in depriving the convict of his freedom for the rest of his life. In accordance with the provisions of the criminal law, this type of punishment is established only for exceptionally serious crimes. The national enforcement law, in many aspects, treats persons sentenced to prison and persons sentenced to life imprisonment distinctly, this category of punishment being much more restrictive. It is important to mention that the principle of humanism and the principle of the equality of convicts are enshrined among the principles of criminal execution legislation. Thus, in the context in which both prison and life imprisonment consist of deprivation of liberty, there would be no grounds to impose distinct behaviors on the two categories of convicts, especially when we refer to their fundamental rights. The role of criminal punishment is not to create suffering for people, regardless of the type of crime committed. Thus, the restrictions to which the person is subject must be proportional to the seriousness of the facts, in order to correct the offender's behavior.

Keywords: life imprisonment; ECtHR jurisprudence; human rights; convicts' rights; enforcement law

1. Introduction

Over the course of several years, the Republic of Moldova is in the midst of democratic reforms aimed at aligning it with international standards, established in countries with an advanced democracy. Elaborating the general principles of conviviality, the state cannot only propagate a declarative policy. Thus, one of the instruments for prioritizing interests and social relations established within the state is the policy of punishment and re-education of people who have committed acts sanctioned by the criminal law. Respectively, determining the circle of rights and obligations offered to the citizen of the Republic of Moldova, a special standard of them is established as a priority and clearly, in the hypothesis of convicted persons - therefore, the legal status of the convicted, which depends, to a large extent, on the normative provisions adopted, the type of punishment ordered by the court and, obviously, the person's behavior during the actual execution of the prison sentence. The development of a statute as efficient as possible, as well as its implementation as it results from the legislation in force, would constitute some primary and principled guarantees in the activity of the institutions for the execution of the criminal penalty of deprivation of liberty.

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2. Historical Incursions Targeting Life Imprisonment

In the course of society's evolution, life imprisonment was immanently connected with capital punishment, becoming an alternative punishment for the most serious crimes. The acceptance of life imprisonment was taken up in the 1990s in several member states of the Council of Europe, following the ratification of Protocol 6 of the European Convention on Human Rights, which abolished the death penalty. Life imprisonment is an indeterminate sentence imposed by a court immediately following conviction for a criminal offense which requires the prisoner to be kept in prison either for the remainder of his natural life or until release following a judicial, quasi-judicial, executive or administrative, which considers that the prisoner no longer represents a risk to the population¹.

3. Aspects Regarding the National and International Normative Framework Regarding Guaranteeing the Rights of Persons Sentenced to Life Imprisonment

In continuation of the idea on the reference segment of the subject taken into consideration in this investigation, we can highlight the fact that life imprisonment was introduced into the Criminal Code of the Republic of Moldova as the main punishment² following the abolition of the death penalty. The abolition of the death penalty is also determined by art. 24 of the Constitution of the Republic of Moldova³. However, in accordance with the provisions of art. 71 para. (1) of the Criminal Code of the Republic of Moldova, life imprisonment consists in depriving the convict of his freedom for the rest of his life⁴.

Life imprisonment, according to the provisions of art. 257 para. (2) of the Execution Code of the Republic of Moldova, consists in the isolation of convicts from other convicts, in a specialized sector of closed type penitentiaries, under the conditions established by the mentioned code⁵ and by the Statute of execution of punishment by convicts⁶. Life imprisonment is qualified as the most severe punishment that can be applied to a natural person in case of committing a crime (Drăghici, 2021, p. 88).

The legislator ruled in art. 71 para. (2) of the Criminal Code of the Republic of Moldova that life imprisonment applies to exceptionally serious crimes⁷. In light of national criminal legislation, the following crimes are punishable by life imprisonment: genocide (art. 135); crimes against humanity (art. 135 par. (2)); war crimes against persons (art. 137 par. (4)); the use of prohibited methods of waging war (art. 1373 par. (5)); planning, preparing, starting or waging war (art. 139 para. (2)); attack on the person benefiting from international protection (art. 142 par. (3) and (4)); intentional homicide (art. 145 par. (2)); rape (art. 171 par. (3)); violent actions of a sexual nature (art. 172 par. (3)); child trafficking

¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The situation of prisoners with life sentences. Extract from the 25th General Report, published in 2016, [consulted 26 May, 2023]. <https://rm.coe.int/1680953539>.

² The Criminal Code of the Republic of Moldova no. 985 of 18 April, 2002. The Official Monitor, no. 72-74 of 14 April, 2009, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=137033&lang=ro#.

³ Constitution of the Republic of Moldova no. 1 of 29 July, 1994. The Official Monitor, no. 78 of 29 March, 2016, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=136130&lang=ro#.

⁴ The Criminal Code of the Republic of Moldova no. 985 of 18 April, 2002. The Official Monitor, no. 72-74 of 14 April, 2009, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=137033&lang=ro#.

⁵ The Execution Code of the Republic of Moldova no. 443 of 24.12.2004. The Official Monitor no. 214-220 of 05 November, 2010, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=136917&lang=ro#.

⁶ Decision of Government no. 583 of 26 May, 2006 regarding the approval of the Statute for the execution of punishment by convicts. The Official Monitor no. 91-94 of 16 June, 2006, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=110142&lang=ro.

⁷ The Criminal Code of the Republic of Moldova no. 985 of 18 April, 2002. The Official Monitor, no. 72-74 of 14 April, 2009, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=137033&lang=ro#.

(art. 206 par. (3)); the terrorist act (art. 278 par. (4)); the delivery, placement, commissioning or detonation of an explosive device or another device with a lethal effect (art. 2781 paragraph (5)); creation or management of a criminal organization (art. 284 par. (2)); crimes against aviation security and airport security (art. 2891 para. (3)); crimes against the security of naval transport (art. 2892 para. (3)); crimes against the security of fixed platforms (art. 2893 para. (3)); the attempt on the life of the President of the Republic of Moldova, the President of the Parliament or the Prime Minister (art. 342).

As stated in the specialized literature, the punishment achieves a double purpose, namely: the prevention of the commission of new crimes by the convicted and the preventive anti-criminal role as a consequence of the provision of the punishment by the criminal law, through the knowledge and adherence of society members to the provision of the respective law (Frîntu, 2013, p. 94). In this sense, we note that the purpose of criminal punishment is manifested both in the plan of general prevention, with impact on the whole society, as well as in the plan of special prevention, on a concrete subject.

Starting from the purpose of criminal punishment, in general, and the execution of life imprisonment, in particular, Recommendation Rec (2003) 23 of the Committee of Ministers to the member states regarding the administration by penitentiaries of prisoners sentenced to life or long terms states the following objectives of life imprisonment: ensuring that prisons are safe and secure places for prisoners and all those who work with or visit them; countering the harmful effects of life imprisonment and long-term imprisonment; increasing and improving the chances of these prisoners being successfully reintegrated into society and leading a law-abiding lifestyle after release¹. This recommendation has a specific character and harmonizes aspects related to safety and rehabilitation (Drosu & Burciu, 2017, p. 55).

The application of a sentence that has an indefinite term generates a social and psychological impact on the convicts, thus making it impossible to achieve the rehabilitative purpose of the sentence. Interferences in multiple fundamental rights of people sentenced to life imprisonment, on the contrary, cause desocialization, loss of personal responsibility and independence. In line with what has been stated, the purpose of life imprisonment should not be to apply stricter rules in relation to other categories of prisoners (Drosu & Burciu, 2017, p. 56).

Pursuant to the provisions of art. 257 para. (2) of the Execution Code of the Republic of Moldova, the sentence of life imprisonment is executed in three detention regimes: initial regime, common regime and simplified regime. In this sense, according to art. 2571 para. (2) of the Execution Code of the Republic of Moldova, the person sentenced to life imprisonment is in the initial regime for 10 years from the day of entering the penitentiary, and, according to para. (4) of the mentioned article, the transfer of the person sentenced to life imprisonment from the common regime to the simplified regime is carried out at the time of the effective execution of the term of the sentence, which gives him the possibility to request conditional release from the sentence before the term². Correlated with the provisions of art. 91 para. (5) from the Criminal Code of the Republic of Moldova, it follows that the transition from the common regime to the simplified regime currently takes place after the effective execution of at least 30 years of imprisonment³.

¹ Recommendation Rec (2003) 23 of the Committee of Ministers to the member states regarding the administration by penitentiaries of prisoners sentenced to life or long terms of 09.10.2003, [consulted on 27 May, 2023]. <https://pjp-eu.coe.int/documents/41781569/42171329/CMRec+%282003%29+23+on+the+management+of+life+sentence+and+other+long+term+prisoners.pdf/bb16b837-7a88-4b12-b9e8-803c734a6117>.

² The Execution Code of the Republic of Moldova no. 443 of 24.12.2004. The Official Monitor no. 214-220 of 05 November, 2010, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=136917&lang=ro#.

³ The Criminal Code of the Republic of Moldova no. 985 of 18 April, 2002. The Official Monitor, no. 72-74 of 14 April, 2009, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=137033&lang=ro#.

The aspect of conditional release of persons sentenced to life imprisonment is under the rule of art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹. In the context of life imprisonment, art. 3 of the Convention, which prohibits torture and inhuman or degrading treatment, must be interpreted as imposing a reducible character to the sentence of life imprisonment, in the sense of a review procedure that allows the domestic authorities to analyze whether the changes in the prisoner's life are sufficiently significant and whether it has been any progress towards rehabilitation during the execution of the sentence such that continued detention is no longer justified for legitimate penological reasons. In this sense, the European Court of Human Rights has reiterated that, considering the margin of appreciation that must be granted to the contracting states in matters of criminal justice and determining punishments, its task is not to order the form (executive or judicial) that would should take the reexamination. For the same reason, it is not for the Court to decide when the review should take place. However, from the materials of comparative law and international law, there is clear support for the establishment of a specialized mechanism to guarantee a re-examination within 25 years of the imposition of the sentence of life imprisonment, with subsequent periodic re-examinations. Thus, if the domestic legislation does not provide for the possibility of such a re-examination, a sentence of life imprisonment does not comply with the rules of art. 3 of the Convention².

Analyzing the provisions of the Criminal Code of the Republic of Moldova, in correlation with the Court's recommendations on the subject of life imprisonment, we notice that the national legislation is more punitive, regulating the possibility of parole after 30 years, and not 25 as the Court provides.

Among the conditions for the execution of the sentence of life imprisonment in the initial regime, according to the provisions of the aet. 257¹ para. (2), convicts: they are assigned to isolated rooms with no more than 2 places; they can be trained in jobs that do not require leaving the detention rooms; benefits from the right to daily walks lasting up to 2 hours, in a specially arranged place. In the same vein, the convicts in the common regime: are allocated in isolated rooms with no more than four places; they can be trained in jobs that do not require leaving the detention sector or in workshops specially set up for this purpose, provided that permanent supervision is ensured, depending on the existence of jobs and the conditions of detention; benefits from the right to daily walks of up to 3 hours; they have the right to long-term meetings under the conditions established for convicted persons³.

A significant distinction regarding the rights of convicts in the initial regime and the common regime concerns the right to long-term meetings. Moreover, the legislator expressly provided in art. 213 para. (4) lit. c) from the Enforcement Code of the Republic of Moldova that long-term paroles are not granted to persons sentenced to life imprisonment in the initial regime. In the context in which the initial regime is established for a period of 10 years, this constitutes a serious interference with the person's right to family, intimate and private life.

In this regard, the Nelson Mandela Rules state that prisoners must be allowed, under appropriate supervision, to communicate with their families and friends at regular intervals: by written correspondence and by the use, as appropriate, of telecommunications, electronic means, digital and

¹ The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was signed in Rome (Italy) on 4 November 1950. It entered into force on 03 September, 1953. In force for the Republic of Moldova on 12. September, 1997. The International Treaties no. of 30 December, 1998, [consulted on 27 May, 2023]. https://www.legis.bmd/cautare/getResults?doc_id=115582&lang=ro.

² ECtHR decision in case of *Vinter and others v. the United Kingdom*. Decision of the Grand Chamber of 09 July, 2013, points 119-122, [consulted on 27 May, 2023]. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-122664%22%5D%7D>).

³ The Execution Code of the Republic of Moldova no. 443 of 24.12.2004. The Official Monitor no. 214-220 of 05 November, 2010, [consulted on 25 May, 2023]. https://www.legis.md/cautare/getResults?doc_id=136917&lang=ro#.

other means and receiving their visit. At the same time, in prisons where conjugal visits are allowed, the given right must be applied without discrimination¹.

At the level of several European states, the number of prisoners sentenced to life and other prisoners serving long-term sentences is increasing. Unfortunately, during the visits, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) established that the situation of these detainees is deplorable from the perspective of material conditions, activity programs and socialization opportunities. However, according to CPT recommendations, prisoners serving long terms should have access to a variety of motivating activities. Additionally, they should be given a margin of discretion to choose how they spend their time, thus instilling in them a sense of autonomy and personal responsibility. The purpose of such an approach would be that the negative effects of institutionalization on prisoners serving long-term sentences will be less pronounced, and they will be better prepared for release if they actually have the opportunity to remain in contact with the outside world² (CPT, 2010, p. 27).

Since imprisonment involves the restriction of fundamental rights, the loss of the right to liberty being the most obvious, the long-term loss of such rights can lead to harmful common sociological effects. Such consequences are inherent in prison in general, but can be intensified as a consequence of how life imprisonment is managed³.

Currently, in the Republic of Moldova, people sentenced to life imprisonment are serving their sentences in Penitentiary no. 17 – Resin. According to the Report on the preventive and monitoring visit carried out at the Penitentiary no. 17 – The report from the National Penitentiary Administration by the Council for the Prevention of Torture, at the time of the visit, there were 115 people sentenced to life imprisonment. As a result of the visit, a series of recommendations were updated to the Ministry of Justice, the National Administration of Penitentiaries and Penitentiary no. 17 – Resist, within the limits of functional powers, in order to improve the execution of the sentence by the convicted, including particular aspects regarding life imprisonment⁴.

On the platform of the Ministry of Justice, a working group was set up for the elaboration of the project to amend the execution-penal legislation regarding the establishment of the individualized and progressive system of execution of criminal sentences. The mission of this working group consists in transposing, in the national legislation, the obligations of the Republic of Moldova assumed under the Conventions regarding the treatment of convicted persons and the international and European standards for penitentiaries and probation. Thus, as a result of the revision of the legislation, the unjustified interferences in the fundamental human rights and freedoms are to be removed, these being admitted only to the extent that they are necessary to achieve the purpose of the criminal punishment, namely correction and resocialization of the convicted, as well as the prevention of committing other crimes. Thus, the respect of a person's rights and freedoms must and is necessary to take place regardless of the

¹ The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 58, [consulted on 27 May, 2023]. https://avp.ro/wp-content/uploads/2020/07/ansamblu_reguli_mnp.pdf

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. CPT norms. 2010, [consulted on 27 May, 2023]. <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendoc.pdf.pdf?reldoc=y&docid=4d78829d2>

³ United Nations Organization. Imprisonment for life. Vienna, 1994, paragraph. 25, [consulted on 27 May, 2023]. <https://cdn.penal.reform.org/wp-content/uploads/2013/06/UNODC-1994-Lifers.pdf>

⁴ Consiliul pentru Prevenirea Torturii. Raportul privind vizita preventivă și de monitorizare efectuată la Penitenciarului nr. 17 - Rezina din cadrul Administrației Naționale a Penitenciarelor la data de 08 aprilie 2022/ Council for the Prevention of Torture. The report on the preventive and monitoring visit carried out at Penitentiary no. 17 – Rezina from the National Administration of Penitentiaries on 8 April, 2022. [consulted on 27 May, 2023]. <http://ombudsman.md/consiliul-pentru-prevenirea-torturii/rapoarte>.

environment in which he is, and this, determining the success of the state institutions in achieving them. Important, because this desired is also specific to people sentenced to life imprisonment.

Conclusions

Ultimately, by its very essence, life imprisonment is already a harsher punishment than prison. Therefore, the aggravation of the situation of people sentenced to life imprisonment by imposing additional restrictions in relation to other categories of prisoners is not substantiated, even meeting discriminatory elements. It is hard to imagine how a person, after serving a long-term custodial sentence, following a strict daily plan set by the prison staff, will be able to return to everyday life overnight. This is why the involvement of prisoners in as many activities as possible is imperative, as the skills they will develop during detention will contribute to facilitating the process of social reintegration after release, thus preventing recidivism.

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