

Presidential Pardon and the European Court of Human Rights

Abstract: The article introduces the Hungarian presidential pardon and a new compulsory presidential pardon system. It is based on the research carried out at the Pardon Department of the Ministry of Justice, where several dozen pardon petitions were analysed.

In connection with the compulsory presidential pardons, the article examines the judgment of the European Court of Human Rights which has condemned Hungary for its adoption of real (whole) life imprisonment. Results from a study of petitions for pardon are given.

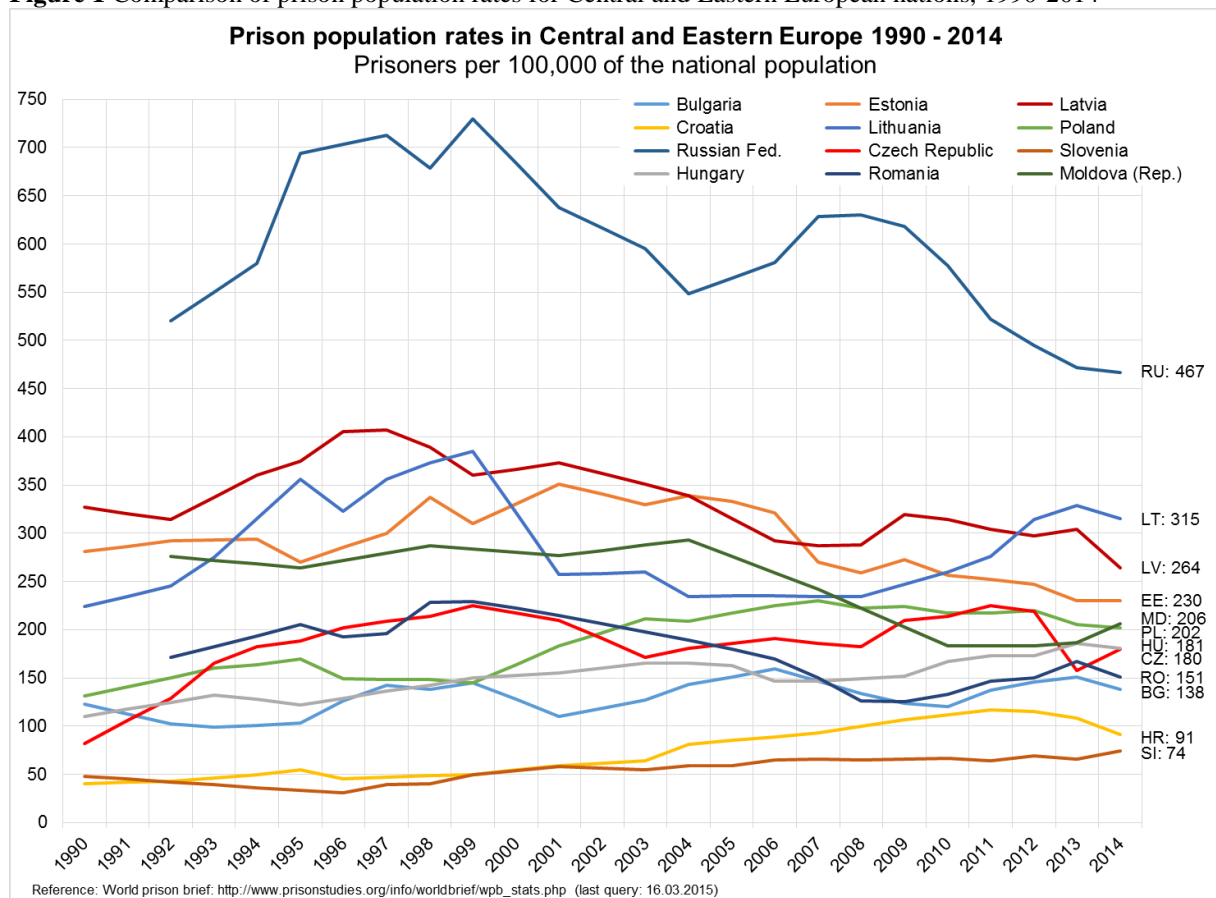
Keywords: pardon, conditional release, ECtHR, life imprisonment, empirical research

Introduction

The European Court of Human Rights has condemned Hungary for its adoption of real life imprisonment (also known as whole life imprisonment¹), and in response to this criticism, Hungary has made modifications to its presidential pardon system. Before considering the new provision in greater detail, it is helpful to take a more general look at the presidential pardon.

The problem of prison overcrowding is a prominent issue in literature. An example of this problem is illustrated in Figure 1.

Figure 1 Comparison of prison population rates for Central and Eastern European nations, 1990-2014



¹Case of Magyar v. Hungary, 73593/10 – Judgement (Third Section) 20, May 2014

As is now well understood, there exists a connection between prison overcrowding and available methods of release from prison. In Hungary, release from prison can occur in several situations:

- completion of the term of imprisonment
- conditional release
- interruption of imprisonment (temporary)
- presidential pardon
- reintegration custody (since 1 April 2015).

The presidential pardon is a discretionary power. There are two types of presidential pardon: a public pardon known as amnesty and an individual pardon. Each of these can further be divided into two categories – procedural and enforcement pardons.

The public pardon can be granted by the Parliament² and applies to a certain group of either the accused or the imprisoned. Further, an amnesty is usually connected with observing symbolic or political events. For instance, in order to commemorate the death of Imre Nagy, a public pardon was granted to a number of prisoners in honour of his death. However, this article focuses on the system of individual presidential pardons in Hungary.

The procedure for an individual presidential pardon

According to Article 9, Paragraph (4), Section (g) of the Fundamental Law of Hungary the President of the Republic has the right to grant individual pardons.³ “The President of the Republic shall (g) exercise the right to grant individual pardon.”

The minister of justice is responsible for:

- (1) preparing the case, with the help of the Pardon Department, and
- (2) endorsing or countersigning the decision made by the President.

There are two ways to initiate a pardon procedure: it can be requested, or it can be initiated through official channels. In the case of a petition, a prisoner, a defence lawyer, a legal representative of a minor, or a relative of the accused or of a prisoner can apply for a pardon.⁴ Under these circumstances, the petition for a pardon must be submitted to a first instance court.⁵

Upon submission, the court gathers necessary documents, for instance, an opinion of a probation officer, an environment survey, police reports, and an opinion of a penitentiary institution. The court then sends the documents (the charge, the sentence, medical reports, and a pardon form⁶) to the minister within thirty days.

However, what happens if the minister does not support the application for a pardon? If that is the case, the minister is required to send the documents together with his/her negative opinion to the President of the Republic. If there are medical reasons, it is possible for the minister to postpone or interrupt the punishment.

² Péter Váczy, *Kegyelem! A közkegyelem intézményéről és a semmisségi törvényekről.* (Pardon! About the institute of amnesty and the rules of nullity) In: *Tanulmányok a 70 éves Bihari Mihály tiszteletére.* Universitas-Győr Nonprofit Kft., Győr, 2013. 553p.

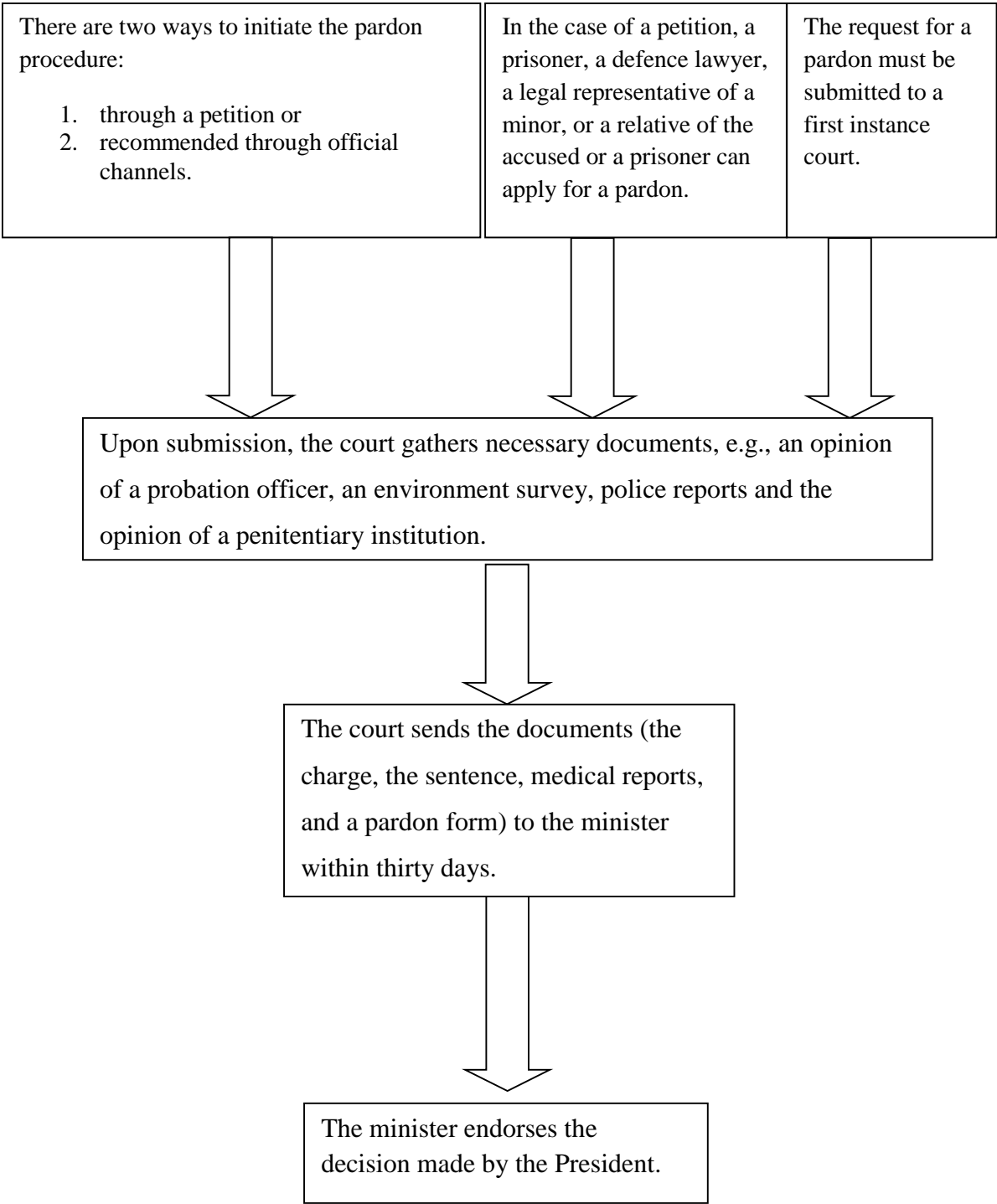
³ *Case of Magyar v. Hungary*, 73593/10 – *Judgement (Third Section) 20, May 2014*

⁴ *Act XIX of 1998* Section 597. (3) on the Hungarian Criminal Procedure Code. “Such a request may be introduced by the defendant, his/her lawyer or ... relative. ...”

⁵ *Act XIX of 1998* Section 597. (4) on the Hungarian Criminal Procedure Code. “A pardon request ... concerning a sanction not yet executed must be introduced with the first instance trial court.”

⁶ *Degree of the Ministry of Justice* 11/2014. (XII. 13.) Section 123.

Figure 2 A flow chart showing the procedure for a presidential pardon



What does a declaration of pardon entail?

In the case of imprisonment, the text reads, for example, “*the remainder of the punishment is suspended for X years on probation*”. Further, the President’s decision has a number of different features:

1. Above all, the President has discretionary power to decide.
2. The President of the Republic shall not discuss the reasons for granting or denying a pardon.
3. The opinion of the minister does not bind the President.
4. The decision becomes effective only with the minister’s endorsement.

Measures taken after the endorsement⁷

The first instance court delivers the decision on the pardon to the prisoner. There is no legal remedy against the decision; however, it is possible to submit a new request for a pardon.

According to the data issued by the Pardon Department for the period between January 1, 2002, and March 31, 2015, approximately 98% of the requests for a pardon were refused.⁸

Table 1 Data provided by the Pardon Department for the period between January 1, 2002, and March 31, 2015

Year	granting a pardon (+)	denying a pardon (-)	Total	Percentage (%)
2002	24	1126	1150	2.09
2003	36	1187	1223	2.94
2004	41	1225	1266	3.24
2005	23	1316	1339	1.72
2006	23	1146	1169	1.97
2007	23	1355	1378	1.67
2008	27	772	799	3.38
2009	17	894	911	1.87
2010	5	866	871	0.57
2011	16	935	951	1.68
2012	8	548	556	1.44
2013	12	976	988	1.21
2014	4	749	753	0.53
2015	8	171	179	4.47
Total	139	987	1126	1.97

⁷The document of the presidential pardon available on: <http://igazsagugyiinformaciok.kormany.hu/tajekoztato-az-altalanos-kegyelmi-eljarasrol>

⁸<http://igazsagugyiinformaciok.kormany.hu/admin/download/9/48/21000/Kegyelmi%20C3%BCgyek%20statistikazika%2020020101-20150930.pdf> (28.10.2015)

After the procedural aspects of an individual presidential pardon have been presented, what follows is the evaluation of the results of an empirical study which was carried out with the permission of the Pardon Department of the Ministry of Justice.⁹

Several dozen legal cases were analysed on the basis of the following factors:

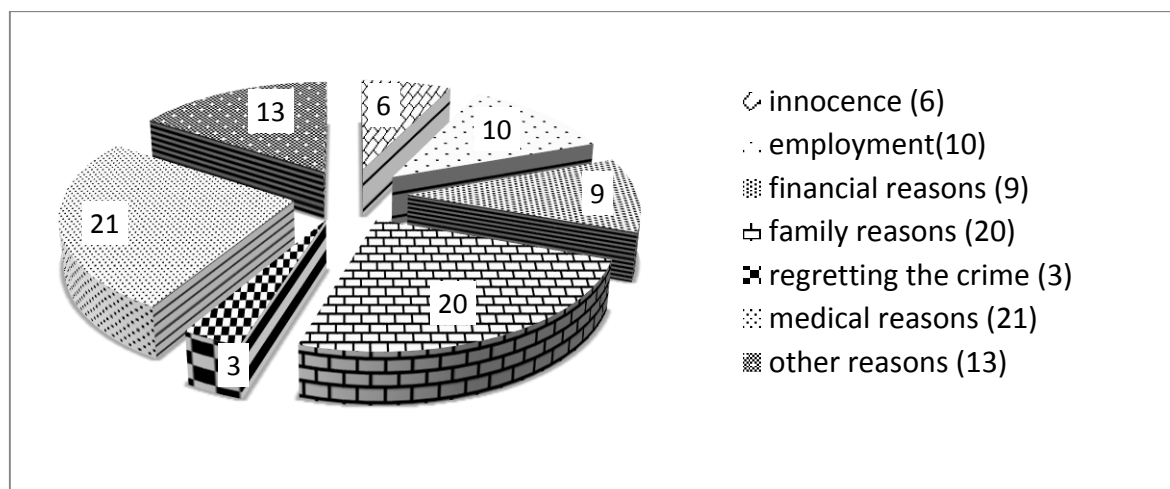
- the crime committed
- the sentence
- the reason for the request
- opinions from relevant sources
- the fact whether the request was recommended for a presidential pardon

Let us examine a sample case from the study¹⁰ in Table 2.

Table 2 Factors examined in the study of presidential pardon petitions.

Type of crime	Sentence	Reason for request	Attached opinions	Recommendation
Multiple cases of fraud	3 years 10 months' imprisonment	Medical reason – paralysis due to a serious accident	Opinion given by the hospital: he saved the life of a person Opinion given by the prison: good behaviour, frequently rewarded	Approval

Figure 2¹¹ shows the distribution of the reasons for requesting a pardon.¹² As can be seen, the most frequent reasons provided are medical reasons and family reasons.



⁹ Research number : Igazságügyi Minisztérium Kegyelmi Főosztály, (Ministry of Justice, Pardon Department) number: XX-KEGY/44/1/2015, January 2015

¹⁰ Research number : Igazságügyi Minisztérium Kegyelmi Főosztály, (Ministry of Justice, Pardon Department) number: XX-KEGY/44/1/2015, January 2015

¹¹ Made by *Dr NAGY ANITA*, Associate Professor, University of Miskolc, Faculty of Law, 12 June 2015. Miskolc MAB, in Memory of *Prof.Dr.Tibor Horváth Conference*.

¹² Other reasons included fear, good behaviour and advanced age.

Real life imprisonment

Most states that have abolished the death penalty have accepted life imprisonment as an appropriate alternative.

On March 1, 1999, the sentence of ‘real life imprisonment’¹³ came into force in Hungary.¹⁴ According to Paragraph 44 (1) of the Penal Code of Hungary, real life imprisonment is applicable to a list of certain types of cases. In eighteen cases, the judge can use his/her judgement, including the following: genocide, crimes against humanity, apartheid, etc. In two cases, real life imprisonment is compulsory¹⁵: a) in the case of multiple recidivism with violence, or (b) for crimes from the list above if there were committed by a criminal organization. In another case, if a person sentenced to life imprisonment commits a further crime, they are sentenced to life imprisonment again. In that case, the actual sentence must be real life imprisonment.¹⁶

In Hungary today, there are 275 people sentenced to life imprisonment, and of them only 40 have been sentenced to real life imprisonment (not all of these are final decisions).¹⁷

The European Court of Human Rights in the Case of *Vinter and others v the United Kingdom*¹⁸ emphasizes there are currently nine countries where life imprisonment does not exist: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia and Spain. The maximum term of imprisonment in these countries ranges from *twenty-one years* in Norway to *forty-five years* in Bosnia and Herzegovina. In Croatia, in the case of cumulative offences, a fifty-year sentence can be imposed.

In the majority of countries where a sentence of life imprisonment may be imposed, there exists a mechanism aimed at reviewing the sentence after the prisoner has served a certain minimum period fixed by law. Such a mechanism, integrated within the law and practice of sentencing, is foreseen in the law of thirty-two countries: Albania (25 years), Armenia (20), Austria (15), Azerbaijan (25), Belgium (15 with an extension to 19 or 23 years for recidivists), Bulgaria (20), Cyprus (12), the Czech Republic (20), Denmark (12), Estonia (30), Finland (12), France (normally 18 but 30 years for certain murders), Georgia (25), Germany (15), Greece (20), Hungary (20 unless courts order otherwise), Ireland (an initial review by the Parole Board after 7 years except for certain types of murders), Italy (26), Latvia (25), Liechtenstein (15), Luxembourg (15), Moldova (30), Monaco (15), Poland (25), Romania (20), Russia (25), Slovakia (25), Slovenia (25), Sweden (10), Switzerland (15 years reducible to 10 years), the former Yugoslav Republic of Macedonia (15), and Turkey (24 years, 30 for aggravated life imprisonment and 36 for aggregate sentences of aggravated life imprisonment).

There are five countries in Europe which make no provision for parole for life-sentence prisoners: Iceland, Lithuania, Malta, the Netherlands and Ukraine. These countries do, however, allow life-sentence prisoners to apply for the commutation of life sentences by

¹³ *Rec (2003)22 of the Committee of Ministers to member states on conditional release (parole) recommends*: “... the law should make conditional release available to all sentenced prisoners, including life-sentence prisoners.” A life-sentence prisoner is one serving a sentence of life imprisonment.

¹⁴ *Act IV* of 1978 Section 45 on the Hungarian Criminal Code, as in force since 1 March 1999, states: “(1) If a life sentence is imposed, the court shall define in the judgment the earliest date of the release on parole or it shall exclude the eligibility for parole. (2) If the eligibility is not excluded, parole shall not be granted in less than 20 years. If a life sentence is imposed for an offence punishable without any limitation period being applicable, parole shall not be granted in less than 30 years.” As in force at the material time and until 30 June 2013 when it was replaced by Act C of 2012 on the Criminal Code: “Imprisonment shall last for life or a definite time.”

¹⁵ *Act C* of 2012 on the Hungarian Criminal Code, Section 44 (2)

¹⁶ *Act C* of 2012 on the Hungarian Criminal Code, Section 45 (7)

¹⁷ <http://www.jogforum.hu/hirek/32833> as of 11 November 2014

¹⁸ Case of *Vinter and others v the United Kingdom*, 66069/09, 130/10 and 3896/10 – *Judgement (Third Section)* 9 July 2013

means of a ministerial, presidential or royal pardon. In Iceland, although it is still available to impose life imprisonment as a sentence, it has never been imposed.

In addition to England and Wales, there are six countries which have systems of parole but which, nevertheless, make use of special provisions for certain offences or sentences under which parole is not available. These countries are: Bulgaria, Hungary, France, Slovakia, Switzerland and Turkey

Long-Term Imprisonment and Human Rights

There is a range of legal instruments by international organizations with provisions which either apply to the treatment and protection of a person deprived of their liberty or are relevant for this group of population because they have a wider scope and regulate a variety of situations.¹⁹ The prohibition of torture and inhuman or degrading punishment or treatment is not only a prominent right in the Universal Declaration of Human Rights (UDHR)²⁰ and the International Covenant on Civil and Political Rights (ICCPR)²¹, but it is also part of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECtHR)²² as well as the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)²³ and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)²⁴.

In the European Union, the regulations concerning long-term imprisonment are primarily concerned with the protection of prisoners' human rights and originate from the Council of Europe and its bodies, not from the European Union (EU). Even so, there has been significant development with regard to human rights protection in the EU. In 2009, the Charter of Fundamental Rights²⁵ of the EU came into force together with the Treaty of Lisbon, which means that there is now a legally binding set of human rights provisions for the EU by the EU (Art. 6 (1) of the Treaty of the European Union).²⁶ However, the relevance of the Charter for the rights of prisoners is still fairly limited – although it addresses EU institutions, bodies, offices and agencies as well as the member states, they are only bound by it when they are implementing EU law.

(Art.51 (1). Admittedly, there was an attempt to instigate the drafting of the European Charter of Prisoner's Rights by the European Parliament in 2004 and a resolution that called for stronger enforcement of prisoners' rights in 2011, but there is still no EU law on the treatment of prisoners.²⁷

Then main actor in the promotion of human rights on the European level has been the Council of Europe, which consists of 47 member states including all EU member states. All the member states of the Council of Europe have signed and ratified the ECtHR. This convention is a basic legal text of the Council of Europe as the protection of human rights is,

¹⁹ Kirstin Drenkhahn : *International rules concerning long-term prisoners*, In: Long-Term Imprisonment Human Rights, Edited by Kirstin Drenkhahn, Manuela Dudeck and Frieder Dünkel, Routledge (2014) 31 p.

²⁰ UDHR, GA Res 217A (III), 10 December 1948

²¹ ICCPR, GA Res 2200A (XXI), 16 December 1966, coming into force on 23 March 1976

²² ECtHR, 4 November 1950, CETS 005, coming into force on 3 September 1953

²³ UNCAT, GA Res 39/46, 10 December 1984, coming into force on 23 March 1987

²⁴ ECPT, 26 November 1987, CETS 126, coming into force on 1 February 1989

²⁵ EU Charter of Fundamental Rights (2010/C 83/02) on 7 December 2000, updated version of 12 December 2007, coming into force on 1 December 2009

²⁶ Treaty of Lisbon (2007/C 306/01) of 13 December 2007, coming into force on 1 December 2009

²⁷ European Parliament Recommendation to the Council on the rights of prisoners in the European Union (2003/2188(INI), 9 March 2004, P5_TA(2004)0142, European Parliament resolution on detention condition in the EU (2011/2897(RSP), 15 December 2011, P7_TA(2011)0585

in addition to the development of democracy in Europe, the main aim of this organisation. Not only does the ECtHR grant all persons within the jurisdiction of the signatory states individual rights and freedoms, it also provides for an individual complaints procedure (Art. 34 ECtHR) that may be instigated by any person, non-governmental organization or group of individuals that claim that their rights laid down in the ECtHR have been violated by the state. There are two additional mechanisms for substantiating good as well as undesirable practices in prison and thus for setting standards: *recommendations to member states* and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT). The CPT was set up under Art. 1 ECPT and started its work in late 1989 (CPT 1991: §7). The ECPT states that the CPT as a mentoring body shall be established, and regulates the CPT's organisation, competence and work. The most important recommendation concerning the conditions of confinement for long-term prisoners are Rec (2006) 2 in the European Prison Rules (EPR) and Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners (Rec. on long-term prisoners). Among a wide range of recommendations concerning the deprivation of liberty, the recommendations Rec (82) 17 concerning custody and treatment of dangerous prisoners, Rec (82) 16 on prison leave and Rec. (2003) 22 on conditional release are the most relevant ones.

The CPT fulfils its preventive task through visits to all places within the jurisdiction of member states where persons are deprived of their liberty. It has unrestricted access to these places and may talk to inmates in private (Art. 8 ECPT). After a visit, the CPT enters into a dialogue with the state about its findings and any consequences in the state. The Committee drafts a report of the delegation's observations with recommendations to the state. Although the ECtHR and the CPT perform different missions, the ECtHR uses the work of the CPT and has relied on visit reports in several cases of alleged violation of Art.3 ECtHR.

Whole Life Sentences and European Human Rights Jurisprudence

In the context of a life sentence, Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment") must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows domestic authorities to consider whether any changes in the life prisoner are so significant and the progress towards rehabilitation made in the course of the sentence is such that it might mean that continued detention can no longer be justified on legitimate penological grounds. However, the European Court of Human Rights, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing ..., would emphasize that it is not its task to prescribe the form (executive or judicial) which such a review should take. For the same reason, it is not for the Court to determine when such a review should take place. This being said, "the comparative and international law materials before [the Court] show clear support for the institution of a dedicated mechanism guaranteeing a review *no later than twenty five years* after the imposition of a life sentence, with further periodic reviews thereafter..." It follows from this conclusion that where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.²⁸

In the Case of *Kafkaris v Cyprus*²⁹, the ECtHR held that there had been no violation of Article 3 of the Convention. Concerning the length of the detention, while the prospect of release for prisoners serving life sentences in Cyprus was limited, this did not mean that life

²⁸ Life imprisonment, In: Factsheet ECtHR 2015 October 1 p.

²⁹ *Case of Kafkaris v Cyprus 21906/04 – Judgement (Third Section) 12 February 2008*

sentences in Cyprus were irreducible with no possibility of release. On the contrary, such sentences were both *de jure* and *de facto* reducible. A number of prisoners serving mandatory life sentences had been released under the President's constitutional powers and life prisoners could benefit from the relevant provisions at any time without having to serve a minimum period of imprisonment. Accordingly, although there were shortcomings in the procedure in place and reforms were under way, the applicant could not claim that he had been deprived of any prospect of release or that his continued detention – though long – constituted inhuman or degrading treatment.³⁰

In the Case of *Vinter and others v the United Kingdom*, the Grand Chamber of the European Court of Human Rights ruled that all offenders sentenced to life imprisonment had a right to both a prospect of release and review of their sentence. Any failure to provide for these twin rights meant that the applicants had been deprived of their right under Article 3 of the European Convention on Human Rights to be free from inhuman or degrading treatment or punishment.

The judgement states: “If 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.”

Two principle established in this judgement require changes in the enforcement of whole life orders that prevent some prisoners sentenced to life terms from being considered for release: (1) Implicit in the right to a prospect of release is a right to an opportunity to rehabilitate oneself. (2) Implicit in the right to review of the continued enforcement of the life sentence is a right to a review that meets standards of a due process.³¹

Regarding the impact of this case, it should be mentioned that it does not prohibit actual whole life imprisonment of adult offenders convicted for murder in the light of Article 3 of the ECtHR. Rather, it prohibits life imprisonment of adults only if there is no clarity under which conditions and when there is a possibility of reducibility of the sentence.

Since the Grand Chamber made this judgment, the issue of whole life orders has returned to the Court of Appeal of England and Wales in the case of *McLoughlin*³². The Court found that the Secretary of State's discretion was limited to “exceptional grounds”, which must be read in a way that is compatible with Article 3 of the ECtHR. The Court was therefore of the opinion that English law did accept the possibility of release even where a whole life order had been imposed and so the ECHR had not been violated.

In 2015, the ECtHR in the Case of *Hutchinson v the United Kingdom*³³ confirmed that imposing whole life sentences on prisoners does not breach Article 3 where the national court in *McLoughlin* determined that the law in England and Wales “is clear as to ‘possible exceptional release of whole-life prisoners’” at the Secretary of State's discretion. However, it should be noted that life imprisonment without parole still violates Article 3, and “whole life sentences” have to allow the possibility of release.

In the Case of *Magyar v Hungary*, the European Court of Human Rights held that the sanction of life imprisonment as regulated by the respondent state, which is *de jure* and *de facto* irreducible, amounts to a violation of the prohibition of degrading and inhuman punishment as prohibited by Article 3 ECtHR. This is because it denies the convict any hope of being released in the future.

³⁰ Life imprisonment, In: Factsheet ECtHR 2015 October 1 p.

³¹ Dirk van Zyl Smit, Pete Weatherby and Simon Creighton: Whole life Sentences and the Tide of European Human Rights Jurisprudence: What Is to Be Done? Human Rights Law Review, 2014, 14, 59 p.

³² R v. McLoughlin, R v. Newell: Court of Appeal, Criminal Division [2014] EWCA Crim 188, Criminal Justice Act 2003 (procedure for setting minimum terms of imprisonment in relation to mandatory life sentences)

³³ Case of *Hutchinson v the United Kingdom* 57592/08 3 – Judgement (Third Section) February 2015

The judgment was challenged by the Hungarian government, but the request for referral to the Grand Chamber was rejected. The judgment became final in October 2014. The Court reinstated its previous case law and as a point of departure emphasized that the imposition of life sentences on adult offenders for especially serious crimes such as murder is not in itself prohibited by, or incompatible with, the ECtHR (Paragraph 47). The Court pointed out that there were two particular but related aspects to be analysed. First, the ECtHR will check whether a life sentence was *de jure* and *de facto* reducible. If so, no issues under the Convention arise (Paragraphs 48-9). Secondly, in determining whether a life sentence was reducible, the Court will ascertain whether a life prisoner had any prospect of release. Where national law affords the possibility of review of a life sentence, this will be sufficient to satisfy Article 3, irrespective of the form of the review.³⁴ Prisoners are entitled to know at the start of their sentence what they have to do to be considered for release and under what conditions, including the earliest time of review (Paragraph 53).

The government tried to argue that the possibility of a presidential pardon made the execution of the sentence reducible in practice, but the ECtHR did not accept this argument.³⁵ The Court also noted that the human rights violation was caused by a systemic problem, which may give rise to similar applications, and therefore suggested a legislative reform of the review system for whole life sentences.

Hungary took two important steps in its response to the ECtHR judgment:

1. It introduced a mandatory pardon procedure, when a convict has spent 40 years of their sentence.
2. It established a Pardon Committee.

Table 3 guides us through what the compulsory pardon procedure actually entails step by step.³⁶

³⁴ Life-sentence prisoners should not be deprived of the hope to be granted release. Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behaviour, the delivery of personal development programmes, the organisation of sentence-plans and security. Countries whose legislation provides for real life sentences should therefore create possibilities for reviewing this sentence after a number of years and at regular intervals, to establish whether a life-sentence prisoner can serve the remainder of the sentence in the community and under what conditions and supervision measures. In: Explanatory Memorandum on Recommendation (2003)22 on conditional release (parole).

³⁵ The Government submitted that the applicant's life sentence was reducible both *de jure* and *de facto*; he had not been deprived of all hope of being released from prison one day. They argued that his sentence was therefore compatible with Article 3 of the Convention.

³⁶ Made by Anita Nagy, Associate Professor, University of Miskolc, Faculty of Law, Institute of Criminal Sciences, 12 June 2015 Miskolc MAB in Memory of *Prof. Dr. Tibor Horváth Conference*

1. The convict has served 40 years of his/her sentence (and has declared that he/she wishes to request the compulsory pardon procedure).³⁷
2. The minister must carry out the procedure within 60 days.
3. The minister informs the leader of the Curia, who appoints the five members of the Pardon Committee.³⁸
4. The majority opinion must be made within 90 days³⁹ in an oral hearing (examining the medical status, behaviour, risk ranking, etc.).
5. The opinion must be sent to the President within 15 days, and the President then decides whether to grant the pardon. The final step is the endorsement of the minister responsible for justice.
6. If a pardon is not granted at this time, the procedure must be repeated in two years.⁴⁰

Conclusion

Regarding the declaration of the ECtHR, the Hungarian Constitutional Court made a declaration on April 17, 2014 (No. III/00833/2014) and a council of the Curia (Büntető Jogegységi Tanácsa) issued a declaration on July 1, 2015 (No. 3/2015. BJE).

Regarding the compulsory presidential pardon procedure, these declarations state that the Hungarian legal system is now in compliance with the requirements set forth by the European Court of Human Rights.

A new system for a compulsory presidential pardon procedure has been put into practice to comply with the ECtHR requirements. However, it can be argued that these measures are not sufficient to meet the requirements of the ECtHR, because the requirement for the *endorsement of the minister* responsible for justice introduces a political element into the decision to grant a pardon.

Secondly, neither the Minister of Justice, nor the President of the Republic have to *give reason* for their decision about such requests.

Thirdly, the ECtHR said that “the comparative and international law materials before the Court show clear support for the institution of a dedicated mechanism guaranteeing a review *no later than twenty five years* after the imposition of a life sentence, with further periodic reviews thereafter...”, but in Hungary, it is *40 years*.

Bibliography

Péter Váczy *Kegyelem! A közkegyelem intézményéről és a semmisségi törvényekről.* (Pardon! About the institute of amnesty and the rules of nullity) In: *Tanulmányok a 70 éves Bihari Mihály tiszteletére.* Universitas-Győr Nonprofit Kft., Győr, 2013. 553 p.

³⁷ Act CCXL of 2014 on the Hungarian Criminal Enforcement Code Section 46/B

³⁸ Act CCXL of 2014 on the Hungarian Criminal Enforcement Code Section 46/D

³⁹ Act CCXL of 2014 on the Hungarian Criminal Enforcement Code Section 46/F

⁴⁰ Act CCXL of 2014 on the Hungarian Criminal Enforcement Code Section 46/H

Kirstin Drenkhahn: *International rules concerning long-term prisoners*. In: Long-Term Imprisonment Human Rights. Edited by Kirstin Drenkhahn, Manuela Dudeck and Frieder Dünkel, Routledge (2014) 31 p.

Dirk van Zyl Smit, Pete Weatherby and Simon Creighton: *Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What Is to Be Done?* *Human Rights Law Review*, 2014, 14, 59 p.

R v. McLoughlin, R v. Newell: *Court of Appeal, Criminal Division* [2014] EWCA Crim 188, Criminal Justice

Act 2003

Act XIX of 1998 on the Hungarian Criminal Procedure Code

Act C of 2012 on the Hungarian Criminal Code

Act CCXL of 2014 on the Hungarian Criminal Enforcement Code

Degree of Ministry of Justice 11/2014. (XII. 13.) Section 123.

<http://igazsagugyiinformaciok.kormany.hu/tajekoztato-az-altalanos-kegyelmi-eljarasrol>

<http://igazsagugyiinformaciok.kormany.hu/admin/download/9/48/21000/Kegyelmi%20%C3%BCgyek%20statisztika%2020020101-20150930.pdf> (28 October 2015)

Research number: Igazságügyi Minisztérium Kegyelmi Főosztály, (Ministry of Justice, Pardon Department) number: XX-KEGY/44/1/2015, January 2015

Case of Magyar v Hungary, 73593/10 – Judgement (Third Section) 20, May 2014

Case of Kafkaris v Cyprus 21906/04 – Judgement (Third Section) 12 February 2008

Case of Vinter and others v the United Kingdom, 66069/09, 130/10 and 3896/10 – Judgement (Third Section) 9 July 2013

Case of Hutchinson v the United Kingdom 57592/08 3 – Judgement (Third Section) February 2015

Rec (2003)22 of the Committee of Ministers to member states on conditional release (parole)

Anotácia: Príspevok predstavuje inštitút prezidentskej milosti udeľovanej v Maďarsku a nový systém zákonom nariadených prezidentských milostí. Opiera sa o výskum realizovaný na Sekcii milostí Ministerstva spravodlivosti Maďarska, počas ktorého sa analyzovali desiatky žiadostí o milosť.

V súvislosti so zákonom nariadenými prezidentskými milosťami príspevok preskúmava rozsudok Európskeho súdu pre ľudské práva, ktorý odsúdil Maďarsko za zavedenie trestu skutočného doživotia, a prezentuje výsledky skúmania žiadostí o milosť.

Kľúčové slová: milosť, podmienené prepustenie, ESLP, doživotné väzenie, empirický výskum

Dr. Anita Nagy

Associate Professor

University of Miskolc

Faculty of Law, Institute of Criminal Sciences

e-mail: anita.nagy@uni-miskolc.hu

Recenzent: PhDr. JUDr. Mgr. Jozef Medelský, PhD.