

Penal Difficulties under the Conditions of the Sanction of Conditional Freedom in the Republic of ALBANIA

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ABSTRACT

During the end of 2015 State of Albania and especially its representative punishment law of life in the modalities of execution of the punishment, shows a lot of obstacles in violating the right of peoples' freedom, which break up the Article 3 of the ECHR. A democratic state and Albania as part of EU law and NATO treaty shows drastic change as soon as possible referring to people sentenced life imprisonment and their punishment according to regulations.

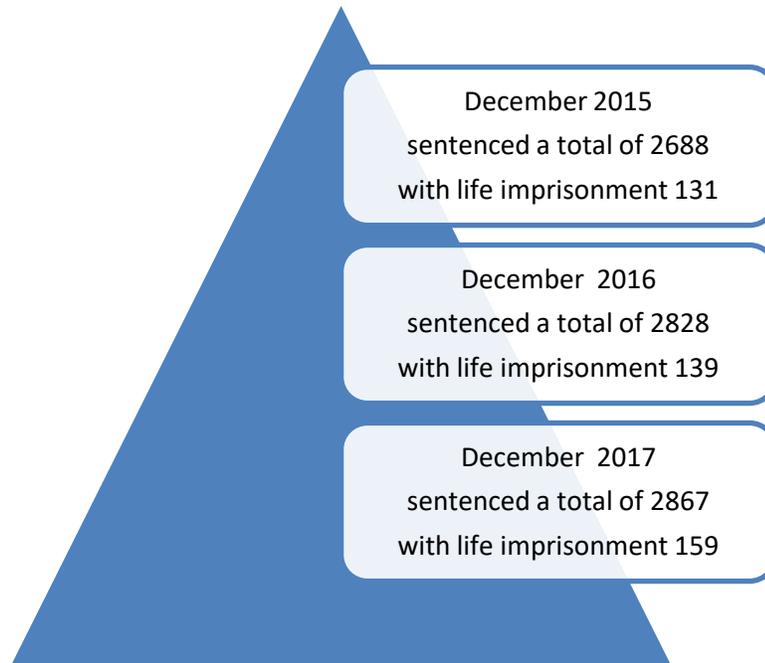
By the end of 2017 a considerable number of 289 has suffered the prison punishment in about 2889 buildings of several prisons, which means that the number of capital punishment has risen up compared to 6 years ago. The identification of difficulties in the legislation in force in Albanian republic is the core of our purpose in this paper.

But referred to referred to progress in the sentence and in function of re-education for the social society in the one that prevail opportunity in court jurisdiction to address the real execution of criminal sentences in order to obtain the supervised freedom as the one that gives hope to life through rehabilitation forms.

Key words: legislation, prevail, conditional freedom, sentence, re-socialization

1. Albanian legislation under the conditions of sanctioning conditional freedom

Even in the Republic of Albania, the word life imprisonment, as a sanction for serious criminal offenses, deprives the individual for social relations forever, which means that in the Republic of Albania, like the EU, the sentence of life imprisonment is provided by criminal legislation as the most heavy one.



The convicts category is from 28-55 years old. ¹

Article 65 of the current Criminal Code states: "Early parole is not allowed for a person sentenced to life imprisonment". Albanian legislation does not allow parole for those sentenced to life imprisonment.

According to, there are extraordinary cases that give a legitimate right to a person sentenced to life imprisonment to seek release after 25 years in prison.

In fact, if we look at what the court has reported as extraordinary circumstances in the legitimate right to parole from life imprisonment there have been no cases. If there are "extraordinary cases" to enable granting of liberty to this category of persons, it is the High Court that reports through a court proceeding.

As long as there is Article 65 in the Penal Code, which in principle prohibits the conditional release of persons sentenced to life imprisonment, then it can be said that the probability of person sentenced to life imprisonment, leaving cell is effective according to a final decision in the Republic of Albania. The primary competence to decide the conditional release of these persons in the Republic of Albania is the Court of the place of execution of the sentence from which the decision is reported. There has been no case of a lifer being granted parole. since 1998 when the death penalty was abolished by the Criminal Code, Cesare Beccaria wrote in 1764, "knowing that you can never be free again, except when you die, is even more cruel, is a" punishment of slavery. "

¹Statistics of the General Directorate of Prisons, Tirana 2016

We will have to dwell on these instruments and the jurisprudence of the European Court of Human Rights.

2. European Recommendations and some Resolutions related to Conditional Freedom(parole)

The Committee of Ministers of the Council of Europe has adopted a series of resolutions and recommendations which have been in the focus of different policies of countries of different cultures.

Points 1/2/3 of 17 February in 1976 Resolution No. (76) states that the convict should follow, and adopt legislative measures and ensure in which cases the convict may be granted conditional freedom (parole) and at the same time determines as binding the states in points 4/5/6 as marked below:

4- to grant conditional freedom (parole) to the convict, after the expiration of a time limit, and to take into account that, only general social prevention as the purpose of the sentence can not justify the refusal to grant the convict the conditional freedom (parole)

5- to adopt the same rules for the category of convicts with life imprisonment as they apply to convicts with long-term imprisonment.

6- to provide for convicts of life imprisonment and those sentenced to long imprisonment periodically every 8 or 14 years a case examination, to see if the convict can be granted conditional freedom (parole) ”²

For the member states for the organization of the penitentiary administration of persons sentenced to life imprisonment there is Recommendation no.23 of the Committee of Ministers of the Council of Europe dated 9.10.2003 which is the successor of Recommendation no. 22 of the Council of Europe, September 2003 This recommendation concerns the conditional release from imprisonment. This recommendation sets out a set of rules that lead to the preparatory phase of parole, including procedural guarantees.

Recommendation 23, on the other hand, states, “... Execution of sentences that deprive convicts of their liberty means finding a balance between the observance of order and discipline in penitentiary institutions on the one hand and the need to provide convicts with the conditions of a dignified life. and an active regime, for a constructive preparation for their release”.³

Throughout Recommendation no.23 we find the principle of individualization, which takes into account the individual personality characteristics of convicts for the adaptation of individual plans of serving the sentence and the principle of progression, which dictates the need that the individual plan of treatment of life imprisonment or by long-term imprisonment of a convicted felon to ensure an advanced evolution (see paragraph 3 of the Recommendation).

²*Council of Europe, Committee of Ministers, Resolution (76)2, 17 February 1976*

³*Council of Europe, , Rec (2003)23 of the Committee of Ministers to member states on the management by prison*

What should serve as a systematic regulator for the progressive evolution of the convict through the penitentiary system is Paragraph 10, provides that individual plans to serve a life sentence, to pass into society where prison conditions and rules improve the individual be based on laws and individual adoption.

There are mainly stable characteristics of both the danger and the criminal needs from where there is the possibility to periodically proceed with an assessment of the risks that the convict presents or not is quoted in Paragraph 16

Finally, paragraphs 33 and 34 deal with the preparation for the return of the convict to society. According to paragraph 33, or with imprisonment for a long time to face the problem of transition from a long imprisonment to a life in compliance with the laws in society, their release must be sufficiently prepared in advance taking into account:

For this reason to help the convicts in order for them to be adopted by respecting the legality regarding to the need to implement specific plans related to pre-release or post-release and what is most important the cooperation of the supervisory authorities during the time of vow(conditional time)⁴

3. The European Convention on Human Rights as a "multifunctional theory of punishment"

Around the 1970s, the Strasbourg Court declared that the sentence of life imprisonment was compatible with the norms of the European Convention on Human Rights, based on the "multifunctional theory of punishment" in one aspect.

Meanwhile, This Court, has recognized te conditional freedom (parole) the gateway that constitutes the effective reintegration of the life prisoner into civil society. Denying that the function of punishment is only re-education, the ECtHR has insisted on this period of prevention and social protection through the punitive power of the State as far as its other aspect is concerned.⁵

If life imprisonment without the right to parole is inhuman and degrading treatment, in violation of Article 3 of the European Convention on Human Rights, the Court has shown a positive escalation. The Strasbourg Court was then asked again in a series of court cases which enable and reflect these improvements.

Then, after 2008, in the case "Kafkaris" ECHR on the implementation of criminal policy for state sovereignty as a result it is cited that, it is prerogative of the state Penal policy to determine, the aspect of a re-evaluation of the sentence of life imprisonment.

A mechanism which will order the release of the convict, in case the existing justifications at the time of communication of the sanction are reduced over time and lack the motives that legitimize

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⁵Ranalli Daniela, "L' Ergastolo nella Giurisprudenza della Corte Europea dei Diritti dell' Uomo", Italia, 2015 fq.1

the detention of the convict has been seen in "W/Vinter" case a positive conclusion concluding that, for a state it is necessary to provide a mechanism that consists in assessing the continuity or not of the sentence of life imprisonment.

In response to the criminal policy of those states that still apparently do not find the balance between the principle of general social protection on the one hand and the principle of re-socialization of the perpetrator on the other hand. the Court approached the problem of life imprisonment without the possibility of release. provided more closely, in the *çështcalan* case, The court approached the problem of life imprisonment without the possibility of conditional freedom (parole) in the *Öcalan* case, by finding that the dangerousness of the offense committed cannot justify the inhuman and degrading treatment of the convict.

Meanwhile, it is the obligation of states to guarantee convicts, even those sentenced to life imprisonment, penitentiary regimes, which are appropriate to the objective of pardon, which allow these convicts to progress in this regard while serving their sentences. The state, according to the Court, must find ways or mechanisms to fulfill this obligation by reconfirming the position it has held for convicts in general, according to which, the term RE-SOCIALIZATION always applies not as a "multifunctional theory of punishment" but as something real.

4. Criticism as a political priority to favor conditional freedom

Albanian legislation regarding the sentence of life imprisonment violates the fundamental human right not to be placed under an inhuman and degrading punishment, and the legitimate right to liberty. Referring to the European instruments and those of international law, which the Strasbourg Court has evidenced in some of its decisions, we can say that, the permanent detention of a person sentenced to life imprisonment by the right to gain freedom, the legal provisions in power treats a person sentenced to life imprisonment the same as "eliminated" from society, which means without the possibility of re-socialization.

Albanian legislation regarding the execution of life imprisonment is not in line with European standards. This legislation should be changed by adopting better than those of HAGUE.

Article 65 of the Criminal Code which does not allow conditional freedom (parole) for persons sentenced to life imprisonment, as a provision which is inconsistent with the Constitution of the Republic, Articles 15 and 17 thereof, and inconsistent with the European Convention on Human Rights Human. In the field of execution of life sentences in Albania should be adopted depending on these instruments.

Albanian legislation does not define these things in paragraph 2 of article 65 in which it mentions them. Conditional release of those sentenced to life imprisonment should not be granted only in exceptional cases. Those sentenced to life imprisonment, according to each individual case and referring to the progress in serving the sentence in the function of re-socialization, after the expiration of a time limit set by law should have the right and real opportunity to address the Court of execution of criminal sentences.

In the Albanian Criminal/penal Code since 1995 This milestone does not fulfill the exigencies of the purpose of punishment in contemporary criminal law and in addition to contradicting the Convention and the Constitution, it contradicts the principles on which the criminal policy of a democratic state should be based, such as: humanism, the right of resocialization.

During the process of favoring the conditional release of those sentenced to life imprisonment, there will be objections, based on the reasoning that dangerous criminals will have to be kept permanently isolated, as long as they do not conform to social rules and public welfare.

Albanian politics must have the courage to take the legislative initiative to repeal this article and legislative adaptation in respect of the fundamental rights and freedoms of persons sentenced to life imprisonment. Every human being, even if condemned to an extreme measure, must return his personal dignity in the hope of life and freedom, leaving aside the punitive and vengeful milestones in its existence. This milestone interrupts the positive progress towards resocialization and mitigation of penitentiary treatment.

Internationally, a strong debate is taking place in Europe, but despite this, Albania lags behind with developments in the field of criminal law and political movements that change people's lives and that prioritize man and his personal dignity in his re-socialization.

CONCLUSION

Since the abolition of the death penalty by the Criminal Code in 1998, the sentence of life imprisonment in the Republic of Albania, is processed according to the Special Part of the Criminal Code for serious criminal offenses with significant social danger.

Albania has in force in its Criminal Code a provision that prohibits conditional release during the executive phase of criminal proceedings for prisoners with life imprisonment.

In order to have an adoptable penal policy by with the applicability of the principles of efficiency and improvement is grounded the goal of this paper and of the analysis itself address the weak points of the penitentiary legislation in force in the Republic of Albania.

After 2011 we can say that the Albanian legislation regarding the sentence of life imprisonment shows serious problems in the modalities of execution of this sentence, violating the fundamental human right and freedom by violating Article 3 of the ECHR.

Republic of Albania will have to change its legislation in this regard as soon as possible, in order to provide the opportunity for recidivism by functioning the re-socialization of the convict as the only incentive to educate itself with the value of change in civil society.

BIBLIOGRAPHY

1. Council of Europe, Committee of Ministers, Resolution (76)2, 17 February 1976
2. Council of Europe, , Rec (2003)22 of the Committee of Ministers to member states on conditional release

3. Council of Europe, , Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners
4. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg 27 June 2007, “Actual/Real life sentences”
5. Halissat Ismaël, Art. “ La Perpétuité réelle existe-t-elle en France?” Le Monde, 12.01.2016
6. Code of Criminal Procedure of the Republic of Albania
7. European Convention on Human Rights
8. Constitution of the Republic of Italy, 01.01.1948
9. Règlement de Procédure et de preuve de la Cour Pénale Internationale
10. Statut de Rome, de la Cour Pénale Internationale
11. Decisions of the European Court of Human Rights (2011-2016)
12. Wikipedia “ Emprisonnement à La Perpétuité”