

Proposal of “Lex Ferenda” in Reference to the Punishment of Life Imprisonment

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Abstract: According to the article 56 of the Romanian Criminal Code, “life imprisonment” is defined as the deprivation of liberty for an unlimited period of time and is executed according to the Law that governs the enforcement of punishments

In the event that the national legislation allows for a re-examination of the life imprisonment sentence of a convict to a jail time or to allow for a parole, we believe that the requirements of the European Convention of Human Rights are fulfilled. (case *Trabelsi vs. Belgium*, Decision from 4th of September 2014).

With respect to the enforcement of the life imprisonment sentence, in a few European countries there are particular provisions by the Law (Croatia, Norway, Slovenia), but in Portugal it's banned by the Constitution; in Belgium, the life imprisonment sentence is defined as a sanction for the rest of the life, while in Cyprus there is no option for parole since the Law doesn't allow it, but it can be affected only by presidential pardon.

Keywords: Penal Code, life imprisonment, changes to legal framework, female inmates, minors convicts

The punishment can be defined in various ways, in reference to the perspective of analysis. From the Criminal Law point of view, the punishment defines the means of constraint and authority, including the motivation for the use of superior forms of coercion, enforced by the Government in order to counterbalance for the damages perpetrated to the citizen or entities, as a result of the crimes, and in order to re-instate the rule of law, by warning the possible perpetrators and by offering the possibility to the official entities to re-socialize and re-educate the convicts to live by the fundamental values and principles of a democratic society.¹

The punishments in the Romanian Criminal Code,² are distinguished in main punishments, accessory and complementary, but the “main punishments” play the dominant role in the chain of constraint.

According to the article 53 of the Criminal Code, the main punishments are tabulated as life imprisonment, jail time and fine.

The life imprisonment is defined as the deprivation of liberty for an unlimited period of time and is executed according to the Law that governs the enforcement of punishments

The life imprisonment has replaced the death penalty, introduced to our legislation by the previous Criminal Code³ as an exceptional measure, with the objective to sanction a very limited number of outrageous and brutal crimes in order to protect the most valuable social assets.

The Criminal Code rules in the article 56 that the punishment of “life imprisonment” is the most harsh of the three main punishments, hence the order in which they are listed shows the progressive downsizing soberness of the punishment’s sternness, so the “jail time” and “fine” being differentiated by nature, time frame and less strict ways of enforcement, hence the “life imprisonment” punishment being considered the most coercive from our penal legislation.

1 Ilie Pascu and colectiv, New Criminal Code with comments, General part, Edition a II-a, Publisher Universal Juridic, Bucharest 2014

2 Romanian Criminal Code of 01.02.2014

3 Romanian Criminal Code of 1969

The “life imprisonment” or long term sentences were adopted by the most of the European criminal codes, except the “death penalty”; Belgian, French, German, Portuguese or Dutch Criminal codes have such regulations.

In regard to the “life imprisonment” punishment, several European countries do not have such provisions (Croatia, Norway, Slovenia), and in Portugal it’s banned by the Constitution. In Belgium, the sentence implies that the individual will be incarcerated for his/her life duration and in Cyprus, there’s no possibility for release since they don’t have a system of “parole” for this type of punishment, the only option will be the presidential pardon. In the United Kingdom, the “life imprisonment” sentence doesn’t allow a parole procedure, but after fulfilling 15 years from the sentence, the convict is able to get a “furlough”. On the other hand, in Poland the sentence of “life imprisonment” is enforced only to very serious crimes and the minors are exempt from such punishment, but allows a step-by-step procedure to a semi-imprisonment regime and eventual “parole” if at least 25 years have been served.⁴

The Romanian Criminal Code rules at article 57 that the “life imprisonment” sentence will not be enforced to the convict that has 65 years of age on the date of the sentence, hence he/she will serve only 30 years from the sentence and some rights will be banned during its maximum length.

The Romanian Criminal Code states: «in the event that the convict that receives a “life imprisonment” sentence will have 65 years of age while serving the sentence, the “life imprisonment” punishment can be changed to 30 years imprisonment and the additionally some rights will be banned during its maximum length, if the convict have shown a good behavior while serving the sentence, have managed to fulfill all civil obligations established in the sentence, except if he/she can prove that didn’t have the means to complete them and made constant and obvious results in order to be integrated in the society».⁵

The lawmaker gives the option to the court to rule, according to the particularities of the conduct shown by the convict, if he/she is worthy of such over-ruling, hence the change of sentence is not mandatory, as is the case when the “life imprisonment” punishment is not applicable.

4 Ibidem 1, pag. 386

5 Art. 58 current Romanian Criminal Code

The dilution of the deterrent character of the “life imprisonment” punishment led to the decision to change it to regular jail time, giving so the hope to the convict that after a period of time, if he/she obeys the rules and makes serious progresses toward the re-habilitation, he/she will be free as a senior citizen. This ruling is applied in the favor of both male and female convicts.

In the light of the current legislation, a basis for reflection at scientific level could be as a proposal for “lex ferenda” the necessity to establish punishments in the Romanian legislation not only in reference to the age of the offender but also in reference to certain categories of perpetrators.

In accordance with the European Court of Human Rights ruling, issued on 24th of January 2017, in the case of Khamtokhu and Aksenchik vs. Russia:

„The Court have established that the justification of a differentiated treatment of the the two plaintiffs in comparison with other offenders, with the sole purpose of promoting the principles of justice and humanity, it was legitimate.” Also, it was found that by deviating certain categories from the punishment of “life imprisonment” is proportional in regard of these principles. In order to reach such conclusion, the Court have studied the practical mechanism of the “life imprisonment” punishment in Russia, from the execution point of view, but also from the possibility of an appeal.⁶

In this particular case, the convictions to “life imprisonment” ruled for the two plaintiffs were not arbitrary or excessive and can be review after 25 years. More, the Court have took in consideration the high tolerance given to the countries to rule over its own penal policies, because there’s no European consensus in this matter, except the opinion that no minor should be punished to “life imprisonment”. It’s true that it would be difficult to criticize the Russian law makers for excluding certain groups of perpetrators from the “life imprisonment” punishment, which can be seen in fact as, if we judge on the basis of previously stated principles, a progress in the criminal legislation

So, in accordance to the Court’s decision, any state can include in its legislation, in the most legitimate way, easier penal sanctions for certain categories of individuals, because this is a “progressive social” approach to the penal law.

6 Request no. 60367/08 si 961/11

In fact, the two mentioned plaintiffs have complaint to the European Court of Human Rights, that, the first of 25 years or age, and the second, of 30 years of age, have been unrightfully sentenced to “life imprisonment” after killing a police officer, claiming that the current Russian Criminal Code is discriminatory since it rules that women, minors, and men over 65 years of age can’t be sentenced to “life imprisonment”.⁷

We should notice also that certain countries have specific punishments for offenders with an age of 60 to 65, while others have “decided to exclude women which were pregnant at the moment of the perpetration of the crime or at sentencing” from “life imprisonment”, and a group of countries, which includes Russia, have a more lenient approach towards all women, which are excluded”, as the ECHR concludes.

Of course, there were opponent opinions amongst the 17 judges of the Court, in particular Sajó, Nußberger, Turković and Mits. The judges Sicilianos, Møse, Lubarda, Mourou-Vikström, and Kucsko-Stadlmayer had a separate common opinion; so did judge Pinto de Albuquerque, who wrote a separate opinion too. All these are included in the annex.

Following the outlines of this ruling, a national study for the Romanian penal legislation can be initiated on the issue of the “life imprisonment” punishment, in order to change the article 57 of the current Criminal Code, with the following text: @If on the day of the sentence, the defendant had the age of 65 years or the defendant is a female, instead of the “life imprisonment” punishment, a 30 year sentence will be imposed and some rights will be banned during its maximum length”.

References

1. Criminal Code of 1969
2. Criminal Code of 2014
3. Ilie Pascu and colectiv, New Criminal Code with comments, General part, Edition a II-a, Publisher Universal Juridic, Bucharest 2014
4. Law no. 254/2013 regarding the execution of the punishments
5. www.echr.coe.int

⁷ www.echr.coe.int