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“Time to re-examine the use of life sentences”

There is now a trend in Europe towards more life sentences for an increasing number of convicts. Many of those sentenced to life-long imprisonment are deprived of the possibility of ever being freed, they are “actual lifers”. This is a reaction to incidents of extremely serious, violent and organized crime. However, this trend seems also to be a response to the perception that politicians have to demonstrate firm determination in face of public demands for tougher punishments. The use of life sentences should be questioned. Are they necessary? Are they humane? Are they compatible with agreed human rights standards?

During visits to member states of the Council of Europe I have met “lifers” in several prisons. Many of them are held in very harsh conditions. In too many cases the authorities keep these prisoners under a special regime, treating them as particularly dangerous and therefore cutting them off from contact with the outside world and often from other inmates as well. Prison guards also face the difficult task of dealing with lifers who have no incentive to demonstrate good behaviour.

A distinction should be made between the length of the sentence imposed and the degree of security restrictions considered necessary. “Lifers” are not necessarily more dangerous than others and should therefore not automatically be kept under a “maximum security” regime. There should be an individual assessment of each detainee with regard to the threat he/she poses to safety and security.

This issue was addressed in a Recommendation adopted 2003 by the Council of Europe Committee of Ministers on “the management by prison administrations of life sentence and other long-term prisoners”. This policy document sets out a number of important guiding principles:

- *individualisation* - there should be individual plans for the implementation of the sentence that take into account the personal characteristics of the prisoners;
- *normalisation* - prison life should resemble as much as possible life in the community;
- *responsibility* - prisoners should be given opportunities to exercise personal responsibility in daily prison life;
- *security and safety* - a clear distinction should be made between any risks posed by life sentence and other long-term prisoners to the external

community, to themselves, to other prisoners and to those working in or visiting the prison;

- *non-segregation* - consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence.

I have become aware that these principles are not fully applied in a number of member states. The same conclusion can be drawn from the published reports of the European Committee for the Prevention of Torture. This Committee has also highlighted a range of psychological problems among this category of prisoners, including loss of self-esteem and impairment of social skills.

The UN Convention on the Rights of the Child prohibits life sentences without the possibility of release. There are not yet any universal provisions banning such sentences against adults. Significant, however, is that the Rome Statute of the International Criminal Court – dealing with the most serious crimes: genocide, crimes against humanity and war crimes – stipulates a review of prison sentences after 25 years.

My opinion is that sentencing to indefinite imprisonment is wrong. In fact, some countries in Europe do not allow for life sentences irrespective of the crime, for instance Norway, Portugal, Spain and Slovenia (though very long fixed-term prison sentences can be handed down). This gives the convict at least some clarity about the future. Some other countries permit reviews after a certain period of time during which the behavior of the prisoner normally is one criterion. Convicts in these cases may therefore see a possibility of release.

However, there is an increasing number of prisoners who can nurture *no or little hope* of ever being freed. Not surprisingly, there are reports about cases of severe depression and other psychological problems in this category of inmates. In a prison I visited recently in Azerbaijan I could see the tension caused by bitterness and frustration among “lifers”, who had hoped for the review of their sentences sooner than after 25 years (the time prescribed by law). Relatives of the prisoners were also desperate.

Life imprisonment without the possibility of release does raise human rights concerns. Especially in combination with “maximum security” conditions, they could amount to *inhuman or degrading punishment* and thereby violate Article 3 of the European Convention on Human Rights.

Actual life sentences also negate the human principle that people can change. There are of course recidivist criminals but there are also examples of prisoners who have reformed themselves. Court decisions

assuming that someone constitutes a permanent threat to society are therefore misplaced. The vision of rehabilitation should be protected, not undermined.

There is also a need to discuss a new category of “lifers” which has emerged in a growing number of countries: offenders who have never been convicted to a life sentence but might well serve one in reality. By virtue of new laws adopted in the name of so-called public security, serious offenders may be denied not only conditional release but even release once they have served their full sentence - if defined as dangerous by experts. If release is denied persistently until the end of a detainees’ life, this will amount to de facto life imprisonment.

Such legislation raises concerns about compatibility with the rule of law, the principle of legal certainty and of the right not to be tried or punished twice – important principles of our penal law systems and the international human rights norms. Are prisoners who face the prospect of indefinitely prolonged detention not in a situation of “*mounting anguish*”, condemned by the European Court in relation to death rows⁽¹⁾?

Two important cases relating to life sentences are now pending before the Grand Chamber of the Court⁽²⁾. The rulings on them will guide the interpretation of the European Convention in this area.

It is my conviction that the present trend of the use of life sentences must be questioned. Though severe punishments will continue to be necessary in some cases to protect public safety, it is possible if there is a political will to give room to human considerations and for the chance of rehabilitation of convicts.

Thomas Hammarberg

Notes

1. [Soering v. the United Kingdom](#), 7 July 1989
2. [Kafkaris v. Cyprus and Ljger v. France](#)