

Life Imprisonment and Human Rights, particularly Life Sentences without Parole – Case – law of the ECtHR and the Legal Situation in Hungary

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ELTE  **ÁJK**
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Life Imprisonment Decisions

- Constitutional Court of Italy (1974)
- German Federal Constitutional Court (1977):
'real prospect for release'



Case-law of the European Court of Human Rights

- i. Kafkaris v Cyprus* (2008)
- ii. Vinter and others v United Kingdom* (2013)
- iii. L. Magyar v Hungary* (2014)
- iv. Harakchiev and Tolumov v Bulgaria* (2014)
- v. Hutchinson v United Kingdom* (2015)
- vi. T.P. and A.T. v Hungary* (2016)



Requirements of the ECtHR concerning Life Imprisonment

- i. A life sentence is not incompatible with the Convention per se, as long as the life prisoner has a real prospect of release. The existence of presidential pardon in itself does not constitute a real prospect of release.
- ii. Article 3 of the Convention requires the reducibility of life imprisonment.
- iii. *De jure* aspect of the reducibility requirement presupposes a review mechanism.
- iv. A mechanism to be available no later than 25 years after the final court decision.



Concurring Opinion of Judge Power-Forde to the Judgment in the Vinter-case

- „... Article 3 encompasses what might be described as **“the right to hope”**. . . .
- Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. **To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading.**”



Forms of Life Imprisonment in Hungary

- i. Life imprisonment with eligibility for parole (**LWP**)
 - ii. Life imprisonment without parole, based on the Court's decision (**LWOP**)
 - iii. Mandatory sentence to life imprisonment without parole, for certain crimes and offenders (**Mandatory LWOP**)
- All three versions may only be imposed for persons who were *above the age of 20* at the time of perpetration



National Consultative Council

Questionnaire on LWOP in February 2011

Question No. 11:

„Some people propose that the new Constitution (the Fundamental Law) shall provide Hungarian courts the opportunity to impose life imprisonment without parole for the most serious crimes. What is your opinion?”



Article IV paragraph 2 of the Fundamental Law of Hungary

„Life imprisonment without parole may only be imposed for a commission of a willful and violent criminal offence.”



Judgements related to Hungary

- i. László Magyar v Hungary (2014)*
- ii. T.P. and A.T. v Hungary (2016)*



Review mechanism of LWOP after the ECtHR decision in the case of László Magyar v. Hungary

- Official review and release procedure when the lifer has served 40 years in prison



Relevant Provisions of the Fundamental Law of Hungary



Constitutional Court Order of 3013/2015. (I. 27.)

- Terminating the proceeding
- 'The legal situation that served as a reason for the submission of the petition had changed enormously.'



Number of Life Prisoners in Hungary on 15 November 2016*

N° of Life Prisoners	Of which 'whole lifers'
352	52

* Source: Letter from the Headquarters of the Prison Administration of Hungary



Sentencing practice in relation to Life Imprisonment in Hungary, 2011-2015*

Year	No. Of Life Imprisonment Convicts	Of which: 'whole lifers'
2011	11	1
2012	30	7
2013	33	10
2014	28	7
2015	32	10
Total	134	35



Age group of 'whole lifers' prisoners

(Total: 52 prisoners)

Age group (years)	25-29	30-39	40-49	50-59	60 or older
%	10	25	46	12.5	6.25



Conclusions

- i. **ECtHR:** *Vinter and others v United Kingdom*
- ii. **Hungary:**
 - Penal populism
 - Defense of sovereignty in the field of penal policy



'Arrangements must also be made at some stage to release the prisoners on leave and on parole; otherwise the long sentence of imprisonment may arguably become a more severe sanction than the death penalty.'

(*Inkeri Anttila* 1987. 2001:166-174, 172)



Thank you for your attention!

