

2. Škulić M. (2018) House Arrest (independent sentence or manner of execution of a prison sentence?), In S. Bejatović (ed.), *Alternative Criminal Sanctions and Regional Criminal Procedure Legislation (basic legal features and experiences in application and improvement measures)*, OSCE Mission to Serbia, Belgrade, 2018. P. 42.

3. Mrvić-Petrović N. (2018) Community Service (concept, conditions, possibilities of imposition, duration and consequences of non - performance of work obligation), in S. Bejatović (ed.), *Alternative Criminal Sanctions and Regional Criminal Procedure Legislation (basic legal features and experiences in application and improvement measures)*, OSCE Mission to Serbia, Belgrade, P. 159.

4. Stevanović I. (2018) Juvenile Offenders and Alternative Criminal Sanctions, in S. Bejatović (ed.), *Alternative Criminal Sanctions and Regional Criminal Procedure Legislation (basic legal features and experiences in application and improvement measures)*, OSCE Mission to Serbia, Belgrade. P. 187-200.

5. Criminal Code of the Republic of Serbia, "Official Gazette of the RS", No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

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CONDITIONAL RELEASE FROM LIFE IMPRISONMENT

Prohibition of torture and inhuman or degrading treatment or punishment undoubtedly derives from all the main international human rights instruments. Unlike the death penalty, which is undesirable (see: Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty) and has already been abolished in the member states of the Council of Europe and the European Union (see: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, Article 1: «The death penalty shall be abolished. No one shall be condemned to such penalty or executed»), the sentence of life imprisonment is not in itself prohibited and does not constitute a violation of Article 3 of the European Convention on Human Rights. But the question is whether life imprisonment without the possibility of conditional release is in accordance with the European Convention on Human Rights.

Let us first look at the international standards deriving from the relevant legal acts of the United Nations Organisation, the European Union and the Council of Europe.

We have reviewed the following UN legal acts:
– Universal Declaration of Human Rights

- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

We have also reviewed the Charter of Fundamental rights of the European Union, The Convention for the Protection of Human Rights and Fundamental Freedoms (better known as the European Convention on Human Rights) with all the Protocols and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with both two protocols.

The international standard prohibiting torture and inhuman or degrading treatment or punishment undoubtedly derives from all these documents (see e.g. Article 4 of the Charter of Fundamental Rights the European Union or Article 3 of the European Convention on Human Rights: «No one shall be subjected to torture or to inhuman and degrading treatment or punishment»). What the European Court of Human Rights considered a violation of Article 3 of the Convention could be seen from a review of the case law of this Court.

As early as 1977, the Constitutional Court of the Federal Republic of Germany faced the question of whether life imprisonment without the possibility of conditional release was in accordance with the Constitution of the Federal Republic of Germany. The Federal Republic of Germany abolished the death penalty with the May 1945 constitution. It was replaced by the sentence of life imprisonment. In 1977, the Constitutional Court of the Federal Republic of Germany had to decide whether the mandatory imposition of life imprisonment, without the possibility of conditional release provided for in Article 211 of the then applicable Criminal Code of the Federal Republic of Germany, was in accordance with the Constitution. The Constitutional Court ruled that such an arrangement was in conflict with Article one of the Constitution of the Federal Republic of Germany, which guarantees the right to human dignity. Human dignity belongs to every individual, including to convicted persons. On this basis, the Constitutional Court adopted the position that every convicted person should at least have hope that he or she will ever be released again. The mere possibility of receiving pardon does not meet this condition. The legislator must determine by law the conditions under which and when a convicted person will be given the opportunity to be released. Based on this Constitutional Court's decision, the German legislator amended the Criminal Code. In December 1981, Article 57a of the German Criminal Code was adopted, laying down the conditions for the conditional release of convicted persons sentenced to life imprisonment. In the cases dealt with after

the amendment of the Criminal Code in 1981, the Federal Constitutional Court of the Federal Republic of Germany ruled that Article 57a of the German Criminal Code was in conformity with the Constitution.

In the Republic of Slovenia, conditional release is regulated by Article 88 of the Criminal Code. Conditional release from life imprisonment is regulated by paragraph three of the same Article. A person sentenced to life imprisonment may be released on parole after having served 25 years in prison if it can be reasonably expected that he or she will not commit new criminal offence after release. The European Court of Human Rights has so far not heard an appeal against the decision of Slovenian courts due to an alleged violation of Article 3 of the European Convention for the Protection of Human Rights in relation to life imprisonment.

Speaking the truth, the courts of the Republic of Slovenia have not imposed a sentence of life imprisonment since its introduction in 2008.

Analyse of the case law of the European Court of Human Rights showed that the sentence of life imprisonment is not in itself prohibited and does not constitute a violation of Article 3 of the European Convention on Human Rights if the legal order gives the convicted person hope that he or she will ever be released again.

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АНАЛИЗ ЭФФЕКТИВНОСТИ КАССАЦИОННОЙ ЖАЛОБЫ В ИНТЕРЕСАХ ЗАКОНА

Согласно ч. 1 ст. 2 Уголовно-процессуального кодекса Республики Молдова (УПК РМ), уголовное судопроизводство регламентируется положениями Конституции Республики Молдова, международными актами, одной из сторон которых является Республика Молдова, и соответственно УПК РМ, то есть вполне определёнными источниками права. Намерения авторов уголовно-процессуального законодательства были не только максимально ограничить источники права, но и создать, насколько это возможно, доступный и понятный закон, который бы соответствовал требованиям Европейского суда по правам человека. Чего не учли авторы, так это многогранности и сложности реальной жизни. Так что спустя почти десять лет после принятия УПК РМ, законодатель вынужден был пересмотреть свой взгляд на источники уголовно-процессуального права, и сделал это путём изменений в ст. 7 УПК РМ, которая регламентирует принцип законности уголовного процесса.