

Asea Gašparić*

NAVIGATING LIFELONG IMPRISONMENT, HUMAN RIGHTS, AND EVIDENCE-BASED JUSTICE IN A POST-DEATH PENALTY ERA

Abstract: The global shift away from the death penalty has elevated lifelong imprisonment as a primary alternative, prompting a critical examination of its conceptual, legal, and human rights dimensions. This exploration navigates through diverse legal definitions and cultural interpretations, emphasizing the increasing adoption of lifelong imprisonment following the decline of the death penalty. In that regard, the dichotomy between penal populism and evidence-based crime policy adds a critical perspective on the influence of public sentiment on criminal justice discourse. While penal populism often prioritizes public opinion over empirical evidence, an evidence-based approach underscores the importance of careful consideration, analysis, and reliance on scientific research in shaping legal policies. Finally, the nuanced approach to lifelong imprisonment recognizes its potential for rehabilitation and reintegration, balancing ethical considerations, evolving trends, and the imperative to protect human rights. This article emphasizes the multidimensional nature of lifelong imprisonment, encompassing ethical dilemmas, evolving paradigms, and the imperative to navigate these complexities with a commitment to justice and human rights.

Keywords: lifelong imprisonment, human rights, death penalty, evidence-based justice.

1. INTRODUCTION

The global landscape of criminal justice has witnessed a significant transformation in recent decades, marked notably by the progressive abolition of the death penalty in many countries. As societies cope with the ethical implications of taking a human life as punishment, a consequential shift has occurred, redirecting focus towards lifelong imprisonment as an alternative measure.¹ This paradigmatic tran-

* PhD candidate at the Deák Ferenc Doctoral School of Law of the University of Miskolc in co-operation with the Central European Academy in Budapest, Hungary, gasparic.asea@gmail.com, ORCID: <https://orcid.org/0000-0003-2725-488X>.

1 See more in D. Van Zyl Smit and C. Appleton /2019/, *Life imprisonment: A global human rights analysis*, Harvard University Press.

sition prompts a critical examination of the conceptual underpinnings and practical implications of lifelong imprisonment, inviting examination from legal, ethical, and human rights perspectives. This exploration begins by clarifying the conceptual aspects of lifelong imprisonment, investigating whether it stands as a just alternative or merely a delayed form of death sentence. Delving into philosophical and legal perspectives, we contemplate the essence of life, the quality of its existence, and the societal dimensions that shape our understanding of punishment. Drawing from historical roots to contemporary practices, we navigate through diverse legal definitions and cultural interpretations, acknowledging the complexity inherent in summarizing the notion of life imprisonment. The subsequent section sheds light on the evolving trends in lifelong imprisonment across various jurisdictions, emphasizing the notable progress towards its adoption as a predominant punitive measure following the decline of the death penalty.

Finally, the narrative pivots towards the dichotomy between penal populism and evidence-based crime policy. The concept of penal populism is dichotomized, revealing its influence in shaping criminal justice discourse based on public sentiment rather than empirical evidence. On the contrary, we underscore the importance of evidence-based approaches in crafting legal policies, especially in the context of lifelong imprisonment, where normative concerns intersect with the need for a just and effective criminal justice system. In navigating these intricate dimensions of lifelong imprisonment, this exploration seeks to unravel the complexities, ethical quandaries, and evolving paradigms that define contemporary approaches to punishment in the absence of capital sentences.

2. THE ABOLITION OF DEATH PENALTY AND ITS IMPACT ON LIFELONG IMPRISONMENT

2.1. Moral, legal, and human dimensions of lifelong imprisonment

With the progression of human rights, society has recognized lifelong imprisonment as the most feasible alternative measure to replace capital punishment, given that taking someone's life as a form of punishment is no longer acceptable. While this focus is understandable, it overlooks the fact that definitions of life serve not only epistemic and metaphysical purposes, but also carry significant social, political, and ethical implications.² In light of this, it is crucial to ponder the very essence of life and its various dimensions. However, can life be solely measured in terms of quantity?

Historically, life imprisonment has also served as a way to impose a punishment meant to keep an offender incarcerated for the rest of their natural life, essentially functioning as "life without the possibility of parole."³ Bearing that in mind,

2 L. Schoenmakers /2023/, Scientific progress, normative discussions, and the pragmatic account of definitions of life, *Synthese*, № 4, vol. 201, p. 13.

3 M. Mauer /2004/, *The meaning of "life": Long prison sentences in context*, Washington, DC: Sentencing Project, p. 4.

can we characterize lifelong imprisonment as a just very slow death sentence? Can a prisoner experience life in its true sense if sentenced to whole life imprisonment? Thus, apart from the quantitative aspects of life quality, it is important to underline the qualitative aspects by considering the fundamental elements that constitute a meaningful existence. The main issue when dealing with this topic is how we interpret and initially approach it from a conceptual point of view. The quality of life can be viewed as a developing goal or, more advantageously, as a method of establishing long-term conditions for oneself on Earth.⁴ Two perspectives may be used to describe the quality of life. Firstly, from a human perspective, it is the extent to which essential natural, biological, psychological, economic, and social needs are met or fulfilled.⁵ And secondly, from the point of view of the society, the quality of life is represented by the capacity of the society, i.e. its ability to meet the resources necessary to fulfill human needs.⁶ The phrase quality of life may signify many different things, from personal fulfillment to the capacity to live a normal existence. In social indicators study, it includes all aspects of daily living, such as housing, recreation, employment, the environment, income.⁷ According to some scholars,⁸ the factors considered to determine the essence of life quality and the degree to which those needs are fulfilled encompass a range of human needs, including physical, psychological, social, functional, relational, and environmental aspects. Examining the multifaceted nature of life quality becomes imperative in evaluating the ethical dimensions of lifelong imprisonment, prompting a critical exploration of its impact on the human experience. As society grapples with the ethical implications, a comprehensive understanding of the qualitative aspects of life is essential to inform discussions surrounding justice, punishment, and the preservation of human dignity.

When discussing life imprisonment, it is essential to begin by establishing a clear definition of what constitutes life imprisonment. In connection with life sentence, the question of justification is linked to the legal definition and practical implementation of life imprisonment.⁹ According to Italian philosopher, Cesare Beccaria, one can define life imprisonment as the incarceration of a prisoner subjected to severe treatment during his sentence and inevitable death in prison.¹⁰ Moreover, Beccaria strongly condemned the death penalty and proposed a life sentence as a harsher and more effective way of punishment.¹¹ On the contrary, some modern countries define life imprisonment as a form of incarceration where individuals are confined for

4 N. Karajić /1992/, *Važnost pojedinih komponenata kvalitete života*, *Socijalna ekologija*, № 4, vol. 1, p. 486.

5 M. M. Bubolz et al. /1980/, *A human ecological approach to quality of life*, *Social Indicators Research*, № 1, vol. 7, p. 107.

6 Karajić /1992/, p. 485.

7 See more in: A. Campbell, P. E. Converse, W. L. Rodgers /1976/, *The quality of American life: Perceptions, evaluations, and satisfactions*, New York: Russell Sage Foundation.

8 E.g. J. O. Hörnquist /1982/, *The concept of quality of life*, *Scandinavian Journal of Social Medicine*, № 2, vol. 10, A. H. Maslow /2013/, *Toward a psychology of being*, Simon and Schuster.

9 For detailed analysis see: D. van Zyl Smit, C. Appleton /2019/, *Life imprisonment: A global human rights analysis*, Harvard University Press.

10 C. Beccaria /2009/, *On crimes and punishments and other writings*, University of Toronto Press.

11 C. Beccaria /2009/, *ibid.*

the rest of their lives but are provided with chances for rehabilitation, and if they are deemed no longer a threat to society, they may be released. In countries that have chosen to incorporate life imprisonment as a punishment within their criminal justice systems, it is necessary to establish regulations concerning the possibility of parole. A prominent example regarding the issue of parole at the European level can be found in German legal practice, where the Constitutional Court, in a landmark decision from 1977,¹² ruled that mandatory life sentences without any possibility of parole under all circumstances are unconstitutional. The same was stated by the European Court of Human Rights which highlighted the importance of implementing mechanisms for reviewing life sentences in several cases.¹³ The Court has emphasized that countries should establish a justice system that allows individuals serving life imprisonment to seek a review and potential commutation of their sentence. In the case of *Vinter and Others v. United Kingdom*,¹⁴ the ECtHR acknowledged the possibility that there might come the point where the continued detention of individuals sentenced to whole life imprisonment no longer serves penological purposes. The Court held that sentences of life imprisonment without any prospect of release or opportunity for review, thereby depriving the prisoners of any hope of eventual release, are inconsistent with Article 3¹⁵ of the European Convention on Human Rights.¹⁶ In the *Vinter* case, the Court did not challenge the legitimacy of lifelong sentences, but the existence of sufficient penological justification for the continued imprisonment of a person on whom a life sentence is imposed. However, the Court explicitly stated that if a prisoner continues to pose a risk to society, he should remain in prison. However, this judgment also emphasized the importance of preserving hope for prisoners regarding their future outside of prison. Finally, without hope, it becomes questionable whether there is any realistic chance for an individual to rehabilitate and fulfill the ultimate goal of the given punishment – resocialization.

2.2. Trends in lifelong imprisonment

The advantage of imprisonment versus the death penalty is recognized in allowing the convicted person to change and improve his or her behavior while serving the sentence. This allows for considering their progress and fulfilling specific conditions that may lead to their eventual release. Furthermore, the advantage of

12 Available at: <https://openjur.de/u/60105.html>.

13 E. g. In the case *Marcello Viola No. 2. v. Italy* (77633/16) ECHR supported the amendment of Prison Administration Act which introduced the possibility for full life prisoners who had failed to cooperate with the justice system to be eligible for release on parole after serving 30 years of imprisonment. Another case is *Matiošaitis and Others v. Lithuania* (226622/13) in which the Court highlighted the importance on establishing an opportunity for life prisoners to ask the domestic court that their sentence be replaced by fixed-term custodial sentence if they have served not less than 20 years. The same was repeated in *Petukhov No. 2. v. Ukraine* (41216/13) where ECHR supported these mechanisms for life prisoners who have served at least 15 years of prison.

14 *Vinter and Others v. United Kingdom*, 2016.

15 Article 3 of ECHR states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

16 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

standardization and sentencing to life imprisonment concerning the death penalty is recognized not only through the principle of humanity but also through the possibility of resocialization. For this reason, individuals serving life sentences are allowed to apply for release, giving them a renewed chance to reintegrate into society.¹⁷ Given the significant limitations on human rights that life imprisonment implicates, the primary stipulation in comparative criminal legislation is that it should be reserved exclusively for the most heinous crimes and the most extreme manifestations of severe criminal offenses. In recent years, there has been a growing discourse on the need for more individualized sentencing practices that consider not only the severity of the crime but also the potential for rehabilitation and reintegration. The fact that this penalty is reserved solely for the gravest criminal offences underscores its exceptional nature, implying that it should be imposed only when the aims of punishment in a particular case cannot be achieved through any other criminal sanction.¹⁸ This approach recognizes the need for a balanced and individualized response to criminal behavior, reflecting a commitment to justice that addresses the unique aspects of each case while upholding the overarching principles of fairness and societal protection.

During the second half of the twentieth century, mechanisms like conditional release were implemented to soften the harshness of the disciplinary regime applied to individuals serving life sentences.¹⁹ This development reflects a broader shift in penal philosophy towards acknowledging the potential for positive change in individuals serving life sentences, emphasizing a more rehabilitative approach. In that regard, resolution (76) 2 from the Council of Europe's Committee of Ministers regarding the treatment of long-term prisoners²⁰ includes a recommendation that member states should guarantee all prisoners the opportunity to apply for conditional release. While the resolution is not legally binding in European law, this principle has received strong backing from the jurisprudence of the ECtHR. The Court affirms that a whole life order can only be deemed a disproportionate punishment if there is no possibility, either in law or in practice, of early release, and if continued detention no longer serves any legitimate purposes of the sentence. In cases where a life imprisonment sentence is imposed, the mandated minimum duration of the sentence must be prescribed before becoming qualified for potential release. However, while acknowledging that life imprisonment, as a form of punishment, undermines the protection of human dignity by depriving an individual of liberty, while failing to support their reintegration or offer any prospect of eventually reclaiming that freedom,²¹ the Court also highlighted its opposition to a specific type of life

17 N. Paunović, Z. Pavlović /2021/, *Life Imprisonment in the Comparative Law Framework as Well as in the Jurisprudence of the European Court of Human Rights*, in: *Yearbook Human Rights Protection: Right to Life* (Pavlović Z., ed.), Belgrade: Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research in Belgrade, pp. 189–190.

18 N. Paunović, Z. Pavlović /2021/, *ibid.*

19 M. Caterini, G. R. Minelli /2021/, *The “Right to Life” of People Convicted in Italy to Life in Prison: Among Recent Jurisprudential Assessments and Perspectives De Iure Condendo*, *Right To Life*, p. 85.

20 Council of Europe, 2003.

21 *Vinter and Others v. United Kingdom*, 2016.

imprisonment that completely excludes the prospect of release or a possibility of review.²² This nuanced position underscores the Court's commitment to balancing the need for punishment with the imperative to uphold human rights standards. Although the Court does not oppose life imprisonment in general, it emphasizes the importance of maintaining a realistic prospect of release or review to ensure compatibility with human rights standards. In this context, even though conditional release mechanisms provide a pathway for rehabilitation, ongoing efforts in legislative reform and international cooperation are crucial to ensuring a consistent and rights-respecting approach to lifelong imprisonment across jurisdictions. Life imprisonment is incompatible with the principles of the Convention if the offender has no initial understanding of when, how, or under what conditions they may become eligible for conditional release.²³ In that regard, the European Court also concluded that a life imprisonment sentence can be in compliance with the Convention as long as the State implements a mechanism to evaluate the continued necessity of enforcing the sentence in relation to the purposes of the punishment.

2.3. Argumentation for abolition of lifelong imprisonment as an absolute norm of ius cogens

In addressing the prospect of eliminating lifelong imprisonment as an inviolable norm under *ius cogens*, it is crucial to delve into the philosophical, ethical, and legal frameworks that historically provided justification for this rigorous punitive measure. This chapter discusses the evolving focus on life imprisonment as a prominent penological issue in Europe. It particularly follows the abolition of the death penalty across the continent, advocating for an evaluation of the abandonment of lifelong imprisonment, challenging its entrenched position as an absolute norm within the sphere of *ius cogens*.²⁴

After the abolishment of the death penalty in all of the countries in Europe,²⁵ the most important penological issue on the European agenda today is life imprisonment.²⁶ In recent decades, as the global use of the death penalty continues to decline, life imprisonment has begun to attract greater attention from international human rights lawyers and is likely to emerge as an increasingly important issue in future legal proceedings.²⁷ While the impact of international law on sentencing practices, such as life imprisonment, may be limited, the scientific community and European human rights organizations have focused on the subject. Initially, when life sentences were being introduced into legal systems, several countries chose to implement them without the possibility of parole. In addition to the condemna-

22 *Ibid.*

23 Caterini and Minelli /2021/, *op.cit.*, p.85.

24 R. L. Hassanova /2023/, The Prohibition of Torture and its Implications in the European Legal Sphere, *Central European Journal of Comparative Law*, № 1, vol. IV, p. 63.

25 With the exception of Belarus.

26 P. P. de Albuquerque /2015/, Life Imprisonment and the European Right to Hope, *Rivista*, № 2, p. 85.

27 N. Bernaz /2013/, Life imprisonment and the prohibition of inhuman punishments in international human rights law: Moving the agenda forward, *Human Rights Quarterly*, № 2, vol. 35, p. 471.

tion of this approach by the ECtHR, the European Committee on Crime Problems²⁸ also criticized the practice, holding it inhumane to subject individuals to lifelong imprisonment without any prospect of release. This concern aligns with a growing body of research indicating that long-term incarceration without the possibility of parole can have detrimental effects on prisoners mental health and rehabilitation prospects.²⁹ A crime prevention policy that accepts keeping a prisoner for life even if he is no longer a danger to society would not be compatible neither with modern principles on the treatment of prisoners during the execution of their sentence nor with the idea of the reintegration of offenders into society.³⁰ Moreover, the European Committee for the Prevention of Torture has issued a recommendation that individuals sentenced to life imprisonment should be provided with appropriate treatment to preserve their humanity throughout their sentence and to prepare them for eventual release.³¹ These guidelines are currently followed by all European countries, with the exception of the Netherlands.³²

Human rights law must extend to everyone and cannot differ for an entire category of human beings, those who have committed crimes. In this regard, it is important to stress that even though punishment is unavoidable, human rights law can and should serve as a framework for determining which forms of punishment are appropriate.³³ It is imperative for the prison system to be just and to provide the possibility of rehabilitation for each individual. In order to justify the imposition of life imprisonment, the system must establish procedures that allow prisoners to demand for their sentence to be reviewed. This would give them hope and a specific goal to work towards, serving as a source of motivation for a positive behavioral change.³⁴ Long periods of incarceration, including lengthy prison terms

28 Available at: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-calls-upon-states-to-review-the-treatment-of-life-sentenced-prisoners>.

29 See more in: C. Haney /2003/, Mental health issues in long-term solitary and “supermax” confinement, *Crime and Delinquency*, № 1, vol. 49.

30 “Nobody should be deprived of the chance of possible release.” This opinion is stated clearly in the following document: Council of Europe, 1977.

31 European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 2016.

32 Since the abolition of the death penalty in the Netherlands in 1870, life imprisonment specifically means imprisonment lasting for the rest of the convicted person’s life without the possibility of parole. However, in 2016, the Supreme Court of the Netherlands passed a verdict stating that the current system of imposing life sentences without any chance of release, except for a granted pardon, is not in compliance with Article 3 of the ECHR. As per the court’s ruling, it is mandated that individuals who have been sentenced to life imprisonment must be granted the opportunity to have their cases reviewed within a maximum period of 25 years of serving their sentence. The court opined that in the event that a prisoner’s reintegration into society is not achievable after 25 years, the prisoner should be granted the right to periodic reevaluation of his sentence. While courts have the jurisdiction to evaluate the feasibility of a life-sentenced prisoner’s reintegration into society, still solely a pardon can release an individual who has been condemned to life imprisonment.

33 Available at: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-calls-upon-states-to-review-the-treatment-of-life-sentenced-prisoners>: 495.

34 European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment, 2016.

and life sentences, combined with inadequate support systems, limited opportunities to maintain relationships with family, and a lack of preparation for reintegration could have significant impact on the prisoners' adaption to the outside world.³⁵ Studies have consistently shown that prisoners who have a prospect of parole or sentence review exhibit better behavior and are more motivated to engage in rehabilitation programs, ultimately increasing their chances of successful reintegration into society.³⁶ Moreover, it is noted that prisoners serving life sentences frequently face more deprived conditions than other inmates, such as inadequate living environments, limited human interaction, and minimal or no access to meaningful activities or rehabilitation programs.³⁷ This situation presents numerous challenges for prisoners, especially when considering the fact that individuals sentenced to life imprisonment are frequently deprioritized, leading to their needs being perceived as less urgent.³⁸

The gravity of life imprisonment becomes apparent as it is exclusively imposed for the most severe and heinous crimes. When examining the concept of life imprisonment, the approach of the ECtHR reflects as progressive by highlighting the importance of periodic reviews for such sentences. This recognition indicates a shift towards a more forward-thinking perspective, highlighting the need to reevaluate life imprisonment cases. Within this context, an example worth mentioning is Norway, which in 1981 established a maximum prison term of twenty-one years³⁹ Since then, they have been implementing policies focusing on rehabilitation and the possibility of parole rather than imposing lifelong sentences. Even though official lifelong imprisonment has been abolished, there is still some space left for the state to intrude when needed. In that regard, the current Norwegian legal system incorporates a unique form of an indefinite penalty called preventive detention (*forvaring*), a sentence with a maximum imprisonment period of 21 years.⁴⁰ Initially, a prisoner must serve 10 years to become eligible for parole. However, if parole is not granted, the sentence can be extended for an additional 5 years. Although the possibility of ongoing extensions every five years theoretically implies the potential for life imprisonment, preventive detention is imposed only when an individual poses a significant risk to society.⁴¹

35 *Ibid.*

36 See more in: J. Petersilia, S. Turner /1993/, Intensive probation and parole, *Crime and Justice*, vol. 17.

37 Policy briefing, 2019, Available at: https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf.

38 Crime Prevention and Criminal Justice Branch, Life Imprisonment, 1994, paragraph 3.

39 D. Schartmueller /2015/, *Life imprisonment in Scandinavia: The ultimate punishment in the penal environments of Denmark, Finland, and Sweden*, unpublished doctoral dissertation, Northern Arizona University, Flagstaff, AZ, p.3.

40 Norway recognizes the exception of punishment of 30 years for crimes against humanity to fulfill requirements under the Rome Statute.

41 See more in: R. A. Berger /2016/, *Kriminalomsorgen: A Look at the World's Most Humane Prison System in Norway*, Social Science Research Network, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2883512.

3. PENAL POPULISM VS. EVIDENCE-BASED CRIME POLICY

Penal populism is a punishment strategy formulated primarily based on its anticipated popularity.⁴² There is no doubt that the primary aim of developing and implementing a policy is to generate change or impact, in other words, to ensure that the policy is effective.⁴³ The concept of penal populism encompasses a range of empirical, conceptual, and normative issues. It directs us to explore the dynamics between the media, the public, and political figures by examining their existing relationships. Additionally, it raises theoretical and empirical questions about the nature of public opinion, how it is measured and how it evolves over time.

Penal populism is primarily a political narrative that openly or implicitly dismisses the perspectives of experts and liberal elites, asserting instead the authority of the people, whose views on punishment it claims to represent.⁴⁴ It often manifests as a competitive process among major political parties, where they strive to outdo each other in presenting themselves as tough on crime.⁴⁵ Penal populism refers to a public perception that crime is widespread and a common issue during elections when politicians propose tough measures to increase the number of offenders in prison before sentencing and lengthen prison sentences. In this regard, political discourse over punishment tends to serve to public opinion rather than prioritizing the relevance of criminological data or expert standpoints. In contrast, populist measures are infrequently guided by evidence, and they are also not substantiated by cost–benefit analysis or equipped with evaluative criteria and performance metrics.⁴⁶ Populist policies, aiming to gain public support and political advantage quickly, prioritize aligning with public opinion and the will of the people.⁴⁷ Rather than relying on empirical findings from scientific research on public opinion, these policies respond to media headlines and emotional expressions of the public.⁴⁸ Thus, it is important to consider the legal maxim *hard cases make bad law*, which suggests that following the temporary outrage of the public may not always be the most efficient way. In that context, the issue of whether it is permissible to integrate public sentiment into the development and implementation of criminal law may come into question.⁴⁹ Although penal populism is often associated with push-

42 Z. Boda et al. /2022/, Two decades of penal populism – the case of Hungary, *Review of Central and East European Law*, № 1, vol. 47, p. 117.

43 M. Kolaković-Bojović /2022/, Human Rights Protection: From Populism to the Evidence-Based Policy Making, in: *Human Rights Protection from Childhood to The Right to a Dignified Old Age – Human Rights and Institutions* (Pavlović Z., ed.), Belgrade: Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research in Belgrade, p. 65.

44 D. Garland /2021/, What's wrong with penal populism? Politics, the public, and criminological expertise, *Asian Journal of Criminology*, № 3, vol. 16, p. 258.

45 Available at: <https://www.populismstudies.org/Vocabulary/penal-populism/>.

46 Garland /2021/, 259.

47 *Ibid.*

48 For deeper analysis see: D. A. Green /2012/, *When children kill children: Penal populism and political culture*, Oxford: Oxford University Press.

49 F. Miró-Llinares, A. B. Gómez-Bellvis /2021/, Does public opinion matter for criminal law? Revisable life imprisonment in Spain and its relationship with social demands, in: *Criminal Law-Making: Theory and Practice* (Becerra J., ed.), Cham: Springer International Publishing, p. 110.

ing criminal law toward harsher and more punitive measures, it is also conceivable that populist policies might embrace more lenient approaches when such measures reflect prevailing public attitudes.⁵⁰ That highlights the need for careful consideration, analysis, and reliance on evidence-based approaches in order to ensure the formulation of sound and just legal policies.

Besides penal populism, the scientific fields of criminology and criminal law are aiding in the construction of evidence-based criminal policy. However, whether policymakers pay attention to research and consider evidence depends on the subject, whereas some topics bring up significant normative and ideological concerns, such as the discussion regarding capital punishment or the severity of sentences.⁵¹ When creating the normative framework for life imprisonment, it is crucial for the legislator to consider the desired outcomes. Ideally, the preferred approach would involve examining prior studies conducted. However, there may be situations when such studies are not available. At that point, it becomes necessary for the state to evaluate the effects of the newly enacted regulations after a certain period of time has passed since their implementation. This assessment allows for a comprehensive understanding of the impact and effectiveness of the regulations, enabling potential adjustments or improvements to be made based on empirical evidence.

4. CONCLUSION

In conclusion, the global shift away from the death penalty has brought lifelong imprisonment to the forefront of criminal justice discussions. The ethical considerations surrounding the taking of human life have propelled societies to explore alternatives, leading to a critical examination of the conceptual, legal, and human rights aspects of lifelong imprisonment. The evolving trends in lifelong imprisonment reflect a nuanced approach, acknowledging the potential for rehabilitation and reintegration. The focus on individualized sentencing and parole or conditional release mechanisms underscores a commitment to a more humane and rehabilitative justice system. However, the argumentation for abolishing lifelong imprisonment as an absolute norm of *ius cogens* highlights significant concerns. The potential detrimental effects on prisoners' mental health, the importance of preserving hope, and the need for periodic reviews align with a growing body of research and human rights principles. As shown, Norway's preventive detention case serves as an example of a system that combines punishment with rehabilitation and the possibility of parole.

The dichotomy between penal populism and evidence-based crime policy introduces a critical perspective on the influence of public sentiment on criminal justice discourse. While penal populism tends to prioritize public opinion over em-

50 Garland /2021/, 259.

51 M. Tonry /2010/, Public criminology and evidence-based policy, *Criminology & Public Policy*, № 4, vol. 9, p. 792. In that regard author states that academics' complaints usually are directed at the most contentious and emotional issues – capital punishment, mandatory penalties, and long prison sentences – and the gravamen of the complaints is less that evidence has been ignored than that complainers disapprove of particular policies.

pirical evidence, an evidence-based approach emphasizes the importance of careful consideration, analysis, and reliance on scientific research in shaping legal policies. Finally, in navigating the complexities of lifelong imprisonment, it is crucial to strike a balance between the gravity of the crimes committed, the imperative to protect human rights, and the potential for rehabilitation. The examination of evidence-based approaches, along with a consideration of normative and ideological concerns, should guide policymakers in crafting legal frameworks that align with justice, fairness, and societal well-being.

LITERATURE

- Beccaria, Cesare /2009/: *On crimes and punishments and other writings*, University of Toronto Press.
- Berger Ryan Alexander /2016/: Kriminalomsorgen: A Look at the World's Most Humane Prison System in Norway, *Social Science Research Network*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2883512.
- Bernaz Nadia /2013/: Life imprisonment and the prohibition of inhuman punishments in international human rights law: Moving the agenda forward, *Human Rights Quarterly*, № 2, vol. 35, 470–497.
- Boda Zsolt, Tóth Mihály, Hollán Miklós, Bartha Attila /2022/: Two decades of penal populism – the case of Hungary, *Review of Central and East European Law*, № 1, vol. 47, 115–138.
- Bubolz Margaret M., Eicher Joanne B., Evers Sandra J., Sontag M. Suzanne /1980/: A human ecological approach to quality of life: Conceptual framework and results of a preliminary study, *Social Indicators Research*, № 1, vol. 7, 103–136.
- Campbell Angus, Converse Philip E., Rodgers Willard L. /1976/, *The quality of American life: Perceptions, evaluations, and satisfactions*, New York: Russell Sage Foundation.
- Caterini Mario, Minelli Giulia Rizzo /2021/: The “Right To Life” Of People Convicted In Italy To Life In Prison: Among Recent Jurisprudential Assessments And Perspectives De Iure Condendo, *Right To Life*, 489.
- de Albuquerque Paulo Pinto /2015/: Life Imprisonment and the European Right to Hope, *Rivista*, № 2, https://www.rivistaaic.it/images/rivista/pdf/2_2015_Albuquerque.pdf.
- Garland David /2021/: What's wrong with penal populism? Politics, the public, and criminological expertise, *Asian Journal of Criminology*, № 3, vol. 16, 257–277.
- Green David A. /2012/: *When children kill children: Penal populism and political culture*, Oxford: Oxford University Press.
- Haney Craig /2003/: Mental health issues in long-term solitary and “supermax” confinement, *Crime and Delinquency*, № 1, vol. 49, 124–156.
- Hassanova Rebecca Lilla /2023/: The Prohibition of Torture and its Implications in the European Legal Sphere, *Central European Journal of Comparative Law*, № 1, vol. IV, 51–73.
- Hörnquist Jan Olof /1982/: The concept of quality of life, *Scandinavian journal of social medicine*, № 2, vol. 10, 57–61.
- Karajić Nenad /1992/: Važnost pojedinih komponenata kvalitete života, *Socijalna ekologija: časopis za ekološku misao i sociološka istraživanja okoline*, № 4, vol. 1, 485–499.

- Kolaković-Bojović Milica /2022/, Human Rights Protection: From Populism to the Evidence-Based Policy Making, in: *Human Rights Protection From Childhood To The Right To A Dignified Old Age – Human Rights And Institutions* (Pavlović Z., ed.), Belgrade: Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research in Belgrade, 63–80.
- Maslow Abraham Harold /2013/: *Toward a psychology of being*, Simon and Schuster.
- Mauer Marc, King Ryan S., Young Malcom C. /2004/: *The meaning of “life”: Long prison sentences in context*, Washington, DC: Sentencing Project.
- Miró-Llinares Fernando, Gómez-Bellví Ana Belen /2021/, Does public opinion matter for criminal law? Revisable life imprisonment in Spain and its relationship with social demands, in: *Criminal Law-Making: Theory and Practice* (Becerra J., ed.), Cham: Springer International Publishing, 109–125.
- Paunović Nikola, Pavlović Zoran /2021/, Life Imprisonment in the Comparative Law Framework as Well as in the Jurisprudence of the European Court of Human Rights, in: *Yearbook Human Rights Protection: Right to Life* (Pavlović Z., ed.), Belgrade: Provincial Protector of Citizens – Ombudsman and Institute of Criminological and Sociological Research in Belgrade, 179–192.
- Petersilia Joan, Turner Susan /1993/: Intensive probation and parole, *Crime and Justice*, vol 17, 281–335.
- Schartmueller Doris /2015/: *Life imprisonment in Scandinavia: The ultimate punishment in the penal environments of Denmark, Finland, and Sweden*, unpublished doctoral dissertation, Northern Arizona University, Flagstaff, AZ.
- Schoenmakers Ludo /2023/: Scientific progress, normative discussions, and the pragmatic account of definitions of life, *Synthese*, № 4, vol. 201, <https://link.springer.com/article/10.1007/s11229-023-04085-7>.
- Smit Dirk van Zyl, Appleton Catherine /2019/: *Life imprisonment: A global human rights analysis*, Harvard University Press.
- Tonry Michael /2010/: Public criminology and evidence-based policy, *Criminology & Public Policy*, № 4, vol. 9, 783–797.

Asea Gašparić*

KAZNA DOŽIVOTNOG ZATVORA, LJUDSKA PRAVA I PRAVDA ZASNOVANA NA DOKAZIMA U ERI NAKON UKIDANJA SMRTNE KAZNE

REZIME

Kako sve veći broj država napušta primenu smrtne kazne, doživotni zatvor postaje njena najvažnija alternativa, što otvara prostor za produbljenu analizu njenog pojmovnog određenja, pravnih okvira i implikacija po ljudska prava. U radu se razmatraju različita norma-

* Doktorandkinja na Doktorskoj školi Ferenc Deák Pravnog fakulteta Univerziteta u Miškolcu, u saradnji sa Centralnoevropskom akademijom u Budimpešti, Mađarska, gasparic.asea@gmail.com, ORCID: <https://orcid.org/0000-0003-2725-488X>.

tivna rešenja i kulturne perspektive, uz poseban osvrt na porast oslanjanja na ovu sankciju u kontekstu napuštanja smrtne kazne na globalnom nivou. U tom svetlu, suprotstavljanje penalnog populizma i krivičnopravne politike zasnovane na dokazima nudi važan uvid u to kako javno mnjenje može oblikovati krivičnopravni diskurs. Dok penalni populizam neretko favorizuje percepcije i očekivanja javnosti nauštrb empirijskih nalaza, pristup zasnovan na dokazima naglašava potrebu za temeljnom analizom, stručnom procenom i oslanjanjem na relevantna istraživanja pri oblikovanju kaznene politike. Konačno, savremeno sagledavanje kazne doživotnog zatvora uključuje i razmatranje mogućnosti rehabilitacije i reintegracije, uz balansiranje etičkih dilema, novih tendencija i obaveze zaštite ljudskih prava. Rad ukazuje na složen i višedimenzionalan karakter ove kazne i važnost njenog promišljenog uređenja u skladu sa savremenim shvatanjima pravde i humanosti.

Ključne reči: doživotni zatvor, ljudska prava, smrtna kazna, pravda zasnovana na dokazima.