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LIFE IMPRISONMENT OF CHILDREN, COMPARATIVE CRIMINAL LAW ANALYSIS

Life imprisonment is a custodial sentence that allows the state to keep the person in its custody for the entire life. The punishment of life imprisonment is of particular importance, as it is often the most severe criminal sanction in countries where the death penalty was abolished. From both a human rights and prison management perspective, life imprisonment raises concerns.

In many legal systems there is an absolute prohibition on all life sentences for children, while 73 States around the world allowed people to be sentenced to life imprisonment for offences committed while under the age of eighteen.

This article focuses on children younger than eighteen years convicted of crimes (as if the United Nations Convention on the Rights of the Child defines the notion of a child) and presents a comparative criminal law analysis of the regulation and enforcement of life imprisonment on children around the world. It also highlights the way that international, regional and national human rights mechanisms have addressed life imprisonment of children over the years.

One of the main conclusions of this analysis is that life imprisonment, of any type, does not have a place in juvenile justice. Imposing such a punishment on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child's rehabilitation and redemption.

Keywords: children, rights, sentence, punishment, life imprisonment, life imprisonment without parole.

DETENȚIUNEA PE VIAȚĂ A COPIILOR, ASPECTE DE DREPT PENAL COMPARAT

Detențiunea pe viață este o pedeapsă privativă de libertate care permite statului să țină persoana în custodia sa pentru întreaga viață. Pedeapsa detențiunii pe viață are o importanță deosebită, întrucât este adesea cea mai severă pedeapsă penală în țările în care pedeapsa cu moartea a fost abolită. Atât din perspectiva drepturilor omului, cât și a gestionării penitenciarelor, detențiunea pe viață ridică îngrijorări.

În multe sisteme de drept există o interdicție absolută a tuturor pedepselor pe viață aplicate copiilor, în timp ce 73 de state din întreaga lume au permis ca persoanele să fie condamnate la detențiune pe viață pentru infracțiuni comise sub vârsta de optsprezece ani.

Acest articol se concentrează asupra copiilor condamnați pentru infracțiuni săvârșite având o vârstă mai mică de optsprezece ani (așa cum este definit copilul în Convenția Națiunilor Unite cu privire la Drepturile Copilului) și prezintă o analiză de drept penal comparat a reglementării

și aplicării pedepsei detențiunii pe viață asupra copiilor în întreaga lume. De asemenea, aceasta evidențiază modul în care mecanismele internaționale, regionale și naționale pentru drepturile omului au abordat de-a lungul anilor detențiunea pe viață a copiilor.

Una dintre principalele concluzii ale acestei analize este că detențiunea pe viață, de orice tip, nu își are locul în justiția pentru copii. Impunerea unei astfel de pedepse unui copil contrazice înțelegerea noastră modernă conform căreia copiii au un potențial enorm de creștere și maturitate pe măsură ce trec de la tinerețe la maturitate și convingerea larg răspândită în posibilitatea reabilitării de drept și de fapt a copilului.

Cuvinte – cheie: copii, drepturi, sentință, pedeapsă, detențiune pe viață, detențiune pe viață fără dreptul de a fi eliberat condiționat

Introduction. Life imprisonment is the most severe punishment applied in most states of the world, often as the ultimate punishment for the most serious crimes. The primary purpose of life imprisonment is to protect society by isolating dangerous prisoners [1, p.15]. Life imprisonment sentences cover a diverse range of practices, from the most severe form of life imprisonment without parole (LWOP), in which a person is sentenced to die in prison so long as their sentence stands, to more indeterminate sentences in which at the time of sentencing it is not clear how long the sentenced person will spend in prison [2, p. 5]. The term *life sentence* (life imprisonment) has divergent meanings in various countries. States impose life sentences for different ranges of offences; and States that release life-sentence prisoners do it in a variety of ways. Although in certain countries degrees of legislated determinacy are attached to life sentences, in general such sentences are, by their very nature indeterminate [3], at the time the sentence is passed, a person is liable to be detained for the rest of his or her natural life.

Applied methods and materials. In the development of this article the methods of analysis, synthesis, statistics, and comparison methods were widely used. The analysis is based on the relevant international standards, research reports and scientific publications in the field.

Content. There were around 479,000 people worldwide serving *formal life sentences* (does not include people in prison under informal, de facto or virtual life sentences) in 2014 [4, p. 16], compared to 261,000 people in 2000, it represents an increase of almost 84% over 14 years. Even though hundreds of

thousands of people are serving life sentences; the impose of this punishment is rarely perceived as a global phenomenon.

Out of 216 countries and territories worldwide, 183 have clear legal provision allowing imposition of life imprisonment [6]. However, even in countries that allow life imprisonment, there are categories of persons on whom a life sentence may not be imposed under any circumstances. In a small but significant number of countries, this prohibition is applied formally to all persons [6, p.104]. The most common prohibition on imposing life imprisonment is the exclusion of children (according to the article 1 of the *Convention on the Rights of the Child - a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier* [7]). Indeed, most countries – with the exception of the United States, the United Kingdom, and most Commonwealth countries – prohibit all formal life imprisonment for children.

Globally, 261,200 children were estimated to be in detention on any given day in 2020 [5, p.14]. There are no data on how many children around the world are affected by sentences of life imprisonment. In 2015, *Child Rights International Network* (CRIN) published the research report *Inhuman sentencing: life imprisonment of children around the world* [2], one of the aims of this report was to establish how many children around the world are affected by sentences of life imprisonment, but unfortunately, it has not been possible to obtain sufficient information to meet this aim. While many of the reviewed States do regularly publish figures on sentencing within the juvenile justice system, no

country publishes comprehensive and up to date statistics on the number of child offenders serving life imprisonment or the amount of time spent in detention by those serving life sentences. This void of authoritative information on the sentencing of children to life imprisonment not only makes it difficult to hold States accountable for their treatment of child offenders but undermines the ability of States to engage in evidence-based reviews of sentencing and measure the rehabilitative merits of that sentencing [2, p.7].

In 2015, 73 States around the world allowed people to be sentenced to life imprisonment for offences committed while under the age of eighteen and a further 49 permit sentences of 15 years or longer and 90 for 10 years or longer. Life imprisonment and long prison terms for juvenile offenders are not the prerogative of a shrinking number, they can be found in the criminal laws of the majority of States [2, p.5, 8].

Legal history and culture has clearly been influential in the retention of life imprisonment. Of the 73 States that permit such sentences for children, 46 are within the Commonwealth. It is difficult to ignore the impact that the British criminal legal tradition has had on the Commonwealth States, and this tradition includes a punitive approach to the sentencing of children, including the retention of life imprisonment. By contrast, States within the Community of Portuguese Language Countries, influenced by the reaction against the use of detention by the Estado Novo regime, have almost all prohibited life imprisonment for children. The Spanish legal tradition is also largely hostile to life imprisonment, with the result that in 2012, mainland Latin America became the first region on earth where it is not legal to sentence someone to life imprisonment for any offence committed while under the age of 18. In Europe, moreover, life imprisonment for children is on the wane: only three States clearly retain life imprisonment for children (Cyprus, France and United Kingdom, including England and Wales, Northern Ireland and Scotland), while in a further three States

laws remain unclear on the subject (Luxemburg, Malta, the Netherlands) [2, p.7, 36].

The primary justification of the prohibition is found in international law, in the *United Nations Convention on the Rights of the Child* (CRC) and in related international human rights instruments and standards that universally condemn life imprisonment without parole for children.

Article 37 (a) of the CRC provides that *no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age* [7]. This prohibition has considerable weight as a principle of international human rights law, for the CRC is a treaty that has been acceded by all the countries of the world except the United States. Only the United States has legislation specifically providing for irreducible life sentences of LWOP for children. This has a dramatic impact on the law regarding the imposition of life imprisonment on children. Although governments may seek to achieve the permanent incarceration of children sentenced to life imprisonment, for example, by manipulating laws formally allowing for consideration of their release, but they act in such a way contrary to their international treaty obligations. This significantly reduces their scope to maneuver [6, p. 105].

Article 40 of the CRC [7] covers additional rights of children in relation to justice systems, emphasizing that *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and self-worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society*. CRC also requires that *the best interests of the child* be a primary consideration *in all actions concerning children*, including those taken by courts of law

[7, article 3 (1)], and that States ensure *to the maximum possible extent the survival and development of the child* [7, article 6].

In shaping the law governing life imprisonment for children, international human rights law seeks to go further than merely outlawing LWOP [6, p.107]. In 2007 the United Nations Committee on the Rights of the Child (Committee) developed the *General comment No. 10* later in 2019 replaced with *General comment No. 24: Children's Rights in Juvenile Justice* stating that *no child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole. The period to be served before consideration of parole should be substantially shorter than that for adults and should be realistic, and the possibility of parole should be regularly reconsidered.* The Committee reminds States parties that *sentence children to life imprisonment with the possibility of release or parole that in applying this sanction they should strive for the realization of the aims of article 40 (1) of the Convention. This means, inter alia, that a child sentenced to life imprisonment should receive education, treatment and care aiming at his or her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his or her possible release. Life imprisonment makes it very difficult, if not impossible, to achieve the aims of reintegration. The Committee notes the 2015 report in which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment finds that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child.* The Committee strongly recommends that States parties *abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence* [8].

The Committee was pessimistic about whether this could be done effectively. It therefore strongly recommended the abolition of all forms of life imprisonment for offences

committed by persons under the age of eighteen. The General Comment of the Committee on the Rights of the Child is not binding on states parties in the same way as the narrower prohibition on LWOP in the text of the convention itself. Nevertheless, it is an indication of the extent to which human rights law has become highly critical of all life imprisonment for children [6, p.107]. The Committee has also regularly raised the issue of life imprisonment in its review of States and has made 38 recommendations to 30 States to abolish life imprisonment for child offenders [9]. However, the Committee has not systematically raised the issue of life imprisonment during its review process. Of the 73 States that currently retain life imprisonment for child offenders in law or practice; around half have received a recommendation on the subject [2, p.14].

A clear example of the interplay between general international treaty obligations and the most specialized provisions of the CRC, on the one hand, and a government determined to ensure that specific individuals sentenced to life imprisonment remain incarcerated, and on the other, is found in 2014 case of *Blessington and Elliot v. Australia* [10]. In that case, the *United Nations Human Rights Committee* (HRC), interpreting the *International Covenant on Civil and Political Rights* (ICCPR) [11], was asked to determine whether the *de facto* LWOP sentences imposed on two prisoners convicted of a murder and rape, committed when they were aged fourteen and fifteen, infringed the ICCPR [6, p. 106], as ICCPR prohibits torture, cruel, inhuman or degrading treatment or punishment [11, article 7] and also entitles every child to *such measures of protection as are required by his status as a minor on the part of his family, society and the State* [11, article 24(1)].

The HRC found that the sentences infringed the ICCPR's provisions prohibiting cruel, inhuman or degrading treatment or punishment in Article 7. It also ignored the duty to orient imprisonment toward *social rehabilitation*, together with the requirement that juveniles should be accorded treatment appropriate with their age and status in Ar-

ticle 10 (3) and the general children's rights provision in Article 24 of the ICCPR. The key finding of the HRC was that *the imposition of life sentence on the authors as juveniles can only be compatible with article 7, read together with article 10, paragraph 3, and 24 of the Covenant if there is a possibility of review and a prospect of release, notwithstanding the gravity of the crime they committed and the circumstances around it. That does not mean that the release should necessarily be granted. It rather means that release should not be a mere theoretical possibility and that the review procedure should be a thorough one, allowing the domestic authorities to evaluate the concrete progress made by the authors towards rehabilitation and the justification for continued detention, in a context that takes into consideration [their age], at the time they committed the crime* [10, paragraph 7.7.]. On the facts of the case, the HRC held that their prospect of release was *extremely remote* and that *release, if it ever took place, would be based on the impending death or physical incapacitation of the [applicants], rather than on the principles of reformation and social rehabilitation contained in article 10, paragraph 3, of the Covenant* [10, paragraph 7.8.]. According to the HRC, this was unacceptable, particularly for persons convicted when they were children [6, p.106].

This analysis is very similar to that of the Grand Chamber of the European Court on Human Rights (ECtHR) in *Vinter and Others v. United Kingdom*, which found that offering such limited grounds for setting someone free from life imprisonment may not constitute a true release at all [12, chapter 2]. In coming to its conclusion in the *Blessington and Elliot v. Australia* case, HRC explicitly relied on the prohibition on LWOP in Article 37 (a) of the CRC as a valuable source informing the interpretation of the ICCPR [10, paragraph 7.11.]. Although the Australian government did not respond positively to the conclusion reached by the HRC and *Blessington and Elliot* continued to serve their life sentences, an important precedent was determined, which will develop binding international law and carry weight with courts and governments that take their international legal obligations

seriously [6, p. 106].

The HRC has examined the issue of life imprisonment in its review of States, but has not extended its scrutiny to the full range of life imprisonment sentences to which children can be subject. For example, in 2014, HRC recommended that the United States prohibit and abolish the sentence of life imprisonment without parole for juveniles, *irrespective of the crime committed*, but did not address the plight of the thousands of children who are subject to life imprisonment with the possibility of parole [13].

The *United Nation Human Rights Council Resolution on human rights in the administration of justice, in particular juvenile justice* of 2011 urged States to ensure that life imprisonment without the possibility of parole is not imposed on persons under 18, but in two resolutions since, the Council has established that no form of life imprisonment should be applied to persons under 18. Abolishing life imprisonment for child offenders has been a regular, though not consistent part of the recommendations made during the Universal Periodic Review (UPR). In the first cycle of the review, States made eight recommendations to abolish life imprisonment for minors, while in the second cycle to date; five recommendations have been made to end life imprisonment for child offenders [2, p.14].

In 2015, life imprisonment of children was considered in the report to the *Human Rights Council of the United Nations* by Juan Mendez, the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, as part of a wider report on children deprived of their liberty [14]. Mendez built on the 2007 recommendation of the Committee on the Rights of the Child and concluded, *Life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child*. He explained, *Life sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment* [6, p.107].

Mendez recommendation was that *life imprisonment in all its forms* should be prohibited for children worldwide [14, paragraph 84(h)]. His recommendation found favor with the Human Rights Council, and in September 2015, the General Assembly of the United Nations urged [states] to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment are imposed for offenses committed by persons under 18 years of age [14, paragraph 24]. Again, it is noteworthy that the prohibition adopted by the General Assembly was off all life sentences for children, not just LWOP [6, p. 108]. The Rapporteur followed up his finding by recommending that States prohibit laws, policies and practices that allow children to be subjected to adult sentences and punishments, and to prohibit the death penalty and life imprisonment in all its forms [14, paragraph 85(h)].

Life imprisonment of child offenders has also recently been included within the remit of the United Nations Secretary-General's annual report on the question of the death penalty. In 2014, the report recommended that when the death penalty is abolished for child offenders, States must avoid sentencing children to life imprisonment as an alternative punishment [16, paragraph 74].

Experts have documented that children cannot be expected to have achieved the same level of psychological and neurological development as an adult, even when they become teenagers. They lack the same capacity as an adult to use reasoned judgment, to prevent inappropriate or harmful action generated as a result of high emotion and fear, and to understand the long-term consequences of rash actions. For many of the children who are sentenced to LWOP, it is effectively a death sentence carried out by the state over a long period of time. Children endure emotional hardship, hopelessness, and neglect while serving time in prison. They may also be threatened with physical abuse. The young age of those serving time in prison in the United States, for example, makes them more susceptible than adults to severe physical abuse by older inmates. This experience can produce additional trauma

for children who are likely to have suffered physical abuse before entering prison. One recent study of seventy-three children serving LWOP sentences in the United States for crimes committed at age of thirteen and fourteen concluded that: *They have been physically and sexually abused, neglected, and abandoned; their parents are prostitutes, drug addicts, alcoholics, and crack dealers; they grew up in lethally violent, extremely poor areas where health and safety were luxuries their families could not afford.* Some child offenders believe death to be more humane than life with the knowledge that their death will come only after many decades spent living in these circumstances. With no hope of release, they feel no motivation to improve their development toward maturity. This is reinforced by the fact that youths placed in the adult system receive little or no rehabilitative programming [17, p. 984 - 985].

In this context, the sentence is indeed cruel. These issues have become so well understood at the international level that a state's execution of this sentence raises the possibility that it not only violates juvenile justice standards but also contravenes international norms established by the *United Nations Convention Against Torture* [24]. Globally, the consensus against imposing LWOP sentences on children is virtually universal [17, p. 985].

In the great majority of European countries, life imprisonment cannot be imposed on children under the age of eighteen years. This is true not only in most Western and Northern European liberal constitutional democracies but also in Central and Eastern European countries that introduced life imprisonment for the first time in the 1990s, after the fall of the Soviet Union [6, p. 111]. Of the 48 States on the continent, 41 include within their laws an explicit prohibition on life imprisonment for children, or a clear limit on the period for which children may be detained which falls short of *de facto* life imprisonment. Nine countries have outlawed life imprisonment regardless of age (Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Norway, Portugal, San Marino, Serbia

and Spain). Three States retain forms of life imprisonment for children: Cyprus, France and the United Kingdom (including England and Wales, Northern Ireland and Scotland). In Luxembourg, Malta and the overseas territories of the Netherlands, CRIN has been unable to clarify whether life sentences are retained or not. Ireland's legislation seems to fall short of a prohibition on life imprisonment for children, but we have not been able to confirm this [18, p.36].

Within the European Union in 22 Member life imprisonment has now been explicitly abolished for children. While certainly something to celebrate, this statistic masks the extremely long maximum sentences that remain legal for crimes committed while under the age of 18 and the disparity in sentencing across Europe. In certain States the situation is less clear whether because of a lack of clarity in domestic legislation or the paucity of the information available [18, p.5].

In the United Kingdom, life imprisonment is mandatory for children aged ten and above who are convicted of murder. Furthermore, the same situation is in Cyprus, but only those aged seventeen and above [6, p. 111]. In Cyprus, the Juvenile Offenders' Law (Chapter 157) does not apply to persons over seventeen, who can be tried and sentenced as adults; persons fourteen to sixteen years old can be sentenced to imprisonment as well, in some cases, and life imprisonment is not expressly excluded. In France, young offenders aged sixteen to eighteen can, in rare cases, get life imprisonment, if the judge assesses the special circumstances and personality of the relevant offenders and concludes that life imprisonment is justified [6, p. 373].

In both Cyprus and France, life imprisonment for children remains very rare. In preparing its report [2], CRIN found no evidence of life sentences for children in Cyprus, and two children have been sentenced to life imprisonment in France during the last 25 years.

In England and Wales, however, the sentence of *detention during Her Majesty's pleasure* (DHMP) remains much more common. Since 2008, 117 children in England

and Wales have been sentenced to DHMP, in one instance the child was 13 years old at the time of sentencing. Another cause for concern is that the United Kingdom Ministry of Justice did not maintain figures on how long children serving these sentences actually serve [2, p. 36]. A further 290 children have been sentenced to *detention for public protection* in England and Wales since the sentences came into force [19], another sentence which can, in principle, authorize detention for a person's natural life. Similarly, in Scotland, 113 people were sentenced to *detention without limit of time* between 2001 and 2011, though Scottish figures did not distinguish between children (defined as those under 18) and young offenders (defined as under 21). In Northern Ireland, CRIN couldn't find availability on children sentenced to *detention during the pleasure of the Secretary of State*, though three people were serving such sentences as of 2004 [18, p. 36].

Some of the European that do not have formal life imprisonment for children do have provision for them to be detained post-conviction under preventive measures that are of indeterminate length. However, such measures are rarely, if ever used and include many safeguards to restrict their imposition and to monitor their continued use at short intervals, in order to ensure that children are detained for very long. In Germany, article 7 of the Juvenile Justice Act allows for the imposition of post-conviction indefinite detention. The 2007 ECtHR case, *Ilseher v. Germany*, is a solitary example of the imposition of post-conviction indefinite detention on a young adult tried as a juvenile [20].

Among European countries that do not allow any type of formal life imprisonment to be imposed on children; several have increased the upper age limit. In Hungary and Bulgaria, offenders have to be at least twenty years old before they can be sentenced to life imprisonment. In Austria and Macedonia, the minimum age for the life imprisonment is twenty-one years, while in Serbia, which has no formal life imprisonment but a maximum fixed-term sentence of forty years; offenders

also have to be at least twenty-one years old to be qualified for such sentence [6].

For the countries of the former Soviet space, the introduction of life imprisonment was a condition to accede to the Council of Europe (art. 1 of Protocol no. 6 of the European Convention on Human Rights regarding the abolition of the death penalty of 28.04.1983) or a precondition to obtain financial support. Thus, on December 8, 1995, the Decree of the President of the Republic of Moldova was issued, by which Law no. 677 abolishes capital punishment and introduces a new form of custodial sentence - *life imprisonment* - into the system of criminal sanctions.

According to the provisions of art. 71 paragraph (3) of the Criminal Code of the Republic of Moldova, - life imprisonment cannot be applied to women and minors [21].

Life imprisonment for child offenders remains prevalent in Africa: at least 23 out of 54 States on the continent retain laws that permit people to be sentenced to at least one form of life imprisonment for offences committed while under the age of 18 (Botswana, Burkina Faso, Eritrea, Ethiopia, Gabon, Gambia, Kenya, Liberia, Madagascar, Mauritius, Malawi, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia (South Central and Puntland), South Africa, Swaziland, Tanzania, Zambia, Zimbabwe). There is a very clear geographic divide between North Africa, which has largely abolished life imprisonment for child offenders, and Sub-Saharan Africa, where such sentences commonly remain legal. Beyond this simple geographic pattern, the prevalence of life imprisonment is closely tied to the legal history and legal cultures across the continent. In this respect, it is difficult to ignore the extensive impact colonialism that influenced the criminal law of African States [2].

There are few jurisdictions across North Africa that permit life sentences for child offenders. A small number of States retain laws which fall short of an explicit prohibition of life imprisonment, however, and it may be that enforcement remains an issue in some of the States in this region. Sudan and South Sudan, in particular, retain laws, which do not

clearly distinguish between the age at which the offence was committed and the age at the time of trial, which could result in people being sentenced to life imprisonment even though they were under 18 at the time of the offence. As elsewhere around the world, many of those States that have retained life sentences in Africa are members of the Commonwealth, share a British colonial history and, in many cases, provisions originally enacted during the colonial period. More than half of the States that currently permit life imprisonment for children are prevailing or former members of the Commonwealth (Botswana, Gambia, Kenya, Malawi, Namibia, Nigeria, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, and Zambia). The relationship is not absolute, however. A small number of African Commonwealth members have taken steps to eliminate life sentences for children from their legislation, though of the five Commonwealth States that acted in the same way only Ghana, Cameroon and Uganda were part of the British Empire [2, p.23].

An interesting and principled exception within the Commonwealth is South Africa. The South African Constitutional Court declared unconstitutional sentencing legislation that made mandatory the imposition of life sentences on children who were convicted of murder, rape, or robbery unless there were *substantial and compelling circumstances* suggesting the opposite. The Court relied on a strong constitutional emphasis on the best interests of the child in the post - 1994 South African constitution, combined with overt reliance on CRC and *soft* international law instruments, to reach its decision. The practical outcome is that the permissible maximum sentence that can be imposed on a child under the age of eighteen in South Africa is twenty-five years [6, p. 114].

Meanwhile, African members of the Community of Portuguese Language Countries have almost all - with the exception of Mauritius - abolished life imprisonment of children (Angola, Cape Verde, Equatorial Guinea, Guinea-Bissau, Mauritius, Mozambique, Sao Tome and Principe, Senegal). At

least with respect to the origins of the legislation, this pattern seems to be at least partially an outcome of the way in which the Portuguese Empire was dissolved. Most of the current members of the CPLC gained their independence in the aftermath of the “Carnation Revolution” as Portugal moved from a dictatorship to a democracy. As a reaction to harsh abuses of the Estado Novo regime, the new constitutions introduced strong limits on deprivation of liberty. Portugal’s Constitution, which has acted as a model for many of the CPLC States includes a prohibition on sentences of a perpetual nature (Constitution of Portugal, Article 30 (1)). This provision has been widely replicated with the consequent impact on life sentences for child offenders and adults (Constitution of Angola, Article 66; Constitution of Mozambique, Article 61 (1); Constitution of Cape Verde, Article 31; Constitution of Sao Tome and Principe, Article 37 (1)) [2, p. 23].

Life imprisonment for child offenders remains prevalent in the criminal justice systems of Asia: at least 16 of the 45 States in the region retain life imprisonment for some offences committed while under the age of 18 (Bahrain, Brunei Darussalam, China, China (Hong Kong SAR), India (Jammu and Kashmir), Iran, Israel, Japan, Democratic People’s Republic of Korea, Malaysia, Maldives, Pakistan, Qatar, Saudi Arabia, Singapore, Sri Lanka). Of the 16 jurisdictions that retain the sentence for children, seven are members of the Commonwealth, whose criminal laws still show the influence of the British colonial legal systems; a further five are located in the Middle East and four lie in East Asia [2, p. 36].

There is a sharp contrast between North America and Central and South America with regards to life imprisonment for child offenders. While Argentina became the last country in mainland Latin America to abolish life imprisonment for children in 2012, life imprisonment remains common in the laws of North American and Caribbean States. Of the 35 States in the Americas, 15 retain at least one form of life imprisonment as a penalty for offences committed while under 18 (Antigua and

Barbuda, Bahamas, Barbados, Belize, Canada, Cuba, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, United States of America). All of these States, with the exception of Cuba and Haiti, formed part of the British Empire at some point in their history and many retain laws strongly influenced by the British criminal law tradition. Of the 20 States that have outlawed life imprisonment for child offenders (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, Venezuela), 13 have absolute prohibitions on life imprisonment regardless of age (Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Uruguay, Venezuela), though some of these States permit adults to be sentenced to prison terms so long as to effectively render them *de facto* life sentences. El Salvador, for example, has a Constitutional prohibition on perpetual punishment, but permits incarceration of up to 75 years for an adult (Constitution of El Salvador, Article 27 and Criminal Code, Article 45.1.). Given that the United Nations Development Program calculated the life expectancy in El Salvador at 72.4 in 2012 [23], such prison terms would be difficult to characterize as anything other than *de facto* life imprisonment. Costa Rica and Guatemala both retain maximum sentences of 50 years’ imprisonment for adults, which might also be considered effectively life sentences [2, p. 27].

When it comes to the imposition of life imprisonment on children, the point of departure is different to that in the rest of the world. As mentioned, the United States is not a party of the CRC, and therefore does not have to follow the preemptory rule that LWOP should not be imposed on children. However, there have been dramatic recent legal developments in a series of judgments of the US Supreme Court, which have identified a significant evolution in standards relating to the death penalty and life imprisonment for

children [6, p. 115]. During the recent years, there have been important US Supreme Court decisions addressing the issue. The Supreme Court has ruled that mandatory life sentences without the possibility of parole for juvenile offenders are unconstitutional. In the cases of *Miller v. Alabama* (2012) and *Montgomery v. Louisiana* (2016), the Court held that sentencing schemes that mandate life imprisonment without parole for juvenile offenders violate the Eighth Amendment's prohibition against cruel and unusual punishment.

These rulings do not prohibit life sentences for juveniles' altogether, but they emphasize that such sentences should not be mandatory, and judges should have the discretion to consider the individual circumstances of each case, including the offender's age and maturity.

Conclusion. On the subject of life imprisonment for children worldwide, it should not be forgotten that outcomes may be shaped by aspects of child justice that do not refer directly to the imposition of life sentences on

them. Providing that younger children should not be held criminally responsible at all ensures that they cannot be sentenced to life imprisonment. However, international and regional attempts to set a clear uniform minimum age of criminal responsibility have failed, thus limiting the scope of the restriction.

States are handing out lengthy sentences to children, yet international condemnation is often limited to life imprisonment without parole and the death penalty. It is essential - indeed long overdue - to widen the focus and challenge any sentence which, at the time it is passed, a child is liable to be detained for the rest of his or her natural life.

Life imprisonment, of any type, does not have a place in juvenile justice. Imposing such a punishment on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child's rehabilitation and redemption.

BIBLIOGRAFIE

BIBLIOGRAPHY

1. Burciu N, Drosu V., *Detențiunea pe viață și liberarea condiționată înainte de termen în Republica Moldova*, Studiu, Misiunea Norvegiană de Experți pentru Promovarea Supremației Legii în Moldova (NORLAM), Chișinău, 2017.
2. *Inhuman sentencing: life imprisonment of children around the world*, Research report, Child Rights International Network, 2015, [life_imprisonment_children_global_0.pdf](https://www.crin.org/life_imprisonment_children_global_0.pdf) (crin.org).
3. *Life Imprisonment*, Crime Prevention and Criminal Justice Branch, United Nations Office in Vienna, 1994.
4. *Global Prison Trends 2023*, Penal Reform International and Thailand Institute of Justice, June 2023, <https://cdn.penalreform.org/wp-content/uploads/2023/06/GPT-2023.pdf>.
5. *Estimating the number of children deprived of liberty in the administration of justice*, UNICEF, 2021, Estimating the number of children deprived of liberty in the administration of justice - UNICEF DATA.
6. Van Zyl Smit D., Appleton C., *Life Imprisonment a Global Human Rights Analysis*, Harvard University Press, 2019, ISBN 9780674980662.
7. *Convention on the Rights of the Child*, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, Convention on the Rights of the Child text | UNICEF.
8. *General comment No. 24 on children's rights in the child justice system*, UN Committee on the Rights of the Child (CRC, 18 September 2019, CRC/C/GC/24), [docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2FPpRiCAqhKb7yhsqIkirKQ-ZLK2M58RF%2F5F0vEnG3QGKUx-FivhToQfjGxYjV05tUAIgpOwHQJsFPd-JXCiixFSrDRwow8HeKLLh8cgOw1SN-6vJ%2Bf0RPR9UMtGkA4](https://www.docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6Qk-G1d%2FPpRiCAqhKb7yhsqIkirKQ-ZLK2M58RF%2F5F0vEnG3QGKUx-FivhToQfjGxYjV05tUAIgpOwHQJsFPd-JXCiixFSrDRwow8HeKLLh8cgOw1SN-6vJ%2Bf0RPR9UMtGkA4).

9. Concluding Observations in relation to the following States, year of review in brackets: Antigua and Barbuda (2004); Argentina (2010); Bahrain (2011); Bangladesh (2003, 2009); Belgium (1995); Belize (2005); Burkina Faso (1994, 2002); China (1996, 2005); Dominica (2004); Ethiopia (1997, 2001); Fiji (2014); Gambia (2001); Jamaica (2003); Japan (2004); Liberia (2003, 2012); Malawi (2009); Malaysia (2007); Netherlands (1999, 2004, 2009); Niger (2009); Nigeria (2010); Qatar (2001); Saint Lucia (2005, 2014); Singapore (2011); Solomon Islands (2003); Sudan (2002); Tanzania (2001); Trinidad and Tobago (2006); Tuvalu (2013); Zambia (2003); Zimbabwe (1999).
10. *Bronson Blessington and Matthew Elliot v. Australia*, Communication No. 1968/2010, U.N. Doc. CCPR/C/112/D/1968/2010, Human Rights Committee, 2014.
11. *International Covenant on Civil and Political Rights*, adopted by General Assembly resolution 2200A (XXI) of 16.12.1966, entry into force 23.03.1976, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
12. *Vinter and Others v. United Kingdom*, App. nos.66069/09, 130/10 and 3896/10, European Court on Human Rights, July 9, 2013 [GC].
13. *Concluding observations on the fourth periodic report of the United States of America*, CCPR/C/USA/CO/4, UN Human Rights Committee, 23 April 2014.
14. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Mendez*, A/HRC28/68, Human Rights Council, March 5, 2015.
15. *Human Rights in the Administration of Justice, Including Juvenile Justice*, A/HRC/30/L.16, Human Rights Council, September 29, 2015.
16. *Report of the Secretary-General on the Question of the Death Penalty*, A/HRC/C/27/23, 30 June 2014.
17. De la Vega C., Leighton M., *Sentencing our Children to Die in Prison: Global Law and Practice*, University of San Francisco Law Review, vol. 42, August 11, 2008;
18. *Life imprisonment of Children in the European Union*, Child Rights International Network, 2014, <https://archive.crin.org/en/library/publications/inhuman-sentencing-life-imprisonment-children-european-union.html>.
19. Ministry of Justice Sentencing Tables, December 2011, <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistic>.
20. *Ilmseher v. Germany*, App. 10211/12 and 27505/14), European Court on Human Law, February 2, 2017.
21. Criminal Code of the Republic of Moldova no. 985 from 18.04.2002 https://www.legis.md/cautare/getResults?doc_id=138778&lang=ro.
22. Barbăneagră A. și alții, *Codul penal, comentat și adnotat*, Chișinău, 2005.
23. *Human Development Report 2013: El Salvador*, UNDP, <http://hdr.undp.org/sites/default/files/Country-Profiles/SLV.pdf>.
24. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December, 10 1984, by the General Assembly resolution 39/46, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

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