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HOPE OF RELEASE? LIFE IMPRISONMENT IN LITHUANIA

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ABSTRACT

In 2017, in the case of *Matijošaitis and Others v. Lithuania*, the European Court of Human Rights ruled that imposing life imprisonment without hope of release violated Article 3 of the European Convention on Human Rights, both in law and in practice. This landmark decision prohibited irreducible life sentences in Lithuania, prompting significant legislative amendments in 2019. These changes allowed individuals serving life sentences to request a commutation to a fixed term of imprisonment ranging from five to 10 years, provided they had served a minimum of 20 years and met specific criteria assessed by the courts. This article sheds light on these significant changes to Lithuania's life sentence system and evaluates whether the new commutation procedure offers a realistic hope of release. The analysis draws on legal and documentary sources, as well as empirical evidence from 45 court decisions on commutation requests, and eight research interviews with individuals serving life sentences. The findings reveal a disparity between the progressive, rehabilitative intent of the legislative changes, and the actual experiences of those serving life sentences in Lithuania.

KEYWORDS

Hope, life imprisonment, commutation, European Court of Human Rights, Lithuania.

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INTRODUCTION

Life imprisonment in Lithuania has given rise to significant human rights concerns in recent years. While the death penalty was ruled unconstitutional and abolished for all crimes in 1998, Lithuania was among a minority of European countries that permitted the imposition of the harshest form of life imprisonment as its ultimate penalty, namely, life imprisonment without the prospect or hope of release.¹ Life imprisonment scholars and human rights organisations have long criticised whole life imprisonment as a form of punishment, arguing that it raises similar concerns to those of the death penalty and violates international human rights standards.² However, it was only after the European Court of Human Rights (ECtHR) intervened in 2017, that significant changes were made to the life sentence system in Lithuania.

In the case of *Matijošaitis and Others v. Lithuania* in May 2017,³ the ECtHR ruled that the law and practice of life imprisonment violated Article 3 of the European Convention on Human Rights (ECHR) (the prohibition on torture and inhuman or degrading treatment or punishment). The Court reiterated the principle established in its previous

¹ While most European countries allow for life imprisonment with the possibility of parole as the ultimate penalty, a few jurisdictions including Bulgaria, Malta, Poland, Turkey and the United Kingdom can impose whole life sentences for certain serious crimes. See Dirk van Zyl Smit and Catherine Appleton, *Life Imprisonment: A Global Human Rights Analysis* (Cambridge, Massachusetts: Harvard University Press, 2019).

² For example, Leon Sheleff, *Ultimate Penalties: Capital Punishment, Life Imprisonment, Physical Torture* (Columbus: Ohio State University Press, 1987); Catherine Appleton and Bent Grøver, "The Pros and Cons of Life without Parole," *British Journal of Criminology* 47, 4 (2007): 597–615 // <https://doi.org/10.1093/bjc/azm001>; Simonas Nikartas and Algimantas Čepas, "Laisvės atėmimo iki gyvos galvos baismė Lietuvoje (I): Refleksija žmogaus teisių standartų kontekste," *Teisės problemos* 2 (2014); Council of Europe, *Report to the Lithuanian Government on Visit to Lithuania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 18 June 2010* (Strasbourg: Council of Europe, 2011).

³ *Matijošaitis and Others v. Lithuania*, European Court of Human Rights, Judgment of 23 May 2017, App. Nos. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13.

judgments,⁴ that life imprisonment without a realistic hope of release violated a person's human dignity and therefore constituted inhuman and degrading treatment. Almost two years after the decision, on 21 March 2019, the Seimas (parliament) of the Republic of Lithuania amended the Criminal Code, introducing a new mechanism for considering the release of individuals serving life sentences. The law, however, did not allow for conditional release on parole after serving a minimum specified period of a life sentence in prison. Instead, it permitted individuals who had served at least 20 years of their life sentence to apply for a commutation to an additional fixed-term sentence of between five and 10 years. Only after this commutation could release on parole be considered. The amended law also established the process for commuting life sentences and outlined the requirements for individuals seeking eligibility. It noted the criteria to be met were strict: only individuals who could demonstrate "considerable improvement"⁵ across all measures could have their life sentence converted into a fixed term of imprisonment. Yet little research has been carried out on the impact of these changes in law on the individuals who are serving life sentences in Lithuania, and on the possibility – or hope – of their release.

This article critically examines Lithuania's life sentence system before and after the ECtHR ruling, evaluating whether the government's reforms align with international human rights standards and provide a genuine hope of release for individuals serving life sentences. After introducing data sources and methods, the analysis reviews the right to hope under European human rights law and considers its implications for Lithuania's life sentence system. How this right has been implemented in the light of the 2017 ECtHR judgment is then evaluated. The assessment draws on an analysis of 45 court decisions concerning the commutation of life sentences, as well as insights from interviews with eight life-sentenced individuals, to determine whether the newly reformed release system offers a realistic prospect of eventual release. The findings reveal a divergence between the law's progressive rhetoric concerning hope, rehabilitation and release, and the harsh realities faced by individuals seeking commutation. The article concludes that further reforms are needed to better align the legal framework with the practical and lived realities within the prison system.

METHODOLOGICAL APPROACH

The empirical research, which forms the core of the article, adopted a pluralistic approach to methodology, combining legal and documentary analysis with empirical evidence from 45 court decisions on the commutation of life sentences and qualitative research interviews with eight individuals serving life sentences in Lithuania.

To examine how courts determine life sentence commutations, 45 anonymised decisions from LITEKO, Lithuania's judicial information system, were analysed. These decisions concerned applications made between April 3, 2019, and June 16, 2022, following legislative changes introduced after the *Matijošaitis* judgment. A structured 45-item questionnaire was developed from the case material to capture key factors,

⁴ For example, *Kafkaris v. Cyprus*, European Court of Human Rights, Judgment of 12 February 2008, App. No. 21906/04; *Vinter and Others v. the United Kingdom*, European Court of Human Rights, Judgment of 9 July 2013, App. Nos. 66069/09, 130/10 and 3896/10; *Murray v. The Netherlands*, European Court of Human Rights, Judgment of 26 April 2016, App. No. 10511/10.

⁵ Ministry of Justice, "Explanatory Report presented to the Seimas on 4 September 2018," (June 2024) // <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/e05c6400b00011e8aa33fe8f0fea665f?jfwid=17altoryo2>.

including previous convictions, offence severity, sentence duration, risk level, disciplinary infractions, compensation for damages, rehabilitation efforts, and case outcomes.

To explore the experiences of life-sentenced individuals in Lithuania, semi-structured interviews were conducted with eight men, aged 38 to 62, one of whom had recently had his sentence commuted to a five-year term. A purposive sample was used, and in collaboration with prison staff, participants were invited for interviews in September and October 2020 at three different prisons: Šiauliai Detention Center, Vilnius and Alytus correctional facilities. At the time of the study, participants had served between 13 and 26 years. Prior to the interviews, participants were informed about the purpose of the research, the research institution, the reason for their selection, their role in the research, and that any information provided would be kept confidential and not used in a way that would personally identify them. Interviews began only after obtaining both verbal and written informed consent from participants. Recorded interviews were transcribed and anonymized, and erased after transcription. Interview data were processed and analysed using MAXQDA. These data were categorised into themes such as prison conditions, rehabilitation, relationships, and hope of release.

The sections below aim to combine, analyse and interpret these data sources in an honest and accurate way, drawing only those conclusions that can be fully supported empirically.

LIFE IMPRISONMENT AND THE RIGHT TO HOPE

Hope, according to the online Oxford English Dictionary, is “the expectation of something desired” or “desire combined with expectation”,⁶ a future-oriented belief that a certain outcome is likely to occur or be true. Both research scholarship, and the jurisprudence of the ECtHR, suggest that the hope of individuals serving long-term or life sentences is primarily linked to their aspiration to gain freedom and release from prison.⁷ A small but growing body of empirical scholarship on the experiences of individuals serving life sentences has shown that nurturing hope helps individuals to adapt to difficult, stressful situations and encourages positive efforts and activities during long term and life imprisonment.⁸

In an assessment of hope and life imprisonment, Seeds identifies two different types of hope: (i) “institutional hope” and (ii) “transformative” or “deep hope”.⁹ According to Seeds, institutional hope is anchored within established frameworks and conventional ways of thinking and acting. Individuals with institutional hope operate within existing systems and seek desired outcomes through recognised practices along established pathways, with their goals being defined by prevailing norms and arrangements. On the other hand, transformative or deep hope emerges when clear paths or opportunities are lacking. In contrast to institutional hope, transformative or deep-rooted

⁶ Oxford English Dictionary, *Hope* (May 2024) // <https://www.oed.com/search/dictionary/?scope=Entries&q=hope>

⁷ For example, Simonas Nikartas and Algimantas Čepas, *supra* note 2; Ben Crewe, Susie Hulley and Serena Wright, *Life Imprisonment from Young Adulthood: Adaptation, Identity and Time* (London: Palgrave, 2020); *Kafkaris v. Cyprus*, *supra* note 4; *Vinter and Others v. the United Kingdom*, *supra* note 4; *Murray v. The Netherlands*, *supra* note 4.

⁸ For example, Margaret Leigey, *The Forgotten Men: Serving a Life without Parole Sentence* (New Brunswick, N.J.: Rutgers University Press, 2015); Lora Lempert, *Women Doing Life: Gender, Punishment and the Struggle for Identity* (New York: New York University Press, 2016).

⁹ Christopher Seeds, “Hope and the Life Sentence,” *The British Journal of Criminology* 62, 1 (2022): 234–50, 236 // <https://doi.org/10.1093/bjc/azab037>

hope is not bound by existing legal, medical or conventional avenues but can be seen as arising out of despair, as it takes root when the structures that once organised daily life, and imbued it with meaning, are lost. While from a legal standpoint, this might be interpreted as a lack of hope of release, from a psychological and anthropological perspective, transformative hope plays a crucial role in helping individuals adapt to, and endure, challenging circumstances. This distinction highlights how hope, especially in the context of life and long-term imprisonment, can take on different forms and serve various functions, influencing both individuals' outlooks and their capacity to navigate their circumstances in prison.¹⁰

For the purposes of this article, we align with the legal concept of hope, specifically the notion of institutional hope. This concept is closely associated with the ECtHR and national courts interpretations, which establish that the hope for individuals serving life sentences is founded on a discernible institutional pathway and a legally recognised right to have their potential for release reviewed.¹¹ In accordance with the jurisprudence of the ECtHR, the efficacy of sentence review mechanisms constitutes a fundamental aspect of realistic, institutional hope of release.

Significantly, concerns regarding the provision of hope for people serving life sentences first emerged at the ECtHR in *Kafkaris v. Cyprus* in 2008. The Grand Chamber established that a life sentence per se was not incompatible with the ECHR if it was carried out in full, that is, if a person died while serving a life sentence. However, it established that where a person serving life imprisonment was held without any prospect of release, this would constitute degrading treatment and might raise an issue under Article 3 of the Convention. The Grand Chamber concluded that for such a form of punishment to be lawful under human rights principles, it must be reducible, both in law and in practice.¹²

In 2013, in *Vinter and Others v. the United Kingdom*, the Grand Chamber further explained the basis of this principle of reducibility in considering the compatibility of whole life orders given to the applicants in England and Wales, with Article 3 of the Convention. The Court upheld the *Kafkaris* decision that in order to comply with Article 3 a life sentence must be "de facto and de jure reducible",¹³ but it took a step further by explaining why there needed to be "both a prospect of release and a possibility of review"¹⁴ for a life sentence to be compatible with the European Convention. First, it stated that life imprisonment must always be justified by "legitimate penological grounds"¹⁵ – retribution, deterrence, public protection, and rehabilitation – not only at the time of its imposition but also be subject to subsequent review. Secondly, without the possibility of review and release, there was a risk that the person sentenced would never be able to "atone for his offence",¹⁶ regardless of any progress made towards rehabilitation. Thirdly, building on principles from German constitutional law, irreducible life sentences that "deprive a person of his freedom without at least providing him with the chance to someday regain that freedom"¹⁷ were incompatible with the provision of human dignity. Fourthly, the Court took into account the broader context of contemporary European and international law emphasizing rehabilitation, a concept

¹⁰ *Ibid.*

¹¹ See especially *Vinter and Others v. the United Kingdom*, *supra* note 4.

¹² *Kafkaris v. Cyprus*, *supra* note 4.

¹³ *Vinter and Others v. the United Kingdom*, *supra* note 4, para 108.

¹⁴ *Ibid.*, para 110.

¹⁵ *Ibid.*, para 111.

¹⁶ *Ibid.*, para 112.

¹⁷ *Ibid.*, para 113.

undermined by irreducible life imprisonment, that “all prisoners, including those serving life sentences, be offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.”¹⁸ As such, life imprisonment must involve a review that takes into account any changes in the life of the person sentenced and any progress they have made towards rehabilitation. Moreover, there is to be no uncertainty in the mind of the person sentenced who is “entitled to know, at the outset of his sentence, what he must do to be considered for release and under what condition, including when a review of his sentence will take place or may be sought.”¹⁹

The Court applied these criteria to the case in question and found whole life orders in England and Wales could not be regarded as reducible, and there had, accordingly, been a violation of Article 3. Yet whilst the Court emphasised that this finding did not give the applicants “the prospect of imminent release”,²⁰ what it did, according to Judge Power-Forde in her Concurring Opinion, was secure the place of the “right to hope” in Article 3. She affirmed that hope was intrinsically connected to human dignity, representing “an important and constitutive aspect of the human person”. Even the most hardened people in prison retain “their fundamental humanity”, and their “capacity to change” underlines this humanity. Therefore, they should be allowed to “retain the hope” that one day they “may have atoned for the wrongs which they have committed.” To strip them of the hope of eventual release would be “degrading” and thus in violation of Article 3.²¹ The ‘right to hope’ was therefore intertwined with a human being’s innate ability to change, to progress positively and ultimately to rehabilitate. Furthermore, in order to satisfy the ‘right to hope’, prison regimes must be “rehabilitative, improving and educative, to make it probable that a person can sustain hope about those conditions and can lead a good life after punishment.”²² In sum, while release cannot be guaranteed, individuals should be given the chance to rehabilitate themselves over the course of their life sentence, regardless of the crime committed, with the hope of returning to, and re-establishing themselves in free society.

THE RIGHT TO HOPE IN LITHUANIA

The standards developed by the ECtHR in *Vinter*, and the emergence of the ‘right to hope’ had significant implications for individuals serving life sentences, not only in Europe but across other jurisdictions and regions. Whole life sentences without the prospect of release were abolished in several countries, including Belize, the Netherlands and Zimbabwe.²³ In Lithuania, at the time of the *Vinter* decision, only people serving fixed-term sentences, not life imprisonment, were eligible for release under law. There were, however, three theoretical possibilities for releasing individuals sentenced to life imprisonment: (i) mitigation due to terminal illness; (ii) the power of amnesty; and (iii) a presidential pardon.

The first possibility – *mitigation due to terminal illness* – represented a form of compassionate release. According to Article 76 of the Criminal Code of the Republic of

¹⁸ *Ibid.*, para 114.

¹⁹ *Ibid.*, para 122.

²⁰ *Ibid.*, para 131.

²¹ *Ibid.*, Concurring Opinion of Judge Power-Forde.

²² Kimberley Brownlee, “Punishment and Precious Emotions: A Hope Standard for Punishment,” *Oxford Journal of Legal Studies* 41, 3 (2021): 589–611, 603 // <https://doi.org/10.1093/ojls/gqab001>

²³ *R v. August*, Court of Appeal of Belize, Judgment of 4 Nov 2016 App. Nos. BZCV2015/001 and BZCR2015/002; *Murray v. The Netherlands*, *supra* note 4; *Makoni v Commissioner of Prisons Commissioner*, Judgment of 13 July 2016, App. No. CCZ 48 of 2015 (Zimbabwe Constitutional Court). See Dirk van Zyl Smit and Catherine Appleton, *supra* note 1.

Lithuania, a sentenced individual suffering from a severe, terminal illness could potentially be granted release from prison by the courts.²⁴ However, merely establishing the presence of a terminal illness did not guarantee release. The court was required to take into account various factors in reaching its decision, including the seriousness of the offence committed, the personality of the convicted person, their conduct and behaviour in prison, the nature of the illness, and the time elapsed since the conviction.

The second option of release for individuals serving life sentences was the possibility of receiving *the power of amnesty*. According to Article 78 of the Criminal Code, an individual who has been convicted of an offence may have all or part of their sentence waived through an amnesty approved by Parliament.²⁵ Yet none of the seven acts of amnesties declared by Parliament thus far included people serving life sentences. Further, three of the amnesties (in 1998, 2000 and 2002) explicitly excluded people serving life sentences as well as those initially sentenced to the death penalty but whose sentence had been converted to life imprisonment following its abolition.

The third option was a *presidential pardon*. According to the Presidential Pardon Requests Procedure of 15 February 2007, requests for pardons from individuals sentenced to life imprisonment could be considered only after individuals had served at least 10 years of their sentence.²⁶ When making a decision whether or not to grant a pardon, the President had the discretion (though not an obligation) to take several factors into account. These included the nature and severity of the offence committed, the individual's behaviour in prison, attitude towards work, time served in prison, any compensation made, and assessments provided by the prison administration, non-governmental organisations and previous employers. Following this assessment, a person serving life imprisonment could potentially have their sentence, or a portion of it, pardoned.

However, in 2017, in the case of *Matijošaitis*, applications were made by eight Lithuanian nationals, all of whom were sentenced to life imprisonment, and who claimed that there was no realistic prospect of their sentences being commuted, effectively leaving them imprisoned without the possibility of release. The question before the Court was whether the applicants' life sentences should be classified as irreducible. In reaching its decision, the Court reaffirmed the need for a review mechanism that allows for the possibility of release, with such a review being based on legitimate grounds. This involves an "actual assessment of the relevant information" to determine whether "continued imprisonment is justified on legitimate penological grounds."²⁷ Furthermore, it stressed that the regime and conditions must "make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence"²⁸ and that it must be made clear to an individual "what he or she must do to be considered for release and under what conditions."²⁹

In contrast to *Hutchinson*,³⁰ the Court in *Matijošaitis* rigorously assessed the different possibilities of release for individuals serving life imprisonment in Lithuania

²⁴ *Criminal Code of the Republic of Lithuania*, Official Gazette (No. 89-2741, 2000), art. 76.

²⁵ *Ibid.*, art. 78.

²⁶ *Presidential Pardon Requests Procedure Decree No. 1K-880 of the President of the Republic of Lithuania*, "On the Formation of the Clemency Commission and its Regulations," Official Gazette (No. 22-823, 2007).

²⁷ *Matijošaitis and Others v. Lithuania*, *supra* note 3, para 174.

²⁸ *Ibid.*, para 177.

²⁹ *Ibid.*, para 174.

³⁰ In *Hutchinson v. the United Kingdom*, European Court of Human Rights, Judgment of 17 January 2017, App. No. 57592/08, the Court ruled that England and Wales' whole life order regulations offered sufficiently clear criteria for potential release, prompting debate on the Court's legitimacy and whether it applied *Vinter* standards more leniently to the UK. See Ergul Celiksoy, "'UK exceptionalism' in the ECtHR's

against criteria developed in its case law. Citing *Vinter*,³¹ and *Öcalan v. Turkey (no. 2)*,³² the Court noted that it has consistently held that a commutation of life imprisonment because of terminal illness, “which only means that a prisoner is allowed to die at home or in a hospice rather than behind prison walls” could not be considered a “prospect of release.”³³ Similarly, the power of amnesty under Lithuanian law “may not be regarded as a measure giving life prisoners a prospect of mitigation of their sentence or release”,³⁴ especially since all previous amnesties were not extended to individuals convicted of the most serious crimes. Additionally, the Court noted that amnesties, when applied broadly without consideration for individual circumstances, appeared to overlook “the rehabilitation aspect of each individual prisoner.”³⁵

In its evaluation of the presidential pardon, however, the Court assessed positively that there existed a published list of qualifying considerations, all relevant to the ongoing justification of the sentence, which the authorities would consider during sentence reviews. It also noted that the review criteria remained consistent throughout the applicants’ imprisonment, that it was accessible to them and to other prisoners at any time. Additionally, the prison authorities had implemented programmes aimed at the social rehabilitation of people imprisoned, facilitating their progress towards meeting the conditions necessary for release. However, the Court determined that while the procedure was clear and straightforward, there was no requirement to provide specific reasons when rejecting an individual’s application to participate. This lack of clarity meant that persons serving life sentences would be left in “a conundrum as to what he or she must do,”³⁶ and uncertain about how they should change or rehabilitate in order to gain a presidential pardon. Furthermore, decisions regarding presidential pardons were “not subject to judicial review”³⁷ and could not be challenged directly by individuals serving life sentences.

The Court also highlighted the rarity of presidential pardons for life prisoners, noting that only one had been granted in 30 years, commuting the sentence to 25 years. While it acknowledged the positive introduction of social rehabilitation programmes, the Court found that poor prison conditions, especially prolonged isolation, undermined the effectiveness of any reform efforts. It highlighted that, “the deleterious effects of such life prisoners’ regime must have seriously weakened the possibility of the applicants reforming and thus entertaining a real hope that they might one day achieve and demonstrate their progress and obtain a reduction of their sentence.”³⁸ In its view, sentencing individuals to spend their lives in isolation, devoid of any hope to demonstrate their rehabilitation and transformation, leads to conditions that degrade human dignity. The Court additionally observed that the government had no immediate intentions to reform this aspect of the law. Considering these factors together, it unanimously concluded that the life sentence system in Lithuania breached Article 3 of the Convention, and in so doing, reiterated the significance of the right to hope in European human rights law. The Court stated:

jurisprudence on irreducible life sentences,” *The International Journal of Human Rights* 24, 10 (2020): 1594–1615 // <https://doi.org/10.1080/13642987.2020.1743977>

³¹ *Vinter and Others v. the United Kingdom*, *supra* note 4, para 127.

³² *Öcalan v. Turkey (no. 2)*, European Court of Human Rights, Judgment of 18 March 2014, App. Nos. 24069/03, 197/04, 6201/06 and 10464/07, para 203.

³³ *Matiošaitis and Others v. Lithuania*, *supra* note 3, para 162.

³⁴ *Ibid.*, para 163.

³⁵ *Ibid.*

³⁶ *Ibid.*, para 176.

³⁷ *Ibid.*, para 170.

³⁸ *Ibid.*, para 179.

[E]ven those who commit the most abhorrent and egregious of acts...nevertheless retain their essential humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, some day, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading.³⁹

It is noteworthy that prior to this landmark decision from the Court, concerns regarding the compatibility of Lithuania's life sentence system with human rights standards had already been raised by international and national human rights organisations, such as the Committee for the Prevention of Torture in 2011,⁴⁰ as well as the Lithuanian Human Rights Monitoring Institute in 2014.⁴¹ Legal scholars too raised similar concerns, predicting such an assessment and decision of the ECtHR:

...a [person sentence to life imprisonment] is convicted with an almost inviolable presumption of eternal danger and unlimited retribution, leaving only a small 'maybe', but only if 'you behave very well and the President will spare you'. Taking all this into account, it is probable that Lithuania may receive decisions from the European Court of Human Rights in the near future that our practice of imposing life imprisonment is in conflict with the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴²

Yet despite clear appeals for reform, the Lithuanian government did not initiate the process of legislative change until almost two years after the decision of the ECtHR judgment in 2017. It was on 21 March 2019, when the Seimas eventually made significant amendments to the Criminal Code under Article 51 in order to rectify the flaws in the domestic law, identified by the European Court.⁴³

THE RIGHT TO HOPE IN LAW

Amendments made to the Criminal Code sparked radical procedural changes, allowing persons sentenced to life imprisonment to seek potential release. After serving a minimum of 20 years, they were eligible to petition a court for a sentence review and possible release. However, release did not mean conditional release on parole from life imprisonment. Instead, a staggered or "two-tier approach"⁴⁴ was introduced: first, a life sentence could be commuted to a fixed-term sentence by a court; secondly, conditional release on parole could be granted. Under Article 51 of the amended Criminal Code, courts could convert life sentences into prison terms of five to 10 years after the person had served 20 years, based on a proposal from the prison administration.⁴⁵ When determining whether to commute a life sentence, the court should consider factors such as the individual's risk of reoffending, behaviour during imprisonment, the impact of their

³⁹ *Ibid.*, para 180.

⁴⁰ Council of Europe, *supra* note 2.

⁴¹ Human Rights Monitoring Institute, "Alternative Report to the United Nations Committee against Torture (2014)," (June 2024) // https://hrmi.lt/wp-content/uploads/2014/04/CAT_Alternative-report_20140414.pdf

⁴² Simonas Nikartas and Algimantas Čepas, *supra* note 2, 19.

⁴³ *Criminal Code of the Republic of Lithuania*, *supra* note 24, art. 51.

⁴⁴ *Dardanskis v. Lithuania*, European Court of Human Rights, Judgment of 11 July 2019, App. No. 74452/13, para 7.

⁴⁵ *Criminal Code of the Republic of Lithuania*, *supra* note 24, art. 51.

sentence, and the extent of compensation for the damages caused by the crime. At the same time, the Code for Execution of Penalties of the Republic of Lithuania (hereinafter referred to as CEP) was amended to include steps to achieve the rehabilitation of individuals whose life sentences have been changed to a fixed term:

Article 137. The aims, actions and means of social rehabilitation

5. In order to achieve more favourable social rehabilitation ... in respect of persons whose life sentences have been changed to fixed-term sentences under Article 51, para 2 of the Criminal Code, but who have not been released from a correctional institution on parole, enhanced social rehabilitation measures must be applied for the duration of the final year of their fixed-term sentence (to provide intensive preparation for their release from the correctional institution, by applying such enhanced social rehabilitation measures).⁴⁶

Once an individual serving life imprisonment had their sentence commuted to a specific prison term, they were given the right to apply for parole, following the established procedure for all sentenced persons in Lithuania, as outlined in Article 157 of the CEP. The eligibility criteria for parole were as follows:

(1.) If the individual was not sentenced to more than four years, or was convicted of non-serious or negligent offences, or was a minor, they must have served one-third of the imposed sentence;

(2.) If the sentence exceeds four years but does not exceed 10 years, the person must have served half of the sentence.

(3.) For individuals whose penalty exceeds 10 years but does not exceed 25 years of imprisonment, they must have served two-thirds of the imposed sentence.⁴⁷

These conditions determine when a person becomes eligible to apply for parole based on the length of their prison sentence. Thus, persons whose life sentences were converted into determinate sentences would be eligible to apply for parole after completing at least half of the commuted custodial sentence. Release on parole, however, was contingent on a range of assessment criteria, including the level of risk of reoffending and the progress made by the individual in prison to mitigate the risk of future criminal behaviour, as stated under the amended Article 157:

Article 157 Release on parole from correctional institutions

1. The convicted persons serving the sentence in a correctional institution, who execute the measures set out in the individual social rehabilitation plan, and have submitted to the Parole Commission requests to be released on parole, and whose risk of recidivism is low and (or) progress made during lowering recidivism allows considering that they will follow the law and will not commit new crimes, may be released from the correctional institutions.⁴⁸

⁴⁶ Code for the Execution of Penalties of the Republic of Lithuania (CEP), Official Gazette (No. 73-3084, 2002), art. 137. It should be noted that this provision ceased to be in effect following the adoption of a revised version of the CEP in 2023. It is likely that the change took into account criticism expressed by scholars, who, based on international human rights standards and the practice of the ECtHR, argued that the resocialisation process for persons serving life sentences should be intensive throughout the entire duration of the sentence. See Gintautas Sakalauskas, Liubovė Jarutienė, Vaidas Kalpokas and Rūta Vaičiūnienė, *Conditions of imprisonment and premisses for social integration of prisoners* (Vilnius: Lietuvos teisės institutas, Žara, 2019).

⁴⁷ CEP, *supra* note 46, art. 157.

⁴⁸ *Ibid.*

The rules for conditional release, however, were revised on 1 January 2023. Article 82 of the CEP established two forms of parole: (1.) Automatic parole: this applies to individuals who have served three-quarters of their prison sentence and facilitates for release without needing approval from a parole commission or a court. However, this does not apply to former life-sentenced individuals or those convicted of serious crimes. (2.) Conditional release: former life-sentenced individuals, or those excluded from automatic parole, can apply for conditional release through a commission, with eligibility based on sentence length and crime severity. For sentences up to four years, individuals can apply after serving one-third; for sentences between four and 10 years, after half; and for sentences between 10 and 25 years, after two-thirds. For the first group, the commission's decision is sufficient. For the second and third groups, court approval is also required. When evaluating conditional release requests, as with the previous regulation, commissions and courts consider the individual's behaviour in prison, their progress in reducing the risk of reoffending, and reintegration prospects, such as housing and employment.⁴⁹

Notably, Lithuania's newly imposed two-tier release system contrasts greatly from most life sentence release systems globally. In most jurisdictions, individuals serving life sentences can apply for conditional release on parole after serving a minimum period, rather than facing an additional lengthy fixed-term sentence.⁵⁰ However, delayed release models have been adopted elsewhere. In Ukraine, a recent law allows life sentences to be commuted to a fixed term of 15 to 20 years after serving a minimum term of 15 years.⁵¹ If successful, individuals can be released on parole after serving three-quarters of the commuted sentence, a system that was recently assessed as "efficient" in both theory and practice by the European Court.⁵² Similarly, in Belarus, after serving 20 years of a death or life sentence, the Court may replace further detention with a fixed-term sentence of up to five years, taking account of the individual's behaviour, health or age.⁵³ In the Netherlands, individuals serving life sentences are assessed after 25 years by an Advisory Board to determine their eligibility to enter a reintegration phase of the sentence. During the second phase of the sentence, they can participate in resocialisation activities, which is a prerequisite before they can be considered for a royal pardon.⁵⁴ And in Sweden, individuals serving life sentences can apply to have their indeterminate sentence commuted to a fixed prison term after serving at least 10 years of their sentence, with a minimum of 18 years additional years in prison.⁵⁵

While the ECtHR has not yet definitively established the most appropriate life sentence review mechanism, it noted in June 2019, in the case of *Dardanskis v. Lithuania*, that the life sentence commutation procedure adopted by the Lithuanian authorities constituted "an adequate and sufficient remedy for the applicants' complaint under

⁴⁹ *Ibid*, art. 82.

⁵⁰ Dirk van Zyl Smit and Catherine Appleton, *supra* note 1.

⁵¹ See *Petukhov v. Ukraine*, European Court of Human Rights, Judgment of 12 March 2019, App. No. 41216/13.

⁵² See *Medvid v. Ukraine*, European Court of Human Rights, Judgment of 10 October 2024, App. No. 7453/23, para 58.

⁵³ *Criminal Code of the Republic of Belarus*, Law no. 275-Z, adopted on 9 July 1999, Art. 58(4).

⁵⁴ See *Murray v. The Netherlands*, *supra* note 4; Council of Europe, *Report to the Government of the Netherlands on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 25 May 2022* (Strasbourg: Council of Europe, 2023).

⁵⁵ The Swedish Prison and Probation Services, "Sanctions," (May 2024) // <https://www.kriminalvarden.se/swedish-prison-and-probation-service/sanctions/#:~:text=Unlike%20other%20sentences%2C%20life%20imprisonment,ten%20years%20of%20their%20sentence>

Article 3”.⁵⁶ It highlighted that the government had recognised through its new legislation the ongoing need to rehabilitate individuals serving life sentences, including implementing enhanced rehabilitation measures even after their sentences are converted to a fixed term, and that it looked forward to the “proper implementation of this remedy in practice.”⁵⁷ As such, the Court unanimously decided to strike the applications out of its list of cases, all of whom had lodged complaints that their life sentences amounted to inhuman and degrading treatment, as they had no hope of release prior to the legislative amendments made in 2019. However, the two-tier life sentence release procedure implemented by the Lithuanian legislator has raised significant concerns regarding its adherence to the European Court’s criteria in practice, and its capacity to provide institutional hope for individuals serving life sentences. The next section assesses the implementation of the right to hope in Lithuania, drawing on empirical findings from 45 court decisions on life sentence commutation and interviews with eight individuals serving life imprisonment.

THE RIGHT TO HOPE IN PRACTICE?

According to a recent report by the Lithuanian Prison Service, there were 99 individuals serving life sentences in 2023, accounting for 2.6 per cent of the prison population, or 3.5 persons per 100,000 of Lithuania’s general population.⁵⁸ In comparison, Russia had 1.3 life-sentenced persons per 100,000 population (2002 in total), Poland had 1.2 persons per 100,000 (441 in total) and Romania had 0.9 persons per 100,000 (173 in total) in 2020.⁵⁹ Moreover, in Van Zyl Smit and Appleton’s global assessment of life imprisonment, Lithuania was ranked as having the sixth-highest life-sentenced prison population, per capita, in Europe.⁶⁰

As noted earlier, before the *Matijošaitis* case, only one person in Lithuania had been pardoned from a life sentence, with their sentence reduced to 25 years of imprisonment. However, following legislative changes, 18 life sentences have since been commuted to fixed terms, and one person has been conditionally released after 32 years in prison.⁶¹ This suggests that Lithuania’s law, deemed “adequate and sufficient” by the ECtHR in *Dardanskis*,⁶² offers a realistic prospect and institutional hope of release for people serving life sentences. However, concerns have emerged about the development and implementation of the two-tier release system, and the implications for individuals serving life sentences.

Of significance, questions have been raised about whether the new release mechanism aligns with the principles of criminal law and the execution of such sentences.⁶³

⁵⁶ *Dardanskis v. Lithuania*, *supra* note 40, para 31.

⁵⁷ *Ibid.*

⁵⁸ Lithuanian Prison Service, “Report of the general unit of the Prison Department under the Ministry of Justice of the Republic of Lithuania on the number, structure and change of prison population in year 2023,” (June 2024) // http://www.kaldep.lt/lt/kalejimu-departamentas/administracine_informacija/ataskaitos/metu.html

⁵⁹ Aebi Marcelo and Tiago Mélanie, *Prison Populations SPACE I – 2020* (Strasbourg: Council of Europe, 2020).

⁶⁰ Dirk van Zyl Smit and Catherine Appleton, *supra* note 1, 90.

⁶¹ It should be noted that another former life-sentenced individual who has been released was the person granted a presidential pardon in 2012, as mentioned earlier. He was released in 2018 after serving a total of 22 years in prison.

⁶² *Dardanskis v. Lithuania*, *supra* note 40, para 31.

⁶³ Gintautas Sakalauskas, Liubov Jarutienė, Vaidas Kalpokas and Rūta Vaičiūnienė, *supra* note 41; Skirmantas Bikelis and Simonas Nikartas, *Proposals for certain amendments in the general part of the Criminal Code regarding the legal consequences of committing criminal acts* (Vilnius: Teisės e-aktualijos, 2021).

A key concern is whether the two-tier approach to release adheres to the constitutional principle of *ne bis in idem*. Some commentators have argued that commuting a life sentence may resemble a re-sentencing, as courts use criteria similar to those in initial sentencing.⁶⁴ Yet Judge Justas Namavičius contends that this process does not violate *ne bis in idem*, likening it to a case where the severity of the original crime is reassessed.⁶⁵ An examination of 45 court decisions on life sentence commutations indicated that courts frequently relied on static factors from the initial sentencing, including previous convictions (58% of cases), the nature and gravity of the offence (71%), and the individual's level of remorse at the time of the offence (76%). Moreover, in these decisions, greater emphasis was often placed on reassessing the original offence than on evaluating the individual's positive conduct or evidence of rehabilitation during imprisonment. The severity of the crime was frequently cited to argue the person remained a danger to society and to justify continued isolation, as illustrated in a Kaunas District Court decision:

...the case confirms that R. M. has been previously convicted once and is currently serving a sentence not only for a moderately severe but also for a very serious crime. ... This type of crime reveals a significantly greater danger posed by the convicted person to the community, and although this has undoubtedly been taken into account in the verdict when sentencing R. M., when considering the question of replacing the life imprisonment sentence with fixed-term imprisonment, this circumstance should not be overlooked in the analysis of the convicted person's personality, behavioural changes, and the impact of the sentence on the convicted person.⁶⁶

Similarly, during research interviews, participants voiced concerns about the possibility of being re-sentenced for a crime for which they were already serving a life sentence. As one participant remarked on the changes to the law:

It is still incomprehensible to me, for many of us, this 'fixed-term sentence' – it is like being tried twice for the same thing!

In a few cases, however, the courts also considered the individual's attitude towards the crime, such as whether they exhibited remorse or understood the consequences of their actions. For example, in one case where the Kaunas District Court decided to commute the sentence, it was noted that:

The convicted person admitted guilt during the criminal trial. Currently, he takes responsibility for his actions, does not minimise his role or justify it, and understands the consequences for the victims and the community.⁶⁷

Since life sentences in Lithuania are imposed for extremely serious crimes involving murder with aggravating circumstances, it was unsurprising that nearly all court judgments (93%) focused heavily on the individual's risk level and efforts to reduce it. However, the review also highlighted that risk assessments and perceived risk reduction often overshadowed other positive factors such as work achievements, participation in resocialization programmes and other forms of constructive engagement. This disproportionate emphasis raises concerns, particularly in the light of documented

⁶⁴ *Ibid.*

⁶⁵ Justas Namavičius, "Laisvės atėmimo iki gyvos galvos reforma Lietuvoje," *Teisė* 127 (2023): 87.

⁶⁶ *Kaunas District Court*, 2019, No. T-116-238/2019.

⁶⁷ *Ibid.*, No. T-88-919/2019.

shortcomings in the quality of risk assessments,⁶⁸ and the inherent difficulties in predicting future dangerousness.⁶⁹ At the time of the study, risk assessments were mainly conducted by prison officers often lacking proper training. Additionally, judges typically had not met with the individual concerned, when making such critical decisions.

Furthermore, the courts frequently interpreted risk assessment results inconsistently. According to the Offender Assessment System (OASys) used in Lithuanian prisons to evaluate the likelihood of reoffending, a low-risk score ranges from 1–40, while medium-risk ranges from 41–99.⁷⁰ However, in some cases, scores within these ranges were still viewed as indicating an ongoing threat to the community. For example, in one case, a medium risk score of 48 – objectively close to low-risk – was assessed by the court as “not even close to low-risk.”⁷¹ In two other cases, the courts noted that the convicted individuals had reduced their risk scores by 38 points (from 91 to 53) and 26 points (from 75 to 49) since their initial assessments. However, the courts did not find this progress sufficiently persuasive for commutation.⁷² Conversely, in other instances, risk assessment results were given less weight, and the courts focused on other aspects of the individual’s (positive) behaviour in prison. For example, in one case, despite the individual’s risk score being 70, the court decided to commute the sentence, emphasizing their positive behaviour, work attitude, family relationships, rejection of criminal subculture, and participation in rehabilitation programmes, rather than the primary offence or risk assessment results.⁷³ This inconsistent interpretation of risk assessment scores leads to unequal evaluation criteria in sentence commutation. It also suggests a potential lack of understanding among judges about the purpose of risk assessment instruments, and how individuals can effectively reduce their risk scores.⁷⁴

Additionally, the criteria for commuting a life sentence in Lithuania, both as outlined in legislation and as applied in practice, have been regarded as excessively challenging to meet, greatly reducing the likelihood of release for individuals serving life sentences. As noted above, the decision to commute a life sentence depends on factors such as the admission of guilt, demonstration of remorse, and the extent to which the individual has compensated for the offence. A major concern is that the financial penalties for criminal damages imposed by the courts can reach tens or even hundreds of thousands of euros, while people serving a life sentence have very limited opportunities to earn or pay for such substantial amounts. This issue is compounded by the fact that people serving prison sentences in Lithuania earn very low wages from any work they might undertake during their imprisonment, barely enough to cover their basic needs.⁷⁵ Additionally, those serving life sentences often struggle to find employment

⁶⁸ Rūta Vaičiūnienė and Vaidas Viršilas, *Socialinės reabilitacijos priemonių taikymo laisvės atėmimo vietose analizė esamos praktikos tobulinimo perspektyvos* (Vilnius: Lietuvos teisės institutas, 2018).

⁶⁹ See Seena Fazel, Matthias Burghart, Thomas Fanshawe, Sharon Danielle Gil, John Monahan and Rongqin Yu, “The Predictive Performance of Criminal Risk Assessment Tools used at Sentencing: Systematic Review of Validation Studies,” *Journal of Criminal Justice* 81 (2022) // <https://doi.org/10.1016/j.jcrimjus.2022.101902>

⁷⁰ For an overview of the OASys risk assessment tool, see Robin Moore (ed.), *A Compendium of Research and Analysis on the Offender Assessment System (OASys) 2009–2013* (London: National Offender Management Service, 2015).

⁷¹ *Kaunas District Court*, 2019, No. T -116-238/2019.

⁷² *Ibid.*, No. T-109-348/2019; *Lithuanian Court of Appeal*, 2024, No. 1S-126-626/2024.

⁷³ *Vilnius District Court*, 2019, No. T-81-654/2019.

⁷⁴ Notably, the majority of individuals on probation (approximately 60%) have been assessed as having a moderate risk. These individuals often have not committed particularly serious crimes and have not spent many years in prison. See Lithuanian Probation Service, *Report on the number of persons under the supervision of the Lithuanian Probation Service* (Lithuanian Probation Service, 2023).

⁷⁵ The hourly wage for prisoners engaged in work activities ranges from 1.92 to 3.33 euros, depending on the skill level required and the worker’s qualifications. See Lithuanian Prison Department under the Ministry of Justice of the Republic of Lithuania, *Director’s Order No. V-394 of 17 December 2021 on the*

opportunities in prison, further worsening their financial situation. This criterion creates significant disparities between wealthier and less fortunate prisoners,⁷⁶ and raises serious concerns about whether the possibility of release will remain out of reach for the majority of life-sentenced individuals.

Although compensation was considered in over half of the rulings analysed (60%), the amounts were generally modest – typically ranging from a few hundred to a few thousand euros – making it feasible for many life-sentenced persons to make some restitution. Courts frequently placed greater emphasis on the individual's initiative and effort in providing compensation, especially in cases involving larger amounts. For example, in one decision, the Kaunas District Court noted that the individual owed €33,772.01 in damages, yet only €1,558.65 had been recovered from their wages during incarceration. The court emphasized that, "a prisoner seeking to have a life imprisonment sentence commuted to a more lenient one must understand the obligation to compensate for the harm caused by their criminal actions and make maximum efforts to do so." It further noted that, "G.R. made no such efforts for a considerable time after committing the crime and while serving the sentence."⁷⁷

Proponents of the new release system claim that additional imprisonment can act as a preparatory phase for an individual's rehabilitation and ease the process of reintegration, yet critics argue this conflicts with resocialisation principles upheld by international standards and the ECtHR. Article 10(3) of the International Covenant on Civil and Political Rights mandates that all prisons "shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation," even for life sentences. The ECtHR reinforces this, not only by highlighting the necessity of a review mechanism aligned with Article 3 of the Convention but also by stressing the importance of a structured process for rehabilitation and resocialisation throughout the life sentence. The Court has stated:

The regime and conditions of a life prisoner's incarceration cannot be regarded as a matter of indifference... They need to be such as to make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence.⁷⁸

Consequently, states are obligated to provide conditions from the start of a life sentence that support rehabilitation and eventual societal reintegration.⁷⁹

Yet despite the ruling by the ECtHR in *Matijošaitis* and the subsequent legislative changes intended to facilitate release, individuals serving life sentences in Lithuania continue to be segregated from the general prison population, often enduring social isolation and harsh conditions that hinder their rehabilitation. According to the CEP, the first 10 years of a life sentence must be served under a 'strict regime' which includes heightened security measures and severely restricted contact with the outside world

Approval of the Procedure for Calculating Monetary Payments for Prisoners and Convicts for Work Activities (Ministry of Justice, 2021).

⁷⁶ See Gintautas Sakalauskas, Liubovė Jarutienė, Vaidas Kalpokas and Rūta Vaičiūnienė, *supra* note 41; Skirmantas Bikelis and Simonas Nikartas, *supra* note, 55.

⁷⁷ *Kaunas District Court*, 2019, T-100-594/2019.

⁷⁸ *Khoroshenko v. Russia*, European Court of Human Rights, Judgment of 30 June 2015, App. No. 41418/04, 30 June 2015, para 122.

⁷⁹ See *Magyar v. Hungary*, European Court of Human Rights, Judgment of 20 May 2014, App. No. 73593/10; *Harachiev and Tolumov v. Bulgaria*, Judgment of 8 July 2014, App. Nos. 15018/11 and 61199/12; *Manolov v. Bulgaria*, Judgment of 4 November 2014, App. No. 23810/05; *Murray v. The Netherlands*, *supra* note 4; *Vinter and Others v. the United Kingdom*, *supra* note 4; *Petukhov v. Ukraine (No. 2)*, *supra* note 51; *Viola v. Italy (No. 2)*, European Court of Human Rights, Judgment of 13 June 2019, App. No. 77633/16.

and with other individuals serving fixed-term sentences in prison. Under this regime, life-sentenced individuals are permitted only one hour of exercise per day and are permitted one contact visit and three non-contact (or online) meetings per month, all under supervision. Additionally, telephone calls are restricted to twice a month during at least the first 10 years of the life sentence. The key differences between a life sentence regime and a fixed-term sentence regime are detailed in Table 1 below.

Table 1. Prison regimes for individuals subject to life and fixed-term sentences

Type of sentence	Life sentence	Fixed-term sentence
Type of facility	Closed prison facility (first 10 years semi-open facility after 10 years if certain conditions are met)	Closed, semi-open and open prison facilities
Type of regime	Disciplinary (first 10 years for all life prisoners in closed prison facilities) Ordinary, light, disciplinary (for individuals transferred to semi-open regime after first 10 years)	Ordinary, light, disciplinary (in semi-open prison facilities)
Number of meetings with relatives or other individuals (per month)	Disciplinary regime – 4 (3 online or non-contact meetings, 1 contact meeting under supervision) Ordinary regime – 4 meetings (3 online or non-contact, 1 contact with or without supervision)	Ordinary regime – 4 contact meetings (1 without supervision) Light regime – unlimited meetings (2 without supervision) Disciplinary regime – 4 (3 online or non-contact meetings, 1 contact meeting under supervision)
Time to walk outside (in hours)	Disciplinary regime – 1 Ordinary regime – 1.5	Ordinary regime – 3 Light regime – 4 Disciplinary regime – 2
The right to have a phone call	Disciplinary regime – twice a month Ordinary regime – twice a week	Ordinary regime – twice a week Light regime – three times a day (no longer than 15 minutes) Disciplinary regime – twice a month
Temporary leave from prison	Not permitted, including in cases of severe illness and death of relatives	Three types of temporary leave: In case of the death of a severe life-threatening illness of a relative. To visit family members For work, study or resocialisation

After serving the first 10 years of a life sentence, convicted individuals may, based on their conduct in prison and perceived security risk, be considered for a potential transfer to a semi-open or 'ordinary' regime, at the discretion of the Director of the prison, to continue serving their sentence. However, not all individuals serving life sentences are guaranteed the opportunity for such a transfer, which would afford them a less restrictive environment and enhanced prospects for rehabilitation. Analysis of court decisions revealed that approval of transfer requests hinged on various factors, including the individual's disciplinary record and efforts toward rehabilitation. Additionally, some individuals – particularly those considered vulnerable or associated with lower-status subcultures – may choose to remain in the strict or disciplinary prison regime as a form of protection and self-preservation. Interview data indicated that this choice was often motivated by a desire to avoid threats, violence and bullying from other prisoners that

might arise in a less restrictive facility with communal living spaces. As one participant put it: "I don't want to associate with others. I don't want to have anything in common with them. Simply because I'm a Romani, they humiliate me." Another stated: "It's about subculture. Because I do not follow it, they automatically reject me, and classify me as an outsider." Similarly, other participants noted that when they were detained within a closed regime and kept under solitary confinement, they actually felt safer being kept away from other prisoners, aligning with previous research findings on the significant role and impact of criminal subcultures in Lithuanian correctional facilities, and in other post-Soviet countries.⁸⁰ As Vaičiūnienė and Tereškinas point out, while the influence of criminal subcultures has been decreasing, Lithuanian penal institutions are still characterised by "carceral collectivism" whereby imprisoned individuals are largely responsible for maintaining order and where the "informal rules of the criminal subculture prevail."⁸¹ Moreover, current legislation prohibits individuals serving life sentences from applying for temporary leave, even in cases of severe illness or the death of a relative (see Table 1 above).⁸² They are also ineligible for transfer to a 'light' or open prison regime, regardless of their behaviour or any progress made in prison.

During interviews, the majority of respondents commented on the bleakness of a strict regime, stating that it conflicted with the goal of rehabilitation and casting doubt on the feasibility of release due to the harsh conditions they had to endure. Many expressed scepticism that most eligible individuals would not live long enough to be effectively released. As one participant stated: "When you think about it, I'm already starting to doubt whether I'll live through the first 20 years ... When I see that people are tortured by such conditions here, I have my doubts". Another commented: "Will I stay alive or not [until release from prison]? –That would be the biggest question..." And one interviewee further reflected: "It's a huge question that I won't be dead by then [the end of the fixed-term sentence]. According to my age, those 10 years would probably be a second death sentence for me!"

Van Zyl Smit and Appleton's global analysis of life imprisonment in 2019 found this type of approach to the implementation of life sentences had been adopted in Russia and in a number of other former Soviet Union countries, as well as certain states in Europe, including Bulgaria, Moldova, Romania, Slovakia and Turkey.⁸³ In such jurisdictions, people serving life sentences were systematically isolated from the remainder of the prison population and subjected to heightened security and a stringent regime on the basis of their sentence, not on the basis of an individualised risk assessment, contravening international standards and European human rights law. After a visit to Lithuania in 2021, the Committee for the Prevention of Torture (CPT) reiterated its concerns regarding this approach, particularly the common practice of isolating individuals serving life sentences from the general prison population. While it welcomed the 2019

⁸⁰ See, for example, Rūta Vaičiūnienė and Artūras Tereškinas, "Transformations in Prison Subculture and Adjustment to Imprisonment in Post-Soviet Lithuanian Penitentiary Institutions," *East European Politics and Societies and Cultures* 31, 3 (2017): 659–679; Nadia Burciu, "Europeanisation of post-Soviet prisons: A comparative case study of prison policy transfer from Norway to Latvia and Lithuania," *The Howard Journal of Criminal Justice* 62, 1 (2023): 102–118; Gavin Slade and Olga Zeveleva, "The pains of prison reform: Informal prisoner governance and penal subjectivities in Estonia and Lithuania," *Punishment and Society* (2024) // <https://doi.org/10.1177/14624745241248930>

⁸¹ Rūta Vaičiūnienė and Artūras Tereškinas, *supra* note 72.

⁸² On 4 June 2024, this provision was declared unconstitutional by the Constitutional Court of the Republic of Lithuania. See *Constitutional Court of the Republic of Lithuania. Decision No.: Nr. KT47-N7/2024, 2024-06-04*, (June 2024) // <https://www.e-tar.lt/portal/legalAct.html?documentId=59c7c2c0227011efbdaea558de59136c>

⁸³ Dirk van Zyl Smit and Catherine Appleton, *supra* note 1.

changes in legislation that allowed individuals serving life sentences to apply for release after serving 20 years, the Committee expressed concerns that such individuals, “were still being systematically segregated from the general prison population”,⁸⁴ and that there was “no justification for systematically segregated life-sentenced prisoners.”⁸⁵

Of significance, study participants were unanimous that being able to maintain contact with the outside world should be of utmost importance in a life imprisonment regime, as it serves as a motivation to change and desire to rehabilitate. As one participant stated:

It’s a form of support for a person, you know, a source of inspiration. It makes you think about how these people live [outside] and how you might want to improve yourself. It provides a kind of inner strength; I can’t explain it, but you feel completely different after someone has interacted with you.

But participants in the study also highlighted that individuals serving life sentences were not afforded sufficient opportunities to stay in touch with their relatives. This deficiency extended to both the duration and frequency of phone calls and meetings (see Table 1 above), resulting in weakened relationships and ultimately diminishing an individual’s motivation. As one participant put it:

You want to talk to many people. I bring a list, and I could stand here all day – but there are constraints. ... We’re given 15 minutes, and we want to talk to as many people as possible, so you divide it into 2-3 minutes per person. Well, it’s hardly feasible.

Furthermore, interviewees complained that due to the negative actions of one life-sentenced individual, detention conditions had been made (even) stricter for all persons serving life sentences, a move considered to be unfair and yet of limited concern to the authorities. As one participant noted:

...the Minister of Justice doesn’t even communicate with us. We are serving our sentences, attempting to make positive contributions, offering advice, but there is no one who cares. He seems to perceive us all as murderers only, already written off. In reality, if there were interactions or meetings, it could possibly change the perception of us. But he doesn’t want to communicate.

In *Dardanskis*, the ECtHR explicitly stated that imposing a strict regime hinders the effective resocialisation of life prisoners and reduces their chances of eventual release. The Court observed that isolating life-sentenced individuals from other people in prison and employing heightened security measures when the individual does not pose a genuine threat or risk to others constitutes inhuman and degrading treatment.⁸⁶ This applies regardless of the seriousness of the offences committed. Additionally, the Court’s case law emphasises that every individual serving a life sentence should have their specific needs identified and addressed through rehabilitation measures with the ultimate aim of release from prison.⁸⁷ Yet the regime, as described by the study participants, seemed incompatible with the aim of rehabilitation. Almost all the eight interviewees lamented the lack of meaningful activities in prison for people serving life

⁸⁴ Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Lithuanian Government on Visit to Lithuania by the CPT from 10 to 20 December 2021*, CPT/Inf (2023), para 65.

⁸⁵ *Ibid.*

⁸⁶ See also *Harachchiev and Tolumov v. Bulgaria*, *supra* note 78.

⁸⁷ *Murray v. The Netherlands*, *supra* note 4.

sentences, such as only having 1.5 hours of “yard time” each day, and the opportunity to go to the gym once every two weeks. One participant expressed his frustration by saying:

It’s [the life sentence is] practically a recipe for becoming disabled. The only other activity in the cell is doing push-ups or something else because otherwise, you won’t even be able to put on your shoes; everything will deteriorate from sitting in the cell. What else can you do? Take three steps one side, three steps to the other.

A few of the study participants, however, were engaged in some form of prison work, and those who were not working expressed a desire to be employed. As one participant put it:

This is what we’re asking for...maybe not everyone, but I certainly know some are. Really, people want to work to stay occupied, to make compensation to the victims.

Indeed, most interviewees who were engaged in some form of employment viewed the opportunity positively, not only as a source of income but as an opportunity to engage in meaningful activities. There were some, however, who had been recently transferred to a new correctional facility with no possibilities for employment for individuals serving life sentences. One of the participants noted:

And here too, when you ask about job opportunities, we are told that the essential conditions for it are not in place. So, why do they keep us here if the necessary conditions for our rehabilitation are not in place? All the officers here know that these conditions are lacking and really do not exist.

A further criticism of the new release system was raised by individuals in the study who had already served 20 years or more. They were particularly concerned that they might not meet the criteria for commutation or release because they were unaware of these criteria when they were originally sentenced. Interviewees pointed out that before the legislative changes, people serving life sentences did not anticipate being released and consequently lacked motivation to behave or comply with prison rules, resulting in a history of disciplinary infractions. It was believed by these participants that past violations posed a significant barrier to commuting their sentence. For example, one participant argued that if such regulations had been in place earlier, he would not have declined to participate in unpaid work, thus avoiding a history of negative behaviour while serving his sentence. As he put it:

It is very unfortunate that, for example, I have 13 of those penalties for not going to unpaid work. Well, for sure, I would have gone! If this law had existed earlier, it would have been 100% guarantee that I really would have done it. ... [I]t seems to me that I’ll die here anyway.

Another respondent mentioned that when the court considered commuting his sentence, it took into account offences he had committed 10 or more years ago, hindering his release. As such, participants in the study emphasised the need to take steps towards meeting the court’s criteria. However, it remained unclear how long this process would take, and the extent to which their release or commutation would be delayed due to past infractions. This was perceived as unjust and disadvantageous to

many in the group compared to those individuals recently sentenced, who expected to have the opportunity be able to fulfil the criteria from the beginning of their sentence.

These observations from study participants were corroborated by the analysis of court decisions. In each ruling, the courts assessed the behaviour of the individual during their life sentence, including any infractions they had committed. In some cases, the courts justified their decisions not to commute sentences based, in part, on infractions committed many years earlier. For instance, in one case, the Kaunas District Court justified its decision not to commute the sentence by noting that the person did not demonstrate exemplary behaviour, having committed infractions during the first seven years of their sentence. The court also highlighted that the individual's behaviour began to improve significantly only in 2011 (13 years prior) when he started receiving commendations for good conduct. Notably, despite committing six infractions (the most recent, 13 years ago) the person had received 32 commendations from prison staff.⁸⁸ This indicates that the court placed considerably more weight on the few infractions committed long ago than on the numerous instances of positive behaviour that had been observed subsequently. In other cases, courts noted that life-sentenced individuals began to exhibit positive behaviour only after a number of years had been served. However, previous research suggests that the adaptation period for individuals sentenced to life imprisonment is particularly challenging. Life-sentenced individuals often experience shock, anger, and despair due to the sudden and profound disruption of their self-perception, social connections, and future aspirations. During this initial phase, they may exhibit acute emotional reactions, including emotional violence, substance abuse, and other negative behaviour.⁸⁹ Over time, however, research has shown that individuals sentenced to life tend to adapt to their situation, find purpose and meaning,⁹⁰ and adhere to internal regulations.⁹¹ Therefore, infractions committed during the early years of imprisonment should not outweigh the individual's subsequent long-term efforts and positive behaviour.

In one case, however, the Lithuanian Court of Appeal took a different approach from previous court assessments by noting that all significant infractions committed by the individual occurred before 2011. Between 2012 and 2016, only two minor infractions were committed. The court concluded that, "...this means that for a fairly long period, the convicted person adhered to the established rules of conduct, demonstrating a positive attitude towards compliance with the established and acceptable rules of behaviour".⁹² This precedent, however, has had little impact on judicial practice. Analysis of the rulings revealed that courts continued to place significant emphasis on earlier infractions, without accounting for the possibility that such misconduct may have occurred when the individual had no realistic hope of release. Further, in evaluating behaviour and efforts, courts often overlooked the restrictive conditions under which resocialization was pursued and failed to consider whether the individual's right to resocialization was upheld in line with ECtHR standards.

⁸⁸ Kaunas District Court, 2024, No. T-102-923/2024.

⁸⁹ Ben Crewe, Susie Hulley and Serena Wright, *supra* note 7.

⁹⁰ Ben Crewe, Susie Hulley and Serena Wright, "Swimming with the Tide: Adapting to Long-Term Imprisonment", *Justice Quarterly* 34, 3 (2017): 517–41.

⁹¹ Steven Herbert, *Too Easy to Keep: Life-Sentenced Prisoners and the Future of Mass Incarceration* (Oakland, CA: University of California Press, Herbert, 2019).

⁹² Lithuanian Court of Appeal, 2019, No. 1S-252-870/2019.

Finally, it is well known that individuals released after serving a life sentence or lengthy prison term, face significant obstacles after release.⁹³ Participants in the study expressed concern that, after serving 30 years, they might be ill-prepared for life outside prison, particularly after enduring stringent and isolating prison regimes. One participant observed that life beyond prison can change dramatically over time: "So, altogether it's 30 years. ... When you're released, you're not ready for that life outside". Another remarked: "So what will happen in 20 years? When we'll be released, the cars will be flying instead of driving!" Although legal reforms have introduced the prospect of rehabilitation and hope of release, the experience of long-term imprisonment left many feeling unprepared for life after imprisonment and reintegration into society.

Equally, the impact of prisonisation or institutionalisation was also identified in court decisions on sentence commutation. Courts based their reasoning not only on assessments of an individual's risk to society but also on perceived (un)preparedness for release. In this context, evaluations frequently considered housing and employment prospects. However, the relevance of such factors is questionable, given that these decisions concern sentence commutation rather than immediate release from life imprisonment. Even after commutation, individuals will remain in prison for an extended period – ranging from five to 10 years – during which time conditions relevant to reintegration, such as housing and employment, may substantially change. In addition, in one-third of the cases analysed (12 out of 45), courts partially based their refusal to grant commutation on the length of the remaining sentence, implying that the time already served was considered insufficient to meet the objectives of punishment. This judicial approach echoes concerns raised in interviews about the imposition of excessively long sentences and the associated fear of dying in prison.

CONCLUDING REMARKS

This article aimed to examine the legal and practical developments in the imposition and implementation of life imprisonment following the reforms enacted in response to the ECtHR decision in *Matijošaitis*, which found Lithuania in violation of Article 3 of the ECHR. The main objective was to assess whether these reforms have provided individuals sentenced to life imprisonment with a realistic, institutional hope of release.

There can be little doubt that significant changes were made to the Criminal Code of the Republic of Lithuania in 2019, introducing a new release system for individuals serving life sentences. In response to the ECtHR's judgment in *Matijošaitis*, the authorities established a two-tier release mechanism that: (i) allows individuals serving life sentences to request a court review of their sentences after serving 20 years; and, (ii) permits the conversion of a life sentence into a fixed-term sentence of five to 10 years if certain requirements are met. Furthermore, the government has recognised through new legislation the need to rehabilitate and resocialise individuals serving life sentences, preparing them for potential release. The newly implemented staggered release mechanism received strong support from the ECtHR's assessment of *Dardanskis v. Lithuania* in 2019. A panel of seven judges concluded that the 20-year period after which life-sentenced individuals can request a review of their status was acceptable, the length of the commuted custodial sentence replacing life imprisonment was reasonable,

⁹³ See, for example, Catherine Appleton, *Life after life imprisonment* (Oxford: Oxford University Press, 2010); Marieke Liem, *After Life Imprisonment: Reentry in the Era of Mass Incarceration* (NY: New York University Press, 2016).

and that during the commuted sentence, (former) life-sentenced individuals are eligible for parole. Additionally, they found that sufficient procedural safeguards governed the new release system, including judicial oversight, legal representation for applicants, and fully reasoned decisions subject to appeal. Individuals serving life sentences can participate in the proceedings to review their sentences, and the criteria set forth in Lithuanian law were deemed objective enough “to allow an effective assessment of whether the person has reformed so as to deserve commutation”.⁹⁴ The Lithuanian life sentence system has thus incorporated, at least in law, a human rights-based approach, allowing life-sentenced individuals to work towards release and preserving their right to hope for eventual release. Since the introduction of this mechanism into Lithuanian legislation, 18 individuals serving life sentences have had their sentences commuted, and one person has been released on parole. As such, European human rights standards can be seen to be at work in a post-Soviet context.

Yet, although the new legal framework aligns with international human rights standards, analysis of commutation decisions and interviews with eight life-sentenced individuals reveals several significant concerns regarding the implementation of a two-tier release mechanism, and its capacity to provide a genuine, institutional hope of release. These include the extent to which individuals serving life sentences can be re-sentenced for the same crime, and whether an individual’s positive conduct and progress in prison will be overshadowed by the circumstances of the original offence. Additionally, risk assessments and disciplinary infractions were often interpreted inconsistently across commutation decisions – carrying substantial weight in negative rulings but downplayed when sentences were commuted. Furthermore, the findings suggest that life-sentenced individuals in Lithuania encounter numerous obstacles that impede their access to rehabilitation and preparation for release, rendering the prospect of release unattainable for some. Despite changes in legislation, they continue to be subject to severe isolation and restrictive conditions, particularly during the first decade of their imprisonment. Interviewees highlighted the bleakness of a strict regime, expressing scepticism and despair that many eligible individuals may not survive long enough to benefit from commutation or release. Harsh conditions and limited opportunities for meaningful engagement leave many ill-prepared for reintegration into society following prolonged periods of incarceration, and participants expressed concern about their readiness to reintegrate into society after spending many years isolated in prison. Such a restrictive approach to life imprisonment is antithetical to the ECtHR’s emphasis on establishing a rehabilitative regime and clearly contravenes the Council of Europe’s Committee of Minister’s recommended principles for treating and managing life-sentenced individuals, including sentence planning, normalised regimes, purposeful activities, and progressive prison regimes for the purposes of transition to society.⁹⁵

The findings indicate that certain legacies of the Soviet Union era remain deeply embedded in Lithuania’s life sentence system. Although recent legislative changes provide a new framework that incorporates elements of institutional hope and reflects the influence of European norms, the practical implementation of this framework continues to fall short of achieving its rehabilitative and human rights objectives. To truly align with the principles articulated by the ECtHR, further reform is needed. This should include, for example, revising commutation criteria to prioritise rehabilitation progress

⁹⁴ *Dardanskis v. Lithuania*, *supra* note 40, para 29.

⁹⁵ See Council of Europe, *Situation of life-sentenced prisoners* (Strasbourg: Council of Europe, 2016).

over past offences, adapting the criteria for persons who have already served 20 years or more who were not required to meet the criteria at the beginning of their sentence, enhancing prison regimes and conditions to support meaningful rehabilitation from the outset of the sentence, and expanding opportunities for employment, education, and maintaining social ties and contact with the outside world.

This article represents an initial effort to explore the impact of the significant changes to Lithuania's life sentence system. Several specific issues identified during the research merit further investigation to strengthen the case for reform. These include the psychological impact of life imprisonment and the role of transformative hope (and despair) in serving life sentences, the process of resocialization and preparation for release, the impact of criminal subcultures, institutionalization and other harmful effects of life imprisonment, as well as the trajectories of those individuals who do experience release from prison. Comparative studies with other former Soviet Union life sentence systems and the impact of the ECtHR's jurisprudence could offer additional insights for reform. While this article offers an early exploration of both the nuances of legal regulation and the lived experiences of life imprisonment, it clearly highlights the critical importance of aligning human rights law and national legislation with the lived reality and experience of life imprisonment.

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