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**LIFE IMPRISONMENT – POSSIBLE VIOLATION OF ARTICLE
3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

Bachelor's thesis

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ABSTRACT

The purpose of this thesis is to explore the concept of life imprisonment in Europe and to examine whether it has the potential to violate the provisions concerning “inhuman and degrading treatment or punishment” under Article 3 of the European Convention on Human Rights (ECHR).¹ To specify, the research question is whether life imprisonment without the possibility for a release is regarded as inhuman or degrading under the provisions of Article 3. In order to answer this question, author aims to analyze life imprisonment and its characteristics which would have the potential to violate the provisions of Article 3 and what are the possible circumstances for the violation.² In addition, author will make observations on the justifications for life imprisonment and the reasons behind it by making the emphasis on the public safety and rights of other individuals.

When it comes to research methods, author will take a qualitative approach by using primary and secondary sources. Primary sources used are European legislation and case law of the European Court of Human Rights (ECtHR). Secondary sources include commentary and restatement written by law scholars which can be used to explain and interpret the primary sources. Author will analyze and make observations based on these subjects of research.

The hypothesis of this research is that there could be cases where life imprisonment without the possibility for release is regarded to have inhuman or degrading nature and is seen as incompatible with Article 3 of the ECHR. Still, depending on the case, the public safety can be considered as a legal justification for keeping the offender in prison for life.³

Keywords: human rights, life imprisonment, inhuman, degrading

¹ Council of Europe, European Convention on Human Rights, 1953, Article 3

² Griffin, D; O'Donnell I. "The life sentence and parole." *The British Journal of Criminology* 52.3, 2012, p 611-629.

³ van Kempen, P. H. "Four Concepts of Security—A Human Rights Perspective." *Human Rights Law Review* 13.1, 2013, p 1-23.

INTRODUCTION

There are always two sides in a coin. Life imprisonment is no exception to this. Ever since death penalty has been prohibited within Europe, life imprisonment and its plausible inhumane and degrading nature is increasingly becoming a commonly disputed topic.⁴ From the eyes of the author, there truly are two sides to this matter. One side is speaking for offenders right not be subjected to inhuman or degrading treatment or punishment under Article 3 of the ECHR. On the other hand, the opposite side recognizes the right of the public to be protected by the state from potential danger threat by an offender. This can be seen as a battle between group rights and individual's rights.⁵

The purpose of this thesis is to examine whether life imprisonment can violate against Article 3 of the ECHR, and if that is the case, what are the circumstances for it. To be more precise, the research question is whether life imprisonment without the possibility for release is regarded as inhuman or degrading under the provisions of Article 3. In the first chapter, author will provide an overview of the concept of the prohibition of inhuman or degrading treatment and of its extent. In addition, author explores the relationship between human rights and offender. In the second chapter, author investigates the reasons behind the conduct of life imprisonment and the aim is to determine the legitimate justifications for it. The focus is made on the public safety and the effectiveness of the punishment system. Third chapter explores the actual possibilities concerning the violation of Article 3 by imposing life imprisonment. According to research question, author makes special focus on life imprisonment without the possibility for release. Analysis is made from different aspects in order to denote the most relevant factors when it comes to life imprisonment and its potential inhuman or degrading nature. The aim is to find those inhuman or degrading elements through the analysis of law scholars' and case law of the ECtHR with taking into account the European legislation and different regimes of life imprisonment within Europe.

When it comes to research methods, the author will take a qualitative approach. Primary sources used includes European jurisdictions, international conventions and case law of the ECtHR. Secondary sources contain commentary and analysis written by law scholars which can be used when explaining and interpreting the primary sources. Yet, it can be observed that there can be

⁴ Griffin, D; O'Donnell I. (2012) *supra nota* 2, p 611-629.

⁵ Snare, A. "Beware of Punishment, On the Utility and Futility of Criminal Law", *The Skandinavian Research Council for Criminology*, 14, 1995, p 51-218.

certain gaps in literature when it comes to degrading and inhuman treatment. It can be observed that the scope and the elements of Article 3 is not yet fully analyzed or explored.⁶

Throughout this thesis, author will use practical and empirical case study research. National law is in charge when it comes to punishment procedures and the ECHR has only secondary power over it.⁷ Therefore, international case law concerning inhuman and degrading punishment can be seen not that extensive.⁸ Still, it is able to give us an insight on life imprisonment and the factors which may or may not indicate to inhuman or degrading treatment or punishment.

The hypothesis of this thesis is that life imprisonment without the possibility for release could raise an issue and might have the characteristics of being inhuman or degrading. It is essential to investigate relevant factors which makes the difference to this matter and what are the common rules for life imprisonment in general. Life imprisonment as a concept can be regarded as very complex since its execution varies among states. It has many moving parts and therefore, it can be difficult to determine its inhuman and degrading nature without looking at this issue individually case by case.⁹

⁶ Webster, E. Exploring the prohibition of degrading treatment within article 3 of the European Convention on Human Rights, Ph. D, University of Edinburgh, 2009, 127-130.

⁷ Benvenisti, E. "Margin of appreciation, consensus, and universal standards." *NYUJ Int'l L. & Pol.*, 31, 1998, p 843.

⁸ Bernaz, N. "Life imprisonment and the prohibition of inhuman punishments in international human rights law: Moving the agenda forward." *Human Rights Quarterly* 35.2, 2013, p 470-497.

⁹ Ibid.

1. ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (ECHR) came into force in 3 November 1953. It is enforced by the European Commission of Human Rights, the European Court of Human Rights (ECtHR) and the Council of Ministers. The aim is to guarantee every individual the rights and freedoms listed in the Convention¹⁰ and to put its efforts run through both national and international organizations.¹¹ In addition, the European human rights system provides the opportunity for an individual to bring claims before the ECtHR if there occurs a possibility of a violation under the ECHR.¹²

1.1 Inhuman or degrading treatment or punishment

According to Article 3 of the ECHR, “no one shall be subjected to torture or to inhuman or to inhuman or degrading treatment or punishment”¹³. Usually, Article 3 it is seen as a provision for prohibition of torture. But, it is essential to realize that it also the prohibition of other forms of ill-treatment are included. Article 3 goes beyond torture and prohibits also inhuman and degrading treatment or punishment, which have not as severe nature compared to torture. Still, they are equally important subjects of the Article 3 and acquire the same level of prohibition.¹⁴

Each member state is obligated to prevent torture and inhuman or degrading treatment or punishment under its jurisdiction.¹⁵ Article 3 imposes both negative and positive obligations for states. Positive obligations secure the protection of an individuals from the state unjust power and negative ones require the state to act reasonably in when securing the rights in its jurisdiction. Human rights can be seen to be established primarily to protect individual from the state`s power.¹⁶

¹⁰ Padfield, N. “Beyond the Tariff: Human rights and the release of life sentence prisoners” *Willan Publishing*, 2002, p 30-34.

¹¹ Ward, T. "Human rights and dignity in offender rehabilitation." *Journal of forensic psychology practice* 11.2-3, 2011, p 103-123.

¹² Bassiouni, M. C. "International Recognition of Victims' Rights." *Human Rights Law Review* 6.2, 2006, p 203-279.

¹³ Council of Europe, *supra nota* 1, Article 3

¹⁴ Bernaz, N. (2013) *supra nota* 8, p 470-497.

¹⁵ United Nations Committee against Torture, New York, 1985, Article 16, §1

¹⁶ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

In relation to life imprisonment, author will explore especially the concept of inhuman and degrading treatment or punishment which has been under the lens of law scholars. Normally, the meaning of “inhuman or degrading treatment or punishment” can be put together without making any distinction between treatment and punishment.¹⁷ Under Article 3, the definition of “inhuman or degrading treatment or punishment” is not as extensive as in torture.¹⁸ Its level of cruelty and severity is not considered to be as serious as in torture. Usually, the difference is calculated from the physical or/and mental harm.¹⁹

The concept of “inhuman” can be characterized to be intentional, relatively long- lasting and able to cause both physical, as well as mental sufferings.²⁰ The term “degrading” is defined to be humiliating for the victim and against his human dignity. In addition, it can create levels of fear or feelings of inferior.²¹ It can be committed either by the national authority or an individual with the same competence.²²

When defining inhuman or degrading treatment or punishment, case-by-case approach is useful. Definition can be seen to be relative to the nature, purpose and severity of an act or omission and needs accurate considerations when deciding its applicability under Article 3 in each individual case.²³ According to case law, the ECHR has ruled that ill-treatment should reach to a certain minimum level of severity²⁴ compared to the circumstances in order to be regarded as inhuman or degrading under Article 3.²⁵ In its considerations the ECtHR takes into account the duration, victim`s health, sex, age and the impact of it on the physical/mental stage of victim.²⁶

¹⁷ Bernaz, N. (2013) *supra nota* 8, p 470-497.

¹⁸ Huntington, E. "Torture and Cruel, Inhuman or Degrading Treatment: A Definitional Approach." *UC Davis J. Int'l L. & Pol'y* 21, 2014, p 279.

¹⁹ Arai-Yokoi, Y. "Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR." *Netherlands Quarterly of Human Rights* 21.3, 2003, p 385-421.

²⁰ Kudla vs Poland, no. 30210/96, § 92, ECHR 2000

²¹ *Pretty v. United Kingdom*, no. 2346/02, § 52, ECHR 2002, *Price vs United Kingdom*, no. 33394/96, § 24-30, ECHR 2001

²² United Nations Committee against Torture (1985) *supra nota* 15

²³ Huntington, E. (2014) *supra nota* 18, p 279.

²⁴ Palmer, S. "A wrong turning: Article 3 ECHR and proportionality." *The Cambridge Law Journal* 65.2, 2006, p 438-452.

²⁵ Arai-Yokoi, Y. (2003) *supra nota* 19, p 385-421.

²⁶ Sadiqova, H. "Defining threshold between torture and inhuman or degrading treatment." *Baku St. UL Rev.* 1, 2015, p 44.

The ECtHR has expressed that if a situation is seen as “difficult” or “unpleasant”, it is not counted as inhuman or degrading. Accordingly, it must include “humiliating” and “culpable” nature.²⁷ Only then, the matter shows a sufficient severity.²⁸ The fact that there are no common standards for minimum level of severity for all cases, makes it more complicated. Therefore, national authorities must consider each case individually and take into account its specific features.²⁹

Some argue that the definition of inhuman and degrading treatment or punishment should be made more precise in order to set some boundaries for punishments.³⁰ This is because the meaning of it is not determined by any international treaty.³¹ Therefore, interpretation of Article 3 can become problematic without any clear or explicit descriptions of the terms used in its provisions³², since the terms “inhuman” and “degrading” are only seen as descriptive expressions.³³ Also, what is now considered to be degrading or inhuman, can later be regarded to be torture as the time goes by. These definitions have a changing nature as the society develops.³⁴

1.2 Offender and Human Rights

Some might say that individual’s personality is the one to separate us from other human beings. Yet, it can have a remarkable impact on the way we see someone’s entitlement to human rights.³⁵ Criminal law can be divided into two categories: offenders and rest of the society. This separation is able to make people to have the idea that offenders who have disrespected the law might have different human natures and personality compared to others. Accordingly, this would indicate different human rights for offenders. However, it can be observed that this way of thinking is based on morality instead of legality.³⁶

²⁷ *Guzzardi v. Italy*, no. 40020/03, § 107, ECHR 1980

²⁸ *Yankov v. Bulgaria*, no. 1509/05, § 120, ECHR 2010

²⁹ Webster, E. (2009) *supra nota* 6, p 127-130.

³⁰ Bernaz, N. (2013) *supra nota* 8, p 470-497.

³¹ Sadiqova, H. (2015) *supra nota* 26, p 44.

³² Bernaz, N. (2013) *supra nota* 8, p 470-497.

³³ Sadiqova, H. (2015) *supra nota* 26, p 44.

³⁴ Arai-Yokoi, Y. (2003) *supra nota* 19, p 385-421.

³⁵ Freeman, M. "The problem of secularism in human rights theory." *Human Rights Quarterly* 26.2, 2004, p 375-400.

³⁶ Galliher, J. F. "Criminology: Human rights, criminal law, and crime". *Englewood Cliffs: Prentice Hall* 12.51, 1989, p 344-352.

Every individual is a human being and therefore entitled to human rights.³⁷ The ECHR is established to protect fundamental rights of all people.³⁸ It does not exclude people who have committed a crime. Offenders can be considered to be in a tough situation since it is likely that legal authorities do not necessarily have the eager to protect their rights. It can be difficult for authorities to favor offenders and consider them as equal to others who have acted accordingly to law.³⁹

From one point of view, it is considered to be essential to accept that offenders acquire the same status as the rest of the society. Yet, it does not mean that unjustifiable harm caused by the offender is undermined or that the recognition of offender`s equal status would reduce the risk of danger to others. Instead, it enables us to realize offender`s position and interests when it comes to taking away his liberty by imprisonment. To conclude this, it can be considered that when defining the form of punishment, the equal position of an offender is to be taken into account.⁴⁰ It can be argued that every individual should have the protection for his human rights regardless to what group of people he belongs.⁴¹ When it comes to the social aspect, there is no criteria set by the ECHR concerning justice between different social groups. Everyone is to be treated equally and the legal authorities are expected to act as natural bodies.⁴²

³⁷ Freeman, M. (2004) *supra nota* 35, p 375-400.

³⁸ Benvenuti, E. (1998) *supra nota* 7, p 843.

³⁹ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁴⁰ Ward, T. (2011) *supra nota* 11, p 103-123.

⁴¹ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁴² Snare, A. (1995) *supra nota* 5, p 51-218.

2. PUBLIC SAFETY AS A JUSTIFICATION FOR LIMITING HUMAN RIGHTS

Usually, the ECtHR is seen to be evaluating the necessity and fairness of state's interference with human rights in relation to states legal aim which it is trying to achieve. When it comes to most human rights, it can be said that national security and public safety are considered to be lawful reasons to limit them. This can be justified with fundamental rights and freedoms of others.⁴³

The possible benefits of life imprisonment can be considered to be its usefulness in the matter of retribution, deterrence and its plausible preventive impact on public safety. It can be said that in order to retain the key aspects of the relationship between the state and an individual, there is no need to overstate the power of human rights. In this part of the thesis, author will concentrate on the arguments in favor of life imprisonment, which is commonly justified with the idea that offender has forfeited his rights when breaking the law.⁴⁴ The rights given to citizens can be seen as contractual terms and it can be that the person violating against shared rules and other's rights, loses some or all of his own rights and freedoms as well. Some argues that by doing this, the person puts himself outside the scope of states protection.⁴⁵ Everyone is expected to know their legitimate obligations towards the state.⁴⁶

When it comes to national criminal law, the ECtHR provides only the framework for their juridical activities. It allows the states to decide themselves on the proper limits to human rights protection.⁴⁷ The issue in this doctrine might the vague criteria for legitimate justifications when it comes to states interference with human rights in order to guarantee the public safety and values of the society.⁴⁸

⁴³ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

⁴⁴ Rosebury, B. "The Theory of the Offender's Forfeited Right." *Criminal Justice Ethics* 34.3, 2015, p 259-283.

⁴⁵ Duff, R. A. "Punishment, Communication, and Community", *Oxford University Press* 12.52, 2003, p 38-42.

⁴⁶ Ward, T. (2011) *supra nota* 11, p 103-123.

⁴⁷ Padfield, N. (2002) *supra nota* 10, p 30-34.

⁴⁸ Brauch, J. A. "The margin of appreciation and the jurisprudence of the European Court of Human Rights: threat to the rule of law". *Colum. J. Eur. L.*, 11, 2004, p 113.

2.1 Meaning of life imprisonment

Life imprisonment is imposed by national Court for those who have committed the most serious crimes. Offender has broken the law which leads to a punishment imposed by the legal authority.⁴⁹ It can be easily assumed that the person is kept in prison for the rest of his life. However, in most times, this is not the case. It is proven that the order for life imprisonment does not necessarily mean whole life in practice.

Life imprisonment without a possibility for release can be considered the most severe punishment in Europe.⁵⁰ Countries have imposed different rules concerning life imprisonment. According to the Council of Europe, many European countries have included life imprisonment to their jurisdiction as the most severe punishment. Still, few countries like Croatia, Norway, Slovenia, Spain and Portugal, have no laws concerning this punishment form.⁵¹ Some countries do not impose this kind of life imprisonment, which means that either it is not prescribed in the jurisdiction, or it prohibits this form of a punishment.⁵² Yet, it is relevant to be reminded that only a few life prisoners are actually spending their whole life in prison.⁵³ Rather, in most European countries, life imprisonment lasts from 12 to 25 years.⁵⁴

The amount of life imprisonment sentenced depends on the principles of different national jurisdictions. Common law countries, especially United States and United Kingdom, differ from European civil law countries. For instance, in 2007 there were four times more offenders serving life imprisonment in England and Wales, than in Finland.⁵⁵ It is relevant to mention that in Europe it is prohibited to impose life imprisonment for a person under 18. Along with this prohibition, the discussion has moved to adults.⁵⁶ For now, a life imprisonment as its own is not prohibited for an adult offender.⁵⁷ But, it is still unclear which are the factors that would make life imprisonment to

⁴⁹ Duff, R. A. (2003) *supra nota* 45, p 38-42.

⁵⁰ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁵¹ Appleton, C; Grøver, B. "The pros and cons of life without parole." *The British Journal of Criminology* 47.4, 2007, p 597-615.

⁵² Nivette vs France, no. 44190/98, ECHR 2001

⁵³ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

⁵⁴ van Zyl Smit, D; Weatherby P; Creighton, S. "Whole life sentences and the tide of European human rights jurisprudence: what is to be done?" *Human Rights Law Review* 14.1, 2014, p 59-84.

⁵⁵ Griffin, D; O'Donnell I. (2012) *supra nota* 4, p 611-629.

⁵⁶ Nivette v France, (2001) *supra nota* 52

⁵⁷ Mavronicola, N. "Inhuman and degrading punishment, dignity, and the limits of retribution." *The Modern Law Review* 77.2, 2014, p 292-307.

be considered as inhuman or degrading under Article 3, since it can be observed that life imprisonment format and its execution varies among jurisdictions.⁵⁸

2.2 Risks vs Rights

As the cultural development goes on, people become more civilized. We are living in a world where one might become even more aware of the risks around him. Risk can be defined as a possibility of a harmful event. It can have an impact on societies way of thinking, as well as to criminal law. Recognition of the risks has regarded to have an influence on legal decisions also. Therefore, it can be said that national criminal law conduct reflects the values of its current society.⁵⁹

Life imprisonment can be considered to protect the public from possible danger threat caused by an offender. Supporters of life imprisonment are criticizing the liability of the review procedure. They consider it to be almost impossible for legal authority to predict unerringly the reoffending probability of a person. Due to a possible error in this matter, the public can end up under a risk of dangerous and criminal behavior. It is argued that recognition of offender`s suitability for release must be considered carefully and with respect towards public safety. If the risk is regarded to be serious, it is worth rethinking whether the release in that case would actually be necessary and justified.⁶⁰

Some human rights scholars state that the focus should be made on the combination of human rights and the risks within. In criminal law, the relationship between personal and national security can be seen as problematic. Recognition of the risk can be considered to be essential part of human rights. Technically, this would mean that it is acceptable for legal authority to limit certain individual rights in order to protect the rights and interests of others.⁶¹ Offender should be punished in accordance with the seriousness of an actual offence. In case of dangerous offender, a lengthy punishment can be considered necessary when protecting the public from possible risk.⁶² Example of this can be found in *Murray v Netherlands* case, where the Court held that applicant who was

⁵⁸ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁵⁹ Snare, A. (1995) *supra nota* 5, p 51-218.

⁶⁰ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

⁶¹ Whitty, N. "Rights as risk: managing human rights and risk in the UK prison sector." *Centre for Analysis of Risk and Regulation, London School of Economics and Political Science*, 2010.

⁶² Padfield, N. (2002) *supra nota* 10, p 30-34.

serving life imprisonment is not to be released due to his dangerousness towards others. It would impose too of a notable risk. Due to this judgement it can be observed that if the danger towards the public is seen to be serious, it can be a legal justification for keeping the offender in prison in order to prevent him from reoffending. This judgement highlights the importance of recognizing that public safety can be regarded to be the priority.⁶³

The support towards life imprisonment can be seen as deriving from its reliability as a punishment form. It ensures that serious offender in incapable of making any more harm.⁶⁴ If offender is kept in prison for the rest of his life because he imposes a safety threat to others, it can be not regarded as inhuman or degrading under the Article 3.⁶⁵ Still, lack of precise definition for a sufficient risk can observed to be an issue. Who is determining it?

According to one ideology, it can be that the concept of public security as justification to limit human rights is not regarded to be developed enough. There should exist a common conduct when limiting human rights for the sake of public safety. Instead, it is seemingly considered to be unclear. States have the responsibility to assure safety for its citizens and this includes the protection of the rights listed in the ECHR. The human rights obligations of the states are regarded to entitle citizens to acquire themselves safety against other private parties⁶⁶, and in this case, against serious offender. One argument says that the public needs to be informed about punishment conducts and they need to know that the authority is promoting their safety in its decisions. Still, it must be done within the scope of humanity.⁶⁷

Demanding both public safety and humanity can become an issue and usually it is observed that one of them is always undermined. Group interests and individual`s human rights are closely connected to each other but there is no clear approach to a proper balance between them. It can be said that it is individual`s security against the state and then there is states obligation to provide security for its citizens against other private parties. These both concepts include human rights, but it can be said that the security against the state actions is the clearest concept and can be seen to be closest with the core values of the ECHR and human rights. This can complicate the

⁶³ Murray v the Netherlands, no. 10511/10, ECHR 2016

⁶⁴ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

⁶⁵ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

⁶⁶ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

⁶⁷ Wolff, M. A. "Evidence-based judicial discretion: Promoting public safety through state sentencing reform." *NYUL Rev.* 83, 2008, p 1389.

promotion of public safety, since human rights can be considered to focus more on individual's rights and in case of life imprisonment, offender's rights.⁶⁸

2.3 Recidivism

Recidivism, more commonly known as reoffending, is considered to be universally noticed and a disputed topic. There is said to be three different theories for recidivism. First, there is a common idea that once you have committed a crime, you will do it again. Second theory is a situation where offender has committed another crime and this latter punishment is to be more severe in order to prevent offender from repeating his unlawful actions. Lastly, there are cases where offender shows a special kind of "evil" mind set and therefore is seen as liable for committing more offences in the future.⁶⁹ Preventing offenders from reoffending can be seen as one of the most important aims of the punishment system. Conclusion from this could be that in some cases life imprisonment would be the most effective way to prevent further harm.⁷⁰

Research has shown that it is more likely to a person to reoffend after committing one crime. It can be observed that there is a bigger recidivism probability linked with offenders who has made more serious offences in the past comparing to minor ones.⁷¹ Accurate recognition of high-risk reoffenders can be essential tool when promoting a safer community.⁷² Due to this statement, it can be considered that keeping a dangerous offender in prison would be the right thing to do for the public safety and it would not to be seen as inhuman or degrading. Judges often states that they believe that offender poses a danger threat towards the public and because of that they are it by imposing imprisonment. Judges predictions for the future plays essential role in sentencing decisions. But still, it can be said that it would not be clever to rely only on the relevant recidivism rates when making the decisions. The personal history of the offender is also to be taken into consideration. According to this, it can be said that life imprisonment must be carefully considered

⁶⁸ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

⁶⁹ Lahti, R; Nuotio, K; Minkkinen, P. "Criminal Policy and Sentencing in Transition", *Department of Criminal Law and Juridical Procedure*, B:3, 1992, p 17-24.

⁷⁰ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

⁷¹ Loucks, N. "Recidivism amongst serious violent and sexual offenders". *Scottish Executive Social Research*, 2002, 10-25.

⁷² Lewis, K; Mark E. Oliver, and Stephen CP Wong. "The Violence Risk Scale: Predictive validity and linking changes in risk with violent recidivism in a sample of high-risk offenders with psychopathic traits." *Assessment* 20.2, 2013, p 150-164.

in relation to facts and circumstances and offenders personal state in order it to be legally justified.⁷³

2.4 Retribution

One of the advantages of life imprisonment can be considered to be its retributive power.⁷⁴ One might say that offender deserves to be punished for his offence. The act of crime concerns not only the victim, but also the whole society and therefore there must be a consequence for that. Even though the offender would stay in prison forever due to life imprisonment, it can be noted that at least the life is not taken from him, like in death penalty,⁷⁵ which is still an option in some states in the United States.⁷⁶

Retribution can be understood as a justification for the punishment by relying on the fact that offender deserved it by committing a wrongful act. The idea behind this can be considered to be morality. Instead of looking for legal justifications, it concentrates on the question what is right and what is wrong. It would be seen as morally right to punish people who does wrong.⁷⁷ On the other hand, retribution can be seen as negative concept. On might say that the only justification which it provides is that offender deserves it, and that it is seen as inappropriate and as some kind of “payback” form the states authority. Because of the fact that retribution can be seen to have a nuance of a moral matter, it can be seen as weak justification for life imprisonment. Morality derives from feeling and that way might not be relevant in serious cases and instead, the case is evaluated by legal matters and norms.⁷⁸

⁷³ Wolff, M. A. (2008) *supra nota* 67, p 1389.

⁷⁴ Strang, H., & Sherman, L. W. “Repairing the harm: Victims and restorative justice.” *Utah L. Rev.*, 15, 2003, 15-21

⁷⁵ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

⁷⁶ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁷⁷ Christopher, R. L. "Deterring Retributivism: The Injustice of Just Punishment." *Nw. UL Rev.* 96, 2001, p 843.

⁷⁸ D'elia, C. "Less than we might: meditations on life in prison without parole." *Federal Sentencing Reporter* 23.1, 2010, p 10-20.

2.5 Deterrence

Another possible claim which supports life imprisonment is deterrence, which can be seen to be connected to retribution. Theory of deterrence aims to prevent crime by imposing punishments that will have an effect on other individuals rather than the actual offender. It aims to make people to rethink of committing a crime and aims to make difference on the rational thinking of people. Severity of the punishment has a notable role when it comes to its effectiveness as a deterrence, and when it comes to life imprisonment, it can be seen as severe and that way effective.⁷⁹

Deterrence may be useful to prevent future reoffending. It can be divided into two functions: general deterrence and specific deterrence. General deterrence means that the punishment imposed by the Court prevents an offender from committing any more crimes. Specific deterrence implies that the punishment imposed to one individual will also keep others from committing a crime by realizing what are the consequences of unlawful acts.⁸⁰

Some argue that life imprisonment is essential part of the functionality of deterrence. It is seen as effective way to prevent those who has the potential of killing or committing other serious offences. On the other hand, one cannot be sure that deterrence has any weigh in one`s mind nor it makes the potential offender to consider or calculate the possible consequences of the offence.⁸¹ According to case law, the ECtHR has stated that life imprisonment can be legitimately justified with retribution and deterrence and would not violate Article 3 of the ECHR.⁸² According to this author can make observation that this case represents an idea that the legal authority has the power to make decisions which would be more beneficiary to the public rather than an individual.⁸³ Yet, the actions of the authorities shall not reach to a point where it can be regarded as inhuman or degrading.⁸⁴

⁷⁹ Nagin, D. S., Cullen, F. T., & Jonson, C. L. "Imprisonment and reoffending." *Crime and justice*, 38(1), 2009, 115-200.

⁸⁰ Christopher, R. L. (2001) *supra nota* 77, p 843.

⁸¹ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

⁸² Mavronicola, N. (2014) *supra nota* 57, p 292-307.

⁸³ *Nivette v France*, (2001) *supra nota* 52

⁸⁴ Huntington, E. (2014) *supra nota* 18, p 279.

3. LIFE IMPRISONMENT- A POSSIBLE VIOLATION OF ARTICLE 3

Prohibition of inhuman or degrading treatment or punishment can be considered to be international customary norm. It binds the states to act accordingly, unless there is a legitimate justification for not to do so.⁸⁵ The legitimacy of the punishment form relies not only on the recognition of national jurisdiction, but also on its compliance with the ECHR. In practice, the execution of life imprisonment varies among the European countries, which makes it likely to become problematic from the human rights perspective.⁸⁶

Since international standards for punishments has developed over time, the ECtHR has dealt with several cases concerning life imprisonment and its compatibility with human rights provisions.⁸⁷ Serious offences are nowadays a commonplace, which adds the pressure for authorities to give more severe punishments. Human rights ensure that punishment authorities do not overemphasize the effectiveness of the punishment system over human rights and human dignity. On the other hand, it can be said that in order to retain the key aspects of the relationship between the state and individuals, there is no need to overstate the power of human rights either.⁸⁸

Case law of the ECtHR provides fundamental principles which sets the guidelines for states interpretation concerning Article 3 under the ECHR. Still, there are some undefined issues regarding the notion of inhuman or degrading punishment.⁸⁹

3.1 Possibility for a release

Life imprisonment isolates offenders from the community and from their normal life. Some argue that it can be justified only if it does not last forever. In other words, after some time in prison, offender should be released back to the society since the offender is seen as reconciled and made

⁸⁵ Weissbrodt, D; Heilman C. "Defining torture and cruel, inhuman, and degrading treatment." *Law & Ineq.* 29, 2011, p 343.

⁸⁶ Nivette v France, (2001) *supra nota* 52

⁸⁷ Bernaz, N. (2013) *supra nota* 8, p 470-497.

⁸⁸ Snare, A. (1995) *supra nota* 5, p 51-218.

⁸⁹ Nivette v France, (2001) *supra nota* 52

himself ready to be released. These arguments can be used when claiming inhuman or degrading nature of life imprisonment in cases where there is no possibility for a release.⁹⁰

In case of life imprisonment, a potential issue could lie in the matter of the possibility for the offender to be released from imprisonment.⁹¹ According to the ECtHR, life imprisonment which does not provide any possibility for release must appear both *de jure* and *de facto* in order to be regarded as inhuman or degrading under Article 3.⁹² “*De facto*” means that life imprisonment without a possibility for release is regarded real for practical reasons and it is true in fact. On the other hand, “*de jure*” refers to this punishment which is in accordance with law, acquires only a formal status and does not guarantee the real actualization of no possibility for release.⁹³

The ECtHR provides that the violation of Article 3 can be present only if there is evidence that show both *de jure* and *de facto* life imprisonment without the possibility for release. For instance, in *Vinter and others v United Kingdom* case, the applicants were unable to prove the existence of these both, which indicates that life imprisonment was not inhuman or degrading. Thereof, the possibility for release was seen to be both formal and actualized.⁹⁴ A conclusion derived from this case might be that if there is actual proof that life imprisonment without the possibility for release is *de jure* and *de facto*, it can be seen as a violation of Article 3. Still, it could be relevant to ask whether this automatically leads to inhuman or degrading conduct or is there more conditions to be fulfilled in order it to be an actual violation of Article 3.⁹⁵

The judgement of the case *Kafkaris v Cyprus*, it was held that an actual release of an offender does not have to be certain. In order to be in accordance with the provisions for “inhuman and degrading treatment or punishment” under Article 3, there only needs to exist a “faint hope”. Derived from this, it is possible to observe that offender does not have to be released, just the possibility for it needs to exist.⁹⁶

⁹⁰ Duff, R. A. (2003) *supra nota* 45, p 38-42.

⁹¹ ECHR Reports 2008; 49 EHRR 35 at paras 97–98, 103 and 108.

⁹² Szydło, M. "Free Life after Life Imprisonment as a Human Right under the European Convention." *Cambridge.org*, 2013, p 501-512.

⁹³ Martin, E. A." A dictionary of law". *Oxford University Press*, 2009.

⁹⁴ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

⁹⁵ Tan, D. "Whole Life Orders in *Hutchinson v UK*: A Counter-Revolution, or Evolution to *Vinter*." *UK L. Student Rev.*, 5, 2017, 143.

⁹⁶ *Vinter and Others v UK*, no. 66069/09, § 17, at occurring opinion of Judge Mahoney, ECHR 2013

To clarify the matter of a possibility for release, it would be relevant to take into consideration the case *Garagin v Italy*. In this case, the applicant was imposed a life imprisonment instead of the initial imprisonment of twenty-eight or thirty years'. The ECtHR expressed that this life imprisonment was violating against Article 3. Even though it provided a sufficient possibility for release, the ECtHR stated that just because the national legal system imposed a life imprisonment, it was degrading and inhuman. The ECtHR simply stated that this punishment was not necessary enough to be compatible with Article 3. According to this, it can be concluded that in order of life imprisonment to be compatible with Article 3, it also needs to be necessary when concerning the facts and circumstances of the case. This can be even if life imprisonment would provide a possibility for release. This may lead to an idea that possibility for release does not automatically guarantee the lawfulness of the punishment in the eyes of the ECtHR.⁹⁷

In Europe, the common standards for life imprisonment without a possibility for release can be seen as problematic. This is because of the lack of demonstration by legal authorities. One might say that the ECtHR needs to clarify the acceptability of life imprisonment. *De facto* and *de jure* has an impact on whether life imprisonment is seen as a violation of Article 3 or not. Yet, the meanings of these expressions can be seen as unclear. One argument states that there is no such thing as life imprisonment which would not provide a possibility for release, which would mean that there is always at least a formal possibility for it. Instead, the focus should be made on the execution of *de jure* possibility for a release, which provides factual juridical review procedure for the offender in order to be released. Seemingly, the common idea in Europe is that there should be a review procedure available for offenders. Due to review procedure, offenders would have the chance to prove their eligibility to be released back into the society without posing any danger to others.⁹⁸

3.2 The need for a review procedure

Vinter and Others v United Kingdom case can be considered to be a turning point regarding inhuman or degrading treatment and punishment in case of life imprisonment. It was the first case where the ECtHR held that violation of Article 3 might arise when the further imprisonment cannot

⁹⁷ *Guzzardi v. Italy* (1980) *supra nota* 27

⁹⁸ Galliani, D. "The Reducible Life Imprisonment Standard from a Worldwide and European Perspective." *Global Jurist*, 16(1), 2016, p 81-99.

be justified anymore. Violation may occur when there is no legitimate reason to keep the offender in prison. The ECtHR held that Article 3 is to be interpreted as requiring a possibility for release which is done with a review procedure. It allows review authorities to consider the release of the offender. Considerations are to be based on offender's positive progress. This would indicate that if there is seen positive development, it would become unjustifiable to continue his imprisonment. According to this, it might be that the ECtHR does not consider life imprisonment inhuman or degrading if offender has the possibility for a review procedure, despite the fact that he is kept in prison for life due to public safety.⁹⁹

In order a review procedure to be correctly executed, it must be done by impartial and independent national legal body. Its decisions must be based on risk and danger regarding the offender. If it is not seen as necessary to keep offender in prison for the sake of the public safety, it is expected that offender is to be released. Review procedure is established to allow the legal authorities to consider releasing the offender by taking into account the changing circumstances.¹⁰⁰

In England, there are provisions which set the minimum period of time which after the legal authority must provide a review procedure. Time period for it is determined case-by-case. Contrary to this, the majority of European countries provide a standardized time period, which is usually between 12 and 25 years.¹⁰¹ According to international norm, the review procedure must take place after 25 years the latest.¹⁰² The practical functioning of a review procedure can be argued to be an issue. These procedures can be executed wrongly in the field. It might be that the review authority rejects the release of the offender too rapidly without making any actual or fair considerations of the relevant facts. This would be why some argues that a review procedure is too weak and hazard in order to comply with Article 3. The problem might be whether it is possible for the review authorities to actually demonstrate that the offender is not eligible for release.

According to the ECtHR, life imprisonment which does not include a sufficient review procedure, violates against Article 3. In order to a review procedure be in accordance with the prohibition of inhuman and degrading treatment or punishment, it must be considered as fair. In addition, offender must be informed about the procedure.¹⁰³ The ECtHR states that offender has the right

⁹⁹ *Vinter and Others v UK*, no. 66069/09, § 119-122, ECHR 2013

¹⁰⁰ Smit, D. V. Z. "Taking life imprisonment seriously: in national and international law". *BRILL*, 2002.

¹⁰¹ van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014) *supra nota* 54, p 59-84.

¹⁰² *A and Others v United Kingdom*, ECHR Reports 2009; 49 EHRR 29 at § 203-4.

¹⁰³ van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014) *supra nota* 54, p 59-84.

to know what is required from him to be released and when the review procedure may be taken place.¹⁰⁴

There are no common guidelines for the execution of a review procedure, which can cause a great variety of conducts among states. States are allowed to modify their jurisdiction concerning the release. Few judges have made observations from different European criminal law policies. They argue that even though states have imposed legit and acceptable life imprisonments with the possibility for release, it can be questioned whether the legal authorities have actually and properly considered releasing the offender through a review procedure.¹⁰⁵ This can be even more complicated since the ECtHR has stated its unwillingness to intervene in national procedural matters and investigate the fairness of review processes. This matter can be seen to belong more in the scope of Article 5 of the ECHR which sets the procedural requirements.¹⁰⁶ Still, due to previous case laws, it can be observed that review procedure plays an essential role when deciding the punishments compatibility with Article 3 of the ECHR.¹⁰⁷

The review procedure needs to have the right respect towards an individual whose rights are concerned. One example for a fair review procedure can be found in case *Osborn*, where the human dignity is respected by hearing the offender before the decision of his release. It can be seen to indicate that in order to life imprisonment to be lawful it needs to pay attention to offender`s point of view and take into account his thoughts.¹⁰⁸

In some countries, the possibility for release is given by the pardon power instead of review procedure, which can be found to be controversial topic. Offender has the possibility for release due to pardon. It can be considered to be a political act without any specific legal purpose. Usually, pardon is granted by the Head of the States and it does not include any juridical review as in the actual review procedure. This leads us to dispute whether the possibility for pardon is counted as “sufficient” possibility for release since it does not include juridical review or a legal purpose. It is seen as vague concept and it can be argued whether it is accepted as the same *de jure* possibility for release as a review procedure.¹⁰⁹

¹⁰⁴ Tan, D. (2017) *supra nota* 95, p 143.

¹⁰⁵ Galliani, D. (2016) *supra nota* 98, p 81-99.

¹⁰⁶ van Zyl Smit, D. “Outlawing irreducible life sentences: Europe on the brink?” *Federal sentencing reporter*, 23(1), 2010, p 39-48.

¹⁰⁷ *Vinter and Others v UK*, (2013) *supra nota* 68

¹⁰⁸ van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014) *supra nota* 54, p 59-84.

¹⁰⁹ Galliani, D. (2016) *supra nota* 98, p 81-99.

To get into the actualization aspect of the possibility for release, the judgement of the final instance made in 2009 concerned the Netherlands' system of release by pardon only. The judgement stated that offender has the opportunity to request his release from the Courts. The ECtHR held that this procedure was sufficient enough to provide a real possibility for a release. Derived from this, it can be observed that life imprisonment which contains possibility for release by pardon can be considered to be compatible with Article 3 because it is seen to have quite the same function and the same outcome as in review procedure and provides the same possibility for release.¹¹⁰

According to these observations, it can be assumed that states need to provide a possibility for release by a review procedure, or in some cases, by pardon. In addition, it must be considered sufficient enough. Otherwise, it can be rendered to be inhuman or degrading. Life imprisonment without the possibility for a sufficient review procedure can be seen to be incompatible under Article 3 from the time of ordering it.¹¹¹ Still, it can be hard to determine whether the review procedure is seen as sufficient or not, due to the fact that there are no clear guidelines set by the ECtHR.¹¹²

3.3 Violation of Human Dignity

It can be stated that the ECHR defends the concept of human dignity and its moral idea that every individual deserved to be equally treated and has inherent worth. Human dignity is one of the core values behind the Article 3.¹¹³ The ECtHR provides provisions which can be seen to be based on the idea of human dignity. It limits the punishment's conducts, such as life imprisonment, and does not take into account neither the preventive effect of the punishment nor the authority's eagerness to punish.¹¹⁴

The ECHR does not directly express the words human dignity in its provisions. Still, one might say that it is clear from the case law and from human rights experts, that it is considered as essential when it comes to inhuman and degrading treatment or punishment under Article 3. It can be shown from relevant cases that the ECtHR uses the term human dignity many times when determining

¹¹⁰ van Zyl Smit, D. (2010) *supra nota* 106, p 39-48.

¹¹¹ *Vinter and Others v UK*, (2013) *supra nota* 67

¹¹² *Ibid.*

¹¹³ Ward, T. (2011) *supra nota* 11, p 103-123.

¹¹⁴ Snare, A. (1995) *supra nota* 5, p 51-218.

punishment's inhuman or degrading nature.¹¹⁵ For instance, it has once stated that "Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing his or her humanity [...] it may be characterized as degrading [...]; degrading treatment as result of an individual feeling 'hurt in his dignity'." ¹¹⁶

It can be argued that life imprisonment without the possibility for release has the elements to violate Article 3 by undermining the human dignity. Argument is justified by the fact that the basic needs for a human being is to develop his personality, his social relationships and other components which creates the base for a human life.¹¹⁷ Rod Morgan, a former Chair of the Youth Justice Board of England and Wales, has once stated that life imprisonment removes the possibility of personal development and therefore, is inhuman punishment and would not comply with the principle of human dignity. ¹¹⁸ A leading human rights lawyer Edward Fitzgerald, agrees to this idea and continues that any punishment which contains elimination of the possibility for release should automatically be a violation under Article 3 of the ECHR. Derived from this it can be said that because life imprisonment without a possibility for release would eliminate fundamental needs of a person, it can be seen to undermine human dignity and that way be considered as inhuman and degrading. ¹¹⁹

Possibility for release in general is seen as one way to apply the principles of human dignity and the common standards for punishment.¹²⁰ Lack of it can be seen to compromise the priority of rehabilitation and human dignity.¹²¹ This argument can also be supported by Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR), which provides that " All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." ¹²²

¹¹⁵ Webster, E. (2009) *supra nota* 6, p 127-130.

¹¹⁶ Millns, S. "Death, dignity and discrimination: The case of *Pretty v. United Kingdom*." *German Law Journal* 3.10, 2002, p 4.

¹¹⁷ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

¹¹⁸ Rod Morgan is Emeritus Professor of Criminal Justice, University of Bristol, United Kingdom and former Chair of the Youth Justice Board of England and Wales.

¹¹⁹ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

¹²⁰ van Zyl Smit, D. (2010) *supra nota* 106, p 39-48.

¹²¹ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

¹²² General assembly, "International Covenant on Civil and Political Rights", Article 10 (1), 1976

3.4 Possibility for rehabilitation

In 2017, *Hutchinson v United Kingdom* case challenges the latter ideology derived from *Vinter and others v United Kingdom* case which promoted the need for a review procedure. The judgement of this case agrees on the requirements for a legitimate and fair review procedure but makes an addition. It held that requirements for a lawful justification of release by the review authority is not to be limited only to “compassionate grounds”. The reason for release might also be for instance rehabilitation. This can be seen to promote offenders right to have a second change and the possibility to rehabilitate themselves, which might be considered as a factor to prevent life imprisonment from being inhuman or degrading.¹²³

Rehabilitation system seeks to prevent crime by individualized methods. The focus point of rehabilitation is offender`s needs and personality.¹²⁴ The ECtHR has stated that if there is no possibility of a review procedure, then there is no opportunity for offender to make any difference to his release, which would make offender unable to make an amend. These arguments emphasize the importance of rehabilitation possibilities by imposing that life imprisonment without a possibility for release would abolish the aim of preventing a crime by rehabilitation system. Due to this it would be considered inhuman and degrading under Article 3. Derived from this, it can be said that if life imprisonment jeopardizes offender`s possibility for justifiable rehabilitation, it can have inhuman and degrading nature since rehabilitation can be seen relevant for fundamental needs of an individual.¹²⁵

In *Vinter and others v United Kingdom* case, it was held that undermining offender`s self-improvement in prison by imposing him life imprisonment without the possibility for release, it would be regarded as inhuman and degrading under Article 3 by being contrary to rehabilitation system. The judgement held that hope, which author mentioned earlier, is important element in the concept of human dignity. Regardless of the fact that offender has committed a wrongful act, he still acquires the same humanity as anybody else.¹²⁶

¹²³ Tan, D. (2017) *supra nota* 95, p 143.

¹²⁴ Ashworth, A. “Sentencing and Criminal Justice”, Cambridge University Press, 13.2, 2010, p 51-388.

¹²⁵ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

¹²⁶ van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014) *supra nota* 54, p 59-84.

Every offender, despite the seriousness of the criminal act, can be considered to be entitled for rehabilitative activities and deserves a realistic hope for future in order of not to be subjected to inhuman and degrading treatment or punishment.¹²⁷ Due to this statement the author raises a question whether rehabilitation possibility is to be provided even though offender is dangerous and imposes a risk for public. This can create conflicts between offenders right and public's safety. To make an example from European country, Germany's national Court has stated that life imprisonment without the possibility for release violates the human dignity which belongs to every human being. This is because it eliminates offender's liberty and does not provide a possibility for gaining it back. German case law has invoked the duty for the state to provide the possibility of release in order to comply with the principle of human dignity.¹²⁸ Germany's law has even included the principle of human dignity to its fundamental norms and that way promotes the system of rehabilitation which helps offenders to adapt themselves back to the society.¹²⁹ Derived from this, it can be asked whether this principle of human dignity should be implemented to all European states? Yet, it can be questioned whether this principle can be applied the same way in cases where offender imposes a serious risk towards the public. It can be disputed whether offender should still, in that case, have the right to rehabilitation and the possibility for release.¹³⁰

¹²⁷ CPT, Report on the visit to Bulgaria from 4 to 10 May 2012, CPT/Inf (2012) 4 December 2012 at para 32; see also CPT, Report on the visit to Switzerland from 10 to 20 October 2011, CPT/Inf (2012) 25 October 2012 at 26.

¹²⁸ van Zyl Smit, D. (2010) *supra nota* 106, p 39-48.

¹²⁹ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

¹³⁰ Appleton, C; Gröver, B. (2007) *supra nota* 51, p 597-615.

CONCLUSION

The aim of this thesis was to explore the relationship between life imprisonment and human rights concerning inhuman or degrading treatment or punishment. It had two major purposes: (1) to investigate whether life imprisonment, especially life imprisonment without the possibility for a release, can be seen as having inhuman or degrading nature (2) to demonstrate the potential cases where the crucial factors concerning the existence of inhuman or degrading nature are shown. In addition, author explored the legal justifications for this punishment form.

Life imprisonment in Europe has clearly received some attention in relation to inhuman and degrading treatment or punishment under Article 3. It can be observed, as expected in the hypothesis, that life imprisonment without the possibility for release is an issue and needs clarification. Due to this thesis, author has come to a conclusion that in order a life imprisonment to comply with Article 3, it must fulfill certain requirements. It was concluded that life imprisonment is able to violate Article 3 if it contains certain characteristics or lacks certain crucial conducts by the legal authority. Yet, the requirements can be complicated for stated follow since there is no official uniform requirements set by the ECtHR.¹³¹

Referring to case laws, ill-treatment of an offender should reach to a point where it is regarded as inhuman or degrading. The results of this research provide that even if the offender is kept in prison for life, it is not automatically counted as inhuman or degrading.¹³² This would mean that life imprisonment as a punishment form as its own does not violate Article 3. According to this research, eliminating all hope for release is the most highlighted factor which makes it incompatible with its provisions. There should be provided at least a possibility to get out of prison at some point. It can be observed that an actual and formal life imprisonment without the possibility for release is considered to violate Article 3.

In addition, due to this research it can be stated that the possibility for a release must be provided with a sufficient review procedure, which is seen as fair towards both offender and the public. It can be observed that Article 3 must be interpreted in a way which requires a review procedure by legal state authority.¹³³ They must provide a review procedure for release or for the further

¹³¹ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

¹³² Galliani, D. (2016) *supra nota* 98, p 81-99.

¹³³ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

justification of life imprisonment.¹³⁴ This conduct makes life imprisonment to comply with human rights provisions and is not seen inhuman or degrading by the ECtHR. It is expected that the legal authority executes a review procedure where it recognizes that offender is not eligible for release.¹³⁵

According to research findings, it can be stated that self-improvement of human being is not to be undermined and therefore the possibility for release should always be present.¹³⁶ If offender is kept in prison for life only in order to punish him, it is seen to be contrary to human dignity and the rehabilitation system, and that way inhuman or degrading.¹³⁷ The ECtHR approves public safety as a legal justification for keeping the offender in prison if it is seen necessary. Other reason would be rehabilitation, deterrence or retribution etc. Life imprisonment is seen as accountable way to keep the public safe and to guarantee that offender is not going to reoffend.¹³⁸ Yet, it can be observed that the grounds for the justifications can change over time as the development of the society goes on. Therefore, it can be disputed when imposing life imprisonment is seen as necessary enough.

To conclude this research, author believes that European legal system is unable to properly demonstrate the requirements for life imprisonment and to ensure harmonized conducts within Europe. Ambiguity in the characteristics of life imprisonment results from the lack of uniform rules concerning minimum period of time which after the authorities have the obligation to consider the possibility of releasing the offender.¹³⁹ In addition, the criteria of the eligibility for the release is not clear either. Arguments against life imprisonment is not that simple as one might think. It is already quite difficult to define whether there actually is no possibility for release, since there can only be a formal possibility instead of an actual and possibility for release.¹⁴⁰ This leads us to the conclusion that human rights should to set more boundaries for states punishments. Those conducts are mainly left to the state to decide and leaves human rights with limited power over national criminal law.¹⁴¹ Generally speaking, the ECtHR sets no restriction on the length of the

¹³⁴ van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014) *supra nota* 54, p 59-84.

¹³⁵ *Nivette v France*, (2001) *supra nota* 52

¹³⁶ van Zyl Smit, D. (2010) *supra nota* 106, p 39-48.

¹³⁷ Mavronicola, N. (2014) *supra nota* 57, p 292-307.

¹³⁸ Appleton, C; Grøver, B. (2007) *supra nota* 51, p 597-615.

¹³⁹ Greer, S. "The Interpretation of the European Convention on Human Rights: Universal Principle or Margin of Appreciation." *UCL Hum. Rts. Rev.*, 3, 1, 2010

¹⁴⁰ *Nivette v France*, (2001) *supra nota* 52

¹⁴¹ Bernaz, N. (2013) *supra nota* 8, p 470-497.

imprisonment. Currently, the only requirement for imprisonment is that it does not violate the Article 3 concerning the prohibition of inhuman or degrading punishment. National legal authorities have the freedom to decide what acts are to be punished from, how it is punished and to what extent.¹⁴²

Based on this research, the solution for this legal problem would be that the ECtHR or provisions of the ECHR should provide more narrow requirements for both life imprisonment and the criteria of Article 3. By doing this, life imprisonments within Europe would become more harmonized in relation to human rights and due to this the issue with inhuman or degrading nature would not occur since there would be clear boundaries set for states concerning life imprisonment and especially for a sufficient review procedure. It can be observed that the ECtHR has the possibility to intervene with states inhuman or degrading punishments.¹⁴³ Still, if the rules concerning life imprisonment would be more accurate, there would not be a need for intervening to this matter in the first place.

According to this research, it might be necessary to consider how we can avoid this ongoing battle between groups safety and individuals rights.¹⁴⁴ It can be said that even though the case law of the ECtHR has given much clarity to this legal issue, there is still undefined components concerning the whole notion of inhuman or degrading treatment or punishment.¹⁴⁵ When it comes to further research possibilities, in the light of this research it would be relevant to examine both the legal framework for life imprisonment and the requirements for state's legal practices within Europe more precisely.

¹⁴² Snare, A. (1995) *supra nota* 5, p 51-218.

¹⁴³ Bernaz, N. (2013) *supra nota* 8, p 470-497.

¹⁴⁴ van Kempen, P. H. (2013) *supra nota* 3, p 1-23.

¹⁴⁵ Nivette v France, (2001) *supra nota* 52

LIST OF REFERENCES

Scientific books:

1. Ashworth, A. (2010) *Sentencing and Criminal Justice*. 5th edit. New York: Cambridge University Press
2. Duff, R. A. (2003) *Punishment, Communication, and Community*. 1st edit. New York: Oxford University press
3. Galliher, J. F. (1989) *Criminology, Human Rights, Criminal Law and Crime*. 1st edit. New Jersey: University of Missouri- Columbia
4. Lahti, R; Nuotio, K.; Minkkinen, P. (1992) *Criminal Policy and Sentencing in Transition, Finnish and Comparative perspectives*. 1st edit. Helsinki: University of Helsinki: Department of Criminal law and Juridical Procedure
5. Loucks, N. (2002). *Recidivism amongst serious violent and sexual offenders*. Edinburgh: Scottish Executive Social Research.
6. Martin, E. A. (2009). *A dictionary of law*. 5th edit. New York: Oxford University Press
7. Padfield, N. (2002) *Beyond the Tariff, Human rights and the release of life prisoners*. 1st edit. Devon: Willan Publishing
8. Snare, A. (1995) *Beware of Punishment, On the Utility and Futility of Criminal Law*. Volume 14. Oslo: Scandinavian Research Council for Criminology
9. Smit, D. V. Z. (2002). *Taking life imprisonment seriously: in national and international law*. 1st edit. BRILL.

Scientific articles:

10. Addo, M. K., & Grief, N. (1998). Does article 3 of the European Convention on Human Rights enshrine absolute rights? *European Journal of International Law*, 9(3), 510-524.
11. Appleton, C., & Grøver, B. (2007). The pros and cons of life without parole. *The British Journal of Criminology*, 47(4), 597-615.
12. I Arai-Yokoi, Y. (2003). Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR. *Netherlands Quarterly of Human Rights*, 21(3), 385-421.
13. Bassiouni M. C. (2006). International Recognition of Victim`s rights. *Human Rights Law Review*, 6(2), 203-279.

14. Bernaz, N. (2013). Life imprisonment and the prohibition of inhuman punishments in international human rights law: Moving the agenda forward. *Human Rights Quarterly*, 35(2), 470-497.
15. Benvenisti, E. (1998). Margin of appreciation, consensus, and universal standards. *NYUJ Int'l L. & Pol.*, 31, 843.
16. Brauch, J. A. (2004). The margin of appreciation and the jurisprudence of the European Court of Human Rights: threat to the rule of law. *Colum. J. Eur. L.*, 11, 113.
17. Christopher, R. L. (2001). Deterring Retributivism: The Injustice of Just Punishment. *Nw. UL Rev.*, 96, 843.
18. D'elia, C. (2010). Less than we might: meditations on life in prison without parole. *Federal Sentencing Reporter*, 23(1), 10-20.
19. Freeman, M. (2004). The problem of secularism in human rights theory. *Human Rights Quarterly*, 26(2), 375-400.
20. Galliani, D. (2016). The Reducible Life Imprisonment Standard from a Worldwide and European Perspective. *Global Jurist*, 16(1), 81-99.
21. Greer, S. (2010). The Interpretation of the European Convention on Human Rights: Universal Principle or Margin or Appreciation. *UCL Hum. Rts. Rev.*, 3, 1.
22. Griffin, D., & O'Donnell, I. (2012). The life sentence and parole. *The British Journal of Criminology*, 52(3), 611-629.
23. Huntington, E. (2014). Torture and Cruel, Inhuman or Degrading Treatment: A Definitional Approach. *UC Davis J. Int'l L. & Pol'y*, 21, 279.
24. van Kempen, P. H. (2013). Four Concepts of Security—A Human Rights Perspective. *Human Rights Law Review*, 13(1), 1-23.
25. Lewis, K., Oliver, M. E., & Wong, S. C. (2013). The Violence Risk Scale: Predictive validity and linking changes in risk with violent recidivism in a sample of high-risk offenders with psychopathic traits. *Assessment*, 20(2), 150-164.
26. Mavronicola, N. (2012). What is an 'absolute right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights. *Human Rights Law Review*, 12(4), 723-758.
27. Millns, S. (2002). Death, Dignity and Discrimination: The case of *Pretty v. United Kingdom*, *German Law Journal*, 3(10), para 5.
28. Nagin, D. S., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending." *Crime and justice*, 38(1), 115-200.
29. Palmer, S. (2006). A wrong turning: Article 3 ECHR and proportionality. *The Cambridge Law Journal*, 65(2), 438-452.

30. Rosebury, B. (2015). The Theory of the Offender's Forfeited Right. *Criminal Justice Ethics*, 34(3), 259-283.
31. Sadiqova, H. (2015). Defining threshold between torture and inhuman or degrading treatment. *Baku St. UL Rev.*, 1, 44.
32. Strang, H., & Sherman, L. W. (2003). Repairing the harm: Victims and restorative justice. *Utah L. Rev.*, 15. 15-21
33. Szydło, M. (2013). Free Life after Life Imprisonment as a Human Right under the European Convention: European Court of Human Rights, Grand Chamber, Judgment of 9 July 2013, Vinter and Others v. The United Kingdom. *European Constitutional Law Review*, 9(3), 501-512.
34. Tan, D. (2017). Whole Life Orders in Hutchinson v UK: A Counter-Revolution, or Evolution to Vinter. *UK L. Student Rev.*, 5, 143.
35. Ward, T. (2011). Human rights and dignity in offender rehabilitation. *Journal of forensic psychology practice*, 11(2-3), 103-123.
36. Weissbrodt, D., & Heilman, C. (2011). Defining torture and cruel, inhuman, and degrading treatment. *Law & Ineq.*, 29, 343.
37. Whitty, N. (2010). Rights as risk: managing human rights and risk in the UK prison sector. *Centre for Analysis of Risk and Regulation, London School of Economics and Political Science*.
38. Wolff, M. A. (2008). Evidence-based judicial discretion: Promoting public safety through state sentencing reform. *NYUL Rev.*, 83, 1389.
39. Weissbrodt, D; Heilman C. (2011). Defining torture and cruel, inhuman, and degrading treatment. *Law & Ineq.* 29, p 343.
40. van Zyl Smit, D., Weatherby, P., & Creighton, S. (2014). Whole life sentences and the tide of European human rights jurisprudence: what is to be done? *Human Rights Law Review*, 14(1), 59-84.
41. van Zyl Smit, D. (2010). Outlawing irreducible life sentences: Europe on the brink? *Federal sentencing reporter*, 23(1), p 39-48.

Court decisions:

42. A and Others vs United Kingdom, no. 3455/50, ECHR Reports 2009; 49 EHRR 29, § 203–4
43. Guzzardi vs Italy, no. 40020/03, § 107, ECHR 1980
44. Kafkaris vs Cyprus, no. 21906/04, ECHR 2008
45. Kudla vs Poland, no. 30210/96, § 92, ECHR 2000

46. Murray vs the Netherlands, no. 10511/10, ECHR 2016
47. Nivette vs France, no. 44190/98, ECHR 2001
48. Pretty vs United Kingdom, no. 2346/02, § 52, § 46, ECHR 2002
49. Price vs United Kingdom, no. 33394/96, § 24-30, ECHR 2001
50. Vinter and Others vs United Kingdom, no. 66069/09, § 17, ECHR 2013
51. Yankov vs Bulgaria, no. 1509/05, § 120, ECHR 2010

EU and International legislation:

52. Council of Europe, *European Convention on Human Rights* (ECHR), 3 September 1953
53. *International Covenant on Civil and Political Rights* (ICCPR), General assembly Resolution 2200A (XXI), 23 March 1976, Article 10 (1)
54. *United Nations Committee against Torture* (UN CAT), General assembly resolution 39/46, 26 June 1987, Article 16, §1

Other sources:

55. CPT, Report on the visit to Bulgaria from 4 to 10 May 2012, CPT/Inf (2012) 4 December 2012 at para 32; see also CPT, Report on the visit to Switzerland from 10 to 20 October 2011, CPT/Inf (2012) 25 October 2012 at 26.
56. Rod Morgan, Emeritus Professor of Criminal Justice, University of Bristol, United Kingdom and former Chair of the Youth Justice Board of England and Wales.
57. Webster, E. (2009). Exploring the prohibition of degrading treatment within article 3 of the European Convention of Human Rights. (Ph. D) *The University of Edinburgh*, 127-130.