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**EUROPEAN COMMITTEE FOR THE PREVENTION
OF TORTURE AND INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT
(CPT)**

Actual/real life sentences

Memorandum prepared by Mr Jørgen Worsaae RASMUSSEN

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Actual life sentence.

Whole life tariff. No hope of release.
-preparation for dying in custody?

Definition

A life-sentence prisoner is one serving a sentence of life imprisonment.¹

Conditional release means the early release of sentenced prisoners under individualised post-release conditions. Amnesties and pardons are not included in this definition.²

With the abolition of, or moratorium on, the death penalty in member states, the indeterminate sentence of life imprisonment has become the severest sanction available to the legislator. The extent to which life sentences are used in practice in the countries that provide for this sanction varies considerably.³

A majority of Council of Europe member states make legislative provision for life sentences. The extent to which such sentences can be, and are in fact, imposed varies. Life sentences do not necessarily imply imprisonment for the remainder of natural life. Most countries make provision for a review of life sentences with the possibility of granting release from prison.

Probably the most wide-ranging provisions for the use of life imprisonment are to be found in England & Wales. There, a life sentence is mandatory for murder and is a sanction that can also be imposed for other serious offences against the person (discretionary life imprisonment). With mandatory life sentences, a tariff giving the earliest date at which conditional release may be granted is set. Whole life tariffs mean that the imprisonment cannot be exhausted during the natural life of the prisoner. In addition, since 1997, an offender found guilty for the second time of serious sexual or violent crimes automatically receives a life sentence unless there are exceptional reasons for not imposing it (automatic life sentence).⁴

Five European countries, Croatia, Norway, Portugal, Slovenia and Spain, make no legislative provision for life imprisonment.⁵

What is certain is that the criminal policy choices made and the way in which they are implemented will have far-reaching consequences for the number and proportion of life sentenced prisoners in the prison population and for the way in which they are to be treated. Thus, for example, the possibility of release after serving a relatively limited time in prison will require an emphasis on release preparation while imprisonment for the whole of natural life will not require such preparation and, may in the last analysis, require preparation for dying in custody instead.⁶

¹ Rec(2003)23-Appendix par.1

² Rec(2003)22-Appendix par.1

³ Explanatory Memorandum, CM(2003)109 Addendum 3 par. 11

⁴ Ibid par.12

⁵ Ibid par.13

⁶ Ibid par.14

Conditional release for all prisoners.

Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole) recommends:

4 a “..., the law should make conditional release **available to all sentenced prisoners, including life-sentence prisoners.**”

Principles for the granting and implementation of conditional release are contained in Recommendation Rec(2003)22 on conditional release. This recommendation and its Explanatory Memorandum is, for the reasons given below, an essential complement to the present recommendation. In addition, it should be noted that Rule 5 of the European Rules on Community Sanctions and Measures has been changed in order to allow indeterminate supervision with suitable guarantees for a just application of this measure⁷. The amended Rule 5 is obviously of considerable relevance to the management of long-term and life sentenced prisoners. Even potentially dangerous offenders can be released and placed under life-long supervision in the community. Life-long supervision can be continuous or intermittent. In the latter form, it can be activated if the released prisoner’s behaviour gives rise to concern.⁸

Recommendation Rec(2003)22 contains the principle that conditional release should be possible for all prisoners except those serving extremely short sentences. This principle is applicable, under the terms of the recommendation, even to life prisoners. Note, however, that it is the possibility of granting conditional release to life prisoners that is recommended, not that they should always be granted conditional release. It also contains a provision stating that the granting and revocation of conditional release should be in the hands of an authority or body empowered by law and manifestly impartial and independent. Such a body is often referred to as a “court-like” body.⁹

Currently, the mechanisms for granting life sentence prisoners release from prison are as follows. In all countries provision is made for the release of life sentenced prisoners from prison for compassionate reasons. This special form of release is not considered further in this report. Release for other than compassionate reasons is, in the majority of countries, granted through a measure of clemency granted by the Head of State, or by decision of a government or government minister or through the decision or recommendation of a parole board, which may or may not be of quasi-judicial character. Granting or revoking conditional release is also undertaken by judicial review. Securing consistency of decision-making is dealt with in Recommendation Rec(2003)22 on conditional release.¹⁰

⁷ See Recommendation Rec(2000)22 on achieving a more effective use of community sanctions and measures and the Explanatory Report concerning the new formulation of Rule 5.

⁸ CM(2003)109 Addendum 3 par.130

⁹ Ibid par.131

¹⁰ Ibid par.133

Where a president or monarch takes the formal decision on release, it is customary for this to be done at the request of the government. The practice whereby a government or government minister takes, or exercises a decisive influence on, the final decision on release from a life sentence has been criticised in the public debates of some countries. Critics argue that such decisions are frequently coloured by the political stance of the government in power. A government with a lenient policy may supersede a government with a restrictive policy, and vice versa. The question also arises as to what extent the taking of decisions on release by the executive and not a court is in conformity with the European Convention on Human Rights.¹¹ Hence, it is argued, discretionary release from imprisonment, as with its imposition, is a matter for the courts and not the executive. There are indications that these views are tending to lead to changes in the procedure for reviewing life imprisonment.¹²

When dealing with conditional release of life-sentenced prisoners the 'Discretionary release system' should be in operation.

"The minimum period that prisoners have to serve to become eligible for conditional release should be fixed in accordance with the law.

The relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period."¹³

For example

On 1 July 2001, new legislation on the conditional release of life sentence prisoners entered into force in Denmark. Before that date, the final decision on the release of life sentence prisoners rested with the Crown. The new legislation aims to ensure that there shall be a regular review of life sentences and, especially, that under certain circumstances it will be left to a court, and not a political instance, to make a final decision. The first review must take place after 12 years have been served. This is conducted by the central prison administration with account taken of the views of the prosecution service, the local prison administration and, in the assessment of believed dangerousness, by a medical review commission. A positive decision states the date for conditional release and the conditions to be imposed. A negative decision gives detailed reasons for not granting conditional release. However, after 14 years without a positive decision on conditional release, prisoners have the right to request a court review of their case. The court nearest to the prison in which the sentence is being served decides whether a prisoner shall be conditionally released. A negative decision can be appealed to a county court.¹⁴

In Sweden, a Commission on Life Sentences has recommended that in principle all life sentence prisoners should eventually be released. It also recommended that a court, and not the government, should decide whether and when to release life sentence prisoners. This recommendation makes it possible to appeal to higher courts.¹⁵

¹¹ This question has been the subject of Judgment *Stafford v. the United Kingdom* of 24 April 2002 of the European Court of Human Rights.

¹² CM(2003)109 Addendum 3 par.134

¹³ Rec(2003)22 par16-17

¹⁴ Ibid par.135

¹⁵ Ibid par.136

In Finland, the Prison Sentence Committee presented proposals on the conditional release of life sentence prisoners in 2001. Legislation to give effect to the proposals will be presented to Parliament in the autumn of 2003. The content of the proposals is as follows. Every life sentence prisoner would be eligible for conditional release. A positive or negative proposal on the granting of conditional release would be submitted by the prison administration shortly before the prisoner has served 12 years of his/her sentence for decision by the Helsinki Court of Appeal. A negative decision by the Court would lead to further proposals by the prison administration and decisions by the Court at intervals of two years.¹⁶

CPT standards.

In compliance with Recommendation Rec(2003)22 on its 62nd meeting the CPT adopting its report on the 2007 visit to Hungary decided to add a paragraph 33, which reads as follows:

“More generally, as regards “actual lifers”, the CPT has serious reservations about the very concept according to which such prisoners, once they are sentenced, are considered once and for all as a permanent threat to the community and are deprived of any hope to be granted conditional release. In this regard, the Committee would like to refer to paragraph 4.a of the Committee of Ministers’ Recommendation Rec(2003)22 on conditional release (parole) of 24 September 2003, which clearly indicates that the law should make conditional release available to all sentenced prisoners, including life-sentenced prisoners.

The explanatory memorandum emphasised that life-sentenced prisoners should not be deprived of the hope to be granted release.

Firstly, no one can reasonably argue that all lifers will always remain dangerous to society. Secondly, the detention of persons who have no hope of release poses severe management problems in terms of creating incentives to co-operate and address disruptive behaviour, the delivery of personal-development programmes, the organisation of sentence-plans and security.

In the light of the above, the CPT invites the Hungarian authorities to introduce a regular review of the threat to society posed by “actual lifers”, on the basis of an individual risk assessment, with a view to establishing whether they can serve the remainder of the sentence in the community and under what conditions and supervision measures.”

Management of life sentence.

The impact of actual life sentences on the individual prisoner.

The recommendation provides principles for preventing and counteracting the damaging effects of life and other long-term sentences. There is thus a presupposition that there are damaging effects consequent upon life or long-term imprisonment and that they can be prevented and counteracted. An essential basis for planning the management of long-term and life sentenced prisoners requires therefore an understanding of these effects of long-term and life imprisonment and the measures that can prevent or counteract them. This raises the question of whether research findings can provide useful knowledge about such effects and ways of hindering their emergence.¹⁷

¹⁶ Ibid par.137

¹⁷ CM(2003)109 Addendum 3 par.91

Recommendation Rec(2003)23 is dealing specifically with ‘the management by prison administrations of life sentence and other long-term prisoners’.

The aims of the management of such prisoners should be (inter alia):

“to counteract the damaging effects of life and long-term imprisonment;

to increase and improve the possibilities of these prisoners to be successfully resettled and to lead a law-abiding life following their release.”¹⁸

The management should follow the general principles of individualisation, normalisation, responsibility, security and safety, non-segregation and last but not least **‘the progression principle’**:

“Individual planning for the managements of the prisoner’s life or long-term sentence should aim at securing progressive movement through the prison system (progression principle).”¹⁹

The *progression principle* refers to the importance of trying to secure a beneficial movement through the prison system for all life sentence and long-term prisoners. During the prison period, progression may be an important antidote to mental deterioration by providing for specific goals that can be achieved within foreseeable periods of time. Progression allows for the increasing exercise of responsibility and has as its ultimate aim, a constructive transition from prison life to life in the community.²⁰

To make sense such recommended compulsory individual sentence planning in a progressive perspective, from more to less restricted prison regimes, must always aim at resettlement in free society.

CPT Sourcebook.

The CPT would like to recall that long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society, to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way. The prisoners concerned should have access to a wide range of purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association). Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psychological and social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release. Moreover, the provision of such a regime to life-sentenced prisoners enhances the development of constructive staff/inmate relations and hence reinforces security within the prison.

(...)

¹⁸ Rec(2003)23 par.2

¹⁹ Ibid pr.8

²⁰ CM(2003)109 Addendum 3 par.44

More generally, steps should be taken to develop a long-term policy vis-à-vis life-sentenced prisoners (including the possibility for declassification to lower security regimes), in the light of the above remarks.²¹

More generally, the CPT recommends that the [...] authorities continue to develop the regime of life-sentenced prisoners at [...], as well as at other prisons throughout [...], by integrating them in the mainstream prison population.²²

Dangerousness.

The impact of actual life sentences on the prison regime.

As actual life sentences have damaging effects on the individual prisoner it may as well be detrimental for a human prison regime.

Life sentences without hope of release give little space for ‘dynamic security’.

A primary task for prison management is to ensure an adequate level of control in the prison as a guarantee of security, order and safety. Although the nature and level of control will vary with the security category of a given prison and the kinds of prisoners that it holds, it should always be based on the notion of dynamic security. Dynamic security means that basic grade prison staff are trained and encouraged to develop good personal relationships with prisoners, to know and understand them as individuals, to provide sympathetic help with personal problems and to engage in meaningful dialogues with them.²³

Judgements from the European Court of Human Rights have emphasised that dangerousness is not necessarily a permanent characteristic of an offender²⁴. The rulings apply both to the period of incarceration and to any time of recall to prison as a result of breach of conditional release conditions. In consequence, whenever the concept of dangerousness is invoked, arrangements should also be made to ascertain whether it is a continuing or abated condition. The same applies to criminogenic needs. Such needs are not necessarily stable and continuing. Both dangerousness and criminogenic needs may, for a variety of reasons, change over time. This means that risk and need assessments made at one point in time may not be valid at a later date. In consequence, assessments should be repeated at intervals or when special circumstances require.²⁵

²¹ SB/04.2007 § 256

²² SB/04.2007 § 257

²³ CM(2003)109 Addendum 3 par. 73

²⁴ Judgment X v. the United Kingdom of 5 November 1981; Judgment Weeks v. the United Kingdom of 2 March 1987; Judgment Thynne, Wilson and Gunnell v. the United Kingdom of 25 October 1990.

²⁵ CM(2003)109 Addendum 3 par.71

The CPT can see no justification for keeping prisoners whose death sentences have been commuted to life imprisonment apart from other prisoners serving lengthy sentences. In many jurisdictions, life-sentenced prisoners are not viewed as necessarily more dangerous than other prisoners; many of them have a long-term interest in a stable and conflict free environment. Risk/needs assessment of life-sentenced prisoners should therefore be made on a case by case basis. Such an approach will also make it possible for the prisoners in question to be accommodated as close as possible to their homes, and will improve their contact with the outside world.²⁶

The CPT must also express its serious misgivings about the very provisions of [... of the Penal Code], by virtue of which the life-sentenced prisoners concerned are systematically subjected to a solitary confinement regime for a certain period, to be fixed by the sentencing court. This approach runs counter to the generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment.

The Committee does not question that it may be necessary for some prisoners to be subject, for a certain period of time, to a solitary confinement regime. However, the decision whether or not to impose such a measure should lie with the prison authorities, be based on an individual risk assessment and be applied only for the shortest period of time. A solitary confinement regime should be seen as a tool of prison management, and not be made part of the catalogue of criminal sanctions to be imposed by courts.²⁷

The Committee considers that the [...] authorities should institute a process for integrating persons sentenced to life-imprisonment into the general prison population. Particular reference should be made to the Council of Europe's Committee of Ministers' Recommendation (2003) 23, on the "management by prison administrations of life-sentence and other long-term prisoners" of 9 October 2003. One of the general principles underpinning such management is the non-segregation principle, which states that consideration should be given to not segregating life-sentence prisoners on the sole ground of their sentence. This principle should be read in conjunction with the security and safety principle, which calls for a careful assessment of whether prisoners pose a risk of harm to themselves, to other prisoners, to those working in the prison or to the external community. It recalls that the assumption is often wrongly made that the fact of a life-sentence implies a prisoner is dangerous. The explanatory report to this recommendation notes that "as a general rule, the experience of many prison administrations is that many such prisoners present no risk to themselves or to others" and that "they exhibit stable and reliable behaviour".

Hence, the placement of persons sentenced to life-imprisonment should be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence.²⁸

²⁶ SB/04.2007 § 259

²⁷ SB/04.2007 § 261

²⁸ SB/04.2007 § 262

Contact with the outside world.

Life sentences and long terms of imprisonment tend to break up marital and family relationships. If their impairment can be prevented an important step has been taken to maintain the prisoner's mental health and, often, motivation to use time in prison positively. Marital and family relationships derive their strength from emotional ties. It is important, therefore, to try to ensure that the circumstances of life sentences and long-term imprisonment do not result in these ties withering away.²⁹

The maintenance of family relationships is facilitated if family visits can be easily undertaken.³⁰ Liberal opportunities to receive and send letters are essential. Frequent visits and visits of long duration under conditions that allow for privacy and physical contact are equally essential. Telephoning offers further opportunities to maintain contact with families. Opportunities to make telephone calls should be made widely available to long-term and life sentenced prisoners. If it is feared that telephone conversations are being used to organise crime, plan escape or in some other way disturb security and order, they can be monitored, but prisoners should be informed that monitoring can be ordered if necessary. Similarly, if letters or visits endanger safety and security, consideration should be given to allowing them to continue using preventive procedures, for example reading correspondence and searching before and after visits.³¹

The negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world. Further, as regards the conditions under which the visits take place, the individual risk/needs assessment of this category of prisoners should also allow decisions concerning the granting of open visits to such prisoners to be made on an individual basis.

In particular, efforts should be made to avoid impairing marital and family relationships, as this in turn will have detrimental consequences on the prisoner's mental health and, often, motivation to use time in prison positively.³²

To systematically deny to life-sentenced prisoners - for years on end - the possibility of having open visits, is indefensible. The granting or withholding of open visits should be based on individual risk assessments.³³

²⁹ CM(2003)109 Addendum 3, par.102

³⁰ Ibid par.103

³¹ Ibid par.104

³² SB/04.2007 § 263

³³ SB/04.2007 § 264

Leaves

A form of external contact that is permitted in some countries for life sentence and long-term prisoners is that they are allowed short escorted leaves. The prisoner is allowed to leave the prison for a few hours escorted by one or two members of the staff. The leave can have varied purposes: to visit a football match, to do some shopping, to hear a concert, etc. Such “breathing space” leave can be a welcome break in prison life and maintain some sense of awareness of life in the external world. Ordinary leave to visit families should be allowed after a qualifying period and with due account taken of the characteristics and situation of the individual prisoner. As prisoners approach the final stages of their imprisonment consideration should be given to allowing long leaves from prison. The provisions of Recommendation No. R (82) 16 on prison leave should be implemented with life and long-term prisoners.³⁴

Nobody should be forced to die in prison.

“ In order to allow terminally ill prisoners to die with dignity, consideration should be given to releasing them so that they may be cared for outside prison...”³⁵

No category of prisoners should be stamped as ‘likely to spend their natural life in prison’.

Rec(2003)23 par. 31 is operating with a category of ‘prisoners who are likely to spend their natural life in prison’. This wording seems contradictory to Rec(2003)22, Appendix 4.a., that ‘conditional release should be available to all sentenced prisoners, including life-sentenced prisoners.’

Denial of release should never be final.

In compliance with the discretionary release system, when the minimum period fixed in accordance with the law has been served, “if the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner.”³⁶

Not even recalled prisoners should be deprived of hope of release.

Failure to observe the conditions of conditional release can result in the released prisoner being recalled to prison... The allocation of a recalled prisoner and further interventions to be undertaken should be decided on in the light of the new assessment. A new decision on conditional release should depend largely on the results of these further interventions. The essential aim should be to prepare the prisoner as soon as possible for a further attempt at resettlement in the community.³⁷

If, following revocation of conditional release, a life sentence or long-term prisoner is returned to prison, the principles enumerated in the foregoing should continue to be followed. In particular, a further assessment of risk and criminogenic needs should be undertaken and used for choosing a suitable allocation and further interventions, with the aim of preparing the prisoner for early reconsideration for release and resettlement in the community.³⁸

³⁴ Ibid par.105

³⁵ Rec(2003)23 par.29.a

³⁶ Rec(2003)22 par.21

³⁷ CM(2003)109 Addendum 3 par.138

³⁸ Rec(2003)23 par. 35

Research and statistics.

“The extent to which life sentences are used in practice in the countries that provide for this sanction varies considerably. Unfortunately, the Committee had no access to statistics showing the number of offenders sentenced to life imprisonment each year over a period of several years in the majority of member states of the Council of Europe. Nor is such data available from comparative international statistics. This makes it impossible to compare trends in the use of life imprisonment.”³⁹

When monitoring the implementation of conditional release of life-sentenced prisoners in the member states the recommendations on research and statistics are of major importance

“ In order to obtain more knowledge about the appropriateness of existing conditional release systems and their further development, evaluation should be carried out and statistics should be compiled to provide information about the functioning of these systems and their effectiveness in achieving the basic aims of conditional release.

In addition to the evaluations recommended above, research into the functioning of conditional release systems should be encouraged. Such research should include the views, attitudes and perceptions on conditional release of judicial and decision-making authorities, implementing authorities, victims, members of the public and prisoners. Other aspects that should be considered include whether conditional release is cost-effective, whether it produces a reduction in reoffending rates, the extent to which conditionally released prisoners adjust satisfactorily to life in the community and the impact the development of a conditional release scheme might have on the imposition of sanctions and measures, and the enforcement of sentences. The nature of release preparation programmes should also be subject to research scrutiny.

Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.”⁴⁰

When visiting member states the CPT-delegations should as a routine ask the authorities to present such research and statistics about conditional release of life-sentenced prisoners.

Final remark.

To this exercise should be added examples from ECHR case law.

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³⁹ CM(2203)109 Addendum 3 par.11

⁴⁰ Rec(2003)22 par 43-45

Draft

Document prepared by Mr RASMUSSEN

Standards on treatment of life sentence and long-term prisoners.

Grounded on the principles contained in

- CM Rec(2003) 22 on conditional release (parole);
- CM Rec(2003)23 on the management by prison administrations of life sentence and long term prisoners;
- and the CPT standards elaborated in visit reports and compiled in The Source Book;

we are able to pin out the following list of standards:

- **The possibility of conditional release should be available to all sentenced prisoners, including life-sentence prisoners.**
- **The minimum period that prisoners have to serve to become eligible for conditional release should be fixed in accordance with the law.**
- **The relevant authorities should initiate the necessary procedure to enable a decision on conditional release to be taken as soon as the prisoner has served the minimum period.**
- **The final decision on conditional release should be a matter for the courts and not the executive.**
- **After a fixed term without a positive decision on conditional release, prisoners should have the right to request a court review of their case.**
- **Individual planning for the managements of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system from more to less restricted regimes (progression principle).**
- **Individual sentence planning in a progressive perspective should always aim at resettlement in free society.**
- **Although the nature and level of control will vary with the security category of a given prison and the kinds of prisoners that it holds, the treatment of all prisoners, including life sentence prisoners, should always be based on the notion of dynamic security.**

- **Dangerousness/risk/needs assessments of life-sentenced prisoners should always be individual and be made on a case by case basis and should be repeated at intervals or when special circumstances require.**
- **The maintenance of family relationships should be facilitated.**
- **Liberal opportunities to receive and send letters should be granted.**
- **Opportunities to make telephone calls should be made widely available.**
- **Frequent visits and visits of long duration under conditions that allow for privacy and physical contact should be granted.**
- **If letters or visits endanger safety and security, consideration should be given to allowing them to continue using preventive procedures, for example reading correspondence and searching before and after visits.**
- **Escorted leaves for special purposes and ordinary leave to visit families should be allowed after a qualifying period and with due account taken of the characteristics and situation of the individual prisoner.**
- **Terminally ill prisoners should be offered clemency so that they may be cared for and die with dignity outside prison.**
- **Recalled prisoners should not be deprived of hope of release. The allocation of a recalled prisoner and further interventions to be undertaken should be decided on in the light of a new risk/need assessment. The essential aim should be to prepare the prisoner as soon as possible for a further attempt at resettlement in the community.**
- **Member states should carry out evaluation and should compile statistics to provide information about the use and the effects of conditional release.**
- **Statistics should be kept on such matters as the number of prisoners granted conditional release in relation to eligibility, the length of the sentences and the offences involved, the proportion of time served before the granting of conditional release, the number of revocations, reconviction rates and the criminal history and socio-demographic background of conditionally released prisoners.**
- **When visiting member states the CPT-delegations should as a routine ask the authorities to present such research and statistics about conditional release of life-sentence and long-term prisoners.**