

Ref: CommHR/DM/sf 021-2019

Ms Nela KUBUROVIĆ

Minister of Justice of the Republic of Serbia

Strasbourg, 7 May 2019

Dear Minister,

I am writing to you regarding the ministerial draft Law on the Amendments to the Serbian Criminal Code ("the draft Law"), which was published on the Ministry's website on 22 April 2019 along with the explanation thereto. The draft Law envisages, *inter alia*, the introduction in Article 43 of the Criminal Code the sentence of life imprisonment without eligibility for conditional release for persons convicted of some of the gravest criminal offences against life and limb, honour and dignity, and sexual freedom.

The European Convention on Human Rights, which Serbia is bound by as a Council of Europe member state, does not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. However, for a life sentence to be compatible with Article 3 ECHR, it must be reducible, or in other words there has to be a prospect of the prisoner's release and the possibility of a review of the sentence. Such a review should allow the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds. The European Court noted that there was clear support in European and international law and practice for those principles, with the large majority of Convention Contracting States not actually imposing life sentences at all or, if they did, providing for a review of life sentences after a set period, which is usually 25 years' imprisonment (see, *Vinter and Others v. the United Kingdom*, judgment (Grand Chamber) of 9 July 2013). The Court has held that a "prospect of release" needs to be available in each case of life imprisonment and the sentence must be reducible *de jure* and *de facto*.

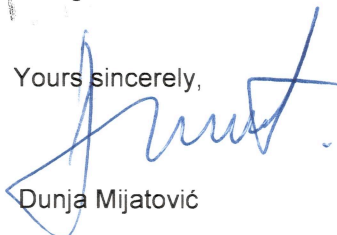
If the draft bill is adopted, as it stands, such life sentences could only be reduced by presidential clemency. In this context, I have noted concerns expressed by national legal experts that presidential clemency in Serbian legislation may fall short of guaranteeing the prospect of release for the prisoner and a possibility of review of the sentence, as required by the Court's case-law. As to whether a life sentence in such cases would be reducible *de facto*, I have noted the reports indicating that none of the 127 requests for release on clemency submitted to the President of Serbia from 2013 until May 2018 by persons sentenced to 15 years of imprisonment or more had been granted.

Another issue that I would like to raise with you relates to the reported lack of transparency of the procedure of the introduction of the draft Law due, and in particular, to the authorities' decision not to hold a public debate on this issue. This was quite an unusual step given the importance of this legislative initiative as well as the fact that in the public debate organised in 2015 concerning this issue the idea of the introduction of life imprisonment in Serbia was faced with serious criticism by members of the judiciary, academia, civil society and legal experts.

Considering the above, I encourage you to reconsider your decision to put the draft Law forward, to organise a broader public debate around this issue and ensure that any future legislative initiative of this kind is fully compliant with the case-law of the European Court of Human Rights.

I look forward to receiving your reply and continuing our constructive dialogue.

Yours sincerely,


Dunja Mijatović