



Republic of Serbia
Government
Ministry of Justice
MINISTER

Ms Dunja Mijatović
Commissioner for Human Rights

Belgrade, October 9, 2019

Dear Commissioner,

First of all, I would like to express my appreciation to the Council of Europe for its continuous work in promoting and protecting human rights. I would also like to thank you for your readiness for a constructive dialogue. The Ministry of Justice has embarked upon significant legislative changes guided by the principles of transparency and inclusiveness and therefore is willing to address in the same manner any concern that might be raised.

The Draft Law you were referring to in your letter from 15 May and 2nd Quarterly Activity Report was adopted by the National Assembly on the 21st of May. The Law on Amendments to the Criminal Code introduced the sentence of life imprisonment. It should be noted that the new sentence is introduced in the form of *life imprisonment with parole*. Only in case of conviction of five criminal offences enumerated under the provision of Article 46(5) the offender cannot be released on parole. However, even in these cases the sentence of life imprisonment remains both *de jure* and *de facto* reducible thus being compatible with the Article 3 of the European Convention on Human Rights. Namely, institute of presidential clemency in the Republic of Serbia provides "prospect of release" which life prisoners can benefit from at any time without having to serve a minimum period of imprisonment. This institute allows for the sentence to be reviewed in a transparent and accessible procedure. In addition, the Law guarantees a proper consideration of the changes in the life of prisoners and their progress towards rehabilitation which is standard created by the European Court of Human Rights ("ECHR") jurisprudence (László Magyar v. Hungary). Presidential clemency in Serbia is clearly formulated and has adequate procedural guarantees against abuse since the request has to be submitted for judicial review, as well as for review by the Minister of Justice, thus differing from the procedures incompatible with the Art. 3 of the European Convention on Human Rights (Harakchiev and Tolumov v. Bulgaria, Petukhov v. Ukraine (no. 2), etc.)

As it had been stated in ECHR judgment in the case of *Vinter and Others v. UK* which you made a reference to in your letter "... a whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence...". Moreover, the Court noted in the reasoning of the said judgment that domestic law concerning the Justice Secretary's power to release a person subject to a whole life order was unclear. Contrary to the facts of this ECHR landmark case, the Serbian Law on Clemency provides for an accessible and foreseeable procedure.



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The mere fact that this procedure differs from classical judicial review and is to be concluded by a decision of the executive branch, cannot be regarded as incompatible with the requirements set out in the ECHR case-law regarding Article 3 of the Convention, as it had been previously interpreted by some jurists as mentioned in your letter. Namely, in cases of *Kafkaris v. Cyprus*, *Iorgov (no.2) v. Bulgaria* the ECHR found no violation of Article 3 due to constitutional powers of the president to release the prisoners and the fact that it "...had not been proved beyond reasonable doubt that the applicant would never have his sentence reduced in practice and it had not been established that he was deprived of all hope of being released from prison one day...". Furthermore, after the necessary clarifications as regards the scope and grounds of the review by the Secretary of State in the UK had been brought, the ECHR confirmed in the case of *Hutchinson v. UK* that the requirements of Art. 3 in the context of life imprisonment have been met. In this regard, the Serbian Law on Clemency other than being accessible and foreseeable, sets out a clear and transparent procedure for the the sentence review which is not based solely on the discretionary powers, but on the reports on convicted person's behavior and judicial assessment thereto. As stated in the judgment *Marcello Viola v. Italy (no.2)* the Court further noted that the Contracting States enjoyed a wide margin of appreciation in deciding on the appropriate length of prison sentences, and that the mere fact that a life sentence might in practice be served in full did not mean that it was irreducible. Consequently, the possibility of review of life sentences entailed the possibility for the convicted person to apply for release but not necessarily to be released if he or she continued to pose a danger to society.

As for the second issue raised in your letter and the aforementioned report regarding the alleged lack of transparency of the procedure of the introduction of the Draft Law I would like to underscore that substantially, wide public consultations on life imprisonment topic lasted four years, from 2015 to 2019, and included both state authorities and CSO efforts, followed by tremendous media coverage. The Working group for drafting amendments to the Criminal Code, formed by Minister of Justice, started its work in 2015. The draft Law, produced by this Working group, consisted proposal of life imprisonment, and it is publicly available on the Ministry of Justice official website. The draft Law was subject of the formal public debate organized in 2015 as prescribed by the Rulebook of the Government. This "formal debate" was also a part of wide informal process of public consultations regarding Criminal Code through 2015 and 2016.

The new Working group was composed of representatives from relevant ministries, courts, prosecutors' offices, professional associations, NGOs, bar association and academic community, bearing special attention that all relevant stakeholders are involved in the process. Such approach enabled meaningful and fruitful discussion among all mentioned participants, in order to achieve the highest degree of inclusiveness in the process of law drafting. The final draft was result of all working group members' efforts, thus reflecting extensive exchange of views, accompanied with scientific approach. Namely, Institute for Criminological and Sociological research provided the Working group with comparative analysis on key issues that were subject to the amendments. Furthermore, the Working group was guided by positive legal solutions that are incorporated in the legal systems in well-developed democratic societies within EU (e.g. UK, Netherlands, Malta, Italy, etc.).



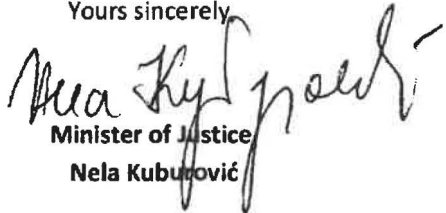
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Special place in the process takes „Tijana Juric Foundation“ whose work had great impact to the following legislative changes. Foundations' work includes more than 60 round tables, conferences and public debates on this subject.

In 2017, „Tijana Juric Foundation“ submitted to the National Assembly a proposal for Criminal Code amendments in terms of life imprisonment, which coincided with the course taken by the working group. After that „Tijana Juric Foundation“ organized peoples' initiative for introduction of life imprisonment in the Criminal Code, with results that are without precedent in implementation of direct democracy mechanisms in Serbia. To be more precise, 158.460 citizens signed peoples' initiative, which is 5 times more than required for proposal of law and 1,5 time more than required for republic referenda. Evenmore it should be noted that this number is higher than number required for constitutional changes. It is certain that this number would definitely be even higher if the prescribed period for signing the initiative was longer than 7 days. We strongly believe that abovementioned facts and figures reflect the level of determination and public support towards legislative changes. The Government, obliged by the strength of the public voice, engaged its capacities in shaping the draft Law that would completely endorse peoples' initiative while satisfying professional requirements at the same time. Therefore, due to the reasons described, Government was only a formal proposer of the introduction of life imprisonment in the Criminal Code, while the substantive proposers were citizens gathered around the initiative.

The Ministry of Justice of the Republic of Serbia remains deeply committed to enhancing human rights and the reform activities in rule of law area mindful of the fact that these represent the core values of each democratic society.

Yours sincerely,



Minister of Justice
Nela Kuburović