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Life Imprisonment in Europe: The Prospect of Release between Case Law and Practice[1]

Patricia Carraro Rossetto[2]
Universidad de Málaga

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Abstract: This article examines life imprisonment through two distinct but intersecting frameworks: the Strasbourg doctrine of reducibility under Article 3 ECHR and the RIMES approach to the harshest penalties, which assesses their orientation towards social inclusion or exclusion. It reconstructs the ECtHR's case law from Kafkaris and Vinter to Murray, under which a review mechanism must be legally defined and have the practical capacity to assess whether continued detention remains justified in terms of the prisoner's rehabilitation. The article then analyses RIMES Pool 4 data from nine European jurisdictions, supplemented by recent legal reforms and evidence on review practices and time served. Read together, the two frameworks reveal the limitations of each approach. While RIMES captures sentence duration and irreducibility, it does not consider the quality of review or the rehabilitative opportunities available to prisoners. Strasbourg, by contrast, remains largely procedural and does not convincingly explain how a life sentence can remain compatible with Article 3 when, despite periodic review, it results in decades of continued detention without a genuine prospect of release. A life sentence may therefore remain formally reviewable while operating in practice as a mechanism of permanent exclusion.

Keywords: *life imprisonment; inhuman or degrading punishment; de jure and de facto reducibility; RIMES instrument; socially exclusionary approach.*

1. Introduction

The compatibility of life imprisonment with the prohibition of inhuman or degrading treatment is one of the most debated questions in European human rights law. The European Court of Human Rights (ECtHR) has consistently held that Article 3 of the European Convention of Human Rights (ECHR) does not prohibit its imposition, while progressively elaborating the conditions under which such sentences remain compatible with that prohibition. Over two decades of jurisprudence have produced a structured body of procedural, substantive and penological requirements that increasingly circumscribe the margin of appreciation left to states in the design and execution of their most severe penalties. Against this background, the article examines life imprisonment through two distinct frameworks: the Strasbourg doctrine of reducibility under Article 3 ECHR and the RIMES approach to the harshest penalties, structured around exclusionary and inclusive

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[2] Correspondence to: patriciarossetto@uma.es

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penal rationales. Reading them together allows a closer analysis of the relationship between penal exclusion, reducibility and the prospect of release.

The analysis proceeds as follows. It begins by examining the Court's own understanding of inhuman or degrading punishment and the principles governing its application. Subsequently, it traces the doctrinal evolution from the foundational reducibility requirement articulated in Vinter and Others v. the United Kingdom to the rehabilitation mandate consolidated in Murray v. the Netherlands. These judgments define the conditions under which life sentences are compatible with the ECHR, setting out the legal framework for the subsequent analysis. The article then turns to the RIMES findings on the harshest penalties across the European jurisdictions examined in order to identify the main legal configurations of life imprisonment and related penalties, and to consider how they are put into practice. Finally, it considers these findings in light of the Strasbourg standard of reducibility.

2. Life imprisonment under Article 3 ECHR: legal framework and Strasbourg doctrine

In the literature on criminal law, the conditions governing the execution and review of sentences have consistently attracted less scholarly attention than the theory of criminal offences itself. This pattern extends to European human rights law scholarship, where the prohibition of inhuman or degrading treatment and punishment has generated considerable attention regarding its absolute nature and conceptual boundaries. Its operation in practice has nonetheless received considerably less attention, even though it is precisely in the execution of life sentences – and in the reality that some are never brought to an end – that the Convention's commitments are most directly at stake (Van Zyl Smit & Appleton, 2019).

The following analysis establishes the normative framework that will subsequently inform a critical reading of sentencing practices across selected European jurisdictions. The first part examines the Court's own understanding of inhuman or degrading punishment under Article 3, ECHR, identifying the threshold conditions and interpretive principles that govern its application. The second traces the doctrinal evolution through which that understanding has been extended to life imprisonment, from the emergence of the reducibility requirement in Vinter and Others v. the United Kingdom to its consolidation as a dual *de jure* and *de facto* standard. The third examines the contribution of Murray v. the Netherlands, which established rehabilitation as a condition of *de facto* reducibility and gave concrete content to the "right to hope". As the following analysis suggests, this doctrinal development, while significant, has unfolded predominantly in procedural terms, without directly addressing whether its requirements produce meaningful outcomes for individuals serving life sentences.

2.1 Article 3 ECHR and the Prohibition of Inhuman Punishment: Scope and Limits

In its own terms, Article 3 of the ECHR simply states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment", a provision that embodies one of the most fundamental values of democratic societies, inextricably linked to respect for human dignity (Bouyid v. Belgium [GC], 2015, § 81). That foundation explains why the

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prohibition is conceived as absolute. No derogation is permitted, even in times of war or public emergency (Article 15, ECHR). To that effect, the Court has consistently held that it cannot be displaced, irrespective of the conduct of the person concerned or the nature of the threat invoked, even where such alleged threat involves terrorism or organised crime (A. and Others v. the United Kingdom [GC], 2009, § 126).

Its scope, however, is not self-defining. The Convention does not specify what form of treatment or punishment falls within the prohibition, and the ECtHR has progressively delimited its content through the resolution of concrete cases, always under the principle that the ECHR must be interpreted as a "living instrument", whose provisions must be read in light of contemporary social and legal standards (Tyrer v. the United Kingdom, 1978, § 31; Selmouni v. France [GC], 1999, § 101). In that regard, the Court's settled case-law makes clear that, to fall within the scope of Article 3, ECHR, ill-treatment or punishment must attain a *minimum level of severity*, an assessment that necessarily depends on all the circumstances of the case. These include, on the one hand, the purpose and duration of the treatment, its physical or mental effects, and the intention or motivation underlying it, together with the context in which it occurred. On the other hand, the sex, age, state of health, and the vulnerability of the person subjected to it (Kudła v. Poland [GC], 2000, § 92). Concerning the question of intention specifically, it has clarified that the absence of any purpose to humiliate or debase the victim does not, of itself, rule out a finding of a violation (Muršić v. Croatia [GC], 2016, § 97; Savran v. Denmark [GC], 2021, § 122; Khlaifia and Others v. Italy [GC], 2016, § 160).

Proceeding from that framework, the ECtHR distinguishes three categories of proscribed ill treatment, each differentiated primarily by the intensity of the suffering inflicted. Torture involves the deliberate infliction of very serious and cruel pain or suffering for a specific purpose, whether for obtaining information or a confession or for inflicting punishment or intimidation. It carries a particular stigma that reflects both the severity of the suffering inflicted and the purposive character of the conduct, the prohibition having achieved the status of *jus cogens* or a peremptory norm of international law (Ireland v. the United Kingdom, 1978, § 167; Selmouni v. France [GC], 1999, § 96). Inhuman treatment encompasses conduct causing intense physical or mental suffering short of the severity required for torture, albeit without the purposive element that characterises it (Labita v. Italy [GC], 2000, § 120). Degrading treatment, by contrast, captures conduct that humiliates or debases an individual in a manner incompatible with human dignity, whether by generating feelings of fear, anguish or inferiority capable of breaking their resistance, or by driving them to act against their will or conscience, independently of any physical dimension (Gäfgen v. Germany [GC], 2010, § 89; M.S.S. v. Belgium and Greece [GC], 2011, § 220).[3]

Against this backdrop, the analysis turns to the specific question of life imprisonment and its compatibility with the prohibition of inhuman or degrading punishment. In this regard, the Court has consistently held that the Convention does not prohibit the imposition of a

[3] It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others. Furthermore, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (Bouyid v. Belgium [GC], 2015, §§ 86-87).

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life sentence on those convicted of especially serious crimes, even if it is effectively served until the prisoner's death.

This position was first established by the European Commission of Human Rights in 1978 and maintained without interruption ever since (Núñez Fernández, 2023, p. 122). The rationale currently underlying that position is that suffering is to some degree inherent in any form of imprisonment, and that even the most severe custodial sentence does not, of itself, attain the level of severity required to engage Article 3.[4] Rather, what may bring a life sentence within the scope of the prohibition is not the element of suffering and humiliation that even lawful incarceration inevitably entails, but the prisoner's deprivation of any genuine prospect of release. The compatibility between long-term imprisonment and Article 3 is, therefore, conditional upon the existence of a *genuine prospect of release*.

The content and scope of that condition have been the subject of sustained doctrinal development, moving from a broad requirement of reducibility to an increasingly demanding framework governing the review of life sentences and the rehabilitation of those serving them. Underlying that development is the right to hope, a normative premise first captured by Judge Power-Forde in her concurring opinion in Vinter, 2013. In her own words, Article 3 of the Convention implicitly recognises hope as an important and constitutive aspect of the human person, since those *who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change*. No matter how long and deserved their prison sentences may be, they *retain the right to hope that, someday, they may have atoned for the wrongs which they have committed* and *ought not to be deprived entirely of such hope* (Vinter and Others v. the United Kingdom [GC], 2013, concurring opinion).

With this framework in place, the following sections examine how the Court has developed the notion of reducibility and identify the conditions that life sentences and other long-term custodial penalties must satisfy, in their national configuration and practical execution, in order to comply with Article 3.

2.2. De jure and de facto reducibility requirement

Having established that a life sentence is compatible with Article 3 only when a meaningful prospect of release exists, the analysis now turns to the content of that condition, generally referred to as *reducibility*.[5]

The notion first appeared in Kafkaris v. Cyprus, 2008, in which the Grand Chamber asked whether a life prisoner could be said to have any prospect of release. It framed this inquiry in terms of whether a sentence could be reduced both *de jure* and *de facto*, without explaining

[4] Alongside the minimum level of severity test, the Court has added a distinct criterion of necessity for one specific category of ill-treatment: physical force used against a person already deprived of liberty. In that context, the decisive question is not only whether the force attained the requisite level of severity, but also whether it was made strictly necessary by the person's own conduct. Where it was not, the use of force is regarded as diminishing human dignity and, for that reason, falls within the scope of Article 3 (Bouyid v. Belgium [GC], 2015, §§ 89-90, 100-101; three judges dissented on this point).

[5] For broader Spanish discussion of reviewable life imprisonment under the ECHR, including the right to hope, the review requirement, penitentiary standards, and later execution problems in Spain, see Landa Gorostiza (2015), Núñez Fernández (2020), and Rodríguez Yagüe (2017).

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what was required in either case. Drawing on an existing line of case-law, the Chamber held that this requirement would be satisfied wherever national law provided for a review of the sentence with a view to its commutation, remission, termination, or the prisoner's conditional release. It also found this to be the case in the absence of a minimum term of unconditional imprisonment, and where the possibility of parole was limited.[6] It concluded that a life sentence does not become irreducible merely because it may, in practice, be served in full (§ 98).

Subsequently, in Vinter and Others v. the United Kingdom, 2013, the Grand Chamber provided some minimal content to the reducibility standard, albeit without expressly organising it around the *de jure* and *de facto* criteria.[7] It requires, *ex-ante*, that domestic law, at the time the sentence is imposed, clearly provides for a review mechanism, offering the prisoner a genuine prospect of release, capable of being triggered at a reasonable point in time. In turn, from an *ex-post* perspective, the same mechanism must allow for an individualised assessment of the prisoner over the course of the sentence, to determine whether continued detention is justified under the recognised penological grounds given their personal changes and progress towards rehabilitation. The Court nevertheless emphasised that this review does not entail an automatic right to release; continued detention may still be refused on the grounds of the prisoner's current dangerousness or the need to protect the public (§§108-122).[8]

Following these two foundational judgments, the Court progressively built a body of case-law refining what domestic law and practice must provide for a life sentence to be considered reducible. Some judgements focused on the clarity and design of the national legal framework, setting out the criteria that a review mechanism must meet to satisfy that standard. Others focused on how such mechanisms had operated in practice, establishing a parallel set of requirements to determine whether a genuine prospect of release was actually

[6] In this case, the Court deemed it sufficient for the purposes of Article 3 that, under Cypriot law, the President of the Republic has the power to grant early release at their discretion upon receiving a report from the Attorney General. Regarding the applicant's argument about the absence of a parole board in Cyprus, the Court reiterated that matters relating to early release policies and their implementation fall within the margin of appreciation retained by member states in the sphere of criminal justice and penal policy. The Court noted that, at the time, there was no clear, widely accepted standard among Council of Europe member states regarding life sentences and their review, nor any clear trend in the systems and procedures implemented for early release (Kafkaris v. Cyprus [GC], 2008, §§ 104-105).

[7] Although not expressed in the precise terms used in Kafkaris, Judge Mahoney emphasises that the reducibility requirement must be examined at two different points in time. The first entails a preventive and legal inquiry, carried out when the life sentence is imposed, into whether the legal configuration of the UK whole-life order is compatible with Article 3. The second involves a substantive review that occurs later during the sentence's execution and considers whether the prisoner's continued incarceration is justified based on the specific circumstances of the case. (Vinter and Others v. the United Kingdom [GC], 2013, concurring opinion of Judge Mahoney, §§ 6–9).

[8] The judgment also gave rise to the notion of the "right to hope", a term first coined by Judge Power-Forde in her concurring opinion. For her, the decisive point was that Article 3, ECHR implicitly recognises hope as an important and essential aspect of human nature. Even individuals who commit the most abhorrent crimes retain their fundamental humanity and the capacity to change; therefore, they should not be entirely deprived of the hope that they may one day redeem themselves.

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available. The distinction between the design of a review mechanism and its practical operation remains one that the case law continues to draw in terms of *de jure* and *de facto* reducibility, respectively.

So, the following two sections are organised around these dual dimensions of reducibility.

De jure reducibility

De jure reducibility relates to the design of the domestic mechanism by which a life sentence can be reviewed. It concerns whether the legal framework in force at the time of sentencing provides a genuine opportunity for future commutation, remission or conditional release that is publicly accessible and defined with a sufficient degree of clarity and certainty, to enable the prisoner to understand and anticipate what is expected of him from the outset.

Building on this general framework, the Court's case law, as set out in its Guide on Article 3 and its Guide on Prisoners´ right, has gradually clarified the requirements for a national mechanism to meet this standard.

The first requirement relates to the nature of the reviewing authority, i.e. whether it is executive or judicial. The Court has consistently declined to prescribe the form that this authority should take, instead leaving this choice within the margin of appreciation retained by contracting states in matters of criminal justice and sentencing (Vinter and Others v. the United Kingdom [GC], 2013, §120; Hutchinson v. the United Kingdom [GC], 2017, §§49–50). Irrespective of the chosen form, the essential point is that the decision on continued detention must be non-discretionary and surrounded by sufficient procedural guarantees to exclude arbitrariness. More recent case law from the ECtHR has seen these safeguards evolve to include a reasoned refusal decision by the authorised body, as well as the possibility of judicial review by a civil court. Before this court, the prisoner and/or their legal representative are entitled to argue that rehabilitation has taken place (Matiošaitis and Others v. Lithuania, 2017, § 181; Petukhov v. Ukraine (No. 2), 2019, § 178; F.B. and Others v. the Netherlands, 2026, §§ 135–138).

The second requirement concerns the content of the reasons given for refusing release. Those reasons must show that continued incarceration still rests on legitimate penological grounds, specifically punishment, deterrence, public protection or rehabilitation. The Court has accepted review criteria built around the prisoner's dangerousness and how his personality has evolved over the course of detention (Bodein v. France, 2014, § 60), as well as criteria addressing the risk of reoffending, the prisoner's behaviour and development, and the impact on victims and next of kin (F.B. and Others v. the Netherlands, 2026, §§ 141-142). By contrast, Article 3 is not satisfied where access to release is made dependent on a criterion detached from that assessment, such as making cooperation with the authorities an automatic precondition for release, irrespective of the prisoner's current dangerousness or rehabilitative progress (Marcello Viola v. Italy (no. 2), 2019, §§ 116, 121, 128, 133). Nor is it sufficient to provide only for compassionate release on grounds such as terminal illness, serious physical incapacity or old age. Such grounds may justify release in humanitarian terms, although they do not allow the prisoner to work towards release by demonstrating personal change, reduced dangerousness or progress toward rehabilitation (Vinter and Others v. the United Kingdom [GC], 2013, § 127).

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The final requirement relates to the timing of the review. The Court has found clear comparative and international support for conducting an initial review no later than twenty-five years after sentencing, followed by periodic reviews at reasonable intervals thereafter (Vinter and Others, 2013, § 120). While this timeframe is not legally binding, the Court has made it clear that a complete lack of a defined timeframe is incompatible with *de jure* reducibility. Consequently, a life sentence that is not subject to review at any fixed point would not meet this standard. This period must, moreover, be assessed by reference to the time elapsed since the imposition of the life sentence, although periods spent in pre-trial detention may be taken into account under domestic law when calculating the minimum term to be served (Bodein v. France, 2014, § 61; Blonski and Others v. Hungary, 2022, §§ 10-12).

De facto reducibility

De facto reducibility relates to how the internal review procedure operates in practice. Rather than merely existing as a formal legal provision, it concerns whether the mechanism effectively provides prisoners with a realistic possibility of release. Building on this framework, subsequent case law has progressively identified the circumstances relevant to assessing the practical reducibility of life sentences.

The first one relates to *empirically* verifying how the mechanism operates in real terms. The Court seeks evidence that the prospect of release is not merely theoretical. Where relevant, it considers factors such as the number of applications lodged, the number of favourable decisions and the reasons given for refusals. The Court also considers the broader pattern of decision-making, particularly where this reveals a consistent refusal to grant release or a tendency to do so only rarely. If the evidence suggests that such powers are being exercised overly restrictively, opaquely or arbitrarily, the sentence may not satisfy the requirement of de facto reducibility (Murray v. the Netherlands [GC], 2016, §100; Sanchez-Sanchez v. the United Kingdom [GC], 2022, §82).

The second circumstance focuses on the prisoner's capacity to work towards the conditions that determine their release. The Court has made clear that a review mechanism can only operate effectively if the state provides the prisoner with a genuine opportunity for rehabilitation during the execution of the sentence. This requires access to measures that support personal change and reduce dangerousness. Such measures include work, education, psychological or psychiatric treatment where necessary, individually planned sentences, periodic assessments, as well as preparation for possible reintegration. The crucial point is that the prisoner must be given the opportunity to demonstrate through their own progress that continued detention is no longer justified on legitimate penal grounds (Murray v. the Netherlands [GC], 2016, §§ 103-108, 121-125; F.B. and Others v. the Netherlands, 2026, §§ 146-166).

3. The empirical reality of life imprisonment: insights from RIMES Project

The preceding sections identified the criteria applied by the ECtHR to determine when a life sentence remains compatible with Article 3 ECHR, as expressed through the dual standard of *de jure* and *de facto* reducibility. The task now is to consider those standards in light of the

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RIMES findings on the harshest penalties across the jurisdictions included in the analysis. The section proceeds accordingly. First, it outlines the scope and methodology of the RIMES instrument. It then identifies the main legal configurations of the harshest penalties across the selected jurisdictions and considers their practical operation. Finally, it reads those findings against the Strasbourg standard of reducibility.

3.1 The RIMES instrument: scope and methodology

RIMES is a validated instrument that provides a comprehensive comparison of the social exclusion generated by national crime control systems in developed Western countries for suspects, defendants, offenders, and ex-offenders. The instrument is based on a conceptual distinction between two opposing approaches to crime prevention. The socially exclusionary approach seeks to incapacitate these groups by placing them in conditions that make it harder for them to either abide by the law or escape detection once their contact with penal institutions ends. By contrast, a socially inclusive approach aims to reintegrate them so that they can voluntarily lead law-abiding lives upon leaving penal institutions (Díez-Ripollés, 2011, pp. 13-15; Díez-Ripollés & García-España, 2021, p. 263).

The instrument comprises thirty-nine validated indicators of punitive rules and practices, distributed across nine fields of penal intervention. It was constructed through a two-stage process of content validation by expert judgement, involving around one hundred international specialists from eighteen developed Western countries (Díez-Ripollés & García-España, 2019, pp. 06–14). Together, these nine categories aim to provide a comprehensive overview of each country's penal intervention model as it relates to the groups most affected by it (Díez-Ripollés & García-España, 2021, p. 261).

Among the nine pools that compose the instrument, the present study concentrates on pool four, harshest penalties, since it is within this pool that life imprisonment and the question of its reducibility are situated. It is composed of four validated indicators, three rules and one practice, listed in Table 1.[9]

Table 1. Indicators composing Pool 4

Item	Operational question
42	Is the death penalty legally available?
43	Is life imprisonment without release legally available?
46	Is a minimum of 20 years served required before release from life imprisonment may be sought?
50	Do life-sentenced persons regularly serve more than 25 years in custody?

Source: table prepared by the author based on RIMES Manual

Taken together, these four indicators occupy a unique position among comparative criminal policy indicators. The sanctions that a state is willing to impose at the limit of its punitive power reveal more clearly than any other factor how far it is willing to go. At that extreme of the punitive spectrum, the socially exclusionary approach is pursued to its furthest

[9] For a detailed account of how Pool 4 was constructed, see Corral Maraver (2024, pp. 245-249)

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point, as neither sanction is oriented towards the offender's reintegration (Corral Maraver, 2023, pp. 243-244).

Considering this, the following examines how the indicators in Pool 4 are resolved across the considered jurisdictions, and what their combined results reveal about the design and practical operation of the harshest penalties at a national level.

3.2 Life imprisonment across European jurisdictions covered by RIMES

The empirical material examined in this section draws on data validated by country and state experts within the RIMES Pool 4 framework.[10] Since the aim of the present analysis is to test this material against the doctrine developed by the ECtHR under Article 3 of the Convention, the discussion is necessarily restricted to those jurisdictions bound by the Convention and subject to the Court's jurisdiction.[11]

The results obtained across the nine European jurisdictions examined in this section are set out in Table 2.

Table 2. Pool 4 results in the European jurisdictions covered by RIMES and falling within the jurisdiction of the ECtHR

Jurisdiction	Item 42	Item 43	Item 46	Item 50
England and Wales	No	Yes	Yes	No
Italy	No	Yes	Yes	Yes
Poland	No	No	Yes	Yes
France	No	No	Yes	No
Spain	No	No	Yes	No
Romania	No	No	Yes	No
Germany	No	No	No	No
Finland	No	No	No	No
Portugal	No	No	No	No

Source: table prepared by the author based on RIMES data.

The results set out above, together with the findings contained in the underlying country protocols, allow for the following observations:

The absence of the death penalty across all nine jurisdictions examined was a predictable outcome, since all of them are contracting parties to the ECHR and have ratified Protocol No. 13, which abolishes capital punishment in all circumstances, including wartime. However, without any practical application, some countries retain in their domestic texts a residual reference to capital punishment under military law in time of war, as is the case of

[10] Validated data are available for the following jurisdictions: Germany, Spain, Finland, France, Italy, Poland, Portugal, Romania, Sweden and the United Kingdom, together with the United States jurisdictions of California, Florida, New York and Texas.

[11] Therefore, the United States jurisdictions, notwithstanding the analytical value of the data collected in respect of them, fall outside the scope of this comparative exercise and are excluded from the discussion that follows.

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Spain. Indeed, Article 2 § 1 ECHR itself still contains the original exception for the execution of a court sentence, and no formal amendment to that text has ever been adopted. Nonetheless, since Al-Saadoon and Mufdhi v. the United Kingdom (2010, § 118), and consistently with the mentioned Convention's living instrument doctrine, the Court has held that consistent State practice, together with the near universal ratification of Protocol No. 13, provides a strong indication that Article 2 must now be regarded as amended so as to prohibit the death penalty in all circumstances.

Having established that capital punishment finds no place in any of the nine jurisdictions examined, the analysis now turns to what became, following its abolition, the most severe penalty available within these criminal justice systems: life imprisonment. In its general configuration, this penalty may be either revisable or genuinely irreducible. Item 43 addresses the second possibility by asking whether national legislation permits life imprisonment without parole at the judge's discretion or as a mandatory consequence. As shown in Table 2, the majority of the studied jurisdictions do not adopt this approach. The only exceptions are England and Wales and Italy. However, as some of the protocols were finalised in 2021 and require updating due to subsequent legal landscape changes, this information may be subject to change.

In England and Wales, a whole-life order provides no avenue for release other than the Secretary of State's discretionary power of compassionate release under section 30(1) of the Crime (Sentences) Act 1997. If anything, that framework has been reinforced rather than narrowed since the protocol was completed, as the Sentencing Act 2026 added the murder of a police, prison or probation officer as a new starting-point category for a whole-life order. Gilman and Phillips (2026, p. 172) report that the whole-life-order population increased by 179 per cent between 2000 and 2022, compared with a 23 per cent rise in the general prison population over the same period. Against that background, England and Wales stands as the clearest instance in the sample of life imprisonment without a realistic prospect of release: a sentence structured around permanent exclusion rather than reintegration, whether justified in retributive terms or on the basis that the offender is considered incorrigible (Gilman & Phillips, 2026, p. 169).

Italy, by contrast, can no longer be treated in the same way. Item 43 was resolved on the basis of the *ergastolo ostativo* regime, which denied life prisoners who did not cooperate with the authorities any access to parole. This absolute bar no longer exists. Following the amendment to Article 4-bis of the Penitentiary Act[12], such prisoners are no longer automatically excluded from parole consideration. Consequently, they can now apply for review after serving thirty years, provided they can demonstrate that they have severed all ties with organised crime and complied with reparative obligations towards the victims. By contrast, a collaborating prisoner is subject to considerably shorter periods, though the exact length depends on the precise legal status of the collaborator. Under the ordinary regime,

[12] Corte Costituzionale, ordinanza no. 97/2021, followed by Decree-Law no. 162/2022, converted with amendments into Law no. 199/2022. This reform was a legislative response to Viola v. Italy (no. 2), App. No. 77633/16 (ECtHR, 13 June 2019), which found the pre-reform regime incompatible with Article 3 ECHR on account of the absolute presumption of dangerousness attached to the absence of collaboration.

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parole is fixed at twenty-six years for a life sentence.[13] If the prisoner has been admitted to the witness protection scheme, this period is reduced to ten years.[14] Therefore, Italy no longer offers a clear example of life imprisonment without any prospect of release under its current framework.

Another relevant change concerning the results of item 43 is that Poland now provides for a genuinely non-reviewable life sentence. In accordance with the revised Article 77 §§ 3-4 of the Penal Code (*Kodeks karny*), the sentencing court has the discretion to exclude parole in cases where the offence follows a previous final conviction of life imprisonment or twenty years or more for specific serious offences. Additionally, the court may exclude parole if it deems the offender to be permanently dangerous, regardless of any prior convictions (Corral Maraver, 2024, pp. 24–26; Polak-Kruszyk, 2024, pp. 69–70). An initial version of this reform, which was approved by the Sejm in 2019, was referred to the Constitutional Tribunal by the President and therefore never came into force. A revised version was enacted in 2022 and came into effect on 1 October 2023, settling on a review threshold of thirty years rather than the originally proposed thirty-five (Polak-Kruszyk, 2024, p. 69). Corral Maraver (2024, p. 30) places this reform alongside a similar one adopted in Hungary, suggesting that Poland may eventually face a negative ruling from the ECtHR, similar to those already issued against Hungary.[15]

Having closed the analysis of item 43 with the jurisdictions whose regimes illustrate the harshest end of the irreducibility spectrum, the picture changes with item 46. Here, among the eight jurisdictions that provide for life imprisonment at all, a majority meet the twenty-year threshold this item requires. The offences that give rise to life imprisonment in the first place remain broadly consistent across the sample, aggravated homicide above all, together with terrorism, genocide and crimes against humanity, with each system adding its own further categories, treason, regicide or magnicide, and offences connected to organised crime.

Three groups can be distinguished within this sample. Portugal stands alone in the first group, as its constitution prohibits life imprisonment altogether. The second group comprises Germany and Finland, the only two jurisdictions whose general review period falls below the twenty-year threshold set by the item. The remaining six jurisdictions meet the twenty-year threshold, though the underlying architecture varies. Italy, Poland and England and Wales combine a reviewable form of life imprisonment with an irrevocable one, which has already been addressed under item 43. As regards the reviewable form, the applicable thresholds also differ among these three. Italy fixes eligibility for parole at twenty-six years. Since the 2022 reform, Poland has set the same threshold at thirty years. England and Wales alone retain a graduated range of twelve to thirty years, depending on the offender's age and the gravity of the offence.Spain and Romania only provide the reviewable form, with a general threshold of twenty-five and twenty years, respectively, although longer minimum periods apply in Spain in certain cases. France follows the same model, although it is

[13] Article 58-ter of the Penitentiary Act, read together with Article 176 of the Criminal Code.
[14] Established under Decree-Law no. 8/1991, converted into Law no. 82/1991.
[15] Specifically, László Magyar v. Hungary, App. No. 73593/10 (ECtHR, 20 May 2014); T.P. and A.T. v. Hungary, App. Nos. 37871/14 and 73986/14 (ECtHR, 4 October 2016).

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structured as a range from eighteen to thirty years, with the latter reserved for *perpétuité incompressible* (see Bérard, 2016, pp. 85, 88–89).

Turning now to the remaining conditions of *de jure* reducibility, a few brief remarks are warranted on the further elements of the legal configuration of life sentences across the jurisdictions sampled. It should, though, be noted that this material does not necessarily fall within the resolution of the respective items, and that the observations that follow rest on independent verification rather than on RIMES data.

The first question to consider is who can initiate a review once the applicable minimum term has been served. In every jurisdiction sampled, it is generally the prisoner, assisted by counsel, who sets the procedure in motion. What differs is whether anyone else can initiate the procedure as well, and whether the competent authority can act of its own initiative. In Germany, for example, the court acts ex officio and is substantively bound to grant release once the statutory conditions are met. In Finland, France, Italy, Poland, Romania and Spain, the competent authority may act either ex officio or following an application from other legitimate individuals, who are generally the public prosecutor, the parole commission or the probation service. Poland extends this circle further by allowing applications from the director of the penitentiary institution or the professional probation officer.[16]

A second criterion concerns the nature of the competent authority itself. The majority of the sampled jurisdictions entrust the decision to a jurisdictional body, though not necessarily to a court dedicated exclusively to this task. In France and Italy, the matter is assigned to a specialised execution court: the tribunal de *l'application des peines* in France and the *tribunale di sorveglianza* in Italy. In contrast, Poland and Germany embed a specialised chamber within a court of general jurisdiction: the *sąd penitencjarny* within the *sąd okręgowy*, and the *Strafvollstreckungskammer* within the *Landgericht*. Spain, Finland and Romania go further, assigning the matter to a court of general jurisdiction without a specialised chamber. In several of these jurisdictions, the decision is preceded by a report from an advisory body. Germany requires a forensic-psychiatric expert opinion as a rule, and appellate courts have quashed decisions that failed to engage adequately with it. Spain requires the court to evaluate the same kind of reports before making its prognosis, and the law obliges the court to repeat this evaluation on its own initiative at least every two years. England and Wales, in turn, stand apart from all seven. The Parole Board is not a court, but an independent non-departmental public body. Its panels typically comprise judicial, psychiatric and psychological members, as well as independent members from outside the judiciary. In terms of the binding nature of the report, the panel is held to a similar standard: a decision has been quashed for irrationality where it departed from expert evidence without adequate explanation. [17]

[16] On the German procedure, see § 57a(1) Criminal Code and § 454(1) Code of Criminal Procedure. On the Finnish procedure, see § 1(1), (3) Act on the Procedure for the Release of Life Prisoners. On the French procedure, see art. 712-4(2) Code of Criminal Procedure. On the Italian procedure, see art. 678(1) Code of Criminal Procedure. On the Polish procedure, see art. 19 § 1 and art. 161 § 2 Code of Execution of Criminal Sentences. On the Romanian procedure, see art. 587(1) Code of Criminal Procedure and art. 97(2)–(3) Law No. 254/2013. On the Spanish procedure, see art. 92(4) Criminal Code.

[17] On the French procedure, see art. 712-7 Code of Criminal Procedure. On the Italian procedure, see art. 70 Law No. 354/1975 and art. 678 Code of Criminal Procedure. On the Polish procedure, see art. 3 § 2 Code of Execution of Criminal Sentences. On the German procedure, see §§ 78a and 78b(1) Courts Constitution Act.

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A third criterion concerns whether the decision must be reasoned, and the degree to which the law structures the grounds for release. Every jurisdiction sampled imposes the first requirement without exception. On the second, the legislation takes different paths. In Italy and England and Wales, the governing standard is framed through relatively open-ended clauses rather than through a detailed statutory list of factors. In Italy, the applicable standard combines certain objective preconditions with a broad evaluative criterion centred on the prisoner's *sicuro ravvedimento* (critically, Pugiotto, 2013, pp. 21-22). In England and Wales, release is likewise governed by a general public-protection test, under which continued detention must no longer be considered necessary for the protection of the public. The remaining jurisdictions set out the governing standard in more detailed statutory terms. In Poland, Spain and Finland, the assessment considers the nature of the offence, the prisoner's behaviour while serving their sentence and their likelihood of reintegrating into society or reoffending. Spain adds specific requirements in terrorism cases. Romania, France and Germany adopt a similar approach, albeit through a more institutionalised structure. Here, statutory criteria are supplemented by intervention from the parole board, multidisciplinary assessments or expert evaluations of continued dangerousness. In several of these systems, however, the prisoner's criminal record is considered alongside their conduct in custody and their efforts towards reintegration. This creates a clear tension in the assessment since it combines a static element, established before the sentence began, with dynamic factors designed to measure change during its execution. To that extent, the continued weight assigned to the criminal record tends to undermine the rehabilitative logic of the review process.[18]

The final criterion relates to the possibility of appealing a negative decision. France, Poland, Romania and Germany all provide a devolutive appeal to a different, hierarchically superior body which reviews the merits of the refusal within a short, fixed deadline. Italy and England and Wales confine the challenge to legality rather than merits, albeit via different processes. In Italy, only an appeal in cassation is permitted, limited to violations of law, within fifteen days. In England and Wales, an internal reconsideration by a different member of the Parole Board is required before any external challenge can be made. A decision that survives this stage can still be quashed on judicial review, but only if the panel has acted irrationally by departing from the evidence before it without adequate explanation. Spain and Finland diverge again, each in its own way. Spain keeps the challenge within the same court that issued the refusal: a reconsideration (*recurso de súplica*), rather than a devolutive appeal, which

On the Spanish procedure, see art. 92(4) Criminal Code. On the Finnish procedure, see § 1 Act on the Procedure for the Release of Life Prisoners. On the Romanian procedure, see art. 587(1) Code of Criminal Procedure and Decision No. 63 of 24 February 2022 of the Constitutional Court. On the position of the Parole Board, see s. 239(1) and Sch. 19 para. 1(1) Criminal Justice Act 2003.

[18] On the Italian standard, see art. 176(1) Criminal Code. On the English and Welsh standard, see section 28(6)(b) Crime (Sentences) Act 1997; see now also s. 28ZA (2). On the French standard, see art. 729 Code of Criminal Procedure, and art. 730-2 of the same code for the dangerousness assessment. On the German standard, see § 57a Criminal Code and § 454(2) Code of Criminal Procedure. On the Polish standard, see art. 77 § 1 Criminal Code. On the Spanish standard, see art. 92(1)(c) Criminal Code. On the Romanian standard, see art. 99(1)-(2) Criminal Code and art. 97(2)-(3) Law No. 254/2013. On the Finnish standard, see ch. 2c, § 10 Criminal Code.

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must be lodged within three days. Finland alone conditions access to its highest court on a filter: an appeal to the Supreme Court is only permitted if the Supreme Court grants leave.[19]

Finally turning to practice, item 50 asks whether life-sentenced prisoners regularly serve more than twenty-five years in custody. For this to be the case, more than 35 per cent of those released must have done so. Only Italy and Poland meet this criterion. In Italy, however, the affirmative answer is based on an inference drawn from the twenty-six-year statutory threshold. The protocol itself acknowledges that the available information is insufficient to answer the question based on observed practice alone. In Poland, by contrast, the result follows directly from the structure of the release regime: as the law bars release before twenty-five years have been served, any prisoner ever released necessarily meets this criterion. France and England and Wales, although they both answered in the negative, require closer attention. In each case, the negative result coexists with independent evidence of exceptionally long periods of confinement that the available data do not fully capture. In England and Wales, release data cannot register prisoners serving whole-life orders at all, precisely because they are never released (Gilman & Phillips, 2026, p. 168). In France, independent sources report prisoners who have served several decades, with a small number of cases ending in death in custody (Vannier, 2016, pp. 207-208). Thus, in both jurisdictions, the negative answer coexists with a documented reality of very long-term imprisonment that the available data reflect only imperfectly.

The examination of item 50 illustrates a broader evidential difficulty brought to light by the application of the item (see Corral Maraver, 2024, p. 250). A Yes or No answer depends entirely on the quality of data that many jurisdictions do not systematically produce, and where such data do exist, they are compiled inconsistently, from official cohort statistics in some countries to inference or partial reporting in others. Germany and Romania, where individualised release records allowed the item to be resolved on genuinely observed practice, show that this is primarily a question of data availability and comparability, rather than a difficulty inherent in the item itself. Even the Council of Europe's own SPACE I survey records life imprisonment as a single category of sentence length, without distinguishing between reviewable and irreducible forms (Aebi & Cocco, 2025).

3.3 Reading the RIMES data against the Strasbourg standard of reducibility

Previous sections have examined the Strasbourg standard for life imprisonment under Article 3 of the ECHR and the findings produced by the RIMES project on the harshest penalties. This section considers these findings in the context of the relationship between penal exclusion, inhuman punishment and reducibility. The analysis aims to identify the areas of overlap between the two frameworks and the limitations that arise from their comparison.

[19] On the French procedure, see art. 712-11 Code of Criminal Procedure. On the Polish procedure, see art. 162 § 2 Code of Execution of Criminal Sentences. On the Romanian procedure, see art. 587(3) Code of Criminal Procedure. On the German procedure, see § 311(2) Code of Criminal Procedure. On the Italian procedure, see art. 585(1)(a) Code of Criminal Procedure, applied via arts. 678(1) and 666; Cass. pen., Sez. I, sent. n. 31908/2023. On the English and Welsh procedure, see Parole Board Rules 2019 (SI 2019/1038), r. 28; R (Wells) v Parole Board [2019] EWHC 2710 (Admin). On the Spanish procedure, see arts. 236 and 238 Code of Criminal Procedure. On the Finnish procedure, see § 8 Act on the Procedure for the Release of Life Prisoners.

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At a methodological level, the two frameworks are based on different rationales. In Strasbourg case law, the concept of inhuman treatment and punishment has mainly been defined in terms of reducibility, i.e. the legal and practical conditions under which life imprisonment can be considered compatible with Article 3 ECHR. By contrast, in RIMES, Pool 4 considers the harshest penalties in terms of social exclusion. It focuses on the extent to which maximum sanctions embody a socially exclusionary approach centred on incapacitation, irreducibility, and long-term exclusion from social life. The two frameworks therefore do not fully overlap, although they intersect at certain points. Their comparison reveals the operational limits of Strasbourg case law and the metric limits of the RIMES instrument. At the same time, it highlights areas of common ground, particularly where the exclusionary logic of the penalty intersects with the rehabilitative and reintegrative considerations that underpin de facto reducibility.

The first point of disconnection concerns de jure reducibility itself. At this level, Strasbourg case law considers the legal rationale for life imprisonment. Under the logic of Article 3 ECHR, this balance is struck between the prisoner's right to liberty and the state's duty to protect society from individuals deemed dangerous. In this context, the reviewing authority, the structure of the procedure, the grounds for continued detention that are deemed acceptable, the possibility of review, and the guarantees against arbitrariness are all relevant, insofar as they define the limits within which the state may exercise its punitive power proportionately. Pool 4 was not designed to assess that internal rationality of legal intervention. Its purpose lies elsewhere, namely in capturing whether the harshest penalties are configured around exclusionary aims such as incapacitation, irreducibility and long-term removal from social life, rather than around reintegration.

Despite this difference, one significant point of contact remains: this concerns the temporal threshold for review. Strasbourg case law has repeatedly identified twenty-five years as the main comparative benchmark for the first review, while consistently refusing to treat this as a binding limit. From RIMES's perspective, pursuing very long minimum terms before release is not just a technical feature of sentence design. It is also an indicator of the extent to which the legal system structures the harshest penalties around exclusion rather than reintegration. Item 46 therefore captures a dimension of de jure reducibility that falls within the scope of Pool 4. Within that framework, the legal availability of life imprisonment without the possibility of parole or review at very late stages is an important expression of penal exclusion. The doctrine of the right to hope does not entirely remove that tension. While it preserves the legal claim that release must remain possible, it does not alter the exclusionary orientation that the legal structure of the sentence may still convey.

The connection becomes closer at the level of de facto reducibility. Here, both frameworks engage more directly with the practical reality of punishment. According to Strasbourg case law, de facto reducibility does not depend solely on the legal availability of review; rather, it depends on whether the prisoner is given a genuine opportunity to work towards release through rehabilitation, personal development, and preparation for reintegration. Pool 4 takes a narrower approach to that practical reality. Item 50 captures one empirical manifestation of penal exclusion: the effective duration of confinement. However, in doing so, it disregards what is most relevant from the perspective of social inclusion, as it

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does not demonstrate whether prisoners are provided with meaningful opportunities for rehabilitation, periodic assessment or preparation for reintegration. For this reason, the comparison also highlights a limitation of the Strasbourg approach. Although the Court increasingly emphasises the need for concrete rehabilitative opportunities, it continues to treat life imprisonment as compatible with Article 3 so long as release is not legally precluded. The question of whether very long periods of confinement, especially when coupled with repeated negative reviews, may themselves render the punishment inhuman in substantive terms is less clearly developed. Consequently, a sentence may remain formally reviewable yet, in practice, approach irreducibility.

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