

LIFE IMPRISONMENT OF CHILDREN IN THE EUROPEAN UNION



ACKNOWLEDGEMENTS

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PART I

INHUMAN

SENTENCING OF

CHILDREN

In 2010 CRIN, with other partners, launched a campaign for the prohibition of inhuman sentencing of children - defined to include sentences of death, life imprisonment and corporal punishment.

Frustrated by the narrow focus on life imprisonment without parole within the children's rights community, CRIN published a report on the life imprisonment in the Commonwealth in 2012, highlighting the prevalence of life imprisonment throughout the Commonwealth States and the different forms that life sentences could take. The current report moves on to look at such sentencing in the European Union member countries (EU).

Life imprisonment sentences cover a diverse range of practices, from the most severe form of life imprisonment without parole, in which a person is sentenced to die in prison so long as their sentence stands, to more indeterminate sentences in which at the time of sentencing it is not clear how long the sentenced person will spend in prison. What all of these sentences have in common, however, is that at the time the sentence is passed, a person is liable to be detained for the rest of his or her natural life.

International human rights standards universally condemn life imprisonment without parole for children, and now the United States is the only State which continues to sentence children to this form of extreme sentencing. This focus on the worst forms of the sentence, however, has disguised the practice of less severe or overt forms of life imprisonment. The United Nations has begun to look at life imprisonment of children more generally and in November 2012 the General Assembly urged States to consider repealing all forms of life imprisonment for children. The Human Rights Committee, meanwhile, has called on States twice to prohibit life imprisonment of children in law and practice.

What is immediately obvious from reviewing the justice systems of the EU, is that life imprisonment of children is now restricted to a small number of States, but that a substantial number of children are affected by such sentences. Within three States - Cyprus, France, and the United Kingdom (including England, Wales, Scotland and Northern Ireland) - life imprisonment remains clearly lawful for children.

In 22 States, life imprisonment has now been explicitly abolished for children. While certainly something to celebrate, this statistic masks the extremely long maximum sentences that remain legal for crimes committed while under the age of 18 and the disparity in sentencing across

Europe.

In certain States the situation is less clear whether because of a lack of clarity in domestic legislation or the paucity of the information available.

CRIN is concerned that States are handing out lengthy sentences to children, yet international condemnation is often limited to life imprisonment without parole and the death penalty. It is essential - indeed long overdue - to widen the focus and challenge any sentence which, at the time it is passed, a child is liable to be detained for the rest of his or her natural life. CRIN, with other commentators, believes that the only justification for the detention of a child should be that the child has been assessed as posing a serious risk to public safety. Courts should only be able to authorise a short maximum period of detention after which the presumption of release from detention would place the onus on the state to prove that considerations of public safety justify another short period of detention. The same principles should apply to pre-trial detention.

This briefing serves to highlight the prevalence and the plurality of laws permitting life imprisonment for children, laws that potentially condemn children to die in prison, and hopes to lead to reviews of the sentencing of children to ensure they are fully compliant with the CRC and other instruments. CRIN believes that life imprisonment, of any type, does not have a place in juvenile justice.

PART II

FINDINGS

Forms of life imprisonment

This report reviews the laws and practices of the States within the European Union with regards to life imprisonment of children; that is all persons under 18 years of age. Where official information is available on how many children are affected by the relevant sentences, this has been included, and where government figures are not maintained, this too is highlighted. For the purposes of this report, “life imprisonment” has been defined to include a variety of types of sentence under which it is possible for a person to be legally detained for the rest of his or her natural life for an offence committed whilst under the age of 18 years. Such sentences include:

Life imprisonment without parole, in which at the time of sentencing, the court orders that the convicted person will never be eligible for release. This sentence means that, short of a pardon, commutation or other form of leniency after sentencing, a person serving such a term will spend the rest of his or her natural life in detention.

Life imprisonment with the possibility of parole, simply referred to as life imprisonment throughout this report. Definitions vary in their precise form, though they usually require the setting of a minimum term which must be served in detention before a person becomes eligible for release. If a person serving a life sentence is released, his or her release is usually subject to restrictions and controls, and he or she will remain liable to be detained upon breaching those restrictions.

Detention at the pleasure of the executive or the courts are strictly speaking indeterminate sentences, in that it is possible that a person will be unconditionally discharged without restrictions. However, such sentences have been included within the definition of life imprisonment here, as in law they allow for a person to be detained for the rest of his or her natural life.

Indefinite detention sentences are those other than detention at the pleasure of the executive or the courts which allow for an undefined period of detention that may be extended for the rest of a person’s life.

Overview of the findings

This section is intended to give a brief overview of the findings of this report. For full details on all of these issues and complete references, see the Country Chapters below.

1. The legality of life imprisonment

What is immediately clear in this report, is that the vast majority of States within the EU have abolished life imprisonment for children. Of the 28 States within the EU, 22 include within their laws an explicit prohibition on life imprisonment for children, or a clear limit on the period for which children may be detained which falls short of de facto life imprisonment. Three States have outlawed life imprisonment for young people beyond the age of 18 (Bulgaria, Hungary and Sweden) and a further three countries have prohibited life imprisonment regardless of age (Croatia, Portugal and Spain).

Three States retain forms of life imprisonment for children: Cyprus, France and the United Kingdom (including England and Wales, Northern Ireland and Scotland).

In Luxembourg and Malta, CRIN has been unable to clarify whether life sentences are retained or not. Ireland’s legislation seems to fall short of a prohibition on life imprisonment for children, but we have not been able to confirm this.

2. How many children affected by life imprisonment

In both Cyprus and France, life imprisonment for children remains very rare. In preparing this report, CRIN found no evidence of life sentences for children in Cyprus, and two children have been sentenced to life imprisonment in France in the last 25 years.

In England and Wales, however, the sentence of “detention during Her Majesty’s pleasure” (DHMP) remains much more common. Since 2008, 117 children in England and Wales have been sentenced to DHMP, in one instance the child was 13 years old at the time of sentencing. Another cause for concern, is that the UK Ministry of Justice did not maintain figures on how long children serving these sentences actually serve.

A further 290 children have been sentenced to “detention for public protection” in England and Wales since the sentences came into force, another sentence which can, in principle, authorise detention for a person’s natural life.

Similarly, in Scotland, 113 people were sentenced to “detention without limit of time” between 2001 and 2011, though Scottish figures did not distinguish between children (defined as those under 18) and young offenders (defined as under 21). In Northern Ireland up to date figures were not available on children sentenced to “detention during the pleasure of the Secretary of State”, though 3 people were serving such sentences as of 2004.

3. Maximum sentences across the EU

Of the 22 States that have abolished life imprisonment and set maximum periods of detention to which children can be sentenced, the period to which children may be sentenced varies wildly. The Netherlands and Spain maintain the lowest maximum sentence of detention at six years, while Hungary sets the maximum at 25 years. The maximum sentence in Malta is at least 30 years, though it is possible that life imprisonment remains lawful.

Across much of the EU, laws tend to have coalesced around 10 years as the maximum period to which children may be sentenced, which is the maximum sentence in nine States.

4. The meaning of life imprisonment

In looking at life imprisonment for children, this report also looks at the way that life imprisonment has been defined in national legal systems. In this way, if life sentences are prohibited for children it is clearer what protection this actually provides.

Definitions of life imprisonment vary widely across Europe. The majority of States, 20 out of the 25 that retain some form of life imprisonment, set a clear minimum period that must be served before a person can be conditionally released from prison. This limit, however, can vary from seven years in Ireland to up to 30 years for certain offences in Estonia, Bulgaria and France.

Five States do not set a clear minimum term to be served, but rely on a system of commutation, ministerial discretion, royal pardon or, in the case of the United Kingdom, a more complicated formula to determine when a person becomes eligible for release from prison.

5. Minimum age of criminal responsibility

It is impossible to meaningfully look at the sentences to which children can be sentenced without also addressing how States define those who it can sentence to criminal penalties. To this end, this report also looks at the minimum age at which children can be subjected to such penalties.

The majority of States within the European Union have settled on 14 years as the minimum age of criminal responsibility (MACR). The lowest MACR across the region is 8 years in Scotland and the maximum is 16 in Luxembourg, though both of these figures are slightly misleading in this simple form as can be seen in the section of this report on the MACR and the detailed country profiles below.

Minimum age of criminal responsibility	Number jurisdictions
8	1 ¹
9	1
10	4
11	0
12	2
13	1 ²
14	11
15	6
16	1 ³

1. Scotland (United Kingdom). Note, though the minimum age of criminal responsibility is set at 8, no person can be prosecuted for an offence committed while under the age of 12..

2. Includes France, as children can be sentenced to criminal penalties from 13 years, but children can be held “criminally responsible” as the phrase is used in French law when they have “discernment”. See country chapter below for more information.

3. Includes Poland, though commentators have argued that Polish law permits measures equivalent to penal sanctions without limit of age. See country chapter below for more information.

4. Includes Luxembourg, though the Youth Court can apply measures that include deprivation of liberty without limit of age. See country profile below for more information.

A notable feature of the MACR across the region, is that of variable limits. Four States across the European Union maintain different minimum ages of criminal responsibility for different offences, typically, though not exclusively, a lower age for more serious offences.⁵

Three countries, at least theoretically, have laws which allow for the penalties of a penal nature, including deprivation of liberty, to be applied to children without setting a lower age limit: France, Luxembourg and Poland.

French law, for example, provides that children may be criminally sentenced from the age of 13, which could reasonably be identified as the “minimum age of criminal responsibility” as it is usually understood. However, under the Penal Code, children can be held “criminally responsible” within the meaning given in French law, if they have “discernment” and subjected to protection, assistance, supervision and educational measures”. Since there is no minimum age at which a person can be said to have discernment, there is no minimum age at which children can be “criminally responsible”.

While the difficulties with French laws may be primarily semantic, those of Poland show a different problem. Formally, the minimum age at which children can be held criminally liable is 15, and only then for specific offences. However, Polish courts have the power to impose measures on children of any age in response to evidence of “demoralisation” of a child. Evidence of “demoralisation” includes criminal activity, and measures that can be handed down include those that amount to a deprivation of liberty. Some commentators have argued that in effect this equates to an absence of a minimum age of criminal responsibility.⁶

At least in theory,
France, Luxembourg
and Poland allow
deprivation of liberty
without a lower age
limit.

5. Ireland, Lithuania, Luxembourg, Poland.

6. See Poland country profile for more information.

PART III

LIFE IMPRISONMENT AND THE EUROPEAN COURT OF HUMAN RIGHTS

1. Challenging life imprisonment under the ECHR

The European Convention on Human Rights (ECnHR) does not explicitly address the issue of life imprisonment, but the European Court of Human Rights (ECtHR) has used the provisions of the ECnHR to set limits on the imposition of life imprisonment.

Challenges to life imprisonment under the ECnHR can be broadly divided into two types:

1. those challenging life imprisonment sentences as violating the ECnHR in and of themselves
2. those challenging the procedure used to implement and monitor life imprisonment, and to challenge ongoing detention

In recent years, the ECtHR has clarified the standards set by the ECnHR with regards to life imprisonment of adults, but the position in relation to children is much less clear, not least because of the small number of States within the EU that still sentence children to life imprisonment. Most of the relevant case law, therefore, originates from the United Kingdom.

To set out the court's case law on life imprisonment clearly, it is necessary to look at the established rule for adults as well as how the rule has been varied with regards to children, and finally how the ways that such sentences for children might be challenged in the future.

2. Life imprisonment and the prohibition of torture, inhuman and degrading treatment or punishment

Adult sentences

The primary means of challenging sentences of life imprisonment in and of themselves has been using the Convention's prohibition on torture, inhuman or degrading treatment or punishment under article 3. This prohibition is absolute, in that if treatment or punishment is judged to have reached the relevant standard, States will not be able to argue that it is justified.

First, it is clear from the ECtHR's case law that life imprisonment is not prohibited by the Convention. The court has accepted that States are "free to impose life sentences on adult offenders for especially serious crimes such as murder" and that "the imposition of such a sentence on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention".

In recent years, the Court has made it clear that life imprisonment for adults will only violate article 3 where detention is "irreducible", a term which has been defined to include only those sentences where release from detention is impossible in principle and in fact. Where there is the possibility of commutation, remission, termination or conditional release, life imprisonment will not be considered irreducible, nor will a life sentence be irreducible simply because it may extend to the rest of a person's natural life.⁸ In the case of any person serving a sentence of life imprisonment, domestic authorities must be able to consider "whether any changes in the 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."⁹

Two recent examples from the Grand Chamber of the ECtHR have illustrated how this line is to be drawn. In Cyprus, life imprisonment is considered a sentence for the rest of a person's natural life and the only way a person serving such a sentence can be released is upon an order of the President on the recommendation of the Attorney-General.¹⁰ In deciding that this sentence was not irreducible, the court placed emphasis on the fact that the Presidential power to release people serving life sentences has been used, 11 times since 1993.¹¹

The issue of when a sentence will be considered irreducible was taken up again in the context of the United Kingdom and "whole life tariffs". Under the English system of life imprisonment for adults, a tariff period is set, which is the minimum term to be served before a person becomes eligible to be released on parole. For the most serious murders, typically those involving the murder of more than one person, a substantial degree of premeditation or sexual or sadistic conduct, this period can be set as a whole life period.¹² Those serving whole life tariff sentences would only be eligible for release upon the order of the Secretary of State. The ECtHR interpreted this discretion as limited to release for compassionate medical grounds.¹³ The ECtHR did not

7. *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10), 9 July 2013, para. 106

8. See *Kafkaris v. Cyprus* (Application No. 21906/04) 12 February 2008, p. 39

9. *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10), 9 July 2013, para. 119

10. Constitution of Cyprus, Article 53(4).

11. *Kafkaris v. Cyprus* at p. 40

12. Criminal Justice Act 2003, Schedule 21, paragraph 4(1)

13. See Prison Service Order 4700, Chapter 12

consider that release on compassionate grounds met the requirement for persons serving life imprisonment to have the chance to be released on “legitimate penological grounds”, and so whole life tariffs violate the prohibition in article 3 of torture, inhuman or degrading punishment.

Since the Grand Chamber made this judgment, the issue of whole life orders has returned to the Court of Appeal of England and Wales. The court found that the Secretary of State's discretion was limited to “exceptional grounds”, which must be read in a way that is compatible with Article 3 of the ECnHR.¹⁴ The Court was, therefore, of the opinion that English law did present the possibility of release even where a whole life order had been imposed and so did not violate the ECnHR. It remains to be seen whether the ECtHR will be persuaded by this clarification of English law.

Sentences for children

For children, the “irreducible” standard has not been applied. Unfortunately, all of the relevant cases that directly address life sentences for children pre-date the Grand Chamber decisions which developed the concept of “irreducible” life sentences, so the court has not clarified how the standards for children and adults relate to each other.

The ECtHR has not clarified how life imprisonment standards for children and adults relate to each other.

As already noted, most of the cases before the ECtHR relate to the practice in the United Kingdom, in particular with regards to sentences of detention at Her Majesty's pleasure (DHMP). While the courts in the United Kingdom have not traditionally called sentences of DHMP life imprisonment, such sentences authorise detention that could extend to the rest of a child's life and are subject to many of the same release requirements as life imprisonment for adults.¹⁵ DHMP sentences are compulsory for any person who commits murder while under the age of 18, and are made up of a “tariff period”, which is the minimum sentence of detention that a person must serve, after which continued detention becomes indeterminate.

The ECtHR has found that the punitive element inherent in the tariff period which is part of a DHMP sentence would not violate Article 3 and that the ECnHR would not prohibit States from subjecting a child to an indeterminate sentence, the continued detention of the offender or recall to detention following release where necessary for the protection of the public.¹⁶ At the time the ECtHR passed its judgment, the applicant had served six years in detention, which “in all the circumstances of the case including the applicant's age and his conditions of detention” the court did not consider to amount to inhuman or degrading treatment.¹⁷

3. Life imprisonment, challenging the lawfulness of detention and the right to a fair trial

A common challenge to ongoing detention under a sentence of life imprisonment has been in relation to the ability of those serving such sentences to challenge the lawfulness of their continued detention before a court. Article 5(4) of the ECnHR enshrines a right of every person deprived of his or her liberty “to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”.

In two judgments delivered on the same day in 1994,¹⁸ the ECtHR found that the parole system in place for children serving DHMP sentences did not meet the necessary requirements to allow children to challenge the legality of their detention. At the time these judgments were made,

14. *R v. Newell; R v. McLoughlin* [2014] EWCA Crim 188, paragraphs 29 to 36. Available at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-mcloughlin-and-r-v-newell.pdf>.

15. See *R v. Secretary of State for the Home Department, ex p Venables and Thompson* [1998] AC 407 and *Greene Brown v. the Queen* [2000] 1 AC 45. Available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/1997/25.html&query=1998+and+AC+and+407&method=boolean>.

16. *T v. the United Kingdom*, (Application No. 24724/94), para. 97.

17. *T v. the United Kingdom* (Application No. 24724/94), para. 98.

18. *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996 and *Hussain v. United Kingdom* (Application No. 21928/93) 21 February 1996.

the Parole Board, which reviewed whether the ongoing detention of persons serving DHMP sentences was necessary, had the power to recommend release, but not the power to order release. Only the Secretary of State, on the advice of the Parole Board, Lord Chief Justice and the original trial judge, could order the release of those serving DHMP sentences. The ECtHR was very clear that this procedure did not meet the standards necessary for a person to be able to challenge the legality of his or her ongoing detention before a court able to order release. The Court also ruled that the convicted person had a right to an oral hearing before the panel which was considering his or her release in order to meet the standards of Article 5(4).¹⁹

The court was also of the opinion that allowing the Home Secretary to set tariff periods amounted to an infringement of the right to a fair trial under Article 6(1).

In a further case involving DHMP in the United Kingdom, the ECtHR was unwilling to consider whether a person serving a DHMP sentence should be able to challenge his or her detention during the tariff period under article 5(4), as the setting of the tariff period was addressed by the original court judgment and sentencing. Article 5(4) relates to challenging the lawfulness of detention, and in determining the tariff period, this opportunity exists at the time of sentencing or in an appeal against sentencing.

4. The potential for change?

The rule for adults is now relatively clear, but where the Court has touched on the issue of detention for children, it appears that there is scope for a more lenient, children's rights approach to be taken. In *Kafkaris v. Cyprus*, the Grand Chamber of the ECtHR addressed life imprisonment for adults, but made a number of points that raised questions as to whether the court would consider life imprisonment for children a violation of article 3.

First, the Court explicitly limited its comments on the incompatibility of irreducible life sentences with article 3 to sentences of life imprisonment for adults.

Second, the court has consistently recognised that age could be a consideration in determining what constitutes torture, inhuman or degrading punishment.²⁰

Third, in addressing a potential violation of article 3 with regards to life imprisonment standards for adults, the ECHR noted a lack of "commonly accepted standard amongst the member states of the Council of Europe concerning life

sentences". In *Vinter and others v. the UK* the ECtHR also looked at the practice across Europe in reaching its decision on the compatibility of whole life sentences with the ECnHR. For children there is an almost universal rejection of life sentences, something that the court may be willing to take into account with regards to life sentences for children.²¹

Fourth, the Convention is a living instrument that must be interpreted in light of present day conditions and so there is cause to question whether the ECtHR may develop a stronger position on DHMP sentences and other forms of life imprisonment if it considered the case again. In *T v. the United Kingdom*, five judges delivered a dissenting judgment in which they argued that "the sentence of detention during Her Majesty's pleasure, i.e. for an indefinite period ... entailed an enormous amount of uncertainty and anxiety ... It is questionable whether the Convention allows States to subject an 11-year-old child to an indeterminate sentence on conviction". As countries abandon the practice of sentencing young children to lengthy prison sentences, it is certainly possible that the ECtHR will develop its case law to consider that such sentences violate the prohibition on inhuman or degrading punishment, in particular when applied to young children.

Finally, during *Singh v. the United Kingdom*, the ECtHR commented on the nature of DHMP sentences in a way that might give rise to a broader challenge to DHMP sentences. The court considered that "an indeterminate term of detention for a convicted young person, which may be as long as that person's life, can only be justified based on the need to protect the public." The court went on to note that a failure to have regard to the changes that take place as a child matures, would mean that persons sentenced to DHMP would have forfeited their liberty for the rest of their lives, which might give rise to issues under article 3.²² It might well be the case that the court would be willing to consider whether mandatory sentences of DHMP for any offence could be justified without looking at the specifics of the crime. DHMP is a mandatory sentence for murder committed by a person under the age of 18 in the UK, but the offence of murder covers a range of acts from euthanasia to the most sadistic of serial killings.

19. *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996, paras. 63 to 69

20. *Kafkaris v. Cyprus* at p. 8

21. *Kafkaris v. Cyprus* at p. 41

22. *Singh v. the United Kingdom* (Application No. 23389/94) 21 February 1996, para. 61

PART IV

COUNTRY PROFILES

Austria

Life imprisonment for children prohibited

Limits on sentences applicable to children rule out the possibility of life imprisonment for persons under 18.

Meaning of life imprisonment

Life imprisonment includes a period of indefinite detention, but a person serving a life sentence becomes eligible for parole if he or she: (i) has served 15 years in detention; (ii) the gravity of offence does not require continued detention; and he or she (iii) consents.²³

Minimum age of criminal liability

No person who was under the age of 14 at the time he or she committed an offence can be subject to punishment.²⁴

A person aged 14 or 15 cannot be subject to criminal penalties where his or her misconduct is not “serious” and where the application of juvenile justice is not necessary to prevent young people from criminal acts.²⁵

Maximums sentences

Maximum sentences of detention are generally halved for persons under 18.²⁶ Where a person aged over 16 but under 18 is convicted of an offence for which life imprisonment may be applied to an adult, he or she may be sentenced to up to 15 years detention. For persons under the age of 16 the corresponding sentence would be up to 10 years detention.²⁷

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Belgium

Life imprisonment for children prohibited:

Life imprisonment is explicitly prohibited for persons who were under the age of 18 at the time they committed a crime.²⁸

The meaning of life imprisonment:

Persons sentenced to life imprisonment become eligible for parole after serving 15 years, though this minimum period can be extended for those who have prior convictions to 19 or 23 years.²⁹

Minimum age of criminal liability:

Children can be held criminally liable from the age of 12.³⁰

Maximum sentences:

Persons aged 16 and 17 can be tried under the adult criminal justice system for particularly serious crimes,³¹ and subject to adult penalties, though life imprisonment is explicitly prohibited for all persons under the age of 18.³² CRIN has not been able to ascertain what the maximum penalty would be in place of life imprisonment.

Number of children serving life imprisonment:

Life imprisonment is not possible for children, so none of those detained were subject to life sentences.

23. Penal Code, Section 57a(1)

24. Jugendgerichtsgesetz (Youth Court Act), Sections 1(1)-(2) and 4(1). Available at:

<http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=46&paid=4&mvpa=3>; http://www.ris.bka.gv.at/Dokumente/ErV/ERV_1991_52/ERV_1991_52.pdf.

25. Jugendgerichtsgesetz (Youth Court Act), Sections 1(1)-(2) and 4(2)

26. Juvenile Justice Act, Section 5

27. Report of the Minister of Justice of Austria to the Council of Europe, “Responses of justice to urban violence”, 19 to 21 September 2012, 17. Available at:

<http://www.coe.int/t/dghl/standardsetting/minjust/mju31/Country-Report-Austria-Final-09-08-2012.pdf>.

28. Penal Code, Article 12. Available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=262695.

29. *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10) European Court of Human Rights, 9 July 2013, para. 68

30. See D. Cipriani, *Criminal Liability and the Minimum Age of Criminal Responsibility: a Global Perspective*, 2009 Ashgate, p. 191

31. Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg on his visit to Belgium, 15 – 19 December 2008, para. 139. Available at:

https://wcd.coe.int/ViewDoc.jsp?id=1458603&Site=CM#P477_113845 and Belgium’s third and fourth periodic reports to the UN Committee on the Rights of the Child, CRC/C/BEL/3-4, 4 December 2009, para. 793.

32. Penal Code, Article 12. Available here http://www.wipo.int/wipolex/en/text.jsp?file_id=262695

Bulgaria

Life imprisonment for children prohibited

Life imprisonment is explicitly prohibited for any person who was under the age of 20 at the time they committed the relevant offence.³³

The meaning of life imprisonment

Imprisonment for life is defined as detention of a convicted person for the remainder of his or her life.³⁴ Life imprisonment can be substituted for deprivation of liberty for 30 years when a person has served no less than 20 years imprisonment.³⁵

Minimum age of criminal liability

Persons under the age of 14 cannot be held criminally responsible, though they may be subject to educational measures where they have committed socially dangerous acts.³⁶ A person aged 14 to 18 can only be held criminally liable if he or she was able to understand the nature and meaning of the act and manage their actions.³⁷

Maximum sentences

Children aged 14 to 16 may be sentenced to imprisonment for a term of three to 10 years for offences for which an adult would be liable to life imprisonment.³⁸ The Criminal Code provides similar translations from the equivalent of adult sentences for lesser offences.

Children aged 16 or 17 may be sentenced to a maximum of 12 years imprisonment for offences that would attract “life imprisonment without substitution”.³⁹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Croatia

Life imprisonment prohibited

Life imprisonment is not a lawful sentence for persons of any age in Croatia, though a maximum cumulative sentence of 50 years imprisonment is possible for adults.⁴⁰

The meaning of life imprisonment

Life imprisonment has now been abolished in Croatia, but prior to abolition, a person serving a life sentence became eligible to be conditionally released after serving 20 years imprisonment.⁴¹ Life sentences expired after 15 years had been served on conditional release.⁴²

Minimum age of criminal liability

No person can be tried for an offence committed while under the age of 14, and any case involving a person under that age must be dealt with by the Centre for Social Welfare.⁴³

Maximum sentences

Persons aged 16 or 17 can be sentenced to juvenile imprisonment, which cannot be for a period in excess of 10 years and may only exceed five years if the offence carries a sentence of “long-term imprisonment” or where two concurrent criminal offences have been committed which carry more than 10 years imprisonment.⁴⁴

Persons aged under 16 can only be sentenced to correctional measures,⁴⁵ a group of sentencing options which excludes imprisonment, though does permit for children to be referred to “correctional institutions”, “reformatories” and “special correctional institutions”.⁴⁶

Number of children serving life imprisonment

Life imprisonment is not a lawful penalty for any offence in Croatia.

33. Criminal Code, Article 38(2). Available at: <http://legislationline.org/documents/action/popup/id/8881/preview/>

34. Criminal Code, Article 38A(1).

35. Criminal Code, Article 38A(3).

36. Criminal Code, Article 32(1) and (2).

37. Criminal Code, Article 31(2).

38. Criminal Code, Article 63(1).

39. Criminal Code, Article 63(2).

40. See *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10) European Court of Human Rights, 9 July 2013, para. 68

41. Criminal Code, Article 55(2). Available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf.

42. Criminal Code, Article 55(3).

43. Juvenile Courts Act, Article 44. Available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Juvenile-Courts-Act.pdf; Criminal Code, Article 10. Available at: http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf.

44. Juvenile Courts Act, Article 24(1).

45. Juvenile Courts Act, Article 4(3).

46. Croatia Juvenile Courts Act, Article 6(1).

Cyprus

Life imprisonment

Detention at the Governor's pleasure and life imprisonment are both lawful sentences for persons under the age of 18.

The meaning of life imprisonment

Life imprisonment is defined as the extent of a persons biological life. Release can occur if permission is granted by the President in consultation with the Attorney-General.⁴⁷ In practice such releases have occurred, in total 11 times between 1993 and the 2008 decision of *Kafkaris v. Cyprus*.⁴⁸

In the European Court of Human Rights Case, *Kafkaris v Cyprus* [2008], the Court held that an “irreducible” life sentence would constitute prohibited treatment under article 3 of the European Convention on Human Rights (prohibition of torture, inhuman and degrading treatment). This means that release from prison must be de jure and de facto possible for a sentence of life imprisonment to be compatible with the Convention, though release need not actually occur.⁴⁹ On the facts, release at the discretion of the President upon consultation with the Attorney-General, was considered to constitute such a de jure and de facto possibility of release.⁵⁰

terms that can be served by “young persons” and since life imprisonment is a penalty in Cypriot criminal law, presumably children can be sentenced to life imprisonment.

Detention at the Governor's pleasure: under the Criminal Code of 1959, persons under 16 had to be sentenced to detention during the Governor's pleasure in lieu of the death penalty. The death penalty has since been prohibited in Cyprus and an up to date version of the legislation is not available online, so it is not clear if this sentence still exists and, if so, in what form.⁵²

Number of children serving life imprisonment

CRIN has not found evidence of any person sentenced to life imprisonment or detention at Her Majesty's pleasure.

Minimum age of criminal liability

Children under the age of 10 cannot be held criminally responsible and children between the ages of 10 and 12 can only be held responsible if the child is judged to have had the capacity to know that he or she ought to have avoided the act or omission.⁵¹

Maximum sentences

Persons aged 17 are not defined as children, young persons or juveniles and so appear to be subject to the adult justice system. Life imprisonment is a penalty for a number of offences in Cypriot criminal law, and is mandatory for murder.

A person aged 14 to 16 years (“a young person”) can only be sentenced to imprisonment where he or she cannot be suitably dealt with under the Juvenile Offenders Law (Cap. 157). There does not appear to be any express limitation on

47. See *Kafkaris v. Cyprus* [2008] App. No. 21906/04 for an overview of Cypriot and European Convention on Human Rights law in the area of life imprisonment. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85019>.

48. *Kafkaris v. Cyprus* [2008] App. No. 21906/04 at para. 103.

49. *Ibid.* at paras. 95-99

50. *Ibid.* at para. 103

51. Second periodic report of Cyprus to the UN Committee on the Rights of the Child, CRC/C/70/Add.16, 13 November 2002, para. 11.

52. Cyprus Criminal Code Section 27(2).



Czech Republic

Life imprisonment for children prohibited

The maximum sentences that can be applied to persons under the age of 18 exclude the possibility of life imprisonment.

The meaning of life imprisonment

A person serving a sentence of life imprisonment may be conditionally released on parole after serving 20 years of imprisonment.⁵³

Minimum age of criminal liability

No person who was under the age of 15 at the time he or she is alleged to have committed an offence can be held criminally liable.⁵⁴

Maximum sentences

Generally, persons aged between 15 to 17 (inclusive) are sentenced to half of that applied to an adult, but the sentence may not be less than 1 year or more than 5 years.

For offences listed under the Special Part of the Criminal Code, the court may sentence a person under the age of 18 to between 5 and 10 years imprisonment⁵⁵ and for crimes committed by juveniles while serving as a soldier “at the time of defence emergency or in a combat situation.”⁵⁶

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Denmark

Life imprisonment for children prohibited

There is no express prohibition on life imprisonment for children, but the maximum sentences for persons under 18 are set at less than life imprisonment.

The meaning of life imprisonment

After 12 years of a life sentence has been served, the Minister of Justice determines whether an offender should be released on probation.⁵⁷

Minimum age of criminal liability

No one can be subject to criminal penalties for actions committed while under the age of 15.⁵⁸

Maximum sentences

Persons under the age of 18 at the time of the relevant offence cannot be sentenced to more than 8 years imprisonment.⁵⁹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

53. Criminal Code, Provision 62(2) . Available at: http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf.

54. Criminal Code, Provision 11.

55. Criminal Code, Provision 79(2).

56. Criminal Code, Provision 79(3).

57. Criminal Code, Section 41. Available at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=121398>.

58. Criminal Code, Section. 15.

59. Criminal Code, Provision 33(3).

Estonia

Life imprisonment for children prohibited

Life imprisonment is expressly prohibited for any person who was under the age of 18 at the time they committed an offence.⁶⁰

The meaning of life imprisonment

A person sentenced to life imprisonment may be released on parole after serving 30 years imprisonment.⁶¹ In deciding whether to release a person on parole, the court must consider the circumstances relating to the commission of the criminal offence, the personality of the convicted offender, his or her previous conduct during the service of the sentence, his or her living conditions and the consequences which release on parole may bring about for the person serving the sentence.⁶²

Minimum age of criminal liability

A child under the age of 14 at the time he or she allegedly committed a criminal act cannot be held criminally responsible.⁶³ However, children aged seven or older who commit unlawful acts may be subject to sanctions under the Juvenile Sanctions Act, including committal to a “young offenders’ institution”.⁶⁴

Maximum sentences

Imprisonment of more than 10 years cannot be imposed on a person who was under the age of 18 years at the commission of the offence.⁶⁵

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Finland

Life imprisonment for children prohibited

No provisions exist in national law to allow for life imprisonment of persons under 18.

The meaning of life imprisonment

A person serving a life sentence may be conditionally released after serving 12 years of imprisonment. For a person under the age of 21 at the time the offence was committed, this period is reduced to 10 years in prison.⁶⁶

Minimum age of criminal liability

Children under 15 years cannot be held criminally liable for any offence.⁶⁷ Measures that can be applied to children under 15 are contained within the Child Welfare Act.

Courts have the power to waive punishment of an offence committed by a person under 18 years of age, where “the act is deemed to be the result of his/her thoughtlessness or imprudence rather than his/her being heedless of the prohibitions and commands of the law”.⁶⁸

Maximum sentences

A persons aged 15-18 is liable to be sentenced to between 2 years and 12 years imprisonment for an offence that would be punishable with life imprisonment for an adult.⁶⁹

The court are granted discretion with regards to minimum terms, whereby they may sentence an offender to less than the minimum term “for special reasons which are to be mentioned in the judgment”, though not where the public interest demands otherwise.

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

60. Criminal Code, Section 45(2) . Available at: <http://legislationline.org/documents/section/criminal-codes>

61. Criminal Code, Section 77(1).

62. Criminal Code, Section 76(3).

63. Criminal Code, Section 33.

64. Juvenile Sanctions Act 1998, Sections 2 and 3(9). Available at: http://www.childsrights.org/html/site_fr/law_download.php?id=38.

65. Penal Code, Section 45.

66. Penal Code, Chapter 2c, Section 10(1).

67. Penal Code, Ch. 3, Section 4(1).

68. Penal Code, Ch. 6, Section 12.

69. Penal Code, Ch. 6, Section 8(1) – (2).

France

Life imprisonment permitted

Life imprisonment is possible under French law for children aged 16 or older.

The meaning of life imprisonment

A person sentenced to life imprisonment must serve a “safety period” before he or she becomes eligible for parole. This safety period must be at least 18 years and may be as much as 30 years imprisonment.⁷⁰

Minimum age of criminal liability

Persons under the age of 18 “able to understand what they are doing” are criminally responsible for the felonies, misdemeanours or petty offences of which they have been found guilty, and may be subject to measures of protection, assistance, supervision and education according to the conditions laid down by specific legislation.⁷¹ There is no absolute minimum age set at which children become able to be held criminally responsible, but a child will usually be considered to have “discernment” between the ages of 8 and 10.⁷²

Children aged 13 to 18 years can be criminally sentenced,⁷³ including to prison terms and children aged 16 to 18 can in certain circumstances be subjected to adult sentences. See below.

Maximum sentences

Persons under 18 are generally sentenced to no more than half of the sentence permitted for adults.⁷⁴

However, the court may decide that children aged between 16 and 18 are entitled to no reduction in the adult sentence where: (i) the circumstances of the case and the personality of the child warrant; (ii) when a crime of wilful injury to life or physical or mental integrity of the person has been committed in a state of recidivism; (iii) when an offence of assault, an offence of sexual assault, a crime committed with the aggravating circumstance of violence was committed in a state of recidivism.⁷⁵

Life imprisonment is a penalty for a number of offences in French law, so it is possible for children aged 16 or over to be sentenced to life imprisonment. Such sentences are incredibly rare, however, and only two children have ever been sentenced to life imprisonment – one in 1989 and a second in June 2013.⁷⁶

Persons under 16 may not be sentenced to more than 20 years imprisonment for offences for which life imprisonment is the adult penalty.⁷⁷

Number of children serving life imprisonment

As of June 2013, only two people had been sentenced to life imprisonment in France for offences committed while under the age of 18, though the conviction of one of these people was overturned, so only one person is currently serving a life sentence in France for a crime committed while under the age of 18.⁷⁸

As of June 2013 two people have been sentenced to life imprisonment for offences committed while under 18

70. Criminal Code, Article 123-23. Available at: <http://legislationline.org/documents/section/criminal-codes/>.

71. Criminal Code, Article 122-8.

72. Ministry of Foreign and European Affairs, “juvenile Justice in France” May 2008. Available at: http://www.ambafrance-nz.org/IMG/pdf/VA_-_juvenile_justice.pdf.

73. Criminal Code, Article 122-8.

74. L'ordonnance n° 45-174 du 2 Février 1945 la délinquance juvénile. Available at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158>.

75. Loi No. 2007-1198 of August 2007, Article 4 amending L'ordonnance n° 45-174 du 2 Février 1945 la délinquance juvénile

76. Le Monde, “Le meurtrier d'Agnès condamné à la réclusion criminelle à perpétuité” 28 June 2013. Available at: http://www.lemonde.fr/societe/article/2013/06/28/le-meurtrier-d-agnes-condamne-a-la-reclusion-criminelle-a-perpetuite_3438832_3224.html.

77. L'ordonnance n° 45-174 France du 2 Février 1945 la délinquance juvénile, Article 20-2. (as amended by Loi No. 2007-1198 of 10 August 2007).

78. Le Monde, “Le meurtrier d'Agnès condamné à la réclusion criminelle à perpétuité” 28 June 2013. Available at: http://www.lemonde.fr/societe/article/2013/06/28/le-meurtrier-d-agnes-condamne-a-la-reclusion-criminelle-a-perpetuite_3438832_3224.html.

Germany

Life imprisonment for children prohibited

The maximum period of detention to which anyone under 18 may be sentenced rules out the possibility of life imprisonment of children.

The meaning of life imprisonment

A person serving a sentence of life imprisonment can become eligible for early release after having served 15 years in detention provided that (i) the seriousness of the offence does not require continued detention; (ii) the release is appropriate considering public security interests; and (iii) the convicted person consents.⁷⁹

Minimum age of criminal liability

No one who was younger than 14 at the time an alleged offence was committed can be held criminally responsible.⁸⁰ Children aged 14 to 18 can be criminally liable where at the time of the offence, he or she was mature enough to see the injustice of the act and to act upon this knowledge.⁸¹

Maximum sentences

Persons aged 14 to 17 (inclusive) can generally be sentenced to no more than 5 years imprisonment, though for very serious crimes for which an adult could be sentenced to more than 10 years of imprisonment, the maximum sentence is 10 years.⁸²

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Greece

Life imprisonment for children prohibited

The maximum limit set on detention for persons under 18 rules out the possibility of life imprisonment for children.

Meaning of life imprisonment

A person serving a sentence of life imprisonment will become eligible for release on parole after serving no less than 16 years, and no more than 20 years.⁸³

Minimum age of criminal responsibility

Children between the ages of 8 and 13 cannot be held criminally liable for an offence, and can only be subject to educational or therapeutic measures for committing acts that would be criminal offences for an older person.⁸⁴ Children aged 13 to 15 at the time of committing a criminal act may only be subject to reformatory or therapeutic measures,⁸⁵ and a child aged 15 to 18 may be sentenced to penalties including deprivation of liberty.⁸⁶

Maximum sentences

Sentences of detention in special detention institutions may not exceed 20 years⁸⁷ nor be less than 5 years if the law punishes an offence with more than 10 years imprisonment.

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

79. Criminal Code (Stafgesetzbuch), Section 57a(1). Available here: http://www.gesetze-im-internet.de/englisch_stgb/index.html.

80. Criminal Code, Section 19.

81. Juvenile Courts Act (Jugendgerichtsgesetz), Sections 1 and 3.

82. Juvenile Courts Act (Jugendgerichtsgesetz), Sections 18.

83. Cheliotis, L.K. "Conditional Release from Prison in Greece: Policy and Practice" in Padfield, N. et al, Release from Prison: European Policy and Practice 2010 Cullompton: Willan Publishing p. 10. Available here:

http://www.academia.edu/323956/Cheliotis_L_K_2010_Greece_in_N_Padfield_D_van_Zyl_Smit_and_F_Dunkel_eds_Release_from_Prison_European_Policy_and_Practice_pp_213-236_Cullompton_Willan_Publishing.

84. Criminal Code, Article 126.

85. Criminal Code, Article 126.

86. Criminal Code, Article 127.

87. Criminal Code, Article 54.

Hungary

Life imprisonment for children prohibited

Life imprisonment is explicitly prohibited for persons who were under the age of 20 at the time they committed the relevant offence.⁸⁸

Meaning of life imprisonment

When sentencing a person to life imprisonment, the court may set a date at which that person may be considered for parole. The minimum term that must be served is generally 20 years, but will be 30 years where the criminal act is not subject to a statute of limitation.⁸⁹ The courts may also decline to set a date at which parole becomes possible, a provision which may amount to life without parole and fail to meet the standards set by the European Convention on Human Rights.⁹⁰

Minimum age of criminal liability

No one who was under the age of 14 at the time that a potentially criminal act was committed may be punished under Hungarian criminal law.⁹¹

Maximum sentences for a single offence

Persons aged 16 or 17 cannot be sentenced to more than 15 years for a crime that would be punishable by life imprisonment if committed by an adult,⁹² and can be sentenced to no more than 10 years for a crime punishable by a term of imprisonment in excess of 10 years.⁹³

Persons age 14 or 15 can be sentenced to no more than 10 years imprisonment for an offence for which an adult could be sentenced to life imprisonment.

A person under 18 may only be sentenced to a penalty involving the deprivation of liberty where “the measure or punishment may not otherwise be achieved”.⁹⁵

Maximum sentences for multiple offences

For persons aged 16 or 17, the maximum cumulative term applied for a number of offences sentenced simultaneously must not exceed 20 years in relation to multiple crimes involving those for which a life sentence could be applied to

an adult.⁹⁶

For Persons aged 14 or 15, the maximum cumulative term applicable is 15 years imprisonment for crimes involving those for which an adult could be sentenced to life imprisonment.⁹⁷

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

88. Hungary Criminal Code, Section 40.

89. Criminal Code, Section 47A(1)-(2).

90. See above regarding *Vinter and others v. the United Kingdom*

91. Criminal Code, Section 23.

92. Criminal Code, Section 110(2)(a). Available at: <http://legislationline.org/documents/section/criminal-codes>.

93. Criminal Code, Section 110(2)(b).

94. Criminal Code, Section 110(3).

95. Criminal Code, Section 108(3).

96. Criminal Code, Section 120(1).

97. Criminal Code, Section 120(1).

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Ireland

Life imprisonment

It is unclear whether life imprisonment remains possible for persons under the age of 18 under Irish law, though it is not included within the sentencing provisions applicable to children under the Children Act 2001.⁹⁸

Meaning of life imprisonment

Life sentences provide for indeterminate detention which may extend to an entire life. The Minister for Justice and Equality determines release upon the advice and recommendations of the Parole Board of Ireland. The average period of detention for those serving life sentences is approximately 12 years.⁹⁹

Minimum age of criminal liability

Persons under the age of 12 cannot generally be held liable for any criminal offence,¹⁰⁰ but children aged 10 or 11 can be held criminally liable for murder, manslaughter, rape, rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990 or aggravated sexual assault.¹⁰¹

Where a child under the age of 14 years is charged with a criminal offence, no further proceedings can be taken without the consent of the Director of Public Prosecutions.¹⁰²

Maximum sentences

As a general rule, children may not be sentenced to adult penalties and may be sentenced to lesser penalties where provided for in the Children's Act.¹⁰³ No child can be sentenced to imprisonment or committed to a prison, though children can be subject to detention.

A person under 18 years can only be sentenced to detention as a measure of last resort¹⁰⁵ and only where it is the only suitable way of dealing with the child.¹⁰⁶

Children sentenced to be detained in a children detention school may not generally be so detained for more than 3

years.¹⁰⁷ This sentence includes aggregate sentences related to consecutive periods of detention.¹⁰⁸

Where a child under the age of 16 years is convicted on indictment (a procedure for more serious criminal offences), it is possible to exceed this three year limit where "none of the other ways in which the case may be dealt with is adequate".¹⁰⁹ When the child reaches 16, he or she can be transferred from a detention school children detention centre upon application to the courts.¹¹⁰ Children over the age of 18 may be transferred from a children detention school or detention centre to a place of detention under section 2 Act of 1970 or to a prison.¹¹¹ No child may be sentenced to a term of detention for longer than that applicable to an adult of full capacity for the relevant offence.¹¹²

Section 2 of the Criminal Justice Act provides that life imprisonment shall be a mandatory penalty for murder or treason, it is not clear what the maximum sentence would be for children.

Number of children serving life imprisonment

CRIN found no evidence that anyone was subjected to a life sentence for a crime committed while under the age of 18.

98. Life imprisonment is not expressly excluded as a possible sentence for children in conflict with the law. For an adult, life imprisonment is mandatory for murder and treason, and discretionary for a number of other offences. For children sentenced for crimes to which an adult would receive a life sentence, s. 103 of the Children Act 1908 was applied, which included provisions for "detention at Her Majesty's pleasure". The Children Act 2001 repealed the 1908 Act, so it is unclear if these provisions remain in force through the Criminal Justice Act 1990.

99. Citizen's Information Ireland. Available at: http://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/types_of_sentences.html.

100. Ireland Children Act 2001, Section 52(1) as amended by the Criminal Justice Act 2005, Section. 129.

101. Ireland Children Act 2001, Section 52(2) as amended by the Criminal Justice Act 2005, Section 129. Available at: <http://www.irishstatutebook.ie/pdf/2006/en.act.2006.0026.pdf>.

102. Citizens Information Ireland. Available at: http://www.citizensinformation.ie/en/justice/children_and_young_offenders/children_and_the_criminal_justice_system_in_ireland.html.

103. Children Act 2001, Section 96(4).

104. Children Act 2001, Section 156.

105. Children Act 2001, Section 96(2).

106. Children Act 2001, Section 143(1).

107. Children Act, Section 149(1).

108. Children Act, Section 149(2) .

109. Children Act, Section 155(1).

110. Children Act, Section 155(3).

111. Children Act, Section 155(5).

112. Children Act, Section 155(7).

Italy

Life imprisonment for children prohibited

The Constitutional Court abolished the life imprisonment of minors in a decision in 1994.¹¹³

The meaning of life imprisonment

Persons serving life imprisonment in Italy become eligible for release after serving 26 years of imprisonment.¹¹⁴

Minimum age of criminal liability

Children under the age of 14 cannot be held criminally liable for any offence and persons aged 14 to 17 (inclusive) can only be held criminally liable where they have been judged capable of forming the necessary criminal intent in relation to the specific offence.¹¹⁵

Maximum sentences

Sentences are reduced by two-thirds for persons aged 14 or 15 and by half for those committed by persons aged 16 or 17.¹¹⁶

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

The Italian Constitutional Court abolished life imprisonment of minors in 1994

Latvia

Life imprisonment for children prohibited

The maximum penalties for persons under the age of 18 exclude the possibility of life imprisonment for children.

The meaning of life imprisonment

A person serving a sentence of life imprisonment becomes eligible for conditional release after serving 25 years in detention.¹¹⁷

Minimum age of criminal liability

A person cannot be held criminally liable for an offence allegedly committed while under the age of 14.¹¹⁸

Maximum sentences

For persons aged 14 to 18 there are limits for the maximum terms of deprivation of liberty that can be applied, but none can exceed 10 years. A sliding scale provides for maximum terms that apply with regards to the seriousness of the offence.¹¹⁹

- For “especially serious offences” a person under 18 years can be sentenced to no longer than 10 years
 - For “serious crimes”, crimes which are associated with violence or the threat of violence or which have given rise to serious consequences, children can be sentenced to no more than 5 years
 - For “other serious crimes” the maximum term to which children may be sentenced is two years.
- For “criminal violations” and for “less serious crimes” deprivation of liberty cannot be applied.

For a person under 18, the court may sentence the offender to less than the prescribed minimum sanction where the court recognises that the offence “has been committed under aggravating circumstances”.¹²⁰

A person who is convicted of an offence while under the age of 18 and who has served the sentence is deemed not to have been convicted.¹²¹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

113. Decision No. 168 of 28 April 1994) and Second periodic report of Italy to the UN Committee on the Rights of the Child, CRC/C/70/Add.13, July 2002, para. 592.

114. *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10) European Court of Human Rights, 9 July 2013, para. 68.

115. Criminal Code, Articles 97 and 98. Available at:

<http://translate.google.co.uk/translate?hl=en&sl=it&u=http://www.altalex.com/index.php%3Fidnot%3D36653&prev=/search%3Fq%3Ditaly%2Bcodice%2Bpenale>.

116. Penal Code, Articles 97-98.

117. Criminal Code, Section 61(3)1. Available at: <http://legislationline.org/documents/section/criminal-codes>.

118. Criminal Code, Section 11.

119. Criminal Code, Section 65(2).

120. Criminal Code, Section 65(2I).

121. Criminal Code, Section 65(5).

Lithuania

Life imprisonment for children prohibited

The maximum sentences for persons under 18 excludes the possibility of life imprisonment for children.

The meaning of life imprisonment

Persons serving a sentence of life imprisonment are held in prisons, but can be transferred to “a house of correction” after serving 10 years imprisonment. A life sentence can be commuted to fixed term of not less than 25 years imprisonment.¹²²

Minimum age of criminal liability

Generally, a person can only be held responsible for a crime or misdemeanour if he or she has attained the age of 16.¹²³

Persons aged 14 or older can be found guilty of a number of specific offences named under Article 13(2) of the Criminal Code. These offences include murder; serious impairment to health; rape; sexual harassment; theft; robbery; extortion of property; destruction of or damage to property; seizure of a firearm, ammunition, explosives or explosive materials; theft, racketeering or other illicit seizure of narcotic or psychotropic substances; damage to vehicles or roads and facilities thereof.¹²⁴

Maximum sentences

Imprisonment for minors cannot exceed 10 years.¹²⁵ Under the Criminal Code, the provisions applicable to minors apply to persons under the age of 18.

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Luxembourg

Life imprisonment

The State has reported that in Luxembourg “[c]apital punishment no longer exists and, in view of the circumstances, there will be no sentence of life imprisonment”.¹²⁷ Life imprisonment is possible for adults, and since 16 and 17-year-olds can be tried as adults, it may be possible for children to be so sentenced under the current law.

The meaning of life imprisonment

A person serving life imprisonment may become liable for release after serving 15 years in prison.¹²⁸

Minimum age of criminal liability

The Law on the Protection of Children (Loi du 10 Août 1992 relative à la protection de la jeunesse) provides that generally persons under 18 must be dealt with by the youth courts,¹²⁹ where measures taken are aimed at protection, care, therapy and education.¹³⁰

However, children can be directed to the adult courts and subject to adult penalties from the age of 16.¹³¹ Furthermore, the powers of the Youth Court are in some circumstances of a penal or correctional nature, including deprivation of liberty generally and solitary confinement of up to 10 days.¹³² There is no lower age limit for these measures.

Maximum sentences

The maximum sentence applicable for offences committed while under the age of 18 seems to be 20 years beyond reaching the age of 21,¹³³ but CRIN has not been able to confirm this. Life imprisonment may also be possible for child offenders.

Number of children serving life imprisonment

CRIN found no evidence of a person being sentenced to life imprisonment for an offence committed while under the age of 18.

122. Criminal Code, Article 51(1). Available at: <http://legislationline.org/documents/section/criminal-codes>.

123. Criminal Code, Article 13(1).

124. Articles 129, 135, 149, 150, 178, 180, 181, 187(2), 254, 263, 280.

125. Criminal Code, Article 90(5).

126. Criminal Code, Article 81(1) and (2).

127. Second periodic report of Luxembourg to the UN Committee on the Rights of the Child, CRC/C/104/Add.5, 19 July 2004, para. 257.

128. *Vinter and others v. the United Kingdom* (Application Nos. 66069/09, 130/10 and 3896/10) European Court of Human Rights, 9 July 2013, para. 68.

129. Loi du 10 août 1992 relative à la protection de la jeunesse, Article 2. Available at: <http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf#>.

130. Luxembourg Loi du 10 août 1992 relative à la protection de la jeunesse, Article 1. Available at: <http://eli.legilux.public.lu/eli/etat/leg/loi/1992/08/10/n3>.

131. Loi du 10 août 1992 relative à la protection de la jeunesse, Article 32.

132. See Cipriani, Don, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Ashgate, 2009, p. 212.

133. See Law on Protection of Children, Articles 5 and 6.

Malta

Life imprisonment

It is not clear whether life imprisonment can be applied to children.

The meaning of life imprisonment

After sentencing a person to life imprisonment, the court may recommend in writing to the Prime Minister the minimum period which in its view should elapse before the prisoner is released from prison.¹³⁴ No maximum period is set, so it is possible for a life sentence to last for the rest of a person's natural life, though the ECHR's rulings in *Kafkaris v. Cyprus* and *Vinter and others v. the United Kingdom* would prohibit irreducible life imprisonment.¹³⁵

Where a person pleads guilty to a crime for which life imprisonment is a penalty, the court may impose a punishment of between 18 and 30 years in lieu of life imprisonment.¹³⁶

Minimum age of criminal liability

Children under 9 cannot be held criminally responsible.¹³⁷ Children aged 9 to 14 cannot be held criminally liable except for offences committed with "mischievous discretion".¹³⁸

Maximum sentences

Children aged 14 to 18: are liable to the punishment applied to an adult, but reduced by one or two degrees.¹³⁹ This should prevent the application of life imprisonment to children, and render 30 years the maximum term to which a child could be sentenced. The State has reported that it is not aware of any instance of a person under 18 being so sentenced, but in commenting on the possibility that children could be sentenced to life indicated that such a sentence may always be circumvented.¹⁴⁰ This implies that life imprisonment for persons under 18 may be legally possible, though it is not clear what the relevant provisions would be.

Research conducted by the University of San Francisco has indicated that children aged 17 could be sentenced to life imprisonment under article 37 of the Penal Code,¹⁴¹ though

in the version that CRIN has been able to obtain, children aged 14-18 are grouped together, though those aged 16-18 are excluded from juvenile justice procedures.¹⁴² The only evidence CRIN has found is an article on amending the Criminal Code dated 28 November 2011,¹⁴³ but no version of the amended Act we have been able to obtain includes this change, including that accessible through the Ministry of Justice.¹⁴⁴

Number of children serving life imprisonment

CRIN could find no evidence of a person being sentenced to life imprisonment for an offence committed while under the age of 18.

134. Criminal Code, Article 493. Available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574>.

135. See the chapter on life imprisonment and the European Court of Human Rights above.

136. Criminal Code, Article 492(1).

137. Criminal Code, Article 35(1).

138. Criminal Code, Article 35(2).

139. Criminal Code, Article 37.

140. Initial report of Malta to the Committee on the Rights of the Child, CRC/C/Add.56, September 1998, para.294.

141. Centre for law and Global Justice, "Cruel and Unusual: U.S. Sentencing practices in a global context" May 2012, p. 82.

142. Initial report of Malta to the Committee on the Rights of the Child, CRC/C/Add.56, September 1998, paras. 282 to 290.

143. Malta Today, "Harsher penalties with new criminal law amendments" 28 November 2011. Available at: <http://www.maltatoday.com.mt/en/newsdetails/news/national/Harsher-penalties-with-new-criminal-law-amendments>.

144. Criminal Code. Available at: <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574/>. Amendments listed.

Netherlands

Life imprisonment

Persons between the ages of 16 and 18 can be tried as adults in exceptional circumstances, but in mainland Netherlands cannot be sentenced to life imprisonment.¹⁴⁵ It is possible that persons under 18 may be sentenced to life imprisonment in Aruba and the Netherlands Antilles.

The meaning of life imprisonment

In defining life imprisonment the Dutch Penal Code provides that "[when an] offender has been sentenced to life imprisonment, such deprivation shall be for life".¹⁴⁶ There is no provision for parole, but people serving life sentences can apply for commutation.¹⁴⁷

Minimum age of criminal liability

Children can be held criminally liable for offences committed from the age of 12.¹⁴⁸

Maximum sentences

In European Netherlands, children aged 16 to 18 cannot be sentenced to more than six years penal detention, and only beyond 24 months where a person has been convicted of a serious, violent or sexual offence.¹⁴⁹

The Committee on the Rights of the Child has raised concerns that children may be sentenced to life imprisonment in the Netherlands Antilles,¹⁵⁰ but CRIN has been unable to obtain the relevant legislation to verify this.

The State has reported that life imprisonment is not possible for persons under 18 in Aruba, but children aged 16 to 18 can be tried as adults in limited circumstances, so it is possible that life imprisonment remains possible under current legislation.¹⁵¹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

"The Committee reiterates its concern ... that 16 and 17 year olds can be convicted to life imprisonment in the Netherlands Antilles.

The Committee recommends that the State party:

Eliminate life imprisonment sentence of children"

- UN Committee on the Rights of the Child, Concluding Observations on the Netherlands Antilles, March 2009, Paragraphs 77 and 78.

145. Penal Code, Article 77a.

146. Penal Code, Article 31(1)(1).

147. See *Vinter v. the United Kingdom* (Applications Nos. 66069/09, 130/10 and 3896/10) European Court of Human Rights, 9 July 2013, para. 68.

148. Penal Code (Wetboek van Strafrecht), Article 77a.

149. Kosine Junger-Tas, "Youth Justice in the Netherlands", *Crime and Justice*, 2004, p. 327.

150. UN Committee on the Rights of the Child, Consideration of reports submitted by States Parties: the Netherlands, CRC/C/NLD/CO/3, 27 March 2009. Available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-NLD-CO3.pdf>.

151. Periodic Report by Aruba (Kingdom of the Netherlands) under the Convention on the Rights of the Child 2003-2006, p. 20.

Poland

Life imprisonment for children prohibited

Life imprisonment is expressly prohibited for any offence committed while the perpetrator was under the age of 18.¹⁵²

The meaning of life imprisonment

A person sentenced to “deprivation of liberty for life” becomes eligible for conditional release after serving 25 years of the sentence.¹⁵³ When a person serving a sentence of deprivation of liberty for life is conditionally released, they remain on probation for 10 years,¹⁵⁴ and remain eligible to be detained while still on probation. If release is revoked, a person serving a life sentence cannot be released again until he or she has served a further 5 years in detention.¹⁵⁵

Minimum age of criminal liability

Any person aged 17 or over is liable to be tried for any criminal offence under the Criminal Code.¹⁵⁶ For offences specifically listed in Art. 10(2) children can be tried from the age of 15.¹⁵⁷

Some commentators have argued that Poland does not have a minimum age of criminal responsibility, as courts have powers to impose measures in response to evidence of “demoralisation” of a child. Such measures include educative, protective and therapeutic measures, which can include deprivation of liberty for indeterminate periods and are not subject to age limits.¹⁵⁸

Maximum sentences

For offences specified under Article 10(2) of the Criminal Code, certain named offences involving violence or risk to life or health, a person aged 15 or older cannot be sentenced to more than 2/3 of the sentence that would be applied to an adult.

The maximum sentence for an adult, excluding life imprisonment which cannot be applied to persons under 18, is deprivation of liberty for 25 years. As such, the maximum term to which a person under 18 could be sentenced would be 2/3 of 25 years, or 16 years and 8 months.

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

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Commentators have argued that Poland does not have a minimum age of criminal responsibility
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152. Criminal Code, Article 54(2). Available here: https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf.

153. Criminal Code, Article 78(3).

154. Criminal Code, Article 80(3).

155. Penal Code, Article 81.

156. Penal Code, Article 10(1).

157. Offences for which children can be held liable from the age of 15 under Polish law include making an attempt on the life of the President, homicide, causing grievous bodily harm, causing an event which imperils human life or the health of many persons, using deceit or violence or a threat of violence to take control of a ship or an aircraft, causing a catastrophe on land or water or to air traffic which imperils the life or health of many persons, rape, holding a hostage with the purpose of forcing a state or local government authority to act in a specified manner, or theft with the use of violence against a person or the threat of violence causing a person to become unconscious or helpless. (Article 134, Article 148. § 1, 2 or 3, Article 156 § 1 or 3, Article 163 § 1 or 3, Article 166, Article 173 § 1 or 3, Article 197 § 3, Article 252 § 1 or 2 and in Article 280 respectively).

158. Second periodic report of Poland to the UN Committee on the Rights of the Child, CRC/C?70/Add.12; Stando-Kaweka, Barbara, The Juvenile Justice System in Poland, presented at the Conference of the European Society of Criminology, Amsterdam, 25-28 August 2004; and Cipriani, Don, Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective, Ashgate, 2009, p. 212.

159. Penal Code, Article 10(3).

Portugal

Life imprisonment prohibited

Article 30(1) of the Constitution of Portugal provides that “[n]o sentence or security measure that deprives or restricts freedom shall be perpetual in nature or possess an unlimited or undefined duration” and article 33(4) prohibits extradition in relation to crimes for which a person may be sentenced to restriction of freedom in perpetuity or for an undefined duration, unless a guarantee is secured that such a penalty will not be applied.¹⁶⁰

Minimum age of criminal liability

Persons under the age of 16 cannot be held criminally liable.¹⁶¹

Persons aged between 12 and 16 can be subject to penalties under the Guardianship and Education Law, which allows for the detention of children in closed educational centres.¹⁶²

Maximum sentences

The Criminal Code provides that no person may be sentenced to more than 25 years imprisonment for any offence.¹⁶³ CRIN has not been able to ascertain whether a lower limit is in place for persons under the age of 18 at the time an offence was committed.

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

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Portugal has
prohibited life
imprisonment
regardless of age
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160. Constitution of Portugal. Available at: http://app.parlamento.pt/site_antigo/ingles/cons_leg/Constitution_VII_revisao_definitive.pdf.

161. Criminal Code, Article 19.

162. Guardianship and Education Law (Lei Tutelar Educativa) 1999, Articles. 1 and 4.

163. Criminal Code, art. 41(1)-(3).

Romania

Life imprisonment for children prohibited

Limits on the sentencing of children exclude the possibility of life imprisonment for persons under the age of 18.

Meaning of life imprisonment

Persons sentenced to life imprisonment must serve 20 years in detention before becoming eligible for parole.¹⁶⁴ If a person serving a sentence of life reaches 60 while serving that sentence, he or she may be released on parole after having served 15 years in detention.¹⁶⁵ If after 10 years from parole being granted, the sentenced person has committed no new offences, the sentence is deemed to have been served.¹⁶⁶

In order to be eligible for parole, a sentenced person must demonstrate that he or she has been “consistent at work, well disciplined and [has shown] serious improvement, also taking into account the criminal antecedents”.¹⁶⁷

Minimum age of criminal liability

No one under the age of 14 can be held criminally liable.

A child aged 14 to 16 can only be held criminally liable where it can be proved that he or she had “discernment”.¹⁶⁹

Children over the age of 16 are held criminally liable “within the framework of the system of sanctions applicable to minors”.¹⁷⁰

Maximum sentences

For offences for which an adult would be sentenced to life imprisonment, a person between the ages of 14 and 18 would be sentenced to between 5 and 15 years of “strict imprisonment”.¹⁷¹

For offences for which an adult would be sentenced to “severe detention” a person between the ages of 14 and 18 would be sentenced to between 3 and 12 years “strict imprisonment”.¹⁷²

For any offence for which the law provides for “strict imprisonment” for an adult, a person between the ages of 14 and 18 will have that sentence reduced by half, and the

sentence may not exceed 3 years “strict imprisonment”.¹⁷³

Strict imprisonment is a form of detention in closed facilities which must be designated for the detention of persons serving such sentences.¹⁷⁴ Other limits are set for imprisonment other than strict imprisonment, fines, and community service.¹⁷⁵

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

164. Criminal Code, Article 72(1). Available at: <http://legislationline.org/download/action/download/id/1695/file/c1cc95d23be999896581124f9dd8.htm/preview>.

165. Criminal Code, Article. 72(2).

166. Criminal Code, Articles 72(3) and 73.

167. Criminal Code, Article 72(1).

168. Criminal Code, Article 113(1).

169. Criminal Code, Article 113(2).

170. Criminal Code, Article 113(3).

171. Criminal Code, Article 123(1)(a).

172. Criminal Code, Article 123(1)(b).

173. Criminal Code, Article 123(1)(c).

174. Criminal Code, Article 66(1).

175. Criminal Code, Article 123(1)(d)-(f).

Slovakia

Life imprisonment for children prohibited

The maximum sentences permitted for persons under the age of 18 prevent the possibility of life imprisonment for children.

The meaning of life imprisonment

A person serving a term of life imprisonment may be conditionally discharged after serving at least 25 years,¹⁷⁶ but may not be conditionally discharged if “repeatedly sentenced to life imprisonment”.¹⁷⁷

Minimum age of criminal liability

Any person under the age of 14 upon committing what would otherwise be a criminal offence may not be held criminally liable.¹⁷⁸ No one may be held criminally liable for sexual abuse if he or she has not reached the age of 15.¹⁷⁹

Maximum sentences

Persons under 18 cannot generally be sentenced to more than 7 years detention, and in any event cannot be detained for more than half of the maximum sentence applicable for an adult.¹⁸⁰

If a young offender has committed (i) “a particularly serious felony; (ii) the degree of seriousness for society is extremely high because of the “despicable mode of the commission of an act” or because of “a despicable reasons” or the adverse and irreversible consequence; then the court can impose a sentence of between 7 and 15 years if it believes that a lesser sentence would “not be sufficient for the attainment of the purpose”.¹⁸¹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Slovenia

Life imprisonment for children prohibited

The maximum penalties for persons under 18 exclude the possibility of life imprisonment for children.

The meaning of life imprisonment

A person serving a life sentence becomes eligible for parole after serving 25 years imprisonment.¹⁸² In deciding whether to release a person on parole the following must be taken into account:

(i) the possibility of re-offending; (ii) any criminal offences taking place against the offender for offences committed before they started serving their prison sentence; (iii) the attitude of the offender towards the criminal offence committed and towards the victim; (iv) the offender's conduct during his or her sentence; (v) the success of any treatment of addiction; and (vi) the conditions for the offender's reintroduction to life outside prison.¹⁸³

Minimum age of criminal liability

Children under the age of 14 cannot be sentenced to criminal penalties.¹⁸⁴ Children under the age of 14 criminal responsibility can, however, be committed to juvenile institutions equivalent to those used for older children in conflict with the law.¹⁸⁵

Maximum sentences

For crimes for which an adult could be sentenced to 30 years imprisonment, no person under 18 can be sentenced to more than 10 years “juvenile detention”.¹⁸⁶

Children aged 14 and 15 can only be sentenced to “educational measures”.¹⁸⁷

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

176. Criminal Code, Section 67(2). Available at: <http://legislationline.org/documents/section/criminal-codes>.

177. Criminal Code, Section 67(3).

178. Criminal Code, Section 22(1).

179. Criminal Code, Section 22(2).

180. Criminal Code, Section 117(1).

181. Criminal Code, Section 117(3).

182. Penal Code, Article 88(3). Available at: <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/34287694.pdf>.

183. Penal Code, Article 88(5).

184. Penal Code, Article 71.

185. See Filipčić, Katja, “Slovenia: Dealing with Juvenile Delinquents in Slovenia,” 75 International Review of Penal Law (Revue internationale de droit pénal) 493, 2004.

186. Penal Code, Article 89(2).

187. Penal Code, Article 72(1).

Spain

Life imprisonment prohibited

Life imprisonment is not lawful under Spanish law for any offence committed by any person of any age.¹⁸⁸

Minimum age of criminal liability

No child can be held criminally responsible for an act committed while under the age of 14, but younger children who carry out what would otherwise be a criminal act can be subject to protection measures.¹⁸⁹

Maximum sentence for single offences

A person under the age of 18 can be sentenced to closed detention for a single offence if:

(i) the facts establish that the person has committed a felony under the Penal Code or special penal laws; (ii) the relevant crime was classified as a misdemeanor, but involved violence or intimidation against persons or has generated serious risk to life or physical safety; or (iii) the acts are classified as crimes committed in groups, organisations or associations.¹⁹⁰

Persons aged 14 or 15 may be sentenced to a maximum of three years detention and persons aged 16 or 17 may not be sentenced to more than six years detention.¹⁹¹

Maximum sentence for multiple offences

A person under the age of 16 cannot be sentenced to more than six years closed detention for committing two or more related or continuing offences.¹⁹²

A child over the age of 16 cannot be sentenced to more than 10 years "closed internment" for committing two or more related or continuing offences.¹⁹³

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

Sweden

Life imprisonment for children prohibited

Life imprisonment is explicitly prohibited as a sentence for an offence committed while under the age of 21.¹⁹⁴

The meaning of life imprisonment

Life imprisonment is an indeterminate sentence which can theoretically last for the remainder of a person's natural life, but a person serving such a sentence may apply for it to be commuted to a fixed term after serving 10 years imprisonment. The minimum fixed term that may then be set is 18 years imprisonment.¹⁹⁵

Minimum age of criminal liability

No person can be subjected to a criminal sanction for an offence committed while under the age of 15.¹⁹⁶

Maximum sentences for a single offence

Life imprisonment is prohibited for minors and imprisonment may only be imposed if "there are extraordinary reasons for so doing."¹⁹⁷ Generally the maximum penalty for offences committed while under the age of 21 is 10 years imprisonment, but for murder, the maximum penalty is imprisonment for 14 years.¹⁹⁸

Maximum sentences for multiple offences

Where a person is sentenced to imprisonment for several offences, the term may not exceed four years more than the most severe punishment. This provision would allow for a maximum prison term of 18 years where one of the offences was murder and 14 years if none of the offences were murder.¹⁹⁹

Number of children serving life imprisonment

Life imprisonment is not a lawful sentence for offences committed while under the age of 18.

188. Spain Criminal Code, Article 76(1). Available at: http://www.sanchezcervera-abogados.com/en/files/2012/06/Criminal_Code_C%C3%B3digo_Penal.pdf.

189. Spain Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Articles 1(1) and 3. Available at: http://noticias.juridicas.com/base_datos/Penal/lo5-2000.html.

190. Spain Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Article 9(2).

191. Spain Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Article 10(1).

192. Spain Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Article 11(1) and (2).

193. Spain Organic Law 5/2000 of 12 January, on the criminal responsibility of minors, Article 11(1) and (2).

194. Criminal Code, Ch. 29 Section 7. Available at: <http://www.government.se/content/1/c6/02/77/77/cb79a8a3.pdf>. Note: the Criminal Code has been amended since this translation was produced. See website of the Government Offices of Sweden for updates.

195. Government Offices of Sweden, "Commutation of Life Imprisonment". Available at: <http://www.government.se/sb/d/9256/a/124123>.

196. Criminal Code, Ch. 1, Section 6.

197. Criminal Code, Ch. 30, Section 5.

198. See Criminal Code (Sweden); Government Offices of Sweden, "Punishment for murder". Available at: <http://www.government.se/sb/d/13420/a/157437>.

199. Criminal Code, Ch. 26, Section 2(3).

United Kingdom

There are three criminal jurisdictions within the United Kingdom: England and Wales, Northern Ireland and Scotland. Juvenile justice legislation and practices vary between these jurisdictions so they are each addressed separately below.

England and Wales

Life imprisonment

Life imprisonment, detention at Her Majesty's pleasure and indeterminate detention for public protection can be applied to persons under the age of 18.

Minimum age of criminal liability

Children can be held liable for criminal offences from the age of 10.²⁰⁰

The meaning of life imprisonment

A sentence of life imprisonment in English law includes a tariff period, which is the minimum period of detention that a convicted person must serve. When a tariff period has been completed, the offender becomes eligible to be released on licence, but subject to the order of the Secretary of State as directed by the Parole Board. If released, a person subject to a life sentence is referred to as "on licence", by which it is meant that he or she is subject to certain requirements which may involve supervision or limitations on movement. Should the requirements of the licence be breached, the person on licence can be "recalled", that is returned to custody without further conviction. It is comparatively rare for a person on a life sentence to remain in custody for their entire natural life, but all persons on life sentences are subject to detention should they not fulfil the requirements of their licence.

When determining the tariff period, the Criminal Justice Act 2003 sets out a series of "starting points" - a minimum term to be served proportionate to the severity of the offence.²⁰¹ According to the specifics of the offence, the court must then deduct terms of imprisonment for mitigating factors and add years for aggravating factors. When a person is being sentenced to life imprisonment for an offence committed while under the age of 18, the starting point used to calculate

the minimum term is 12 years.²⁰²

Maximum sentences

There are a number of lengthy sentences that, at the time of sentencing, would permit a child to be detained for the rest of his or her natural life.

If dealt with in a Youth Court (or other summary jurisdiction) the maximum custodial sentence will be 24 months. Life imprisonment is not possible if a person is sentenced by a Youth Court. Where a person is aged 14 or younger, he or she would normally be sentenced in a youth court, though for homicide offences or where that person comes within the definition of a "dangerous offender" (see below) he or she would be sentenced in the Crown Court.

"Long term detention". Persons under 18 sentenced for offences for which a person over 21 would be sentenced to more than 14 years can be sentenced to a term that does not exceed that for which such an adult would be sentenced. This may include a life sentence. This could include life imprisonment with regards to certain named offences.²⁰³

Sentences for "dangerous offenders"²⁰⁴ (Criminal Justice Act 2003 Ch. 5).

Detention for life can be imposed for certain named offences.²⁰⁵ Life would be the maximum sentence for any offence committed by a person aged 10-18 who has been convicted of an offence, other than murder, for which a person aged 21 or over would be eligible for a discretionary life sentence.

Detention for public protection (DPP). An indeterminate sentence for the purposes of public protection.²⁰⁶ For the purposes of release, DPP sentences for persons under 18 are treated in many respects as life sentences.²⁰⁷

200. Children and Young Persons Act 1933, Section 50. Available at: <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12>.

201. See Criminal Justice Act 2003, Schedule 21.

202. Criminal Justice Act 2003, Schedule 21, Section 7.

203. Powers of Criminal Courts (Sentencing) Act 2000, Section 91. Available at: <http://www.legislation.gov.uk/ukpga/2000/6/contents>.

204. Criminal Justice Act 2003, Ch. 5. Available at: <http://www.legislation.gov.uk/ukpga/2003/44/contents>.

205. Criminal Justice Act 2003, Section 226(2) and the Sentencing Act, Section 91.

206. Criminal Justice Act, Section 226.

207. Crime (Sentences) Act 1997, Section 34(2)(e) provides that for the purposes of Part II Ch. II, "life sentence" includes a sentence of detention for public protection under Section 226 of the Criminal Justice Act 2003. Available at: <http://www.legislation.gov.uk/ukpga/1997/43/contents>.

DPP Can be applied (i) where a person under 18 is convicted of “a serious offence” (listed violent and sexual offences which, if committed by an adult, would be liable to a life sentence, or determinate sentence of 10 years or more) and (ii) the court considers that the offender poses a significant risk of serious harm by the commission of further “specified offence” (certain violent and sexual offences).

The offender would be sentenced to an indeterminate sentence. A tariff period is set as the minimum amount of time to be spent in detention at which point the offender becomes liable to release on licence. If the offender is released on licence, and not recalled, the licence can be brought to an end after 10 years if the Parole Board is satisfied that the licence is no longer necessary for the

There has been serious criticism of IPP sentences (the adult equivalent of DPP. The Sainsbury Centre published figures in 2008²⁰⁸ which demonstrated that half of those on IPP sentences were suffering from problems with emotional well-being (higher than that for those serving life sentences). Indeterminacy of the sentence was found to have a damaging effect on personal relationships, and offenders found the refusal of parole difficult to cope with (especially when full compliance was forthcoming). Access to offender programmes is also difficult for those with mental health problems. There have also been cases (see *Walker v James* [2008]) in which the prison did not offer the resources (appropriate programmes) that would make the offenders eligible for release.

protection of the public. The Parole Board must then direct the Secretary of State to make an order ceasing the effect of the licence.

The sentences have only existed since 1997, so it is not clear what the long term prospects are of those subject to them, but it is theoretically possible for a DPP sentence to last for life.

Since the relevant legislation came into force, 290 people between the ages of 10 and 17 have been sentenced to DPP. Such sentencing peaked in (70 that year) but fell to 27 in the 12 months ending in September 2011.²⁰⁹

Detention during Her Majesty's pleasure (DHMP).

Under the Powers of Criminal Courts (Sentencing) Act 2000, s. 90, persons convicted of murder, who were under 18 at the commission of the offence, must be sentenced to be detained during Her Majesty's pleasure.

Since the relevant legislation came into force, 290 people between the ages of 10 and 17 have been sentenced to DPP

Detention at Her Majesty's pleasure is treated as a life sentence when considering parole, but has historically been classified as an indeterminate sentence by the judiciary.²¹⁰ The starting point is 12 years. See the section on “the meaning of life imprisonment” above for more information on calculating minimum sentences.

208. The Sainsbury Centre for Mental Health, “In the dark: the mental health implications of imprisonment for public protection” 18 September 2008. Available at: http://www.centreformentalhealth.org.uk/publications/in_the_dark.aspx?ID=584.

209. Ministry of Justice Sentencing Tables, December 2011. Available at: <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>.

210. See *R v. Secretary of State for the Home Department, ex p Venables and Thompson* [1998] AC 40. Available at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKHL/1997/25.html&query=1998+and+AC+and+407&method=boolean>. and *Greene Brown v. the Queen* [2000] 1 AC 45

Number of children serving life imprisonment in England and Wales

Detention at Her Majesty's pleasure

Since 2008, 117 people have been sentenced to detention at Her Majesty's pleasure for offences committed while under the age of 18. The average age of the person at the time of sentencing was 16 years and five months, but we were unable to access figures on how old the relevant people were at the time they committed the offence for which they were sentenced. See below for a break down of age at the time of sentencing.

Age at the time of sentence	Year			
	2008	2009	2010	2011
13	1	-	-	-
14	1	1	-	-
15	3	-	2	-
16	9	8	6	4
17	10	14	11	11
18	7	12	1	3
19	3	6	3	1

All figures were provided in response to a freedom of information request made to the Ministry of Justice. Response received 17 May 2013.

As of November 2011, the Ministry of Justice reported that it did not hold the details of the number of people currently serving sentences of detention at Her Majesty's pleasure. In response to a Parliamentary Question, Lord McNally acknowledged "Many offenders sentenced to be detained at Her Majesty's Pleasure as children will have passed their 22nd birthday and will therefore now be being managed as adult life sentenced prisoners." Data was available for individual case management, but was not held for statistical purposes. This meant that the government was not able to identify how many of the people held within the prison population were so held as a result of being sentenced to detention at Her Majesty's pleasure.²¹¹

211. Hansard, HL Deb, 16 November 2011, c.170w. Available at: <http://www.theyworkforyou.com/wrans/?id=2011-11-16a.170.3&s=2011-11-15..2011-11-17+section%3Awrans+speaker%3A13129#g171.0>.

Detention of persons under the age of 18 at the time of committing the offence

During the 2011/12 year, an average of 1,963 children were held in custody following sentencing, serving an average sentence of 13.1 months imprisonment.²¹² This showed a decrease in the average number of children detained from 2,040 the previous year and 2,801 in 2001/2.

Of those people under the age of 18 held in detention, a large majority were male (94 per cent) and an even larger majority were between the ages of 15 and 17 (96 per cent).

In January 2013, the Government revealed that five people under the age of 18 had been authorised to be moved to adult detention facilities during 2011.²¹³

In the 12 months up to September 2011, 382 children were subject to detention at Her Majesty's pleasure or a lengthy sentence for which a person over the age of 21 would be able to more than 14 years. This is the lowest figure recorded in the last 10 years. Figures have shown a general downward trend since 2002, but have fluctuated.²¹⁴

In January 2013 the UK Government revealed that five people under the age of 18 had been authorised to be moved to adult detention facilities during 2011

Northern Ireland

Life imprisonment

Children may be sentenced to detention “during the pleasure of the Secretary of State” (DSSP), which is the Northern Irish equivalent of “detention during Her Majesty's pleasure” in England and Wales. Under Northern Irish law, DSSP sentences are often treated as life sentences.²¹⁵

Meaning of life imprisonment

Persons serving life sentences in Northern Ireland are given a “tariff period”, which is the minimum period to be served in detention. After the tariff period expires, the person serving the sentence becomes eligible for parole. The Parole Commission of Northern Ireland will consider release approximately 6 months before the expiry of the tariff period, and every two years should parole be refused. When released on parole from a life sentence, “license” conditions are applied which place restrictions and requirements on the person serving the sentence. Should a person breach the conditions attached to their license, they are subject to recall to custody.²¹⁶

Minimum age of criminal responsibility

No child under the age of 10 can be found guilty of a criminal offence.²¹⁷

Maximum sentences

Any person under the age of 18 who would be sentenced to life imprisonment but for his or her age, must be sentenced to be detained “during the pleasure of the Secretary of State” in such conditions as the Secretary of State may direct.²¹⁸

Number of children serving life imprisonment

As of 10 August 2004, there were three prisoners detained at the Secretary of State's pleasure.²¹⁹ It is not clear whether those sentenced to DSSP who were no longer classified as young offenders were included in the figures. CRIN has not been able to obtain more recent figures related to the sentencing of children to DSSP as figures were not sufficiently broken down in the latest sentencing statistics of the Northern Irish Department of Justice.²²⁰

212. Ministry of Justice, “Youth Justice Statistics 2011/12: England and Wales”, 31 January 2013, p. 11. Available at: <http://www.justice.gov.uk/downloads/statistics/youth-justice/yjb-stats-2011-12.pdf>.

213. Hansard, HC Deb, 10 January 2013, c444W. Available at: <http://www.theyworkforyou.com/wrans/?id=2013-01-10a.134352.h&s=2013-01-01..2013-01-17+speaker%3A11791#g134352.r0>.

214. Ministry of Justice, “Sentencing tables- September 2011”. Available at: <https://www.gov.uk/government/publications/criminal-justice-statistics—2>.

215. See, inter alia, the Criminal Justice (Northern Ireland) Order, 2008, Article 13(1). Available at: http://www.legislation.gov.uk/nisi/2008/1216/pdfs/uksi_20081216_en.pdf; the Life Sentences (Northern Ireland) Order 2001, Article 2(2). Available at: http://www.legislation.gov.uk/nisi/2001/2564/pdfs/uksi_20012564_en.pdf.

216. See the website of the Parole Commissioners for Northern Ireland for more information: <http://www.parolecomni.org.uk/index.htm>.

217. Criminal Justice (Children) (Northern Ireland) Order 1998, Article 3.

218. The Criminal Justice (Children) (Northern Ireland) Order 1998, Article 45(1). Available at: <http://www.legislation.gov.uk/nisi/1998/1504/article/45>.

219. Northern Ireland Yearbook 2005, p. 132.

Scotland

Life imprisonment

Children can be sentenced to “detention without limit of time”, which is the Scottish equivalent of detention during Her Majesty's pleasure.

Meaning of life imprisonment

In setting a life sentence, the trial judge must set a minimum tariff period to be served before an offender can be considered for release on parole. After that period has expired, the Parole Board determines whether the person serving the sentence should be released on “life license”, that is released from detention subject to restrictions on his or her behaviour. After a person serving a life sentence becomes eligible for parole, the Parole Board will consider his or her release from detention at least every two years.

Minimum age of criminal liability

No child under the age of eight can be found guilty of any criminal offence,²²¹ but no person under the age of 12 may be prosecuted for an offence and a person aged 12 or older may not be prosecuted for an offence committed while under the age of 12.²²²

The gap between the minimum age of prosecution and the minimum age of criminal liability means that criminal offences committed between the age of 8 and 12 may be included on a child's criminal record, though a prosecution may not take place. As of July 2013, the Scottish Government said it “[would] consider calls for the minimum age of criminal responsibility to increase”.²²³

Maximum sentences

Persons aged 12 to 18 convicted of murder must be sentenced to “detention without limit of time”, a measure that replaced “detention during Her Majesty's pleasure”.²²⁴

Number of children serving life imprisonment

Between 2001 and 2011, 113 “young offenders” were sentenced to DWLT in Scotland. Unfortunately, these figures published by the Scottish government include all persons under the age of 21, so it is not possible to identify how many people were under the age of 18 at the time they committed

the relevant offence.²²⁵

Because of the length of sentences, it is difficult to estimate how long a person sentenced to DWLT would serve in detention if convicted today. However, the Scottish Government has conducted analysis of offenders serving such sentences between 1965 and 1996, which gives an indication of how they have been used across a sustained period.

Between January 1965 and December 1996, 127 males and 2 females were sentenced to DWLT for murder. Analysis of 67 people who had been released from detention while serving DWLT sentences indicated that the average time spent in detention was 10 years and five months compared to 11 years and one month for mandatory life sentences in general across the same period.²²⁶

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People serving DWLT sentences served an average of 10 years and five months in detention compared to 11 years and one month for life sentences

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221. Criminal Procedure (Scotland) Act, Section 41. Available at: <http://www.legislation.gov.uk/ukpga/1995/46/contents>.

222. The Criminal Procedure (Scotland) Act, Section 41A(1)-(2).

223. The Herald Scotland, “Dismay as reform fails to stop criminal records for children” 1 July 2013. Available at: <http://www.heraldscotland.com/news/home-news/dismay-as-reform-fails-to-stop-criminal-records-for-children.21493503>.

224. The Criminal Procedure (Scotland) Act 1995, s. 205(2). Available at: <http://www.legislation.gov.uk/ukpga/1995/46/contents>.

225. The Scottish Government, “Statistical bulletin – Crime and Justice series: Part 7” 2011.

226. The Scottish Government, “Life Sentence Prisoners in Scotland”, 1999, Chapter 4. Available at: <http://www.scotland.gov.uk/Publications/1999/05/ee951c69-5631-4322-a3f9-d33837d34433/Q/pno/7>.

ANNEX I

INTERNATIONAL AND REGIONAL STANDARDS ON LIFE IMPRISONMENT FOR CHILDREN

UN Human Rights Conventions

UN Convention on the Rights of the Child (CRC)

Article 37(a): prohibits torture, cruel, inhuman or degrading treatment or punishment, and explicitly prohibits life imprisonment without parole for offences committed while under the age of 18 years. Article 37 also explicitly requires that deprivation of liberty is only used as a measure of last resort and for the shortest appropriate period of time.²²⁷

Article 40 covers additional rights of children in relation to justice systems, emphasising that “States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and self worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

The Convention also requires that the best interests of the child be a primary consideration “in all actions concerning children”, including those taken by courts of law,²²⁸ and that States ensure “to the maximum extent possible the survival and development of the child”.²²⁹

In its General Comment on juvenile justice, the Committee specifically addressed the issue of life imprisonment, noting “the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life imprisonment for offences committed by persons under the age of 18.”²³⁰

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) sets out a clear definition of torture and details measures that States must take to prevent torture from occurring.

Universal Declaration of Human Rights.

Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

227. CRC, Article 37(b).

228. CRC, Article 3(1).

229. CRC, Article 6.

230. CRC, CRC/C/GC/10, General Comment 10, para. 77.

231. Second Cycle: Bangladesh, Netherlands, Nigeria and Saudi Arabia. First Cycle: Antigua and Barbuda, Argentina, St Lucia, Trinidad and Tobago, and the United States. See UPR Info’s database for full quotes and citations: <http://www.upr-info.org/database/>.

232. A/HRC/25/L.10.

233. A/HRC/24/L.28, para. 22.

234. A/HRC/18/L.9, para. 13.

235. UN General Assembly, Sixty-seventh session, Resolution A/c.3/67/L.34, 9 November 2012.

International Covenant on Civil and Political Rights

Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Human Rights Council

Universal Periodic Review

The Human Rights Council, during the Universal Periodic Review, has also regularly criticised States that continue to sentence children to life imprisonment, though the Netherlands is the only state within the European Union that has received a recommendation on life imprisonment.²³¹

Resolutions

The UN Human Rights Council Resolution on children’s access to justice (2014) includes a paragraph reaffirming the duty of states to ensure that their legislation and practices do not permit life imprisonment for offences committed by persons under 18 years of age.²³²

The UN Human Rights Council Resolution on human rights in the administration of justice, including juvenile justice (2013) urged States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment is imposed for offences committed by persons under 18 years of age.²³³

The UN Human Rights Council Resolution on human rights in the administration of justice, in particular Juvenile Justice (2011) urged States to ensure that, under legislation and practice, neither capital punishment nor life without the possibility of release is imposed for offences committed by persons under 18 years of age.²³⁴

UN General Assembly

In November 2012, the UN General Assembly passed a resolution calling on states to “ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release, nor corporal punishment is imposed for offences committed by persons under 18 years of age” and encouraged states “to consider repealing all other forms of life imprisonment for offences committed by persons under 18”.²³⁵

UN Standards, Rules and Guidelines

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), provides that deprivation of liberty of a juvenile should be a disposition of last resort and for the minimum period” and that it “should be limited to exceptional cases”.²³³

Article 5(4): Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

This provision has been used to challenge the procedure for reviewing ongoing detention under life imprisonment.

The UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) promote a child centred approach to juvenile justice, including by providing that “no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institution”.

The UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) set out standards with respect to professionals involved in the management of children in the justice system, from arrest through to release. The Rules include that imprisonment should only be used as a last resort, for the minimum necessary period and that it should be limited to exceptional cases.

European Convention on Human Rights

The standards set under the European Convention on Human Rights (ECnHR) on life imprisonment is discussed in more depth above, but the following provisions are those that the European Court of Human Rights has used in addressing the compatibility of life imprisonment with the ECnHR.

In prohibiting torture and inhuman or degrading treatment or punishment, article 3 of the the ECnHR sets limits on life imprisonment.

Article 5(1): Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court

This provision has been used to set limits on the use, monitoring and review of life imprisonment sentences.

²³³. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”), Rule 2.