

Summaries

Justitiële verkenningen (Judicial explorations) is published eight times a year by the Research and Documentation Centre of the Dutch Ministry of Security and Justice in cooperation with Boom Lemma uitgevers. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (no. 2, 2013) is *Life imprisonment*.

Life imprisonment: An international comparative perspective

D. van Zyl Smit

Life imprisonment is difficult to define. Sentences that are not called life imprisonment may also be indefinite sentences of detention which may result in the detention of offenders in prison until they die there. Even where a sentence is called 'life imprisonment' it may be difficult to ascertain for how long the offender will actually be held and what criteria will be applied to considering his eventual release. This paper sketches some recent developments in respect of indeterminate sentences that are not called life imprisonment, even though they amount to it in practice. It then turns to the question of life sentences that are imposed without provision for any fixed period after which they should be reconsidered. Questions are raised about the extent to which such sentences are acceptable in Europe, the United States and elsewhere, particularly in instances where at sentence there is an indication that the offenders may not be considered for release at all. It is argued that human rights law is moving towards requiring that all persons sentenced to life imprisonment should have a reasonable prospect of release. Given the widespread support for life imprisonment this paper seeks to raise some human rights concerns that arise with the use of this sentence. The concerns are essentially twofold. First, the sentence may be imposed in instances where it would be disproportionate punishment to do so. Secondly, the procedures for its implementation, in particular those that relate to the potential release of persons serving life sentences, may not be adequate to meet the requirement of a realistic prospect of release.

Life imprisonment: Extradition and surrender to the Netherlands

V.H. Glerum

In principle a Dutch life sentence is served in full. 'Lifers' can benefit from executive clemency. However, over the last 26 years clemency has been applied so sparingly as to call into question whether clemency for 'lifers' is a real possibility at all. Recently the European Court of Human Rights has refined its case-law on the compatibility of life sentences with Art. 3 ECHR, in the national context as well as in the context of extradition. This contribution discusses whether under Article 3 ECHR the Dutch practice of executing life sentences in full acts as a bar to extradition or surrender of a person who faces the imposition and/or execution of a life sentence in the Netherlands.

The judicial advisement in the procedure of pardon

D.J.G.J. Cornelissen

This article provides an overview of the development of the prerogative of mercy. From the outset, the king (now: the Crown) is empowered with this prerogative and the judiciary is appointed as an advisory institution. The author focused on this judicial advisement in the procedure of pardon. First the different competent advisory courts are outlined. Initially, the highest court of justice was the only competent advisory body. For practical reasons the task was eventually shifted to the judge who imposed the sentence. Secondly, the impact and meaning of the advice are valued by researching sixteen pardon cases. In approximately half of the cases the judicial advisement was acknowledged by the Crown. In six of the sixteen studied pardon cases the Crown deviated from the judicial advisement in favour of the convict. According to the author, these deviations are in line with the policy of pardon of the last century.

The prestige of the State. On the execution of lifelong imprisonment in practice

W.F. van Hattum

In 1870 in the Netherlands the death penalty was replaced by the sanction nearest to that effect: lifelong imprisonment. For the government though this penalty was acceptable only in connection with the possibility of mercy. The sanction was to be executed humanely and should not result in torture. The way the sanction was executed since, the administration developed a policy of mercy taking into account

the devastating effects of the sanction. This policy resulted in mental care for the convicted and his release after approximately twenty years imprisonment. More than hundred years later, about 2004, the policy of mercy changed. Since then, according to the responsible ministers, life imprisonment should end by the onset of death. In this article the practice under the old and the new policy is illustrated by a case study. The conclusion is that like the death penalty lifelong imprisonment corrodes the prestige of the State.

'Doing life': Harm reduction through life sentences

M.S. Fleisher

This essay examines imprisoned felons' perspectives and interpretations of 'doing life'. Prisoners' and ex-prisoners' perspectives on the pros and cons of life imprisonment were documented over four decades of ethnographic research in prisons and on urban streets. The author's research was conducted as a participant observer of street criminals and observing participant in federal prisons. Interviews with violent convicted felons in state and federal prisons and persistent criminals with histories of imprisonment reveal what it means to 'do time'. Prisoners' enculturation accommodates their adjustment to prison life and ability to negotiate daily prison life, but prison culture's and prison programs' inability to alter the nature of violent criminals pose a continuous threat to the population at large. Life imprisonment benefits prisoners' physical and social health and protects communities by keeping violent criminals imprisoned.

Towards a compensatory regime for life and long-term prisoners

G. de Jonge

Though small in numbers life and long-term prisoners pose special problems for the Dutch prison administration in terms of their treatment. A new approach is to concentrate these prisoners in three units specially designated for them. It is still unclear however what the regime in those facilities will look like. The author argues for introducing there a 'compensatory regime' that can counteract to some degree the harmful effects of life and long-term imprisonment.

Loss of prospect for life prisoners and long-term forensic psychiatric inpatients

P.C. Braun

A comparison between life prisoners and long-term forensic psychiatric inpatients shows, besides differences in legal position, important similarities. Therefore the results of an experiment with regime changes in the long-term ward of Dutch forensic psychiatric institutions might also be relevant for the regime of life prisoners. The experiments are partly based on the ideas of Andrews, Ward and Bonta. The fundamental idea is to give inpatients a sense of control over their life environment by granting them as much responsibility as possible for practicalities, by communicating with their representatives regularly and taking a positive attitude towards inpatients' preferences and requests. First experiences show that the new approach seems to have a positive impact on inpatients. They suffer less from depression as well as aggressive moods, which contributes to a better atmosphere in the institution. Stressing the tentative nature of this observation the author indicates that the hypothesis on the beneficial effects of active influence on the life environment might be verified by research currently in progress.

Prospects for life prisoners?

T. de Bont and S. Meijer

This article focuses on the 'de iure' and 'de facto' possibilities in Dutch penal law to reduce a life sentence. The question is whether the current legal framework offers sufficient perspective to life prisoners as required by the European Court of Human Rights. It also addresses the disadvantages of the current procedures. The authors argue that it is desirable that a legal possibility for release on probation of life prisoners is introduced in the Netherlands. They will set out a bill written by the NGO 'Forum Levenslang' that would make this possible.