



THE RIGHT TO HOPE

Life Imprisonment in the European Context

LIFE DATABASE





Presentation

[“The Right to Hope. Life Imprisonment in the European Context”](#) is a research project co-funded by the European Union, Jean Monnet Activities, Jean Monnet Academic Modules. It started on October 1, 2014 and will last three years.

One of its activities is the preparation of [Life Database](#), which aspires to become the first Database in the world with the main statistical and legal information of the Life Imprisonment Free States.

Furthermore, we firmly believe that it is important to report even the most significant info on the issue of death penalty.

Each State Report is prepared by members of the [Inner Life Working Group](#), made up of graduating students on Public Law or Fundamental Rights, coordinated by Professor Davide Galliani (University of Milan, Italy).

In the Reports, we use many external link to give the opportunity to quickly look up the source of the information.

At the moment, the States on Life Database are the following. In Europe: Andorra, Bosnia and Herzegovina, Croatia, Montenegro, Portugal, San Marino, Serbia and Spain. Outside Europe: Angola, Brazil, Bolivia, Cape Verde, Macau, Colombia, Costa Rica, Dominican Republic, East Timor, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Mozambique, Nicaragua, Panama, Paraguay, São Tomé and Príncipe and Uruguay.

*Professor Davide Galliani
July 24, 2015*





The Right to Hope Life Imprisonment in the European Context

LIFE DATABASE (INNER LIFE WORKING GROUP)

www.lifeimprisonment.eu



Montenegro

by [Marta Stroppa](#) (updated on June 22, 2015)



**ESSENTIAL STATISTICS** at December 31, 2015 ⁽¹⁾

Population.....	624,300
Prison population total (including pre-trial).....	1,064
Prison population rate (per 100,000 of national population)	170
European prison population rate.....	133.5
Pre-trial detainees (percentage of prison population).....	28.6%
European pretrial detainees.....	17%

COUNCIL OF EUROPE AND COURT OF STRASBOURG

Accession to Council of Europe.....2007 ([here](#))

Montenegro data (from 2007 to 2014)

Total number of judgements.....	18 (here)
Finding at least one violation.....	17 (here)
Inhuman or degrading treatments	1 (here)

European data (from 1959 to 2014)

Total number of judgements.....	17,754 (here)
Finding at least one violation.....	14,877(here)
Inhuman or degrading treatments.....	1,513 (here)

MAIN OFFENCE (final sentence) at September 1, 2013 ⁽²⁾

Homicide, incl. attempts	55 (7.1% of the total)
Assault and battery.....	93
Rape and other sexual offences.....	7 and 2
Robbery and other theft.....	6 and 248
Economic and Financial	1
Drug offences	201
Terrorism	3
Organised crime	14
Other case.....	149
Total.....	779
Total European main offence (final sentence).....	1,287,788

⁽¹⁾ ICPS - International Centre for Prison Studies: [here](#)

⁽²⁾ Council of Europe, Annual Penal Statistics, SPACE I - Prison Populations (table 6, page 104): [here](#)





DEATH PENALTY

Death Penalty (hereinafter: DP) in Montenegro has been abolished in 2006. There were several early attempts to abolish DP. In 1906, a pamphlet against DP was published in Cetinje (Old Royal Capital of Montenegro). In 1907 the Minister of Justice informed the Parliament that it was the Prince's wish to have the DP abolished in Montenegro, except for treason. However, no amendments to the Penal Code were made in the Parliament and the DP remained in force. Since 1960 in former Yugoslavia there were some academic oppositions to DP. In 1980 some citizens tried to establish a league aimed at fighting DP, but authorities never gave them a legal statute.

A partial abolition occurred after the dissolution of the Socialist Federal Republic of Yugoslavia, when Serbia and Montenegro together established a Federation on April 27th, 1992 and adopted a new Constitution.

While drafting the Constitution, the proposal to abolish federal DP came from the Montenegrin members of the Drafting Commission. The proposal was accepted: the Article 21 abolished DP for federal crimes (including genocide, war crimes, political and military offences). Article 21 became effective on December 31st, 1993, when the Penal Code has been harmonized with the new Constitution. The last execution in Montenegro, by fire

squad, took place on January 29th, 1981 and the last two death sentences were pronounced on October 11th, 2001 (obviously it was for State crimes).

On June 19th, 2002, the Montenegrin Parliament amended the Penal Code by deleting all references to DP. As was stressed in the parliamentary debate, a paramount motive for abolition was the desire to join the Council of Europe.

International obligations

After Montenegro reached its independence (June 3, 2006), it became a State member of the United Nation and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (September 23, 2006), abolishing the death penalty. Montenegro is also bound by the following international conventions prohibiting capital punishment: Protocols N°6 and N°13 to the European Convention on Human Rights (March 3, 2004); Rome Statute of the International Criminal Court (June 3, 2006).

Montenegrin Constitution

According to Article 26 of the Montenegrin Constitution (2007): "In Montenegro, capital punishment is forbidden". In the Criminal Code, death penalty is not expected (Article 33 : Types of punishment).

LIFE IMPRISONMENT

Life imprisonment is not expressly mentioned in the Constitution. However, we can understand the life imprisonment penalty's incompatibility with the Montenegrin Constitution from two dispositions: Article 28 (Dignity and inviolability of person) and Article 31 (Respect for person). Any inhuman and degrading behavior is prohibited. Any kind of violence against a person deprived of liberty or whose liberty has been limited is prohibited and punishable.

Life imprisonment is not mentioned in the Penal Code. However, the Article 33 (Types of punishment) lists as maximum punishment the thirty-year imprisonment. The thirty-year imprisonment is distinguished from the imprisonment penalty, which cannot be longer than twenty years (Article 36: Imprisonment). The thirty-year imprisonment is expected for the most serious criminal offences, but it can not be prescribed as the only punishment for a certain criminal offence. Article 35 (Thirty-year imprisonment) lists some thirty-year imprisonment's limits: a thirty-year imprisonment sentence cannot be pronounced to a person who was under 21 at the time of commission of a criminal offence; to a person who had significantly reduced mental capacity at the time of commission of a criminal offence; for an attempted criminal offence.

Release on parole

Article 37 (Release on parole) of the Penal Code says that a convicted person who has served half of the prison sentence (or of the thirty-year imprisonment sentence) can be released on parole if in the course of serving the prison sentence thereof s/he has improved so that it is reasonable to

expect that s/he will behave well while at liberty and, particularly that s/he will refrain from committing criminal offences until the end of time the prison sentence had been imposed.

Article 38 (Revocation of parole) lists in which cases there is the revocation of parole. The Court shall revoke parole if a convicted person commits one or more criminal offences while on parole, for which imprisonment sentence of more than a year is pronounced or if a person on parole commits one or more criminal offences for which imprisonment sentence of less than one year is pronounced (even if a person on probation is tried for a criminal offence that s/he committed before release on probation). In these cases, a parole can be revoked at latest within two years of the date the parole expired. When the court revokes parole it shall pronounce punishment. If a person on parole is sentenced to imprisonment of less than a year and the court does not revoke the parole, the parole shall be extended for the period of the imprisonment sentence which the convicted person has served.

Pardon

Article 131 (Pardon) specified that by pardon, a specifically named person shall be released from criminal prosecution or completely or partially released from execution of a penalty. By pardon, a security measure of prohibition from practising a profession, conducting a business activity and performing an official duty, prohibition of driving a motor vehicle and expulsion of foreigners from the country can be repealed or reduced.



SOURCES:

Constitution:

<http://www.legislationline.org/documents/section/constitutions/country/57>

https://www.constituteproject.org/constitution/Montenegro_2007.pdf/constitution/Montenegro_2007.pdf/constitution/Montenegro_2007.pdf

Penal Code:

<http://www.legislationline.org/documents/section/criminal-codes/country/57>

[https://www.icrc.org/applic/ihl/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/14f90763b0c620e4c12576ce004bf798/\\$FILE/CRIMINAL%20CODE.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/14f90763b0c620e4c12576ce004bf798/$FILE/CRIMINAL%20CODE.pdf)

Death Penalty:

<http://www.amnesty.it/flex/FixedPages/10ottobre/pdf/dati-paesi.pdf>

<http://www.radoradiale.it/exagora/nessuno-tocchi-caino-14-in-serbia-e-montenegro>

Prison studies:

<http://www.prisonstudies.org/country/montenegro>

Council of Europe — Annual penal statistics (survey 2013):

<http://wp.unil.ch/space/files/2015/02/SPACE-I-2013-English.pdf>

