Right to Hope as Fundamental Right in Global Law Context

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Abstract

"Right to hope" – Is the newly emerged right regarding the irreducible life sentences in connection with article 3 of the European Convention on Human Rights that prohibits torture, inhuman or degrading treatment or punishment. The research paper therefore tries to explore and understand, why has it become necessary to acknowledge the notion of hope in human rights law regarding the article 3 of the convention, how did ECHR manage to determine its weight, essentiality and importance for the human being, And how come that the court was compelled to notice hope as a fundamental right. The research also tries to determine the nature of "hope" as it is acknowledged by the human rights case law and its possible implication as the fundamental right in global law context. The research paper overviews how ECHR expanded its power by the means of the right to hope and how the human rights law is inclining towards the system where recognition of individuals - essential part of their presence and humanity are in the center of attention.

Keywords: Degrading punishment, Right to hope, Dignity, European Court of human rights, Global Law, Right to recognition.

Introduction

Whether a person can change or not during his or her lifetime is the question of psychological and philosophical matters. However, one might state, that the European Court of Human Rights overstepped its boundaries and responded to the matter of psychology when it stated, that "Even those who commit the most abhorrent and egregious of acts, nevertheless retain their essential humanity and carry within themselves the capacity to change"[1]. The court referred to "the capacity to change" as an underlying reason of why prisoners have the right to hope for atonement and release, and explained that hope is the fundamental aspect of humanity, denial of which would be degrading.

The case law of ECHR made it clear that individuals and their feelings like hope bear fundamental importance for ensuring human rights. While the states are obliged to share the ECHR's vision on humanity, the notion of hope has become tangible. The controversiality is attached to the fact that the ECHR has defined human nature and an individual's particular feeling – hope. This raises several issues – how can "the right to hope" be interpreted, how broad understanding it might potentially have, how far can the existence of this right reduce the state's autonomy and how can it be applied in today's world. The actuality of those issues was the main factor of choosing the research topic.

The main purpose of the research paper is to try to determine how the "right to hope" can be perceived and adopted in a global law context. In the first part of the research paper the genesis of this right will be discussed: why the ECHR faced the necessity to acknowledge the "hope" as the

[1] Matiošaitis and Others v. Lithuania, 2017.

right and in fact, what does it mean that the court has determined human nature and emphasized hope as the fundamental aspect of humanity. In the second part the nature of the notion of hope will be observed in the background of international and European law - How the right is connected with other rights and how it can be translated or interpreted furthermore. In the last part, the paper discusses the applicability of the right to hope in a global law context, the controversial characteristics of acknowledging it as the fundamental right essential for humanity, and several possible challenges.

To achieve the main object the research is based on different methods. Case study analysis is used to examine the relevant precedents through which the right to hope was recognized, the main emphasis is put on the case law of ECHR. Analysis of legal acts and documents is applied to determine the general framework around the newly emerged right before its acknowledgement by ECHR. Through comparative legal analysis the research highlights differences between various jurisdictions and possible drawbacks of implication of the right in global law. Analysis of scientific literature is applied to examine the nature of the right, its interconnection with other rights and possible future expansion. The linguistic method is referred to while interpreting article 3 of the convention on human rights.

1. Acknowledgement of "Hope"

There is the difference between hope for freedom and freedom itself. This explains the ECHR statement regarding the prisoners who are sentenced for their whole life: "To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading"[2].

The questions of the importance of hope, the person's capacity to change or transform, and what does it mean to be in despair in the absence of freedom had always been the subject matter of psychology and philosophy. Concerning the life sentences, it is impossible to exclude mentioning hope. Although acknowledging it as the "right" is a different case - hope is an inner human emotion, an individual feeling that is hard to understand and determine objectively and which is experienced in a completely intimate way. Perhaps that is why the ECHR statement - that the denial of hope equals the denial of humanity and that would be degrading, has led to many discussions on the legal field.

"Right to hope" – emerges regarding the irreducible life sentences and refers to the article 3 of the European Convention on Human Rights that prohibits torture, inhuman or degrading treatment or punishment." It is interesting to understand, why has it become necessary to acknowledge the notion of hope in human rights law regarding the article 3 of the European Convention, how did ECHR determine its weight, essentiality and importance for the human being, and how come that the court was compelled to notice hope as a fundamental right.

1.1. Primary Grounds

First, it is important to mention that before its recognition by ECHR "Hope" as the legal notion was already noticed, for example, in the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"), the recommendations of the committee of Ministers of the Council of Europe, or the explanatory memorandum accompanying them, there were numerous examples of the exact wording of how fundamental and

[2] Matiošaitis and Others v. Lithuania, 2017, § 180.

essential is the right to have a legally grounded "hope", in particular, possibility for the prisoners with life sentences, that their sentence might be reviewed and they might be released. Of course, the main factor is the necessity of reducibility of the life sentences *de jure* and *de facto.* As one of the recommendations emphasizes, that stems from the individual principle and the progression principle.

Every individual is different, therefore absolute denial to all the whole life prisoners of the possibility of review or release would exclude the fact that they have differently undergone the process of punishment and rehabilitation, therefore, the diversity of their nature and characteristics must be taken into account while deciding whether they are ready to be released or not. And secondly, which is even more important, is the progressive principle which requires the states to perceive a person as capable of transformation and progress, and hence, give him or her the chance to be atoned for their crimes, regain freedom and socialize again. One of the explanatory memorandum accompanying the recommendation of 2003 mentions: "no one can reasonably argue that all lifers will always remain dangerous to society… the detention of persons who have no hope of release poses severe management problems"[3] .

The abovementioned memorandum and the reports of the CPT was referred by ECHR for several times including in the primal cases regarding reducibility of the life sentences such as Kafkaris v. Cyprus, Vinter and Others v. UK, etc. One of the report made in 2007 (later referred to in the case of Vinter and others v. UK) was concluded by the recommendation that "no category of prisoners should be "stamped" as likely to spend their natural life in prison; no denial of release should ever be final; and not even recalled prisoners should be deprived of hope of release"[4].

It is apparent that the court, while sharing those standards stated by the recommendations and their explanations, was gradually inclining towards the reasoning that: 1. No one knows if someone is able to change or not, hence, the person sentenced for life must be given the chance to be perceived as someone who can change 2. It is better for the security and sentence plans that people will hope that their atonement and release might be possible and therefore have the strong innate incentive to change towards better.

Based on that argumentation the main emphasis was placed under the punishment aim of rehabilitation, and the court step by step made it clear that countries should provide transparent and determined possibilities of release and review in regards to the life of prisoners. Though the imprisonment itself even served for the whole life is not considered as the violation of article 3 of the convention (as court stated in Kafkaris case[5]) – But it is despair and hopelessness based on obscurity of the future that leads to the degrading punishment. The latter conclusion attracts more attention - this is the right, the damage of which is practically non measurable and future expansion of it is also unclear.

1.2. Emerging of The Notion of "Hope" in ECHR

Kafkaris v. Cyprus was one the most important first cases of ECHR dealing with the issue. In Kafkaris case the court did not find the violation of article 3 of the convention. However, the court highlighted the main principles and standards that states should meet while imposing punishments in order to be in accordance with article 3. The court especially emphasized the principle of

[3] Committee of Ministers, 2003.
[4] CPT, 2007.
[5] Kafkaris v. Cyprus, 2008, p. 98.

reducibility regarding the life sentences[6]. The court clearly stated that in terms of the irreducibility of the life sentence the issue of article 3 of the convention arises, taking into account that the life sentence is an extremely grave punishment. Although the mere fact of serving the life sentence fully – is not establishing the violation – Article 3 that prohibits degrading punishment is violated when there is not such a possibility in the national legislature to review the sentence in fixed terms.

Despite those statements, Vinter v. UK was the first case, in which the Judge Power Forde in her concurring opinion used this specific wording "right to hope"[7]. As metaphorical as it sounds it actually had the relevant and actual meaning for that specific case, and as the judge herself mentioned the existence of this right was the main factor that led her to vote with the majority for finding the violation of article 3 of the convention.

In the case Vinter v. UK several applicants were involved. All of them were convicted of the extremely grave crimes and they had been sentenced for life. Applicants complained about the unclear provisions under which the life sentence could be reduced. However, it is interesting that regardless of the standards of article 3 established by ECHR in previous cases, the first chamber while deciding the case didn't find the violation of the convention. Of course, the chamber acknowledged the importance of reducibility as well as they noticed that the provisions were unclear, however it was doubtful for them whether regarding these specific applicants' article 3 of the convention has really been violated or not. The main reason for the doubt was applicants' current situation: two of them had served for five and nearly seventeen years - time that was considered objectively not enough for reviewing their sentences in this specific situation, while one applicant had served for twenty-seven years, however with the grave criminal background.

Firstly, it is important to mention that the review of the life sentence in any case is possible after a certain amount of time period that is determined by the legislature – the main purpose is that after a certain period of time justification for the detention might be shifted – Instead of punitive of preventative objectives now the individual might have changed and the aims of rehabilitation might come first. However – it is only possible after the precise minimum period of time which is necessary to serve as the life prisoner, only after that period of time the review and consideration whether the person has changed or not will become possible. In case of the first applicant – who was convicted for the second murder offence of his wife in a grave circumstances and served just for five years of detention and the third applicant – who was convicted for four counts of murder of homosexual men "for his own sexual gratification" as he himself stated and had served his sentence for just seventeen years – that legally determined minimum time period after which the review of their sentence or reconsideration of their progress would be possible, apparently have not gone yet – they had to serve for a specific period of time without the right to review. Hence in this regard, the chamber concluded that there was no violation against them[8] .

The second applicant was convicted for murdering his adoptive sister and her two young children for financial gain. Considering his imprisonment period and how he acted in prison, there were not sufficient grounds for reviewing his sentence, or releasing him. Hence, from the chamber's point of view in case of those three specific applicants' article 3 of the convention was not violated. That position was later shared by the Judge Villiger in the grand chamber his dissenting opinion.[9]

[6] Kafkaris v. Cyprus, 2008.
[7] Vinter and others v. UK, 2013, Concurring Opinion of Judge Power-Forde.
[8] Vinter and Others v. UK, 2013.
[9] Dissenting Opinion of Judge Villiger.

The grand chamber however found the violation of article 3. The court based the main arguments on the standards of article 3 regarding the life sentences[10]: the detention should always meet the legitimate penological grounds – therefore, if there is no need to imprisonment in order to protect public security, while the punitive aim is also already achieved, the court should review the sentence – Hence, the justification of the person's imprisonment should be subsequently reviewed. Second, the person should have the possibility to atone for his or her offence. Furthermore, the court again and now more explicitly stated that irreducible life sentences are incompatible with human dignity. In addition, the court acknowledged that the main emphasis of the penal policy should be put on rehabilitation. The legislation regarding the reviewing or releasing of life sentences were not clear and precise in Vinter's case and therefore had lost their practical meaning.

The applicants who argued barely served their sentences. Even in the presence of clear and precise instructions regarding the review or release, they still would not be able to benefit from those regulations. The grand chamber several times stated that this fact was irrelevant since they were fighting for the right to hope and not for the release itself. Applicants were obviously seeking not the ultimate right to freedom, but their right to the possibilities, and hope.

Though, the controversy still remained between the grand chambers' and the chamber's decisions. The chamber's position that the legitimate penological purpose remained in the applicant's case therefore there was no grounds for article 3, was shared by the judge Villiger in the grand chamber who voted against the violation of the article 3. His dissenting opinion questions the relevance of article 3 – stating that the grand chamber's judgement was more abstract and did not specify how in this particular case applicants rights were determined as violated – the violation of article 3 would normally be assessed on individual case to case bases - including evaluation of whether the minimum severity of treatment was reached regarding each applicant. Judge Villager also criticized the main judgement for not estimating how the irreducible life sentence amounts to inhuman or degrading treatment.

1.3. Defining The Importance of Hope

One of the main fields of disagreement in Vinter V. UK was whether those people have the right to fight for those possibilities who, even given the legal chance to review the possibility of release won't still be the subject of that right, they won't be released. Therefore, the government argued, the chamber shared, as well as the dissenting opinion of the final judgement, that nonetheless the outcome of the case, the defendants could not satisfy the requirements for release. Hence, there was no violation of article 3 of the convention regarding this specific case – to say in short, applicants have not experienced degrading punishment.

The grand chamber, however opposed this view with the cohesive argument: "if such a prisoner is incarcerated without any prospect of release and without the possibility of having his life sentence reviewed, there is the risk that he can never atone for his offence: whatever the prisoner does in prison, however exceptional his progress towards rehabilitation, his punishment remains fixed and unreviewable. If anything, the punishment becomes greater with time: the longer the prisoner lives, the longer his sentence"[11], what the grand chamber explained is the inner feeling of the prisoner that life would become prison itself. The grand chamber in its judgment explicitly stated, that the absence of clear mechanisms, detailed and foreseeable legal grounds and instructions around the possibilities for the release while Imposing the life long sentence is itself the violation

[10] Vinter and Others v. UK, 2013, §110-113.
[11] Vinter and others v. UK, 2013, §112.

of article 3 – Therefore violation occurs in the moment of sentencing (even though the sentence itself, or serving the punishment fully doesn't constitute the violation).

So, the outcome of this case might not change any status or conditions for the applicants - observing from the outside of their inner world, it might change nothing to establish clear legal possibilities for life sentence prisoners in general that their sentences would be reviewed, as long as according to the government, they would still have to serve the sentence, they wouldn't even become the subject to review since they haven't been imprisoned for the sufficient amount of time for that, then what was it that they were fighting for, and why was there the violation of article 3 regarding their case?

In concurring opinion Judge Mahoney tried to argue the presence of the violation of article 3 of the convention – stated that article 3 had also a preventative role and could be used to restrict potential violations by countries[12].

In her concurring opinion Judge Power-Forde simply showed that there was no necessity for mentioning the future, consideration of the time and nature of the sentence, violation of article 3 of the convention already happened as soon as the applicants were robbed out of hope.

Judge Power-Forde in her short concurring opinion mentioned how she shared the argumentations and the main points of the dissenting opinions too. However, what made her vote for the majority, the main factor of her decision, was the fact that "Article 3 encompasses what might be described as "the right to hope"."[13]

Hope for the future and the absence of it is evidently the matter that arises in the moment of sentencing. As Judge Power stated "Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading." In this concurring opinion it was the first time when the judge used the wording "Right to hope".

The concurring opinion of Power-Forde (that was later fully shared by the Court in the case of Matiošaitis v. Lithuania) explains why there is an actual violation and not the future one, the main object for what the defendants were fighting for under the article 3 of the convention, was not the release itself or guaranteed prospect, but the "right to hope". This also depicts the main reasons why imposing life sentences in the absence of possibility to review or release constitutes violation from the moment of sentencing and not time by time while serving the sentence. Completely eradicating the hope for the future in a person means his or her degradation, denial of the essential factor that makes his or her life reasonable -regardless the period of the time during which the person was hopelessly serving the sentence. It doesn't matter whether it was from the beginning of the sentencing or after a longer period of imprisonment, no matter is it one minute of hopelessness or the whole life – the despair that one might not ever be able to regain normal life constitutes the violation of Article 3. This is an extremely important remark, as the first acknowledgement of hope and the point from where the right to hope starts existing independently.

[12] Vinter and Others V. UK, 2013, Concurring Opinion of Judge Mahoney.
[13] Vinter and Others V. UK, 2013, Concurring Opinion of Judge Power-Forde.

While in dissenting opinion, Judge Villiger in Vinter Case emphasized that " a minimum of severity has to be reached to attain the first threshold;" and that the assessment of this minimum is individual[14], and raises the question – has the minimum severity reached in this case- Judge Powers explanation gives a response - Hopelessness and despair itself establishes the severity. Hope itself regardless of its innate nature is important enough that the absence of it caused by the legislation means the violation of Article 3.

Reviewing the case of Matiošaitis v. Lithuania this notion of hope that was explained by the Judge Power- Forde was fully shared and adopted by the ECHR. The case was about the applicants complaining because of the absence of the parole (despite the presence of the pardon plea of the president, the amnesty of Seimas or the provision regarding reducing life sentences in case of terminal illnesses). The court found that the existing mechanisms were not sufficiently effective to establish the reducibility of the sentence – there was no clarity of what one had to do in order to gain freedom or the prospect of release. Not to mention that provision providing the possibility to release prisoners for life in case of their terminal illness should not be taken into account in this context, as far as one could not hope to be ill in order to be released and die at home.

In conclusion of the case of Matiošaitis v. Lithuania The ECHR underlined the preventive nature of article 3 was questionable, however, to establish its violation, it word by word repeated the argumentation of Judge Power "even those who commit the most abhorrent and egregious acts, nevertheless retain their essential humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and to do that would be degrading"[15].

While stating those words, it became evident that ECHR has considered the right to hope as the fundamental right of human beings, deriving from article 3 of the convention, article that protects human dignity.

2. Nature of Hope

As mentioned above, the ECHR interpreted hope as the essential part of humanity – Thus it is interesting to determine the nature of this right. Hope itself according to its intimate nature is connected to the individual in a way that even observing its existence from outside is impossible - its presence is not even always depended on the outer world and circumstances in someone's life. Though admitting it as the "right" from the human rights law perspective indicates how the ECHR have totally inclined towards recognition of individuals and individual rights.

While public security carries no less importance, the court somehow put the individual right in front – and in this case – the right that refers to the specific feeling – hope. Even more, the court went further – determined the weight of this feeling for the human being, declaring that it is the fundamental aspect of humanity. Whether the court was eligible to determine what is to be a human in such an intimate level, or to surely state that everyone as human beings carry "the capacity to change" is questionable in the lights of the ongoing philosophical and psychological debates throughout the whole history of humankind about the matter of whether an individual is really able to undergo the transformation process or not. Here the court - not a national one, but independently existent - established its own vision on human abilities and the driving force of hope

[14] Vinter and Others V. UK, 2013, Dissenting opinion of Judge Villiger.
[15] Matiošaitis and Others V. Lithuania, 2017, §180.

in people's lives and now the contracting states are compelled to share the vision that the force of hope in an individual is one of the greater importance than the states own choices of how to ensure security of public which is at least much more easily measurable and empirically understandable.

This issue will be more explicitly discussed in further, however the main factor here which should be emphasized is the court's attempt to establish stronger grounds for protecting dignity in its every aspect. Though dignity itself is an abstract term it does not mean that it bears less importance. As it is evident, the notion of dignity stands behind article 3 of the European Convention on Human Rights and plays the main role in the process of its interpretation when the formal wording might be scarce to ensure that the individual's right is protected. As in this case – The prohibition of "degrading punishment" might not primarily point out that if there is not the detailed possibility to review the life sentence on fixed terms and release the punishment is degrading. Solely this argumentation would be hard to prove as far as the life imprisonment itself does not mean the violation (as the court stated in Kafkaris) and no one can fully measure what kind of suffering or degradation might be caused merely by the absence of that possibility even in people who anyway would not going to benefit from it.

Therefore, the nature of the right to hope is intertwined with the notion of dignity. That's why the court was compelled to delve into the degrading effects of the absence of hope. While hope as stated before might not be dependent on the outside world, for example there are people struggling with depression and despair, one cannot declare that those people lack dignity. There is a different connection between those terms. The notion of dignity compels us to not to determine someone else for the rest of their lives, as one of the recommendations mentions not to make people who are already in a grave circumstances feel that they are "stamped" forever and that they no matter what will they do for the future will be defined according to one particular thing from their past that determined their detention[16]. Whether the life prisoners will retain hope in themselves for atonement or release it is mainly depended on how they perceive the world, but to restrict them from hoping that one day according to their transformation the circumstances and the world will also change towards them, is to underline that the society have once and forever determined the isolated place for them – Excluding any possibilities to be perceived otherwise than a criminal and opportunity to even think that one deserves the place in society. In the absence of the possibility that the locked gate to the outer door might open and normal social interactions might reappear in their lives, individuals will eventually feel that they are no longer perceived as humans with dignity.

As in the case of Matiošaitis v. Lithuania ECHR mentioned the notion of dignity is the main impetus of declaring the right to hope as fundamental and why the irreducible life sentences without any possibility of review or release means the violation of article 3 from the moment of sentencing.

Some scholars suggest to perceive the right to hope as the right to recognition[17]– in the matter of recognition of individuals by others, and in the matter of recognition of the individual by the law. Indeed, the right really derives from the recognition of an individual and acknowledging the particular part in his or her nature – that they might change, the law in this sense should provide the grounds for those changes – The law also should recognize an individual as a human being capable of transformation and not as an isolated embodiment of the constant danger that should be eventually eliminated from the society. That is why the ECHR constantly repeated that there should be clear provisions on how a prisoner can behave in order to regain freedom, the nature of

[16] European Committee for the Prevention of Torture and Inhuman and Degrading treatment, 2007.
[17] Trotter, 2022, p. 17-18.

the presidential pardon de facto did not give such transparent instructions, while the absence of judicial review had further aggravated the problem.[18]

Hope is mainly connected to the possibility of release and not the release itself. Possibility furthermore in several scholar's opinion, is relational - "how person has changed", also the prospect to be "atoned" for the "wrongdoings" points about the relationality, whereas atonement only can be discussed in relations with other people[19]. Therefore, it doesn't only establish the right but the incentive to follow the obligation to change in order to gain freedom. This practical aspect of the relational character of the right hope is quite effective.

However, the relationality of hope itself is actually arguable. Hope as it seems is an independent right – emerging from the moment of sentencing independently from the relationships the person will have and the metamorphosis he or she will undergo in the future which is not foreseeable. Indeed, in the moment of sentencing, No one is able to anticipate the future – is the convicted person actually able to change or not, and if they will show such kind renovation. The right to hope exists independently regarding every person who is sentenced for life. It is the release itself that is complex and relational and requires to determine the inner changes the person has gone through – shown by the relationship of this person and the world – his or her characteristics in communications and social life that shows their improvement, remorse and transformation.

Some scholars argued that considering hope as the right opens the door for further and wider interpretations of hope in the essence of punishments[20]. The court consistently mentioned that the prospect of release and review should be in legislation and in practice. In Vinter's case it was one of the arguments of the applicants' that despite government submissions the irreducibility was depicted in fact that "No life prisoner had ever been released under section 3- of the 1997 Act or any other power". In the case of Matiošaitis v. Lithuania, applicants were also arguing about the practical ineffectiveness of the plea pardon and amnesty. Although in Kafkaris v. Cyprus the court clearly stated that the serving life sentence itself does not constitute the violation of article 3. However, these above mentioned argumentations itself that the court took into account is connected with several questions: in an imaginary scenario were potential applicants would be the constant subjects of denial of the release despite the regulations that are compatible with article 3 of the convection and despite the fact that the country creates "possibility" to release and review, can the applicants argue about the formal and non-functioning character of these legal regulations solely on the precedent of the constant denial on their release? That their right to hope was degrading according to the constant refusal. As the court put great emphasis on the importance that if met the regulated and clear conditions for release, the life prisoner has to be released.

Could the ECHR set the basis for the countries on which refusal of release should be assessed? Could ECHR decide whether denial of release by the judges is legally grounded or not, and how can the right to hope apply in this case? Can constant denial of release "unlawfully kill the hope"? Would the countries face the obligation that it is necessary in several terms, to provide the real eventual judgment on release or not, and if so, would not it impose the extremely big additional obligation to the contracting states? The following chapter observes the scope of the possible expansion of the interpretation of the right to hope in the global law context.

[18] Matiošaitis and Others v. Lithuania, 2017, § 181.
[19] Trotter, 2022, p. 7-8
[20] Vannier, 2016.

3. Hope as Fundamental Right in Global Law

It is hard to imagine how "right to hope" as the fundamental right, can be considered as applicable in a global law perspective. The precedent of declaring it as the "fundamental right" by the ECHR and expanding standards that the contracting states are obligated to follow, itself contains several risks.

3.1. Expanding Supranational Nature of ECtHR by the Means of "The Right to Hope"

Judge Kūris in his concurring opinion on the case Matiošaitis V Lithuania, has argumentatively mentioned "…the present judgment is based on the law of the convention as it stands today. I am critical not so much with regard to *what* it (law) says, but more with regard to *how* it has arrived at saying it"[21] . While underlining how the case law of the ECHR has expanded towards the right to hope, he reviewed how standards established by the court around the sentence reviewing mechanisms are getting extremely higher – in a way that for the current moment the relevance of the Kafkaris case has totally faded. Thus, he argues that actually that case was overruled even though the court has never declared as so.

According to Judge Kūris While in Kafkaris v. Cyprus the court based its opinion while taking into account the conditions of the applicant, but now with this new notion of the right to "hope", the court is able to assess the "quality" of national legislation, and not the practical violation towards the applicants. In this sense, ECHR had become supranational. Furthermore, as the Judge Kūris continues, "that conduct is *completely immaterial* to finding the said violation", and there is not a single assessment of the suffer undergone by the applicant - neither time of sentencing, applicants efforts to change for better, period for progress, or the signs of it were measured by the court.[22] . Judge Kūris reviewing the imprisonment histories of the applicants actually finds that they were not released on the sound grounds. The court was not entitled to state that the legislation was ineffective towards their rights regarding article 3 of the convention.

The main point what Judge Kūris underlines is that the ECHR expands its ability to review the national legislations – regardless the actual harm has occurred towards the applicants or not, the court bases its opinion while reviewing the national legislation and its effectiveness, basing the judgement on the abstract right to hope, that might become the hazardous precedent. To analyze Judge Kūris opinion, his argumentation has several logical grounds: It is obscure how far can the precedent reach - First, in fact, the court has acknowledged the abstract right that is completely connected to the inner feeling of an individual. Second, the court reviews the cases in a manner that only involves the assessment of the national legislations and generally evaluates whether those legislations might be able to harm someone's individual feeling -whether they are generally able to deprive someone from hope or not, and respectively bases its judgement on its findings regarding mentioned question.

Emphasizing the widening supranational nature of ECtHR regarding contracting states, Judge Kūris concludes that ECHR gains the power of supranational constitutional court, becomes able to supervise the national laws and does not take into account the applicants' circumstances anymore.

[21] Matiošaitis and Others V. Lithuania, 2017, Concurring Opinion of Judge Kuris.
[22] Ibid.

3.2. Contracting States Margin of Appreciation Regarding Punishments

Even though ECtHR in the Vinter's case cited Kafkaris regarding the autonomy of the countries to choose their own system of punishment[23], it seems so that it has (as the Judge Kuris has mentioned) gained the character of extraterritorial constitutional institution. However, the above-mentioned statement today is not as grounded as in the time of making the decision on Kafkaris case.

The court has carefully mentioned for several times that the states have their margin of appreciation regarding the punishments as well as the forms of the review of the sentences and release[24] But despite formally underlining the countries prerogatives on the current matters, it is evident that the margin of appreciation of contracting states regarding criminal codes and punishments is getting limited.

First of all, it is important to mention that while reviewing cases about right to hope, ECHR based its opinion primarily on the grounds that rehabilitation should be the main objective of criminal punishments, however as Judge Villiger states in dissenting opinion on the case of Vinter v. UK, this contradicts with the subsidiarity principle. One might say that the country should have the prerogative to establish what kind of penological objectives are of greater importance in their own society. For the illustration taking into account the objectives of Lithuanian criminal punishments that were stated in the old and new criminal codes and assessed by the ECHR on the case Matiošaitis v. Lithuania, the preventative and the punitive objectives came first and had the greater importance than other aims.

Also considering the government's position regarding the matter it was understandable that several mechanisms for the reducing of the life sentence existed- including the detailed pardon plea – that even though was the discretion of the president, was well determined. However, it was not sufficient enough to respond to the standards of the ECHR. On this ground, it is questionable what margin of appreciation has left to the countries. In the case Matiošaitis v. Lithuania, one of the reasons why a low number of pardons were granted to life prisoners was, as suggested by the Government, "the extreme sensitivity surrounding the issues of early release for life prisoners[25]", however this does not imply directly that the pardons were denied on unreasonable grounds. There is the possibility that the country has maintained the stricter provisions to evaluate whether the life prisoners are ready to be released and integrate in the society or do they still represent the danger for the security.

Applicants on this case were emphasizing on the statement of the website of the Lithuanian President's Office, where it was mentioned that violent criminals could "*hardly* expect to be granted pardon"[26]. As populistic as it might sound, it is one of the most important factors for the public security in the state that citizens should feel safe. It is apparent that the wording "hardly expect" did not exclude the possibility for those prisoners to get pardon, but contrary to that, underlined that the circumstances regarding their release would be assessed meticulously to sustain the public safety. Preventative objects are of no less importance. It is also very common, that sometimes in the absence of effective punishments that lack the punitive effect, the syndrome of impunity might arise in the society. This can lead to severe consequences.

[23] Kafkaris v. Cyprus, 2008, p. 99, Vinter and Others v. UK, 2013, p. 104.
[24] Matiošaitis and Others V. Lithuania, 2017, §18e; Vinter and Others V. UK, 2013, §120.
[25] Matiošaitis and Others v. Lithuania, 2017, §. 59, 132, 136.
[26] Matiošaitis and Others V. Lithuania, 2017, §. 130.

Therefore, it is evident that ECHR interpretation on the objectives of punishment or its inclination towards the rehabilitation aim of the criminal proceedings are gradually limiting the margin of appreciation of the contracting states, while their legislatures are assessed in detail by the ECHR.

ECHR went even further while determining the nature of human beings - not only about the finding that hope itself is the fundamental aspect of humanity but also claiming that every person is able to change. Evaluating the situation more generally, the court outside the country is imposing the states to follow its own vision on the nature of human beings. Is ECtHR objectively powerful enough to determine whether the value of hope - an individual feeling outweighs the value of public security.

3.3. Acknowledging The Right to Hope in a Global Law Perspective

To see the case from a broader perspective, it is hard to consider the ways in which it will be possible to acknowledge the right to hope as a fundamental right in a global law perspective. Surely, Europe is inclining towards recognizing every aspect of human dignity, however, the absolute nature that the right to hope starts carrying in the light of ECHR's standards might soon become the challenge.

Firstly, it might make countries paralyzed with the problem of overspread recidivism cases or the syndrome of impunity. Life orders are often imposed for the murder that are convicted by the persons who had already convicted serious crimes in the past. Does not the country in any case have the discretion to determine whether the risks of very high level of recidivism might be eliminated by imposing lifelong punishments without the possibility of release in certain cases? In a longer perspective it is hard to determine in the modern world the seriousness of the crimes that the countries might face in the future regarding for example, terrorism.

In the case of Vinter v. UK ECHR stated that" the primary justification for the detention changes over time, and therefore, its existence requires review[27]. But What if the state considers that there are certain crimes that carry that kind of extreme gravity, that the imprisonment conditions will never give sufficient evidence whether the person has changed or not. In prisons prisoners don't usually have to interact without supervision, they are well controlled, therefore they hold lower risk to commit a crime, or behave in an acceptable way. However, these supervised situations and conditions might not give the country an absolutely clear vision about how someone has changed, and therefore, considering the previous crimes and declaring several crimes with extremely grave characteristics as punishable with the irreducible life sentence for the preventative reasons might be logical.

Another aspect would be about possible wider global implications of this right. If the right to hope is the essential part of humanity (and therefore, an attribute of democracy) that restricts national courts to impose life sentences without possibility of release or review, then what about some states with the death penalty? Taking for example the USA where death penalty is legal in several states, can it be considered that the democracy of the country is highly questionable on these grounds. If as the ECHR mentions in the case of Vinter v. UK "rehabilitation is constitutionally required in any community that established human dignity as its centerpiece"[28], it means that the USA that allows the death penalty- penalty which absolutely excludes rehabilitation of the person, has totally disregarded human dignity.

[27] Vinter and Others V. UK, 2013, §. 111.
[28] Ibid, §. 113.

Furthermore, death row phenomenon in various countries including in several states of the USA[29] compels people sentenced with death to wait for the execution during the uncertain period of time, regarding this, it is almost impossible to say what kind of right to hope have those people who are waiting for their death and do not even know for how long they will have to wait for it. California Department of Corrections and Rehabilitation have represented the list of the death sentenced citizens who have died since 1978 and the causes of death. Only fifteen people out of those one hundred eighty persons from that list have died from execution. While most of them died with the natural causes in the process of waiting for the execution and thirty of them died because of the suicide[30]. This shows that people in the USA waiting for the execution are totally deprived of hope and in despair.

With this regard, acknowledging the right to hope as the fundamental right in a global law perspective, even though it is connected with the danger of totally reducing countries' autonomy regarding the punishments, might also become the positive factor, though it is hard to be implied.

To put aside the totally global perspective, even though the position of the Judge Kuris is quite grounded, while he stated that the ECHR has gained the extraterritorial constitutional institution's nature, It is also worth to mention that the court's inclination towards the acknowledgement of that individualistic right as the aspect of dignity means the declaration that no human deserves to be totally, once and forever determined by one part of their lives, that everyone should be given the chance to be perceived as someone as capable of change by other individuals and by the law of their country. This absolutely positive and humanistic perception of mankind obligates the countries to acknowledge and recognize individuals in higher standards. If the Right to hope, as the fundamental right, will expand more as the principle, the global law will become more protective towards individuals rather than considering numbers and adapting quantitative approaches.

Though people who commit crime might feel "safer" knowing that even if they get accountable for their crimes, they will in any case also be given the chance for atonement and liberty. Because of this, thinking globally, one might consider that acknowledging the "right to hope" as fundamental right imposes greater danger than the benefits for humanity, but as soon as the perspective is narrowed down to the individuals and certain humans who are sentenced for life and for whom life might gain the meaning of prison itself – the value of the right to hope becomes evident.

Conclusion

In conclusion, the paper overviewed several issues, questions, dilemmas, opinions and further possible implications regarding the newly emerged fundamental "Right to Hope" in a global law perspective.

First, has determined the circumstances during which the "right to hope" emerged in the case law of the ECHR. The paper has made it evident that before the ECHR has declared it as the right, the notion of "hope" already existed on other legal grounds. Furthermore, it overviewed the circumstances regarding the cases by which the right to hope was gradually shaped. These circumstances as shown in the paper was referring to the dilemma in which grounds could it be possible to determine the violation of Article 3 of the convention in the absence of clear instructions around the possible review and release while it was not certain, whether the applicants would eventually benefit from those clear possibilities or not.

[29] Bojosi, 2004, p. 307.
[30] California Department of Corrections and Rehabilitation, n.d.

Furthermore, the research paper delved into the nature of the right to hope, it explored the notion of hope and its relation with dignity. It also discussed the general relationality of the right to hope, and the possibility to review it as the right to recognition. In addition, several dilemmas around further possible interpretations of the right were mentioned.

In the last part the research paper has reviewed the right to hope in the global context and its applicability. At first, the paper noted about the expanding power of the ECHR, then it discussed how the margin of appreciation of the countries regarding criminal punishments are getting limited. Besides, the research explored the applicability of the right to hope as the fundamental one in a wider context. It became apparent that acknowledging the right to hope as the fundamental right might face several challenges in the global perspective including in the countries where death penalties are still considered legal, especially regarding the death row phenomenon.

To conclude, the right to hope, despite its controversial nature – whether it become effective or not for the purposes of criminal law, is the indicator of how European law is becoming more and more concentrated individuals and their dignity, it is, as one might say, the humanistic statement made by the ECHR.

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