

***Recommendation by the Council for the Administration of Criminal Justice and  
Protection of Juveniles  
Summary for publication***

*title* : Life imprisonment, follow-up recommendation  
*issued to* : the State Secretary of Justice  
*date* : 29 April 2008

**This recommendation is a supplement to the recommendation entitled ‘Life imprisonment, prospect of change’ [*Levenslang, perspectief op verandering*] issued on 1 December 2006, partly arising from the discussions that took place at the conference on long-term deprivation of liberty entitled ‘The Years Count’ [*De Jaren Tellen*] organised by the Council on 6 March 2008.**

In its 2006 recommendation, the Council recommended the introduction of a periodic review, after fifteen years, of the risk of reoffending in the case of offenders sentenced to life imprisonment. Depending on the result of the review, the decision may be taken to transfer the detainee to a less secure regime or to convert the sentence into a specific number of years, thus making conditional release an option.

Reacting to the recommendation, the State Secretary announced that a policy survey into the enforcement of life imprisonment and the implementation of the present pardon procedure would be conducted during 2008. The State Secretary decided that this survey would not include the recommendation for introduction of a judicial review regarding the continuation of such enforcement, with regard to the fundamental nature of this recommendation. The State Secretary dealt with the Council’s recommendation in greater detail at the conference on 6 March 2008. She emphasised that the decision to impose a life sentence rests with the court, which gives careful consideration to the sentence handed down. This is particularly true since the recent introduction of a maximum thirty-year sentence. In view of the option to pardon offenders, she did not consider there is an urgent need for a periodic review regarding the continuation of the enforcement of life imprisonment.

**In the supplementary recommendation the Council states the opinion that the fact that an interim review is not carried out either by the court or within the context of an official pardon means that the Netherlands could be approaching the limit, or could step beyond the limit, of what the European Court of Human Rights considers to be acceptable pursuant to the provisions of Articles 3 and 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, it means that the Netherlands is not in accordance with common practice in this area in other European countries. The Council therefore urges that measures should be taken.**

The Council’s recommendation in respect of life imprisonment is based on and reasoned from the point of view of the aspect of hopelessness that accompanies life imprisonment, particularly in the absence of any form of interim review. The Council considered that this alone, regardless of the European aspect, constitutes sufficient grounds to recommend the introduction of an interim review. Within the context of proper treatment, the Council attaches a great deal of importance to humane enforcement, even, and perhaps particularly, in the case of offenders who have been handed down the maximum sentence. The enforcement of life imprisonment cannot be determined by the basic principle that the offender will never return to society. The Council argues for the introduction of an interim review by a court but does not

argue for the possibility of a somewhat systematic approach towards the granting of pardons. In this regard, reference should be made in particular to the political sensitivity surrounding potential decisions to grant a pardon and the vulnerable position of the responsible members of government in these types of cases.

The current situation in the Netherlands with regard to life imprisonment provides the minimum conceivable amount of leeway: there is no interim review, no policy favouring official pardoning and partly as a result of this, the basic principle of enforcement is that activities that focus on or are associated with re-integration into society are not deemed to be appropriate. The Council vigorously urges that a new element should be introduced in order to reduce the severity of this minimalistic approach, not simply because the provision of some form of prospects should form an integral part of the enforcement of the sentence, but also because this would appear to be obligatory under European regulations.

*A copy of the recommendation can be obtained from the Council's secretarial office  
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