

# LONG-TERM PRISON SENTENCE IN BOSNIA AND HERZEGOVINA

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## Abstract

*Criminality as a constant phenomenon in society has also caused a reaction of the society to it. Nowadays, punishment is a dominant reaction. The punishment of deprivation of liberty is prevailing among the sentences in the world and in Bosnia and Herzegovina (B&H). In B&H, deprivation of liberty appears in two forms: imprisonment and long-term imprisonment.*

*The object of observation in this paper is the long-term imprisonment sentence, which provokes objections since its appearance. Most often, objections relate to it as being inhumane and incapable of contributing to special and general prevention.*

*The analysis of the Bosnian-Herzegovinian normative framework (criminal laws and laws on the execution of criminal sanctions) presented in this paper, shows a series of non-harmonization of the norm throughout the territory of B&H, which is unacceptable and needs to be harmonized. These inconsistencies are particularly noticeable in substantive law and criminal law enforcement.*

*For the purpose of this paper and full consideration of long-term imprisonment, an empirical research was conducted, covering 42 persons sentenced to this punishment, from the territory of the Federation of B&H, in the period from 2000 to 2016. With this research, the authors showed the sociodemographic data of the convicted persons, the territorial and temporal distribution of the sentence, and the phenomenology of the crimes for which it was pronounced. Empirical research also showed deficiencies in the recording of personal data on suspects/accused persons in verdicts, which should definitely be obviated.*

**Key words:** *punishment, imprisonment, long-term imprisonment, execution of sentences*



## 1. GENERAL REVIEW

As crime is a constant phenomenon in society, reactions to such illegal behavior are unavoidable. The way society reacted to crime through the history of development of human society changed and reflected the social and cultural structure of the state and legal system of a given society.<sup>1</sup>

When we talk about the punishment in the form of deprivation of liberty, as one of the ways of a social reaction to crime, it should be said it appeared in the second half of the 18<sup>th</sup> century. According to Šakić, and conveyed by Žakman-Ban, developmental path of deprivation of liberty, from its occurrence to this date, can be divided into two periods: the period of classical thought and the period of modern thinking. The same author takes the Second World War as a temporal determinant that distances these two periods.<sup>2</sup>

The penalty of deprivation of liberty, or a prison as often referred to, is understood as deprivation of freedom of movement for the perpetrator of the offense. That is a time penalty, which represents reaction of society towards those who do not respect the legal order and the rules of common life in regulated social communities. Only a court can pronounce it by a court judgment, which is the result of a criminal proceeding. When pronouncing a sentence of deprivation of liberty, the court must respect certain principles set forth by contemporary criminal law, such as the principle of guilt, the principle of legality and legitimacy, the principle of justice, humanity, etc.<sup>3</sup>

Significant debates were held on the purpose of the sentence of deprivation of liberty. The Bosnian-Herzegovinian legislature, taking into account modern requirements, accepted mixed theories on the purpose of punishment, and set special and general prevention as an immediate goal and protection of society, and social goods and

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1 Babić, M. et al., (2005.), *Komentari krivičnog/kaznenog zakona BiH*, Council of Europe/European Commission, Sarajevo, 241.

2 Žakman-Ban, V., "Institucionalni penološki tretman i socijalno-gospodarski status osuđenika kao jedna od njegovih determinanti", *Hrvatski ljetopis za kazneno pravo i praksu*, Vol.3-No 1/1996, 25.

3 Babić, M. et al., 242.

values against crime are emphasized as a further, indirect goal.<sup>4</sup> Moreover, the lawmaker in Bosnia and Herzegovina has established a simple and flexible system of punishment, in which the prison sentence occupies a significant and dominant position. Regarding the prescription of imprisonment, the BiH legislator has opted for a system of relatively specific penalties, that is, for each criminal offense, the duration of imprisonment within the general minimum and the overall maximum. It is considered that this system is the best because it allows individualization of prison sentences. General minimum of 30 days is in line with the practice of most European countries. Setting a general minimum has the function of removing all negative effects of a short-term penalty of deprivation of liberty.<sup>5</sup>

Article 42 of the Criminal Code of Bosnia and Herzegovina<sup>6</sup> (hereinafter: the CC of BiH), Article 43 of the Criminal Code of the Federation of Bosnia and Herzegovina<sup>7</sup> (hereinafter: the CC of FBiH), Article 46 of the Criminal Code of Republika Srpska<sup>8</sup> (hereinafter: the CC of RS) and Article 43 of the Criminal Code of Brčko District of Bosnia and Herzegovina<sup>9</sup> (hereinafter: the CC of BD BiH) prescribe basic characteristics of the prison sentence. By these legal solutions (paragraph 1), it is prescribed that the prison sentence cannot be shorter than thirty days or longer than twenty years.

It is also stipulated that, long-term imprisonment of twenty to forty-five years may be exceptionally prescribed for the gravest forms of serious criminal offences (Article 42 b) of the CC of BiH, 43 b) CC of

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4 Petrović, B., Jovašević, D. (2006.), *Izvršno krivično/kazneno pravo*, University of Sarajevo-Faculty of Law, Sarajevo, 65.

5 Babić, M., Marković, I. (2015.), *Krivično pravo opšti dio (peto izdanje)*, University of Banja Luka-Faculty of Law, Banja Luka, 316.

6 *Criminal Code of Bosnia and Herzegovina*, Official Gazette of Bosnia and Herzegovina No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15, 35/18

7 *Criminal Code of the Federation of Bosnia and Herzegovina*, Official Gazette of the Federation of Bosnia and Herzegovina No. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16, 75/17

8 *The Criminal Code of Republika Srpska*, Official Gazette of Republika Srpska No 64/17, 104/18

9 *Criminal Code of the Brčko District of Bosnia and Herzegovina*, Official Gazette of BD of BiH No. 33/13, 26/16, 13/17, 50/18



FBiH and 43 b) CC of BD BiH), respectively twenty-five to forty-five years (Article 45 of the CC of RS). We will theoretically, normatively and practically review this sanction in this paper.

A long-term prison appeared in exchange for the death penalty in the process of humanizing the criminal justice system in BiH. This is the most severe criminal sanction in our country, and therefore the legislator has envisaged a number of restrictions for its prescription and pronouncement.<sup>10</sup> The gravity of the offense is the first condition for prescribing and pronouncing a long-term imprisonment sentence. The BiH legislator was imprecise in terms of whether this punishment can be prescribed for the basic form of the offense or only for its qualified form. The legal formulation that this punishment can only be prescribed for the gravest forms of a crime excludes the possibility that it may be prescribed for the basic forms of certain offenses.<sup>11</sup> However, according to the Criminal Code of BiH, this sentence is prescribed for the basic form of certain criminal offenses (Genocide - Article 171, Assassination of a representative of the Highest Institutions of BiH - Article 167). The reason for such an approach should be sought in the fact that these are grave criminal offences that do not have a qualified form.

From the moment of introducing into the system of sanctions, the punishment of long-term imprisonment was not an independent sentence, but was an extended sentence of imprisonment. This punishment gained independence by amendments to the Criminal Codes in Bosnia and Herzegovina in 2010.

With its introduction in legal and penological theory, discussions about its applicability and purposefulness began immediately. There is a whole series of objections to this punishment: this sentence is inhumane as well as the death penalty it was supposed to replace (the person was convicted to a slow but sure death, unlike the death penalty in which death occurs immediately); it cannot achieve goals of general prevention because there is a possibility of replacing it with amnesty, pardon with substitution of the imposed

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10 Babić, M. et al., 250.

11 However, the RS legislator has foreseen that this sentence can also be imposed on the basic form of some criminal offenses, which will be discussed furthermore.

punishment by a less severe one, etc.; it cannot accomplish goals of special prevention as such a prisoner is aware that, regardless of his/her behavior and success in treatment, he or she cannot be released on the basis of conditional release or law prescribed benefits; it does not entirely exclude the possibility that such a dangerous criminal will commit a new criminal offense at the expense of other convicted persons, staff or property of the institution.<sup>12</sup>

Speaking of long-term imprisonment, we should bear in mind that we are talking here about a special punishment prescribed by a BiH legislator. Furthermore, it should be kept in mind that, in criminal and penological literature, long-term imprisonment sentences and its effects are widely discussed, and those certainly, as we will see, include long-term imprisonment as a special sanction.

There is no unique opinion on what can be considered a long-term imprisonment.<sup>13</sup> In different environments and times, the line that separates long-term imprisonment from other prison sentences is differently determined. According to Ignjatović, long-term imprisonment in Europe is considered to be a term of imprisonment for more than ten years.<sup>14</sup> According to Flanagan, long-term prison sentences, in the United States of America, during the 1970s were all prison sentences longer than five years. In the 1980s, this line was shifted to seven years and more, and in the 1990s under the influence of the US courts' practice of imposing sanctions, this line moved to eight or ten years.<sup>15</sup> According to John Weekes (1995), as conveyed by Ignjatović, long-term prison sentences in Canada are all sentences of imprisonment of more than ten years, and these sentences include three types of prison sentences: life imprisonment, deprivation of liberty of indefinite duration and imprisonment longer than

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12 Petrović, B., Jovašević, D. 45-46.; Simović, N. M. et al., *Izvršno krivično pravo*, (2014.), University of Istočno Sarajevo-Faculty of Law, Istočno Sarajevo, 105-106.

13 Flanagan, J. T. *Long-Term Incarceration - Issues of Science, Policy and Correctional Practice*, SAGE Publications Inc, California, 4.

14 Ignjatović, Đ., "Dugotrajne kazne zatvora i problemi u njihovoj primjeni", *Pravni život*, Udruženje pravnika Srbije, Belgrade, 525.

15 Flanagan, J. T., 4.



ten years.<sup>16</sup> Simović (2014) expresses an interesting opinion on what can be considered a long-term imprisonment, pointing out that all modern legislations foresee “long-term imprisonment” for 30, 40 or more years, or a life imprisonment, ie. “life-long prison sentence”.<sup>17</sup> Such reasoning is consistent with BiH lawmakers, which will be discussed more on the following pages.

## 2. SETTING NORMS FOR A LONG-TERM IMPRISONMENT IN BIH

Pursuant to Article 42 b) paragraph 1 of the CC of BiH, Article 43 b) paragraph 1 of the CC of FBiH, Article 45 paragraph 1 of the CC of RS, and Article 43 b) paragraph 1 of the CC of BD BiH a norm, that a long-term imprisonment may be prescribed for the gravest forms of serious criminal offenses perpetrated with intent, is set. The prescribed duration of this sentence at the level of BiH, the Federation of Bosnia and Herzegovina and Brčko District is from 21 to 45 years, while in the Republika Srpska (RS) Entity the length of long-term imprisonment is prescribed for a period of 25 to 45 years. Obviously, there is a limitation in the prescription and pronouncement of imprisonment in RS Entity for over 20 years and under 25 years. If we compare these norms, we can conclude that the upper limit of long-term imprisonment is the same throughout the territory of BiH, however, the lower limit of 25 years in the RS Entity differs from the rest of BiH where the limit is 21 years. The long-term imprisonment is imposed in full years and cannot be prescribed as the sole punishment for a particular criminal offense.

Article 42 b) paragraph 3 of the CC of BiH, Article 43 b) paragraph 3 of the CC of FBiH, Article 45 paragraph 3 of the CC of RS, and Article 43 b) paragraph 3 of the CC of BD BiH stipulate that a long-term imprisonment cannot be imposed on a perpetrator who has not reached the age of 21 at the time of perpetration of the criminal offense. Unlike the rest of the country, the legislator in the RS Entity prescribed in the Article 45 paragraph 3 that this punishment cannot be imposed on a pregnant woman neither.

16 Ignjatović, Đ., 527-528.

17 Simović, N. M. et al., 105.

Moreover, there is a difference in setting norms for the institution of pardon<sup>18</sup> and amnesty.<sup>19</sup> Article 42 b) paragraph 5 of the CC of BiH, and Article 43 b) paragraph 5 of the CC of FBiH, stipulate that pardons may be granted after three-fifths of long-term imprisonment have been served. Unlike the above mentioned, which prescribe only the possibility of giving pardons, lawmakers in BD and RS have prescribed that both amnesty and pardon may be granted. Thus, Article 43 b) paragraph 5 of the CC of BD BiH stipulates that amnesty and pardon can be granted after three-fifths of the sentence has been served, and Article 45 paragraph 4 of the CC of RS prescribes that amnesty and pardon can be granted after two-thirds of long-term imprisonment sentence have been served.

Based on all of the foregoing, we can conclude that there are significant differences in set norms for a long-term imprisonment on the territory of BiH and that they should be working to eliminate them and align criminal laws. This different standardization of the same sentence in the territory of one state leads to legal uncertainty and inequality of citizens and distrust in the judicial system of the state. In the light of the above mentioned, we can conclude that it is necessary to harmonize criminal laws throughout the territory of BiH.

Long-term imprisonment sentence in the territory of BiH is prescribed for seven criminal offenses common to all criminal laws, and for another 25 criminal offenses<sup>20</sup> at the state level, for another nine

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18 By means of pardon, complete or partial release from the execution of punishment is granted to *the specifically designated person*, imposed punishment is substituted by a less severe one or a suspended sentence, annulment or shortening the duration of the legal consequence of the conviction or security measure is prescribed. See more: Babić, M., Marković, I., 469.

19 By an amnesty, to *the person* covered by it, a release from criminal prosecution, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or cancellation of legal consequences incident to conviction is given. See more: Babić, M., Marković, I., 467.

20 Criminal offences against the Integrity of Bosnia and Herzegovina – two acts, Criminal offenses against Humanity and Values Protected by International Law – 16 acts, and Criminal offence against the Armed Forces of Bosnia and Herzegovina – seven acts.



criminal offenses<sup>21</sup> at the level of the FBiH, 15 criminal offenses<sup>22</sup> at the RS Entity, and seven in BD BiH.<sup>23</sup>

Criminal offenses for which a long-term imprisonment sentence is prescribed and which are common to all criminal codes in BiH are: Taking of Hostages (Article 191, paragraph 3 of the CC of BiH, Article 200 paragraph 3 of the CC of FBiH, Article 305 paragraph 3 of the CC of RS and Article 197 paragraph 3 of the CC of BD BiH); Terrorism (Article 201 paragraph 3 of the CC of BiH, Article 201 paragraph 3 of the CC of FBiH, Article 299 paragraph 3 and 4 of the CC of RS, and Article 198 paragraph 3 of the CC of BD); Organized Crime (Article 250 paragraph 3 of the CC of BiH, Article 342 paragraph 3 of the CC of FBiH, Article 366 paragraph 3 of the CC of RS<sup>24</sup>, Article 336 paragraph 3 of the CC of BD BiH); Attack on the Constitutional Order (Article 156 in conjunction with Article 169 of the CC of BiH, Article 149 in conjunction with Article 164 of the CC of FBiH, Article 278 in conjunction with Article 298 of the CC of RS, Article 149 in conjunction with Article 161 of the CC of BD BiH); Endangering Territorial Integrity (Article 157 in conjunction with Article 169 of the CC of BiH, Article 150 in conjunction with Article 164 of the CC of FBiH, Article 279 in conjunction with Article 298 of the CC of RS, Article 150 in conjunction with Article 161 of the CC of BD BiH); Armed Rebellion (Article 162 in conjunction with Article 169 of the CC of BiH, Article 156 in conjunction with Article 164 of the CC of FBiH, Article 283 in conjunction with Article 298 of the CC of RS, Article 155 in conjunction with Article 161 of the CC of BD BiH); Espionage (Article

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21 Criminal offenses against the Constitutional Order of the Federation of BiH – two acts, Criminal offences against Life and Body – one act, Criminal offences against Sexual Freedom and Moral – three acts, Criminal offences against Marriage, Family and Youth – one act, Criminal offences against Property – two acts.

22 Criminal offences against Life and Body – one act, Criminal offences of Sexual Abuse and Exploitation of a Child – one act, Criminal offences against Constitutional order and Security of Republika Srpska – 13 acts.

23 Criminal offences against Life and Body – one act, Criminal offences against Sexual Freedom and Moral – three acts, Criminal offences against Marriage, Family and Youth – one act and Criminal offences against Property – two acts.

24 In CC of RS enlisted criminal offence is entitled: Commission of a Criminal Offence as a part of Criminal Association.



163 in conjunction with Article 169 of the CC of BiH, Article 157 in conjunction with Article 164 of the CC of FBiH, Article 291 in conjunction with Article 298 of the CC of RS, Article 156 in conjunction with Article 161 of the CC of BD BiH).

After reviewing this standardization, and in order to improve the generally preventive effect of our laws, we consider that the scope of prescribing this sentence should be extended. In what way would this expansion should be made, the research that could and should be carried out would indicate.

### 3. EXECUTION OF LONG-TERM PRISON SENTENCE

Laws on the Execution of Criminal Sanctions regulate execution of a long-term imprisonment sentence in Bosnia and Herzegovina.<sup>25</sup> The authors of this paper failed to find bylaws related to the execution of this sentence, and noted that its execution in practice does not significantly differ from the execution of the prison sentence and its execution is mostly regulated by the regulations governing the execution of the prison sentence. This segment also deserves attention and additional regulation based on the needs and results of the research.

#### 3.1. Presuppositions for execution of a long-term imprisonment sentence

In order to enforce a long-term imprisonment sentence, it is necessary that the judgment becomes final and that there are no legal obstacles to its execution. The most important legal impediment of criminal sanctions enforcement is certainly the statute of limitations of the execution of criminal sanctions, which means that the punish-

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25 *Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and other Measures*, Official Gazette of Bosnia and Herzegovina No. 22/16; *Law on the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina*, Official Gazette of the Federation of Bosnia and Herzegovina No. 44/98, 42/99, 12/09, 42/11; *Law on Criminal Sanctions of Republika Srpska*, Official Gazette of the Republika Srpska No. 63/18; *Law on the Execution of Criminal Sanctions, Detention and Other Measures in the Brčko District of BiH*, Official Gazette of the BD BiH No. 31/11



ment will not be enforced by the expiration of a certain period of time from the date of validity of the judgment.<sup>26</sup>

The statute of limitations is regulated by the provisions of the CC of BiH, CC of FBiH, CC of RS, and CC of BD BiH. Article 16 of CC of BiH, Article 17 of CC of FBiH and Article 17 of CC of BD BiH stipulate that the statute of limitations of execution of long-term imprisonment shall occur when, from the day of entry into force of the judgement by which a punishment has been imposed, the period of 35 years elapses.

However, Article 97 of CC of RS stipulates that the statute of limitations of execution of long-term imprisonment shall occur when, from the day of entry into force of the judgement by which a punishment has been imposed, the period of 30 years elapses.

Obviously, in this segment of the statute of limitations for the execution of long-term imprisonment as well, there are inequalities in the territory of BiH, which are unacceptable and need to be harmonized.

Article 20 of CC of FBiH and the same Article of CC of BD BiH prescribe that criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences that, pursuant to International Law, are not subject to the statute of limitations. Extended norms of this institute are governed by Article 19 of the CC of BiH, which stipulates that in addition to crimes, for which under International Law, the statute of limitations cannot take place, it cannot occur for the crimes of genocide, crimes against humanity and war crimes either. Certainly, for these criminal offenses, long time imprisonment is predominantly imposed. The provisions of CC of RS do not foresee this possibility, which is another inequality that needs to be harmonized.

### 3.2. Authorities competent for execution of long-term imprisonment

The prison system in BiH is organized in the entities and includes seven penitentiary institutions in the FBiH and six penitentiary institutions in the RS. In the BD BiH there are no penitentiary institutions,

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26 Petrović, B., Jovašević, D. (2005.), *Krivično/kazneno pravo Bosne i Hercegovine - opći dio*, University of Sarajevo-Faculty of Law, Sarajevo, 379-380.

but prisoners are sent to institutions in FBiH and RS, and persons who are detained or convicted by the Court of BiH are also sent to the entity penitentiaries.<sup>27</sup>

In FBiH, long-term imprisonment is executed in the Zenica Penitentiary-Correctional Facility, while this punishment in RS Entity is executed in the Penitentiary-Correctional Facility of the closed type in Foča.

Long-term imprisonment is carried out in a separate unit of the closed-type prison, in separate rooms from other prisoners and with increased control measures. These enhanced surveillance measures imply observation and more frequent controls of prisoners by day and night, without disturbing everyday activities of prisoners. Prisoners are put in special educational groups where there may be a maximum of 25 prisoners, while in RS Entity, 20 prisoners are assigned to one educator. Letters and telephone conversations are also controlled to these prisoners.<sup>28</sup>

### 3.3 Privileges in the time of execution of long-term imprisonment

In the framework of execution of the sentence of deprivation of liberty, the organs of penitentiary institutions also have at their disposal measures to encourage convicts in the process of their resocialization. These measures are called privileges and are granted to prisoners for their commitment to work and good behavior. In this way, confidence is shown to convicted persons, the consequences of deprivation of liberty are mitigated, and they are encouraged to participate in the treatment program. These measures reinforce responsibility and self-confidence of prisoners, which aim to try to get them to reintegrate into society. The laws regulate that prisoners can use these privileges inside and outside the correctional facility.<sup>29</sup>

It is interesting that laws do not prescribe any convenience that prisoners can use within the prison or the manner in which those

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27 Sijerčić-Čolić, H., Vranj, V. (2011.), *Uvod u penologiju i izvršno krivično pravo Bosne i Hercegovine*, University of Sarajevo-Faculty of Law, Sarajevo, 184 – 186.

28 See more: Sijerčić-Čolić, H., Vranj, V., 214 and Petrović, B., Jovašević, D., 169.

29 *Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and other Measures*, Article 168 and *Law on Criminal Sanctions of Republika Srpska*, Article 140



could be used. The authors consider, and the laws indicate, that this should be subject to regulations such as the House Rules of Prison where long-term imprisonment is served.

Pursuant to Article 169 paragraph 1 of the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and other Measures, Article 89 of the Law on the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, and Article 141 paragraph 1 of the Law on Criminal Sanctions of Republika Srpska, the privileges that convicted persons may use outside the Establishment are: after each seven-day prison sentence served, a period of 24 hour leave outside the Establishment is granted; once a month, they can use the convenience of going to the town freely for up to five hours; leave up to six days during one year of imprisonment, while every two months spent on serving a prison sentence, the convicted person may be granted a one-day leave;<sup>30</sup> in case of serious illness or death of a family member, natural disasters or serious social cases, they have the right to leave for up to seven days during one year of imprisonment;<sup>31</sup> up to two days leave on religious holidays; to move freely outside the Establishment; for every public holiday, they can use the convenience of free movement outside the Establishment for up to one day during one year; family vacation.

Article 169 paragraph 2 of the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and other Measures, Article 89 a) paragraph 1 point b) of the Law on the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, and Article 144 of the Law on Criminal Sanctions of Republika Srpska it is prescribed that the privileges that a prisoner uses out of prison can be granted with or without supervision. The norm stipulates that supervision is necessary if, *inter alia*, it is a person sentenced to more than ten years of prison, regardless of the type of crime. The principle of analogy could lead to the conclusion that this norm also applies to prisoners serving long-term imprisonment sentence.

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30 *Law on Criminal Sanctions of Republika Srpska* does not stipulate that, after every two months spent on serving the prison sentence, the convict may be granted up to one day of leave.

31 In RS, this convenience is called extraordinary convenience, which is approved only in exceptional cases, while all other are regular privileges.

Furthermore, Article 90 paragraph 1 point b) of the Law on the Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina and Article 142 paragraph 1 point 1) of the Law on Criminal Sanctions of Republika Srpska prescribe that privileges used outside the Establishment may be granted after one half of the sentence has been served, if it is a sentence of imprisonment for a term of ten years or more, regardless of the type of criminal offense. Pursuant to Article 174 paragraph 1 point 2) of the Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and other Measures it is prescribed that these privileges may be used only after three fifths of imposed sentence have been served. By the principle of analogy, in this case as well, it could be concluded that this norm also applies to prisoners serving long-time prison sentence.

We can notice the difference in the period of time after which the privileges that prisoners can use outside the Establishment, between, on one side BiH and on the other side Entities, are granted. We can again see the inequality of the norm in the territory of BiH, which can certainly not be acceptable and it needs to be changed and harmonized.

### 3.3. Conditional Release

When executing a long-term imprisonment sentence, a convicted person may be released from further serving a sentence, which represents the institute of conditional release. The conditional release involves the dismissal of the convicted person before he/she has served the entire sentence of long-term imprisonment, subject to good conduct when at liberty, up to the expiry of the sentence imposed. It has a dual function. The first one is reflected in shortening of the sentence, when it is no longer necessary, and the other is reflected in encouraging convicted persons to behave in a manner that shows that the punishment has acted positively on them during the execution of the sentence. Moreover, conditional release enables redundancy of prisoners in penitentiary institutions. This institute is used in the case of imprisonment, long-term imprisonment and juvenile prison sentence.<sup>32</sup>

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32 Damjanović, I., *et.al.*, “Uvjetni otpust sa izdržavanja kazne zatvora” (from 1998 until 2002), *Hrvatski ljetopis za kazneno pravo i praksu*, vol. 11, No. 2/2004, Zagreb, 867-868.



Article 44 paragraph 4 of CC of BiH, Article 45 paragraph 4 of CC of FBiH, Article 45 paragraph 4 of CC of BD BiH, prescribe that conditional release may be granted to a prisoner who is serving long-term imprisonment only after three-fifths of the sentence have been served, while Article 47 paragraph 2 of CC of RS prescribes conditional release after two-thirds of a sentence have been served.

Amended Criminal Code of BiH from 2018 passed the novelty, according to which the convicted person cannot be released on conditional basis, regardless of the imposed punishment for the precisely listed offenses. This norm excludes conditional release in the event of the commission of the following criminal offenses: Criminal offenses against the Integrity of BiH (all acts from this chapter of CC of BiH), Article 202 (Funding of Terrorist Activities), Article 202 a) (Public incitement to terrorist activities), Article 202 b) (Recruitment of others for the purpose of committing Terrorist Activities), Article 202 c) (Training for Terrorist Activities) and Article 202 d) (Organizing a Terrorist Group).

As in the previously mentioned institutes, when approving conditional release, one can notice the inequality of citizens before the law in the territory of BiH, which is certainly not good and should be changed.

## 4. JUDICIAL PRACTICE RESEARCH

### 4.1. Methods, sample and measuring instrument in empirical research

In this paper, a sample of 42 convicted persons from the territory of the Federation of Bosnia and Herzegovina, who are sentenced with long-term imprisonment (by the Court of BiH and the competent courts in the Federation of BiH and the Basic Court of the Brčko District BiH) has been used. The sample data were taken for the period from 2000 to 2016. These are secondary data, which are contained in the court verdicts, provided by the Prison in Zenica, based on the approval of the Ministry of Justice of the Federation of BiH.

In order to carry out the research, ie to collect appropriate data, a specific *Questionnaire for collecting data on long-term imprisonment in the Federation of BiH* was constructed, and it consisted of variables that mainly determine the structure of the mentioned sample.

Variables used in the research: the sentencing court, the date of pronouncement of the judgment, gender, age, employment, marital status, earlier conviction, type of committed criminal offense, duration of imprisonment and professional background.

Data collection was carried out using the method of analysis of the content of the obtained court judgments.

#### 4.1.1. Statistical data processing

A descriptive analysis, for statistical data processing, obtained by empirical research, was used, within which the distribution of frequencies and percentages for each variable was determined, after which the results were presented in tables.

## 4.2. Results and discussions

Table 1 shows the representation of convicted persons from the territory of the Federation of BiH who have been sentenced to long-term imprisonment in the period from 2000 to 2016, in relation to the court that convicted them. It is visible that 42 persons were sentenced by eight different courts. The highest number of persons was convicted by the Court of Bosnia and Herzegovina, 26 (61.9%), then the Cantonal Court in Sarajevo 6 (14.3%) and 3 (7.1%) were convicted by the Cantonal Court in Tuzla. The Cantonal Courts of Bihać and Zenica convicted 2 (4.8%), the Basic Court of the Brčko District, the Cantonal Court in Novi Travnik and the Supreme Court of the FBiH each convicted 1 (2.4%) person.

**Table 1** Representation of convicted persons who have been sentenced to long-term imprisonment in relation to the court that sentenced them

Court	F	%
Cantonal Court in Sarajevo	6	14.3
Cantonal Court in Tuzla	3	7.1
Cantonal Court in Bihać	2	4.8
Basic Court of Brčko District	1	2.4
Cantonal Court in N. Travnik	1	2.4
Cantonal Court in Zenica	2	4.8
Court of BiH	26	61.9
Supreme Court of FBiH	1	2.4
<b>Total</b>	<b>42</b>	<b>100.0</b>



Table 2 shows the representation of persons, in relation to the year in which they were sentenced to long-term imprisonment for the period from 2000 to 2016. It is noted that the highest number of persons were convicted in 2007 and 2013, 6 (14.3%) in each year, then in 2006, 2008 and 2014, 4 every year (9.5%). The least number of convicted person happened in 2002, 1 (2.4%).

**Table 2** Representation of convicted persons in relation to the year in which they were sentenced to long-term imprisonment

The year of sentencing	F	%
2000	2	4.8
2002	1	2.4
2003	2	4.8
2006	4	9.5
2007	6	14.3
2008	4	9.5
2010	2	4.8
2011	2	4.8
2012	2	4.8
2013	6	14.3
2014	4	9.5
2015	5	11.9
2016.	2	4.8
<b>Total</b>	<b>42</b>	<b>100.0</b>

Regarding the representation of persons sentenced to long-term imprisonment, for the period from 2000 to 2016, in relation to gender, 42 prisoners, 41 (97.6%) were male, and only 1 (2.4%) female (Table 3). This result is expected because, due to their psychophysical characteristics, females are significantly less likely to commit crimes for which this punishment can be imposed.

**Table 3** Representation of convicted persons who were sentenced to long-time imprisonment in relation to gender

Gender	F	%
Male	41	97.6
Female	1	2.4
<b>Total</b>	<b>42</b>	<b>100.0</b>



Table 4 shows the representation of persons convicted to long-term imprisonment for the period from 2000 to 2016, in relation to age. Most of them are between 41 and 50 years of age, that is, 14 (33.3%) prisoners, then between 21 and 30, 12 (28.6%), and 9 (21.4%) convicts above 50 years. The lowest number of prisoners are those between 31 and 40 years of age, 7 of them (16.7%). Considering the age of prisoners, it can be concluded that the most productive part of human life is represented, which points to a significant sociological problem.

**Table 4** Representation of persons convicted to long-term imprisonment in relation to age

Age	F	%
21-30	12	28.6
31-40	7	16.7
41-50	14	33.3
50>	9	21.4
<b>Total</b>	<b>42</b>	<b>100.0</b>

Table 5 shows the representation of persons convicted to long-term imprisonment, between 2000 and 2016, with regard to employment. Out of 42 convicted persons, the data on employment are unknown for 21 (50%). A large number of prisoners are unemployed, 16 (38%), while only 3 (7.1%) are employed. These data also point to a significant sociological problem, where unemployment can be the cause of dissatisfaction, which can produce different negative consequences for the individual and, therefore, society, such as certain unacceptable forms of behavior and commission of various crimes.

**Table 5** Representation of persons convicted to long-term imprisonment in relation to employment

Employment	F	%
Unemployed	16	38.1
Employed	3	7.1
Unknown	21	50.0
Retiree	2	4.8
<b>Total</b>	<b>42</b>	<b>100.0</b>



When it comes to the professional qualifications of persons convicted to long-term imprisonment sentence, between 2000 and 2016, most of them have a secondary level education, ie 21 (50%) person, and then lower level education, 7 (16.7 %). Taking into consideration 4 (9.5%) persons with university degree, the majority of prisoners (about 60%) are professionally trained, thus resolving the problem of employment of such persons, found to be prone to the commission of criminal offenses, could be an important preventive measure. A significant lack of registration of professional qualifications (10 or 23.8%) is also noticeable. Moreover, other data on the identity of convicted person are missing, in judgments issued by the courts, which is certainly not in accordance with the legal provisions regarding the obligatory personal data of the suspect/convicted person, which could serve to plan for the most successful processes of resocialization.

**Table 6** Representation of persons convicted to long-term imprisonment in relation to professional qualifications

Professional Qualifications	F	%
Primary School Degree	7	16.7
Secondary School Degree	21	50.0
University Degree	4	9.5
Unknown	10	23.8
<b>Total</b>	<b>42</b>	<b>100.0</b>

When it comes to the marital status of persons convicted to long-term imprisonment, for the observed period, it is noticed that most prisoners are married, 23 (54%), while 10 (23.8%) are not (Table 7). That this is a significant sociological problem, is further shown by the data on marital status. The commission of a criminal offense, followed by the pronouncement of long-term imprisonment sentence, directly violates family relations, the basic cell of society. Therefore, these and previous data on age and employment should be the reason for new, multidisciplinary research, in order to further clarify the causes of the commission of criminal offenses and it should influence implementation of comprehensive prevention.

**Table 7** Representation of persons convicted to long-term imprisonment in relation to marital status

Marital Status	F	%
Married	23	54.8
Single	10	23.8
Divorced	3	7.1
Unknown	6	14.3
<b>Total</b>	<b>42</b>	<b>100.0</b>

Table 8 shows the representation of prisoners with long-term imprisonment sentence, in relation to previous conviction, in the observed period. It is noticeable that approximately the same number of previously convicted and non-convicted persons is represented. There were 18 (42.9%) previously not convicted persons, while 15 (35.7%) persons were convicted before. A large percentage of returnees to commission of criminal offenses indicates that the process of resocialization applied to convicts did not give expected results. In that sense, additional research should be carried out, which would show deficiencies in the programs of resocialization and possible directions of action for their improvement.

**Table 8** Representation of persons convicted to long-term imprisonment in relation to previous convictions

Previous Convictions	F	%
Convicted	15	35.7
Not Convicted	18	42.9
Unknown	9	21.4
<b>Total</b>	<b>42</b>	<b>100.0</b>

The results of the survey of the representation of convicted persons in relation to the type of committed criminal offense for which the long-term imprisonment sentence has been imposed, for the period from 2000 to 2016, show that 42 persons committed 7 different types of criminal offenses. The most crimes were committed *against humanity*, by 23 (58.57%) persons, followed by 10 (23.8%) persons committing *the murder*, while 5 (11.9%) were *aggravated robbery*. *Robbery*, *War Crimes against Civilians*, *Terrorism and Organized Crime* – one person one crime, respectively (Table 9).



**Table 9** Representation of persons convicted to long-term imprisonment in relation to the type of criminal offense

Type of Criminal Offense	F	%
Aggravated Robbery	5	11.9
Murder	10	23.8
Robbery	1	2.4
War Crimes against Civilians	1	2.4
Terrorism	1	2.4
Organized Crime	1	2.4
Crimes against Humanity	23	54.8
<b>Total</b>	<b>42</b>	<b>100.0</b>

Table 10 shows the representation of prisoners convicted to long-term imprisonment, between 2000 and 2016, given the length of the imprisonment. Out of 42 persons, most of them were sentenced to prison terms from 20 to 25 years, 24 (57.1%) convicts, then from 31 to 35 years, 7 (16.7%).

**Table 10** Representation of persons convicted to long-term imprisonment in relation to the length of sentence

Length of prison sentence	F	%
20-25	24	57.1
26-30	5	11.9
31-35	7	16.7
36-40	4	9.5
41-45	2	4.8
<b>Total</b>	<b>42</b>	<b>100.0</b>

## CONCLUSION

Crime is a constant phenomenon in society, and the social reaction changed over time and corresponded to degree of development of a given society. The most common social reaction is punishment, and among the sentences, today, the sentence of deprivation of liberty dominates. This is the case in BiH as well, but this sentence in BiH has two forms; a prison sentence (30 days to 20 years) and a long-term imprisonment (21 and 25 to 45 years).

The sentence of imprisonment has often been the subject of various researches, but long-term imprisonment has not. There are many reasons, and the basic one can be linked to its relatively new autonomy in the system of criminal sanctions. It appeared as a substitute for the death penalty, and available research imputed a series of objections. The basic objections relate to its inhumanity and inability to achieve the aims of special and general prevention.

The analysis of the Bosnian-Herzegovinian normative framework (criminal laws and laws on the execution of criminal sanctions) presented in this paper show a series of non-harmonization of the norm throughout the territory of BiH, which is unacceptable and needs to be harmonized. These inconsistencies are particularly reflected in terms of: the legal minimum and the maximum penalty of long-term imprisonment; the categories of persons to whom the mentioned punishment cannot be pronounced, the amnesty and pardon institutes and the time period after which these can be approved; the period of time related to the statute of limitations of execution of long-term imprisonment; the period of time after which a convicted persons may use privileges outside Establishment and the period after which conditional release may be granted.

For the purposes of writing this paper and full consideration of long-term imprisonment, an empirical investigation was conducted, covering 42 persons sentenced to this punishment from the territory of the Federation of BiH, in the period from 2000 to 2016. The aim of this research was to show the sociodemographic data of convicted persons, the territorial and temporal distribution of this sentence, and the phenomenology of the crimes for which it was pronounced. The results obtained, among other things, show that long-term imprisonment is most often pronounced for men, 97.6%; the age of convicted



persons ranges from 20 to 50 years of age; only 7.1% of convicted persons are employed, and for half of these prisoners data of employment is unknown; most of the convicts have secondary education, 50% of them; 54.8% were married; a large percentage of returnees to criminal offences, 35.7%, which shows that the process of resocialization that was carried out earlier did not yield the expected results; this punishment is most often pronounced (58.57%) for the perpetrators of crimes against humanity.

Empirical research also showed deficiencies in the recording of personal data on suspects/accused persons in judgments, which should definitely be eliminated.

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# KAZNA DUGOTRAJNOG ZATVORA U BOSNI I HERCEGOVINI

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## Sažetak

*Kriminalitet kao konstantna pojava u društvu, izazivao je i reakciju društva na isti, a današnjom reakcijom dominira kažnjavanje. Među kaznama, u svijetu ali i u BiH dominira kazna lišenja slobode. U BiH se lišavanje slobode pojavljuje u dva oblika kazna zatvora i kazna dugotrajnog zatvora.*

*Predmetom opservacije u ovom radu je kazna dugotrajnog zatvora koja od svoje pojave izaziva prigovore, a najčešće da je nehumana i da nije sposobna da doprinese specijalnoj i generalnoj prevenciji.*

*Analiza bosanskohercegovačkog normativnog okvira (krivični zakoni i zakoni o izvršenju krivičnih sankcija) koja je prezentirana u ovom radu pokazuje niz neusklađenosti norme na cijelom teritoriju BiH, što je neprihvatljivo i potrebno je uskladiti. Ove neusklađenosti se posebno primjećuju u materijalnom i izvršnom krivičnom pravu.*

*Za potrebe rada i potpunijeg sagledavanja kazne dugotrajnog zatvora provedeno je i empirijsko istraživanje koje je obuhvatilo 42 lica osuđena na ovu kaznu sa teritorije Federacije BiH u periodu 2000.-2016. godine. Ovim istraživanjem autori su pokazali sociodemografske podatke osuđenih lica, teritorijalnu i vremensku raspodjelu ove kazne, te fenomenologiju krivičnih djela za koja je izricana. Empirijsko istraživanje je pokazalo i nedostatke u pogledu evidentiranja ličnih podataka o osumnjičenim/optuženim licima u presudama, što se svakako treba otkloniti.*

**Ključne riječi:** *kažnjavanje, zatvor, dugotrajni zatvor, izvršenje kazni*