



Life sentencing in Russia is not discriminatory

In today's **Grand Chamber** judgment¹ in the case of **[Khamtokhu and Aksenchik v. Russia](#)** (application no. 60367/08) concerning an allegation of discriminatory age- and gender-related differences in life sentences, the European Court of Human Rights held:

by sixteen votes to one, that there had been **no violation of Article 14 (prohibition of discrimination)** of the European Convention on Human Rights, taken in conjunction with **Article 5 (right to liberty and security)** of the Convention, as regards the difference in treatment in life sentencing in Russia on account of age; and

by ten votes to seven, that there had been **no violation of Article 14** of the Convention, taken in conjunction with Article 5, as regards the difference in treatment on account of sex.

The applicants alleged that, as adult males serving life sentences for a number of serious criminal offences, they had been discriminated against as compared to other categories of convicts – women, persons under 18 when their offence had been committed or over 65 when the verdict had been delivered – who were exempt from life imprisonment by operation of the law.

The Court found that the justification for the difference in treatment between the applicants and certain other categories of offenders, namely to promote principles of justice and humanity, had been legitimate. It was also satisfied that exempting certain categories of offenders from life imprisonment had been a proportionate means to achieving those principles. In coming to that conclusion, it bore in mind the practical operation of life imprisonment in Russia, both as to the manner of its imposition and to the possibility of subsequent review. In particular, the life sentences imposed on the applicants themselves had not been arbitrary or unreasonable and would be reviewed after 25 years. Moreover, the Court also took account of the considerable room for manoeuvre given to contracting States to decide on such matters as penal policy, given the lack of any European consensus on life sentencing apart from as concerned juvenile offenders, who were exempted from life imprisonment in all Contracting States without exception. Indeed, it would be difficult to criticise the Russian legislature for exempting certain groups of offenders from life imprisonment, that exemption representing, all things considered, social progress in penological matters.

Principal facts and complaints

The applicants, Alsan Bachmizovich Khamtokhu and Artyom Aleksandrovich Aksenchik, are Russian nationals, born in 1970 and 1985 respectively. They are currently serving life sentences in the Yamalo-Nenetskiy Region following their convictions of a number of serious crimes.

Mr Khamtokhu was found guilty in December 2000 of multiple offences, including escape from prison, aggravated assault on police officers and illegal possession of firearms. His conviction was upheld on appeal by the Supreme Court first in October 2001 and, following a quashing by way of supervisory review and fresh consideration of the case, again in June 2008.

Mr Aksenchik was found guilty of three counts of murder in April 2010. His conviction was upheld on appeal by the Supreme Court in August 2010.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Both men were sentenced to life imprisonment under Article 57 of the Russian Criminal Code which provides that a sentence of life imprisonment may be imposed for certain particularly serious offences. However, the same provision prohibits life sentences from being imposed on women, persons under 18 when the offence was committed or over 65 when the verdict was delivered.

In their applications to the European Court, the applicants alleged that, as adult males serving life sentences for criminal offences, they had been discriminated against as compared to other categories of convicts who were exempt from life imprisonment by operation of law. They relied on Article 5 (right to liberty and security) taken in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Procedure and composition of the Court

The case originated in two applications (nos. 60367/08 and 961/11) lodged with the European Court of Human Rights on 22 October 2008 and 11 February 2011 respectively.

On 13 May 2014 the Court decided to join the proceedings in the applications and in a [decision on the admissibility](#) declared admissible the applicants' complaints under Articles 14 in conjunction with Article 5 of the Convention.

On 1 December 2015 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing was held in the Human Rights Building, Strasbourg, on 20 April 2016.

Third-party comments were received from Equal Rights Trust, a non-governmental organisation based in London (the United Kingdom).

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,
 András Sajó (Hungary),
 Işıl Karakaş (Turkey),
 Luis López Guerra (Spain),
 Mirjana Lazarova Trajkovska ("the former Yugoslav Republic of Macedonia"),
 Angelika Nußberger (Germany),
 Khanlar Hajiyev (Azerbaijan),
 Paulo Pinto de Albuquerque (Portugal),
 Linos-Alexandre Sicilianos (Greece),
 Erik Møse (Norway),
 André Potocki (France),
 Ksenija Turković (Croatia),
 Dmitry Dedov (Russia),
 Branko Lubarda (Serbia),
 Mārtiņš Mits (Latvia),
 Stéphanie Mourou-Vikström (Monaco),
 Gabriele Kucsko-Stadlmayer (Austria), *judges*,

and also Roderick Liddell, *Registrar*.

Decision of the Court

The Court reiterated that, in order for an issue to arise under Article 14 there had to be a difference in treatment of persons in analogous or relevantly similar situations. Such a difference in treatment was discriminatory if it had no objective and reasonable justification.

The Court noted that the applicants had been given life sentences, whereas women offenders, juvenile offenders and offenders aged 65 or over convicted of the same or comparable offences would not have been given a sentence of life imprisonment under the relevant domestic law. It followed that the applicants had been in an analogous situation to all other offenders who had been convicted of the same or comparable offences, and that they had been treated differently on grounds of sex and age.

The Court found that the justification for that difference in treatment, namely to promote principles of justice and humanity (which required that the sentencing policy take into account the age and “physiological characteristics” of various categories of offenders), had been legitimate.

Furthermore, the Court was satisfied that the means employed to achieve those principles of justice and humanity, namely exempting certain categories of offenders from life imprisonment, had been proportionate.

In coming to that conclusion, the Court took into account the practical operation of life imprisonment in Russia, both as to the manner of its imposition and to the possibility of subsequent review. It reiterated that imposing a life sentence on an adult offender for a particularly serious crime was not in itself prohibited or incompatible with the European Convention; and noted in that connection that life imprisonment was reserved in the Russian Criminal Code for only particularly serious crimes. The Court was satisfied that the applicants had been sentenced to life imprisonment following an adversarial trial; the outcome of their trials had been decided on the specific facts of their cases and their sentences had been the product of individualised application of the criminal law by the trial court. Furthermore, they would be eligible for early release after the first 25 years of their sentence provided that they had fully abided by the prison regulations in the previous three years.

Moreover, the Court considered that it was quite natural that national authorities, whose duty it was to consider the interests of society as a whole, should have considerable room for manoeuvre (“margin of appreciation”) when deciding on matters such as penal policy. It was not the Court’s role to decide the appropriate term of detention applicable to a particular offence or to pronounce on the appropriate length of detention or other sentence which should be served by a person after conviction.

One of the factors for determining the extent of this room for manoeuvre lied in establishing whether there was a European consensus or not regarding the imposition of life imprisonment. The Court observed that there was a consensus not to impose life imprisonment on juvenile offenders in all the Contracting States, without exception, and to provide for a subsequent review in those jurisdictions which did so for adult offenders. Beyond this, however, there was no established consensus between Contracting States on life sentencing. Some States had established a specific sentencing regime for offenders who had reached the age of between 60 and 65. Other States had decided to exempt women offenders who were pregnant at the time of the offence or at the time of sentencing. Yet another group of States, including Russia, had extended this approach to all women offenders.

Nor could the Court see any grounds for considering that the relevant Russian law excluding offenders aged 65 or over from life imprisonment had not been reasonably and objectively justified, the possibility of a sentence reduction or release carrying all the more weight for elderly offenders. As concerned the applicants’ complaints about the difference in treatment as compared to women offenders, the Court accepted that there was a public interest in exempting women offenders from life imprisonment. It noted in particular various European and international texts addressing the need for women to be protected against gender-based violence, abuse and sexual harassment in the prison environment as well as statistical data submitted by the Government showing a considerable difference between the total number of male and female prison inmates.

In sum, in the absence of common ground regarding the imposition of life imprisonment, the Court found that the Russian authorities had not exceeded its room for manoeuvre to decide on such matters. Indeed, it was difficult to criticise the Russian legislature for exempting certain groups of offenders from life imprisonment, that exemption representing, all things considered, social progress in penological matters.

Therefore the Court concluded that the exemptions at issue in the present case had not been discriminatory within the meaning of Article 14 taken in conjunction with Article 5. There had therefore been no violation of Article 14 of the Convention, taken in conjunction with Article 5, as concerned the difference in treatment on account of either age or sex.

Separate opinions

Judges Sajó, Nußberger, Turković and Mits each expressed a concurring opinion. Judges Sicilianos, Møse, Lubarda, Mourou-Vikström and Kucsko-Stadlmayer expressed a joint partly dissenting opinion. Judge Pinto de Albuquerque expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

George Stafford (tel: + 33 3 90 21 41 71)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.