



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF SÁNDOR VARGA AND OTHERS v. HUNGARY**

*(Applications nos. 39734/15 and 2 others)*

JUDGMENT

Art 3 (substantive) • Inhuman or degrading punishment • Whole life sentence subject to mandatory pardon procedure after 40 years lacking *de facto* reducibility for Article 3 purposes  
Art 35 § 1 • Exhaustion of domestic remedies • Applicants not expected to pursue a constitutional complaint • Issues of “constitutionality” or “compatibility” did not arise as life imprisonment without possibility of release on parole part of the constitutional legal order

STRASBOURG

17 June 2021

**FINAL**

**11/10/2021**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Sándor Varga and Others v. Hungary,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Carlo Ranzoni,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the applications (nos. 39734/15, 35530/16 and 26804/18) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Hungarian nationals, Mr Sándor Varga, Mr Á.K., Mr I.K. and Mr Henrik Rostás (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Hungarian Government (“the Government”) of the complaints concerning Article 3 of the Convention and to declare inadmissible the remainder of the applications;

the parties’ observations;

the decision to uphold the Government’s objection to examination of the applications by a Committee;

the decision by the President of the Section to appoint Mr Carlo Ranzoni to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Mr Péter Paczolay, the judge elected in respect of Hungary, having withdrawn from sitting in the case (Rule 28 § 3);

Having deliberated in private on 18 May 2021,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The cases concern the applicants’ life imprisonment without the possibility of release on parole. The applicants complained that their sentences constituted inhuman and degrading punishment, in breach of Article 3 of the Convention.

## THE FACTS

2. The applicants’ details are set out in the appendix.

3. The Government were represented by their Agent at the Ministry of Justice, Mr Z. Tallódi.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. MR VARGA (“THE FIRST APPLICANT”)

5. On 7 September 2012 the Budapest Surroundings High Court sentenced the applicant – pursuant to Article 47/A §§ 1 and 3 of the Criminal Code – to life imprisonment without the possibility of parole for the premeditated murder for financial gain of four people and a series of armed robberies committed in a criminal organisation.

6. On 3 February 2015 the Budapest Court of Appeal altered the characterisation of the crime, finding that the criteria for a criminal organisation were not met since it had been the actions of only two of the eight defendants, the applicant and his common-law wife, which had been organised and coordinated over a longer period of time. The applicant’s sentence was upheld by the Court of Appeal.

7. On 30 April 2015 the applicant lodged a constitutional complaint against the judgment of the Budapest Court of Appeal under section 27 of Act no. CLI of 2011 on the Constitutional Court (“the Constitutional Court Act”), submitting, *inter alia*, that the underlying legal provisions governing the exclusion from the possibility of parole in the case of life sentences were unconstitutional. The proceedings are currently pending before the Constitutional Court (case no. IV/01159/2015).

II. MR Á.K. (“THE SECOND APPLICANT”) AND MR I.K. (“THE THIRD APPLICANT”)

8. On 6 August 2013 the Budapest Surroundings High Court sentenced the applicants to life imprisonment without the possibility of release on parole for the premeditated murder of six people, including a four and a half year old child, committed with special cruelty for racist motives and in a criminal organisation, as well as for a series of related crimes (armed robbery, abuse of firearms).

9. On 8 May 2015 the Budapest Court of Appeal found the applicants guilty of further crimes (four counts of violation of personal liberty) and upheld the applicants’ sentences. Following a request for review, the judgment was upheld by the *Kúria*, acting as a third-instance court, on 12 January 2016.

10. The second applicant lodged a constitutional complaint against the judgment under section 27 of the Constitutional Court Act on 11 April 2016. The third applicant lodged a constitutional complaint under section 27 of the Constitutional Court Act on 28 April 2016.

11. The proceedings in both cases are still pending.

### III. MR ROSTÁS (“THE FOURTH APPLICANT”)

12. On 6 January 2014 the Budapest High Court sentenced the applicant to life imprisonment without the possibility of release on parole for the attempted murder for financial gain committed with special cruelty of several people, as well as for several counts of robberies and assault. On 3 October 2014 the Budapest Court of Appeal upheld the applicant’s sentence. The applicant did not lodge a constitutional complaint against the judgment.

### RELEVANT LEGAL FRAMEWORK AND PRACTICE

13. The Fundamental Law of Hungary provides, in so far as relevant, as follows:

**Freedom and responsibility  
Article IV**

“1. Everyone has the right to liberty and security of the person.

2. No one is to be deprived of liberty except for reasons specified in an Act and in accordance with the procedure laid down in an Act. Life imprisonment without parole may only be imposed for the commission of intentional and violent criminal offences.”

14. The Constitutional Court Act, in force as of 1 January 2012, provides as follows:

**Section 26**

“(1) Under Article 24 § 2 (c) of the Fundamental Law an individual or organisation involved in a particular case may lodge a constitutional complaint with the Constitutional Court where, owing to the application of a piece of legislation allegedly contrary to the Fundamental Law in the court proceedings conducted in the particular case,

(a) their rights enshrined under the Fundamental Law have been violated, and

(b) they have exhausted the available legal remedies or no remedies are available.

(2) Divergently from subsection (1), Constitutional Court proceedings may also exceptionally be initiated under Article 24 § 2 (c) ... of the Fundamental Law where

(a) the grievance has occurred directly, without a court ruling, as a result of the application or the taking effect of a provision of the law [allegedly] contrary to the Fundamental Law, and

(b) no remedy is available for redressing the grievance, or the complainant has already exhausted the remedies.”

**Section 27**

“An individual or organisation involved in a particular case may lodge a constitutional complaint with the Constitutional Court against a court ruling allegedly

contrary to the Fundamental Law under Article 24 § 2 (d) of the Fundamental Law, where the ruling taken on the merits of the case or another ruling closing the court proceedings

(a) violates the complainant's right enshrined under the Fundamental Law, and where

(b) the complainant has already exhausted the remedies or no remedies are available to him."

15. Act no. IV of 1978 on the Criminal Code (as in force from 1 March 1999 until 30 June 2013, when it was replaced by Act no. C of 2012 on the Criminal Code) provided as follows:

**Imprisonment  
Article 40**

"1. Imprisonment shall last for life or for a fixed duration.  
..."

**Release on parole  
Article 47/A**

"1. If a life sentence is imposed, the court shall define in the judgment the earliest date of eligibility for parole or it shall exclude eligibility for parole.

2. If eligibility for parole is not excluded, the earliest date of release on parole shall be after serving a term of twenty years, or at least a term of thirty years if the life imprisonment was imposed for a criminal act that is punishable without a statute of limitation.

3.<sup>1</sup> Release on parole can be excluded concerning the following offences: if the offence has been committed with violence against a person or an object; the offence of attempting to overturn the constitutional order by force (Article 139 § 1); aggravated sabotage (Article 142 § 2); genocide (Article 155 § 1); apartheid (Article 157 §§ 1 and 3); aggravated violence against the civilian population (Article 158 § 2); war crimes (Article 160); use of weapons prohibited by an international convention (Article 160/A § 1); aggravated violence against a war emissary (Article 163 § 2); aggravated murder (Article 166 § 2); aggravated kidnapping (Article 175/A §§ 3 and 4); aggravated trafficking in human beings (Article 175/B § 5); aggravated public endangerment (Article 259 § 3); terrorism (Article 261 § 1); aggravated seizure of aircraft, any means of railway, water or road transport or any means of freight transport (Article 262 § 2); aggravated insubordination (Article 352 §§ 3 and 4); aggravated violence against a superior or a law-enforcement officer (Article 355 § 5); aggravated compromising of combat readiness (Article 363 § 2); breach of duty by a commander (Article 364); desertion (Article 365)."

16. The relevant parts of Act no. C of 2012 on the Criminal Code (as in force as of 1 July 2013) read as follows:

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<sup>1</sup> Enacted by Act no. CL of 2011.

**Imprisonment  
Article 34**

“Imprisonment is imposed for a fixed duration or for a life term.”

**Life imprisonment  
Article 41**

“1. Only persons over the age of 20 at the time of commission of the criminal act shall be sentenced to life imprisonment. ...”

**Release on parole from life imprisonment  
Article 42**

“In the event a sentence of life imprisonment is imposed, the court shall specify the earliest date of eligibility for parole or shall exclude any eligibility for parole.”

17. The relevant parts of Act no. CCXL of 2013 on the execution of punishments, measures, certain coercive measures and confinement for infractions, as amended by Act no. LXXII of 2014, in force as of 1 January 2015, read as follows:

**Mandatory pardon procedure for prisoners sentenced to life without parole  
Section 46/A**

“(1) Pursuant to the provisions of this Act, *ex officio* clemency proceedings (henceforth: mandatory pardon proceedings) shall be conducted in respect of convicted persons sentenced to life imprisonment without the possibility of parole.

(2) Having recourse to such mandatory pardon proceedings shall not exclude the possibility of filing a request for pardon under the general rules by a convicted person sentenced to life imprisonment without the possibility of parole or by any other person entitled to do so, or of initiating pardon proceedings of his or her own motion by a person entitled to do so.”

**Section 46/B**

“(1) The correctional facility detaining the convicted person shall notify the minister for justice when the convicted person has served forty years of imprisonment.

(2) Prior to the notification mentioned in subsection (1), the correctional facility shall invite the convicted person to make a declaration as to whether he or she gives consent to the mandatory pardon proceedings. The declaration of consent or refusal by the convicted person, or, in the event the convicted person has refused to make a declaration, the records thereof, shall be attached to the notification made under subsection (1).

(3) Should the convicted person not consent to or refuse to make a declaration, no mandatory pardon proceedings may be instituted.”

18. On 3 April 2014 the Szeged Court of Appeal requested the Constitutional Court, in the course of criminal proceedings before it against a third party, to review the constitutionality of Article 47/A § 1 of Act no. IV of 1978 (the old Criminal Code) and Article 42 of Act no. C of 2012 on the Criminal Code (the new Criminal Code), concerning life sentences

without parole, since they were in breach of Article 3 of the Convention. In the meantime, Parliament enacted Act no. LXXII of 2014 amending Act no. CCXL of 2013 on the execution of punishments, measures, certain coercive measures and confinement for infractions, introducing a mandatory pardon procedure for persons serving whole life sentences. In view of the legislative amendments, the Constitutional Court found that the legal framework underlying the request had changed and discontinued the proceedings as devoid of purpose on 20 January 2015.

19. On 11 June 2015 the *Kúria* delivered judgment no. BfV.II.1812/2014/7 in response to a request for review by a third party, L.M., who had been sentenced to a whole life sentence without eligibility for parole pursuant to Article 47/A of Act no. IV of 1978 on the Criminal Code, as in force at the time when the offence had been committed. In his request for review, L.M. argued, referring to the Court's case-law, that the mandatory pardon proceedings after serving forty years – as enacted through Act no. CCXL of 2013 – did not remedy the breach of Article 3 of the Convention. He requested the *Kúria* to set the date of his eligibility for parole after having served twenty-five years of his sentence. The *Kúria* found the following:

“Pursuant to Article 47/A of the Criminal Code as in force at the time when the offence was committed, the trial court was to set the earliest date of eligibility for parole, or to exclude any eligibility for parole. Having regard to the above, the breach of the Convention can be remedied by omitting from the final judgment a reference to the exclusion of release on parole and by setting the earliest date of eligibility for parole.”

The *Kúria* established in that case that the earliest date for release on parole was forty years.

20. Following the *Kúria*'s judgment of 11 June 2015, the head of the Criminal Division of the *Kúria* initiated uniformity proceedings (*jogegységi eljárás*). On 1 July 2015 the *Kúria* issued uniformity resolution no. 3/2015 on the unity of criminal law (3/2015 *Büntető jogegységi határozat*) concerning the applicability of section 47/A of Act no. CCXL of 2013 as amended by Act no. LXXII of 2014. The decision contained the following passages:

“A whole life sentence, with the possibility of exclusion of eligibility for parole is part of the constitutional legal order. Its judicial application – if the statutory conditions are met – are not prohibited by an international agreement.

...

### Reasoning

...

In operative provision 3 in the case of *László Magyar v. Hungary* [no. 73593/10, 20 May 2014] the European Court of Human Rights (ECtHR) found a violation of Article 3 of the Convention.



...

In that case the ECtHR did not examine and assess Article 47/A of the Criminal Code (currently Article 42) – as in force at the time the offence had been committed and tried – but other rules relevant for life imprisonment.

Certainly, the ECtHR did not – and could not – examine the provisions in sections 46/A-46/H of Act no. CCXL of 2013 as amended by section 109 of Act no. LXXII of 2014 enacted on 31 December 2014 and which came into force on 1 January 2015. ...

In this respect there is no doubt either that the ECtHR did not examine the combined regulations under the Criminal Code and Act no. CCXL of 2013 either.

It does not follow from the above that the relevant provisions infringe the Convention.

...

The decision of the ECtHR did not establish that the applicable legislative provision is contrary to the Convention but that the regulatory framework is. ...

The only thing that follows from this is that when applying a legal provision which has not been declared contrary to the Convention, regard must be had to the decision of the ECtHR.

Based on the above, the ECtHR did not examine and find contrary to the Convention the criminal law provision based on which the trial court had ordered the life sentence excluding the possibility of parole.

The ECtHR did not assess the applicability of the sanction but the rules of its execution, which cannot be amended by the courts but by the legislature.

It is a fact that at the time of the decision of the ECtHR and of the request for review, the sentence was under execution, and in the meantime the rules of execution, as criticised by the ECtHR, have been amended.

...

The ECtHR criticised the impugned judgment for the lack of an adequate regulatory framework. Changing this situation and finding a solution in conformity with the Convention is within the remit of the legislature of the Hungarian State, not of the courts. Act no. LXXII of 2014, mentioned above, amending the provisions of the Criminal Code was meant to respond to the shortcomings pointed out by the international human rights body.

...

Under the case-law of the ECtHR, there had been a violation of Article 3 because the domestic legislation, as in force at the time of the judgment, did not oblige the domestic authorities to examine in the course of the pardon procedure whether at the time when a convicted person lodged a pardon request, the deprivation of liberty could still be justified on the grounds of legitimate principles of punishment.

Thus, the assessment of the ECtHR did not condemn a positive (existing) legal provision applied by the courts but found that the lack of a regulatory framework was in breach of the Convention. It found that a set of conditions to be applied following sentencing during the enforcement of sentences was lacking.

The legislature responded to the breach of the Convention, as established in the ECtHR's judgment, with the intent to remedy these shortcomings, introducing a

mandatory pardon procedure, which is applicable to all detainees serving whole life sentences, irrespective of whether their conviction and exclusion from release on parole was based on Act no. IV of 1978 or the Criminal Code in force.

The ensuing legal position makes inseparable the assessment of the general substantive law provisions on the whole life sentence together with the provisions of Act no. CCXL of 2013 on the execution of punishments, measures, certain coercive measures and confinement for infractions. The conformity of these provisions with the Convention was not examined by the ECtHR and cannot be examined by the Hungarian courts. If the legal preconditions are met, a Hungarian court can impose a whole life sentence without the possibility of parole on the basis of the Fundamental Law, Act no. IV of 1978, the Criminal Code currently in force and the legislative amendment not questioned by the Constitutional Court.

It is impossible by definition to find that a decision was in breach of the Convention if it applies the legislation in force and a rule which was not assessed and found to be in breach of the Convention by the ECtHR, and which was accepted by the Constitutional Court.”

## THE LAW

### I. JOINDER OF THE APPLICATIONS

21. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicants complained that, under the new mandatory pardon procedure (*kötelező kegyelmi eljárás*) in force as of 2015, their whole life sentences remained *de facto* irreducible, in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

#### A. Admissibility

##### 1. *Exhaustion of domestic remedies*

###### (a) The parties’ submissions

23. In respect of the first, second and third applicants, the Government submitted that the proceedings before the Constitutional Court initiated by the applicants were still pending. They thus requested the Court to declare the applications inadmissible pursuant to Article 35 § 1 of the Convention for failure to exhaust domestic remedies.

24. In respect of the fourth applicant, the Government requested the Court to declare the application inadmissible for failure to exhaust domestic remedies since the applicant had failed to lodge a constitutional complaint

against the judgment of the Budapest Court of Appeal under sections 26 or 27 of the Constitutional Court Act. In the Government's view, had the applicant submitted a constitutional complaint, the Constitutional Court could have ordered the criminal court to deliver a new judgment in accordance with the constitutional requirements. As regards the effectiveness of this domestic remedy, the Government referred to the Court's decision of 5 July 2018 on the admissibility of the application in the case of *Mendrei v. Hungary* ((dec.), no. 54927/15, 19 June 2018).

25. The applicants argued that the constitutional complaint had not constituted an effective remedy in their cases.

26. The first applicant drew the Court's attention to the fact that no progress had been made in his case before the Constitutional Court since the lodging of his complaint.

27. The second and third applicants submitted that the Fundamental Law of Hungary provided for a sentence of life imprisonment without parole and the Constitutional Court had no power to review the constitutionality of constitutional norms, that is the provisions of the Fundamental Law.

28. The applicants also referred to the decision of the Constitutional Court of 20 January 2015 (see paragraph 18 above) to demonstrate that the Constitutional Court had refused to issue a decision on the matter. They also maintained that claimants before the Constitutional Court could not challenge a legislation for its incompatibility with an international treaty and thus they could not challenge the final judgment in the criminal proceedings on that basis either.

#### **(b) The Court's assessment**

29. The rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, the High Contracting Parties are dispensed from answering for their acts or omissions in proceedings before the Court before they have had an opportunity to put matters right through their own legal systems. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 93, 10 January 2012).

30. The Court refers to the general principles on the exhaustion of domestic remedies set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

31. Where legal systems provide constitutional protection of fundamental human rights and freedoms, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009)

32. The Court has already examined the scope of the Constitutional Court's review in Hungary and noted that it carries out an examination under section 26(1) and section 27 of the Constitutional Court Act if the grievance has occurred as a result of the application of a piece of legislation allegedly contrary to the Fundamental Law in court proceedings (section 26(1)) or if the grievance has occurred as a result of court rulings allegedly contrary to the Fundamental Law (section 27), and under section 26(2) of the Constitutional Court Act if the grievance has occurred directly as a result of the taking effect of a legal provision, provided the absence of any other remedies (see *Mendrei*, cited above, and *Szalontay v. Hungary* (dec.) no. 71327/13, 12 March 2019).

33. In the present case, the Government argued that recourse to the Constitutional Court provided an effective remedy for the applicants either through challenging the constitutionality of the final court judgments or of the underlying legal provision. At the same time the Court notes that the wording of the relevant provisions of the Constitutional Court Act provides for a right to lodge a constitutional complaint only in circumstances in which an individual considers that a legal provision or a judicial decision is incompatible with a legal provision of the Fundamental Law.

34. However, life imprisonment without the possibility of release on parole is explicitly provided for by the Fundamental Law (see paragraph 13 above) and, as concluded by the *Kúria*, the possibility of exclusion of eligibility for parole was part of the constitutional legal order (see paragraph 20 above). Consequently, it cannot be said that any issues of "constitutionality" or compatibility with the Fundamental Law of either the court judgments or the provisions of the Criminal Code applied in the applicants' case arise. In such circumstances the Court considers that the constitutional complaint referred to by the Government did not constitute an effective remedy for the applicants' grievances.

35. Having regard to the above considerations, the Court concludes that the applicants' complaints under Article 3 of the Convention cannot be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies; it therefore dismisses the Government's preliminary objections in that regard.

## 2. *Compliance with the six-month time-limit*

36. The Court reiterates that, in contrast to an objection as to the non-exhaustion of domestic remedies, which must be raised by the respondent Government, it cannot set aside the application of the six-month rule solely

because the Government have not raised a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

37. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Nonetheless, it has been said that the six-month time-limit does not apply as such to continuing situations; this is because, if there is a situation of an ongoing breach, the time-limit in effect starts afresh each day and it is only once the situation ceases that the final period of six months will run to its end (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 157 and 159, ECHR 2009, with further references).

38. The Court observes that in the present case the first applicant was convicted on 3 February 2015 and he submitted his application to the Court on 1 August 2015. The second and third applicants' conviction was upheld by the *Kúria* on 12 January 2016 and they lodged their applications with the Court on 15 June 2016. Therefore, the first, second and third applicants lodged their applications within six months following the final domestic decisions issued in their cases. However, the fourth applicant was convicted on 3 October 2014 and he only lodged his complaint with the Court on 28 May 2018, thus substantially more than six months after the final domestic judgment.

39. It is nonetheless clear that the state of affairs complained of by the applicants has not ceased, as they are all still serving their life sentences, and it will cease to apply to them only after their release. Thus, the situation must be considered as a continuing one. In such circumstances, the Court cannot conclude that the fourth applicant lodged his application out of time.

### 3. Conclusion

40. The Court further notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

### 1. The parties' submissions

#### (a) The applicants

41. The applicants argued that they had been *de facto* deprived of a real chance to regain their liberty, even if the amendments to the legislation made after the Court's judgment in *László Magyar v. Hungary* (no. 73593/10, 20 May 2014) had introduced a mandatory pardon procedure after a convicted person has served forty years. They considered that the pardon procedure did not constitute a sufficient guarantee for a reduction of

their sentence, firstly, because it was applicable only after forty years of the sentence had been served, a period which fell foul of the Court's standards and, secondly, because it was a purely discretionary decision, not satisfying the requirements of objectivity and predictability.

42. The applicants further submitted that a life sentence could not be justified by legitimate penological reasons, since it provided no positive incentives to convicted persons and as a consequence – in practice – it excluded rehabilitation.

43. In the applicants' view a sentence of life imprisonment should be imposed only if there is a mechanism for reviewing the sentence after the prisoner has served no more than twenty-five years.

**(b) The Government**

44. The Government contended that following the Court's judgment in *László Magyar* (cited above), new legislation – Act no. LXXII of 2014 – had introduced a mandatory pardon procedure for convicted persons serving whole life sentences. The new legislation allowed for the eventual termination of his or her imprisonment. Under the new legislation, in the course of the mandatory pardon procedure the authorities, a Clemency Board, had to examine whether the imprisonment continued to be justified as soon as a convicted person had served forty years of his or her life sentence. The Government argued that nothing in the Court's case-law indicated that life prisoners had a right under the Convention to judicial review of their sentences.

45. In the Government's understanding, when the Hungarian legislature had set the time-limit for the mandatory pardon procedure at forty years, it had relied on the Court's admissibility decision in the case of *Törköly v. Hungary* ((dec.), no. 4413/06, 5 April 2011), concerning a similar complaint. The Government further argued that the forty-year period corresponded primarily to the retribution phase of a whole life sentence and was proportionate to the circumstances of the offence. Moreover, before the expiry of the forty-year time-period, the applicants could avail themselves of the general pardon procedure, which afforded them the possibility of release if extraordinary circumstances deserving special consideration existed.

46. In respect of the mandatory pardon procedure, the Government pointed out that each convicted person was aware, from the outset of his sentence, of the conditions for release. The legislation provided that proper consideration had to be given to the changes and developments that had occurred in the convicted person on his way to rehabilitation. The legislation also set out the elements that the Clemency Board needed to examine in the course of the mandatory pardon procedure and those elements were identical to what penitentiary judges had to assess when deciding on release on parole of non-life prisoners. The convicted person

was notified of the opinion of the Clemency Board as well, thereby making him or her aware of the reasons underlying the decision on release.

47. As regards the procedural elements of the pardon procedure, the Government argued that the findings concerning a lack of procedural safeguards in the judgment in *T.P. and A.T. v. Hungary* (nos. 37871/14 and 73986/14, § 49, 4 October 2016) were premature, since no such proceedings had yet been conducted.

## 2. *The Court's assessment*

48. The whole life sentence and the mandatory pardon procedure after forty years of imprisonment was the primary subject of scrutiny in the judgment in *T.P. and A.T. v. Hungary* (cited above). In that judgment the Court held that the fact that the applicants could have their release considered, in the form of the mandatory pardon procedure, only after they had served forty years of their life sentences was sufficient to conclude that the new Hungarian legislation did not offer *de facto* reducibility of the applicants' whole life sentences. That factor, coupled with the lack of sufficient procedural safeguards in the second part of the procedure, as provided for by the new legislation, led the Court to find a violation of Article 3 of the Convention (*ibid.*, § 50).

49. The Court notes that the arguments raised by the Government are similar to those already examined and rejected in *T.P. and A.T. v. Hungary* (cited above). The Government have not submitted any new circumstances which would lead the Court to depart from its previous findings that the applicants' whole life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention.

50. There has accordingly been a violation of that provision.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. **Damage**

52. The first and fourth applicants did not submit any claims under this head. The Court therefore makes no award.

53. The second and third applicants claimed 5,000 euros (EUR) each in respect of non-pecuniary damage.

54. The Government contested these claims.

55. As regards the second and third applicants, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered and accordingly makes no award to them either under this head (see *T.P. and A.T. v. Hungary*, cited above, § 54).

#### **B. Costs and expenses**

56. The first and fourth applicants did not submit any claims under this head.

57. The second and third applicants claimed EUR 2,000 each in respect of the costs and expenses incurred before the Court. These sums correspond to the fee billable by their lawyer, plus costs.

58. The Government contested these claims.

59. In the absence of a claim on their part, the Court is not called upon to make any award under the head of costs and expenses as far as the first and fourth applicants are concerned. As regards the second and third applicants, regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award them jointly the sum of EUR 2,000 for the proceedings before the Court.

#### **C. Default interest**

60. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the second and third applicants;
5. *Holds*
  - (a) that the respondent State is to pay the second and third applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:



EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the second and third applicants, in respect of costs and expenses;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 17 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Ksenija Turković  
President

## APPENDIX

## LIST OF CASES

| No. | Application no. | Case name                   | Lodged on  | Applicant<br>Year of birth                     | Represented by        |
|-----|-----------------|-----------------------------|------------|------------------------------------------------|-----------------------|
| 1.  | 39734/15        | Sándor Varga v.<br>Hungary  | 01/08/2015 | <b>Sándor VARGA</b><br>1981                    | Erzsébet KADLÓT       |
| 2.  | 35530/16        | Á.K. and I.K. v.<br>Hungary | 15/06/2016 | <b>Á.K.</b><br>1967<br><br><b>I.K.</b><br>1976 | Edina Eszter<br>JÓZSA |
| 3.  | 26804/18        | Rostás v.<br>Hungary        | 28/05/2018 | <b>Henrik ROSTÁS</b><br>1987                   | Erzsébet KADLÓT       |