



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

FIRST SECTION

CASE OF BANC SÓK AND LÁSZLÓ MAGYAR v. HUNGARY (No. 2)

(Applications nos. 52374/15 and 53364/15)

JUDGMENT

Art 3 • Inhuman and degrading punishment • Life sentences for applicants whose eligibility for release is reviewable only after serving forty years, not regarded as reducible despite ability to seek presidential clemency without limitation

STRASBOURG

28 October 2021

FINAL

28/01/2022

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

In the case of Bancsók and László Magyar v. Hungary (no. 2),

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

Ksenija Turković, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Gilberto Felici,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the applications (nos. 52374/15 and 53364/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Hungarian nationals, Mr József Bancsók and Mr László Magyar (“the applicants”), on 7 October 2015 and 20 October 2015 respectively;

the decision to give notice to the Hungarian Government (“the Government”) of the complaints concerning the applicants’ life sentences and to declare the remainder of the applications inadmissible;

the parties’ observations;

Having deliberated in private on 5 October 2021,

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

INTRODUCTION

1. The cases concern the applicants’ sentences of life imprisonment with the possibility of release on parole once they have served a forty-year term. The applicants complained that their sentences constituted inhuman and degrading punishment, in breach of Article 3 of the Convention.

THE FACTS

2. Mr Bancsók (“the first applicant”) was born in 1979. Mr Magyar (“the second applicant”) was born in 1960 and is detained in Tiszaölök Prison. The first applicant was represented before the Court by Ms E. Kadlót, a lawyer practising in Budapest. The second applicant was represented by Mr D.A. Karsai, a lawyer practising in Budapest.

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

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

I. THE FIRST APPLICANT

5. The first applicant was found guilty of murder by the Budapest Surroundings High Court on 18 June 2013. The court held that he would be eligible for release on parole once he had served forty years' imprisonment. His sentence was upheld on appeal by the Budapest Court of Appeal on 22 April 2015.

6. On 24 July 2015 the first applicant lodged a constitutional complaint against that judgment. He argued that setting the earliest date of his release once a term of forty years had been served was contrary to the case-law of the Court and constituted inhuman treatment.

7. The Constitutional Court declared the complaint admissible on 22 February 2016. The proceedings are still pending.

II. THE SECOND APPLICANT

8. The second applicant was sentenced on 28 September 2010 to life imprisonment without eligibility for parole under Article 40 § 1 and Article 47/A of Act no. IV of 1978 on the Criminal Code (as in force at the material time). In *László Magyar v. Hungary* (no. 73593/10, 20 May 2014) the Court found a violation of Article 3 of the Convention on the grounds that the applicant's life sentence could not be regarded as reducible for the purposes of Article 3 of the Convention.

9. Following the Court's judgment, both the second applicant's legal representative and the public prosecutor applied to the *Kúria* for a review of the final judgment. The public prosecutor requested that the *Kúria* set the earliest date for release on parole in the applicant's case once a term of thirty years had been served.

10. In the meantime, the Hungarian Parliament enacted Act no. LXXII of 2014 (which entered into force on 1 January 2015), prescribing mandatory clemency proceedings for prisoners sentenced to life imprisonment without eligibility for release on parole.

11. Accordingly, the public prosecutor amended the application before the *Kúria*, arguing that with the introduction of the mandatory clemency proceedings, Hungary had fulfilled its international obligations. It thus requested the *Kúria* to maintain the second applicant's life sentence without eligibility for parole, but to make it subject to mandatory clemency proceedings once forty years of the sentence had been served. The second applicant argued, referring to the Court's case-law, that the mandatory clemency proceedings after forty years' imprisonment – 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 twenty-five years of his sentence had been served. In judgment no. BfV.II.1812/2014/7 of 11 June 2015, 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.”

12. The *Kúria* thus upheld the second applicant’s life sentence but held that he was eligible for release on parole. It set the earliest date for release on parole after forty years of the sentence had been served. It found that this period was capable both of remedying the breach of the Convention and fulfilling the goals of punishment in respect of the second applicant – a multiple recidivist who had committed several of the gravest violent crimes against persons in vulnerable situations.

13. On 16 October 2015 the second applicant lodged a constitutional complaint against that judgment. Relying on the judgment delivered by the Court in his own case and in *T.P. and A.T. v. Hungary* (nos. 37871/14 and 73986/14, 4 October 2016), he argued that setting the earliest date of his release once a term of forty years had been served was contrary to Hungary’s obligations under the Convention.

14. The Constitutional Court declared the complaint admissible on 21 March 2016. The proceedings are still pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

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 a term of twenty years has been served, or at least a term of thirty years if the life sentence was imposed for a criminal act that is punishable without a statute of limitations.

3.¹ Release on parole can be excluded in respect of the following offences: if the offence has been committed with violence against a person or an object; the offence of

¹ Enacted by Act no. CL of 2011.

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 rail, 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); or desertion (Article 365).”

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

**Imprisonment
Article 34**

“Imprisonment shall be 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 the commission of the criminal act may be sentenced to life imprisonment.

...”

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

“In the event that 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.”

Article 43

“1. If the court does not exclude any eligibility for parole, the court shall set the earliest date of eligibility for parole after a term of twenty-five years has been served and the latest after forty years.

...”

17. The relevant parts of Act no. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Detention for Regulatory Offences, as amended by Act no. LXXII of 2014, in force as of 1 January 2015, read as follows:

Section 57

“...

(8) If the prison judge does not release on parole an offender sentenced to life imprisonment, eligibility for release on parole shall be examined after two years, at the latest, and every year thereafter ...”

Section 188

“(1) A person sentenced to imprisonment may be released on parole if:

(a) if, on the basis of the prisoner’s exemplary conduct as demonstrated during imprisonment, and the ability to maintain such conduct, it can be presumed that the aim of the punishment can be achieved without further deprivation of liberty; and

(b) in the case of a fixed-term prison sentence, the term set in Article 38 § 2 of the Criminal Code or in the judgment convicting the person has been served; or, in the case of life imprisonment, the term set by the court based on Article 43 § 1 of the Criminal Code has been served.

...”

18. Act No. CLI of 2011 on the Constitutional Court (hereinafter “the Constitutional Court Act”) provides, in so far as relevant, as follows:

Section 26

“(1) Under Article 24 § 2(c) of the Fundamental Law, persons or organisations affected by a particular case may submit a constitutional complaint to the Constitutional Court if, as a result of the application of a law contrary to the Fundamental Law in the court proceedings conducted in their case,

(a) their rights secured under the Fundamental Law were violated; and

(b) the possible remedies have already been exhausted or no possible remedies exist.

(2) By way of derogation from subsection (1), Constitutional Court proceedings may, exceptionally, also be initiated where:

(a) as a result of the application of, or the coming into effect of, a legal provision contrary to the Fundamental Law, a violation of the rights [of persons referred to in subsection (1)] has occurred directly, without a court decision; and

(b) no possible remedy to redress the violation exists, or the petitioner has already exhausted the possible remedies.”

Section 27

“Under Article 24 § 2(d) of the Fundamental Law, a person or organisation affected by a court decision contrary to the Fundamental Law may lodge a constitutional complaint with the Constitutional Court where the decision on the merits of the case or another decision terminating the court proceedings

(a) violates their rights secured under the Fundamental Law; and

(b) the possible remedies have already been exhausted by the petitioner or no possible remedies are available.”

THE LAW

I. JOINDER OF THE APPLICATIONS

19. 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

20. The applicants complained that their sentences of life imprisonment, with the possibility of release on parole after serving forty years, 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

21. The Government invited the Court to reject the applications on the ground that the applicants had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention. They submitted that the applicants had lodged constitutional complaints under section 27 of the Constitutional Court Act, which had constituted an effective remedy for their alleged grievances, and the proceedings were still pending before the Constitutional Court.

22. The first applicant argued that a constitutional complaint could not be regarded as an effective remedy. He submitted that, although he had lodged a constitutional complaint, this was not because he had considered such proceedings to be capable of remedying his situation. Moreover, the proceedings had been pending for years and he could not be expected to wait further for the outcome of the proceedings before the Constitutional Court.

23. The second applicant argued that the Government had failed to submit any relevant case-law substantiating that a constitutional complaint constituted an effective remedy in the case of life-imprisonment. In any event, he had lodged a constitutional complaint on 16 October 2015 and the proceedings were still pending. In his view, owing to this unprecedented delay, that legal avenue was ineffective in practice in his case.

24. The Court has previously found that a constitutional complaint under section 27 of the Constitutional Court Act represents an effective remedy to be used for the purposes of Article 35 § 1 of the Convention in situations where the application concerns Convention rights that are equally protected by the Fundamental Law of Hungary (see *Szalontay v. Hungary* (dec.), no. 71327/13, 12 March 2019). On the other hand, the Court reiterates that

the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1 of the Convention (see *Story and Others v. Malta*, nos. 56854/13 and 2 others, § 80, 29 October 2015, and *Mikalauskas v. Malta*, no. 4458/10, § 50, 23 July 2013).

25. In this connection, the Court does not consider it necessary to decide *in abstracto* whether the remedy relied on by the Government satisfies the requirements of Article 35 § 1 in respect of life imprisonment under Articles 34 and 43 of the Criminal Code.

26. In the instant case it is sufficient to note that the proceedings before the Constitutional Court in respect of the applicants' complaints have been pending since 2015. At this point in time, such a delay undermines the potential effectiveness of the remedy in question (see, for comparison, *Longin v. Croatia*, no. 49268/10, §§ 38-41, 6 November 2012).

27. It follows that the Government's objection concerning the non-exhaustion of domestic remedies must be dismissed.

28. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

29. The applicants submitted that life imprisonment with a possibility of release on parole after a forty-year term had been served amounted in practice to a whole life sentence. The forty-year term to be served before being eligible for conditional release corresponded to the term that whole life prisoners had to serve before having access to mandatory clemency proceedings. The fact that all life prisoners served their terms under the same prison regime was further evidence that there was no *de facto* distinction between the two types of life sentence.

30. The applicants pointed out that the possibility of release could not be considered real if it was so distant that it would only allow the prospect of dying in a care facility or a hospice. Having regard to their age, they simply would not live long enough to be eligible for release on parole, and thus any change in their behaviour would be irrelevant for the purpose of being eligible for release. In this sense their sentences were purely punitive and did not serve any resocialisation purpose.

31. The applicants maintained that the punitive element of punishment was only relevant at the time of sentencing, whereas the review of such sentences was to focus on reintegration or the threat that the offender posed to society. In their view, the forty-year term to be served before being

considered for release on parole went beyond the State's margin of appreciation.

32. As regards the ordinary pardon proceedings, the applicants asserted that this avenue did not result in the *de facto* or *de jure* reducibility of their life sentence.

(b) The Government

33. The Government submitted that the applicants' life sentences were reducible both *de jure* and *de facto*; they had not been deprived of all hope of being released from prison one day. The Government argued that the applicants' sentences were therefore compatible with Article 3 of the Convention.

34. The Government pointed out that sentencing fell under the general criminal policy of the Contracting States, in which context they were accorded a wide margin of appreciation.

35. As to the applicants' contention that the forty-year term was contrary to the Court's case-law on this issue, the Government argued that the reference to a twenty-five-year term in the Court's case-law could not be interpreted as the Court prescribing when a review of life imprisonment should take place. The forty-year period first of all corresponded to the retribution phase of a whole life sentence and was proportionate to the circumstances of the offence concerned, including, among other things, its gravity, the danger it posed to society and the offender's criminal liability. The Government submitted that conditional release could only be envisaged once the retribution phase of the sentence had been served and that any conditional release was subject to an assessment of whether maintaining an offender's imprisonment could still be justified by any legitimate aim of punishment.

36. Furthermore, the Government asserted that the establishment of the retribution phase of imprisonment at forty years could be compared to a lengthy (fixed-term) prison sentence of up to forty-five or fifty years, as was possible in some Council of Europe member States.

37. The Government also maintained that the age of the applicants was irrelevant in assessing whether life imprisonment constituted inhuman punishment.

38. Lastly, referring to *Törköly v. Hungary* ((dec.), no. 4413/06, 5 April 2011), the Government submitted that before the expiry of the forty-year period, the applicants could avail themselves of the general pardon procedure, whereby a pardon could be granted by the President of Hungary, affording them the possibility of release if extraordinary circumstances deserving special consideration existed.

2. *The Court's assessment*

(a) **General principles**

39. In *Murray v. the Netherlands* ([GC], no. 10511/10, 26 April 2016), the Court reiterated and further developed its previous case-law concerning the need for life sentences to be *de facto* reducible (see also *T.P. and A.T. v. Hungary*, cited above; *Kafkaris v. Cyprus* [GC], no. 21906/04, ECHR 2008; *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts); and *László Magyar*, cited above).

40. In particular, it reiterated that the imposition of a sentence of life imprisonment on an adult offender was not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention. A life sentence could remain compatible with Article 3 of the Convention only if there was both a prospect of release and a possibility of review, both of which had to exist from the imposition of the sentence (see *Murray*, cited above, § 99, and *Vinter and Others*, cited above, §§ 104-18 and 122).

41. Furthermore, having regard to the margin of appreciation which must be accorded to Contracting States in matters of criminal justice and sentencing, it is not the Court's task to prescribe the form – executive or judicial – which that review should take, or to determine when that review should take place. However, comparative and international-law material shows clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter (see *Vinter and Others*, cited above, § 120; see also *Harachiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 246, ECHR 2014 (extracts), and *Murray*, cited above, § 99). Where domestic law does not provide for the possibility for such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention (see *Vinter and Others*, cited above, § 121).

(b) **Application of those principles to the present case**

42. In Hungary, the penalty of life imprisonment can take the form of a whole life sentence without the possibility of parole and is reserved for offences that are particularly serious. It exists alongside the penalty of “simple” life imprisonment, as in the present case, which affords the possibility of the conditional release of the prisoner (Article 42 of the Criminal Code; see paragraph 16 above). Article 43 of the Criminal Code provides for the possibility of the conditional release of life prisoners after they have served a certain portion of their term. The minimum term to be served before an offender can be released on parole is to be set between the statutory minimum of twenty-five years and the maximum of forty years in the judgment convicting the offender. If the prison judge refuses to commute the offender's sentence of life imprisonment to probation,

eligibility for release must be re-examined after a further two years, and on a yearly basis thereafter.

43. Furthermore, the requirements which a person sentenced to a prison term must fulfil in order to be conditionally released are set out in section 188 of Act no. CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures, and Detention for Regulatory Offences; satisfactory compliance with those requirements is subject to assessment by a court (see paragraph 17 above).

44. Thus, national law and practice afford the possibility of a dedicated judicial review of the life sentence imposed on the applicants. However, in the present case, the applicants could be eligible for release after having served forty years of their term. It remains to be determined whether the review mechanism in the case of the applicants satisfies the criteria set out in the Court's case-law.

45. In that connection, the Court notes that the forty years during which the applicants must wait before they can for the first time expect to be considered for release on parole is a significantly longer period than the maximum recommended time frame after which the review of a life sentence should be guaranteed, established on the basis of a consensus in comparative and international law (see *Vinter and Others*, cited above, § 120, and *T.P. and A.T.*, cited above, § 45). It is also hardly comparable with the twenty-six-year period that the applicant in *Bodein v. France* (no. 40014/10, 13 November 2014) had to wait before being eligible to apply for parole (see paragraph 42 above; see also *Bodein*, cited above, § 61).

46. Finally, in so far as the Government relied on the fact that, even before the lapse of the forty years required for eligibility for release on parole, a life prisoner could seek presidential clemency in ordinary pardon proceedings without any limitation, the Court has already found that a possibility of being granted a pardon or release on compassionate grounds for reasons related to ill health, physical incapacity or old age does not correspond to the notion of "prospect of release" (see *Vinter and Others*, cited above, § 127).

47. In sum, the fact that the applicants in the present case can hope to have their progress towards release reviewed only after they have served forty years of their life sentences is sufficient for the Court to conclude that the applicants' life sentences cannot be regarded as reducible for the purposes of Article 3 of the Convention. Such a long waiting period unduly delays the domestic authorities' review of "whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds" (see *Vinter and Others*, cited above, § 119).

48. There has accordingly been a violation of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The first applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. The second applicant claimed EUR 10,000 in respect of non-pecuniary damage.

51. The Government found these claims excessive.

52. The Court considers that its finding of a violation constitutes sufficient just satisfaction and accordingly makes no award under this head.

B. Costs and expenses

53. The first applicant claimed EUR 3,000 in respect of the costs and expenses incurred before the Court. The second applicant claimed EUR 8,000 plus value-added tax (VAT) in respect of the costs and expenses incurred before the domestic courts. This sum corresponds to forty hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT. He also claimed EUR 2,600 plus VAT in respect of expenses incurred before the Court. This sum corresponds to thirteen hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT.

54. The Government contested these claims.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 to the first applicant for the proceedings before the Court, plus any tax that may be chargeable to him. It also considers it reasonable to award the sum of EUR 10,600 to the second applicant covering costs under all heads, plus any tax that may be chargeable to him.

C. Default interest

56. 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 any non-pecuniary damage sustained by the applicants;
5. *Holds*
 - (a) that the respondent State is to pay to the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) to the first applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;
 - (ii) EUR 10,600 (ten thousand six hundred euros) to the second applicant, plus any tax that may be chargeable to him, 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 amounts 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' claim for just satisfaction.

Done in English, and notified in writing on 28 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Ksenija Turković
President

APPENDIX

List of Applicants

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence
1.	52374/15	Bancsók v. Hungary	07/10/2015	József BANCSÓK 1979 Budapest
2.	53364/15	László Magyar v. Hungary no. 2	20/10/2015	László MAGYAR 1966 Tiszalök