



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

FIFTH SECTION

CASE OF MEDVID v. UKRAINE

(Application no. 7453/23)

JUDGMENT

*This version was rectified on 7 November 2024
under Rule 81 of the Rules of Court.*

Art 3 (substantive) • Inhuman or degrading punishment • Clear and realistic prospect of reducibility of life sentences after new release on parole mechanism became fully operational • New mechanism introduced by legislative reform provided life prisoners with possibility, after serving fifteen years of original life sentence, to apply for its commutation into fixed-term imprisonment that was further reducible • New mechanism offered applicant realistic opportunity to have life sentence reviewed within well-defined timeframe under clear conditions in compliance with Art 3 • Reformed system allowed for a uniformity of approach to the assessment of prisoners' rehabilitation and reformation • Ultimate decision of life prisoners' suitability for a reduction in their sentence taken by the domestic courts with prisoners' participation and their lawyer • Need for life prisoners to undergo continuous rehabilitation even after life sentence commuted to a fixed term of imprisonment not overlooked • Reformed system efficient in theory and in practice • Situation of uncertainty with a lack of any clear and realistic prospect of early release between date of final sentencing to life imprisonment and date new release on parole mechanism became fully operational in breach of Art 3

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

FINAL

17/03/2025

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

In the case of Medvid v. Ukraine,

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

Mattias Guyomar, *President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
María Elósegui,
Mykola Gnatovskyy,
Stéphane Pisani,
Úna Ní Raifeartaigh, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 7453/23) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Ukrainian national, Mr Maksym Mykolayovych Medvid (“the applicant”), on 26 January 2023;

the decision to give notice to the Ukrainian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 10 September 2024,

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

INTRODUCTION

1. The application concerns the introduction of the possibility for life sentences imposed in Ukraine to be reduced in length and the compliance thereof with Article 3 requirements.

THE FACTS

2. The applicant was born in 1984 and is detained in Romny Prison no. 56, Perekhrestivka, Sumy Region, Ukraine. He had been granted legal aid and was represented by Messrs M. Tarakhkalo, H. de Suremain, V. Melnychuk and Ms A. Kozmenko, lawyers.

3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. On 18 June 2003 the Kyiv Regional Court of Appeal sentenced the applicant to life imprisonment for a double murder committed in December 2002. This judgment was upheld by the Supreme Court on 2 October 2003.

6. Between 2014 and 2019 the applicant lodged several unsuccessful applications with the domestic courts for his life sentence to be commuted to fifteen years’ imprisonment.

7. In February 2021 the applicant lodged an application for release on parole; that application was rejected by the courts at two levels of jurisdiction for lack of any legal basis on, respectively, 15 April 2021 and 16 November 2022.

8. On 1 December 2022 a commission was convened in Romny Prison to examine the degree to which the applicant had been reformed; it found that the applicant did not qualify to lodge an application for the commuting of his life sentence to a fixed term of imprisonment. According to the Government, the applicant was served with the commission's finding before 31 December 2022, while the applicant maintained that he had only received the full text of the commission's finding in mid-August 2023.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. STATE OF DOMESTIC LAW AND PRACTICE PRIOR TO THE AMENDMENTS OF 18 OCTOBER 2022

A. 2001 Criminal Code

9. On 5 April 2001 Parliament enacted a new Criminal Code, which entered into force on 1 September 2001. The relevant provisions of the Code in the original wording read as follows:

Article 81 Release on parole

“1. Release on parole may be applied in respect of persons sentenced to correctional work, duty-related restrictions for military officers, restriction of liberty, custody in a penal battalion for military officers, or [fixed-term] imprisonment ...

2. Parole may be granted if a sentenced person displays decent behaviour and diligence in work by way of proof of his or her reformation ...”

Article 82 Commutation of the remaining part of a punishment to a less severe punishment

“1. The remaining part of the punishment of persons sentenced to restriction or deprivation of liberty may be commuted by a court to a less severe punishment ...”

B. Judgment of 16 September 2021 by the Constitutional Court on the review of the sentence of a person serving life imprisonment

10. Referring *inter alia*, to the case-law of the Court, the Constitutional Court found the first paragraphs of Articles 81 and 82 of the Criminal Code (see paragraph 9 above) to be unconstitutional in so far as they did not apply to persons who had been sentenced to life imprisonment. In its decision the court noted, in particular, that when amending the relevant legislation in order to permit the commuting of a life sentence to a less severe sentence or early

release, it should be taken into account that commuting life imprisonment to a fixed term of imprisonment should not constitute a precondition for early release.

C. Judgment of the Grand Chamber of the Supreme Court of 8 July 2020 in case no. 1-42/2004

11. In 2019 the Court found, in *Petukhov v. Ukraine (no. 2)* (no. 41216/13, 12 March 2019), a violation of Article 3 of the Convention in respect of the insufficiency of the medical assistance provided to Mr Petukhov and the impossibility of reducing of his life sentence. Mr Petukhov applied for a review of his case by the Supreme Court on the basis of the Court's judgment. The Grand Chamber of the Supreme Court rejected his application. In particular, with regard to the impossibility of reducing his life sentence, the Grand Chamber of the Supreme Court referred to the Court's conclusions under Article 46 of the Convention (namely, that the irreducibility of life sentence was a systemic problem calling for a reform of the system of review of whole-life sentences) and noted that it was not empowered by law to review a life sentence (for more details, see *Kupinsky v. Ukraine*, no. 5084/18, §§ 32 and 40, 10 November 2022).

II. LAW AND PRACTICE FOLLOWING THE AMENDMENTS OF 18 OCTOBER 2022

A. 2001 Criminal Code

12. By Law no. 2690-IX of 18 October 2022 ("the Amendment Act"), Articles 81 and 82 of the Code were supplemented in so far as relevant by the following provisions:

Article 81

Release on parole

"...

3. Release on parole may be applied after a sentenced person has ... served:

...

3) at least three quarters of the sentence set by a court for an especially grievous crime, in the case of commuting life imprisonment to a fixed term of imprisonment ..."

Article 82

Commutation of punishment or the remaining part of a punishment to a less severe punishment

"1. The remaining part of the ... [sentence of] life imprisonment may be commuted by a court to a less severe punishment, the term of which shall start running from the day of commutation ...

...

5. Life imprisonment may be commuted to imprisonment for the term of fifteen to twenty years, if a sentenced person has served at least fifteen years of the punishment that was set by the court ...”

13. Those amendments of 18 October 2022, which entered into force on 6 November 2022, introduced a system which was meant to make the life sentence reducible. The system provides a possibility for a person serving a life sentence to apply, after having served at least 15 years of the original life sentence, for its commutation into fixed-term imprisonment from fifteen to twenty years, to be served from the moment of the commutation. The period of fixed term imprisonment can be further reduced for good behaviour. Taking into account the possibility for such reduction, under the new legislation cited above, the minimum period of time a life prisoner has to serve is 26 years and 3 months in total (fifteen years of the original life sentence plus fifteen years fixed-term imprisonment minus a reduction for good behaviour).

B. 2012 Criminal Procedure Code

14. Under the Amendment Act (see paragraph 12), the second part of Article 31 of the Code of Criminal Procedure was supplemented by paragraph 3, under which an application for the commuting of a life imprisonment to a fixed term of imprisonment should be examined by a court of three judges. A similar provision that set forth the procedure for the judicial examination of issues relating to the execution of sentences was added to Article 539 of the Code. The latter Article also provides for the right of a prisoner and his or her lawyer to participate in such a judicial examination.

C. 2003 Code on the Execution of Sentences

15. The Amendment Act inserted into the Code a specification of the procedure to be observed when lodging an application for the commuting of a life imprisonment to a fixed term of imprisonment.

Article 154

Procedure for early release from serving a sentence

“...

3. In respect of a prisoner to whom, under Articles 81, 82 of the Criminal Code of Ukraine, parole may be granted by way of commuting life imprisonment to punishment in the form of a fixed term of imprisonment ..., the prison body or institution shall within a month lodge an application to a court ... Within a month of a prisoner serving that part of [his or her] sentence provided by the Criminal Code of Ukraine, the administration of a prison body or institution is obliged to consider the possibility of [his or her] lodging an application for ... the commuting of [his or her] life sentence to a fixed term of imprisonment ...

...

7. In the event of a court refusing to commute a [prisoner's] punishment or the remaining part of [his] punishment to a less severe punishment, a fresh application to this end in respect of persons sentenced to life imprisonment, ... may be lodged no earlier than one year from the date of [that] decision ...

...

12. Together with the application for the commuting of a prisoner's life imprisonment in its remaining part to a less severe punishment, the administration of the [prison] shall submit to a court its findings regarding the extent to which the person sentenced to life imprisonment has been reformed.

The determination of the degree to which a person sentenced to life imprisonment has been reformed and the drawing-up of a conclusion shall be carried out with the participation of an authorised probation body.

The procedure and methodology ["the release on parole mechanism"] for determining the degree to which a person sentenced to life imprisonment has been reformed shall be established by the central executive body, which ensures the formation of State policy in the field of the execution of sentences.

The main purpose of submitting a conclusion regarding the degree to which a person sentenced to life imprisonment has been reformed is to provide the court with the information necessary to be able to determine the possibility of commuting his life sentence to a less severe punishment and to determine ... the length of imprisonment of the prisoner in respect of whom this issue is being considered.

13. A person sentenced to life imprisonment – in addition to applying for the commutation of his or her punishment to a less severe punishment in the form of a fixed term of imprisonment – shall submit an individual plan for his or her reform and resocialisation. Such a plan should [i] contain measures whose implementation during the period in which that person serves a less severe punishment in the form of a fixed term of imprisonment would allow him or her to eliminate factors that might adversely affect [his/her] abstention from reoffending, and [ii] list facts indicating the prospects for the reform and resocialisation of the convicted person after release.

The form of an individual plan for reform and resocialisation shall be established by the central executive body that ensures the formation of State policy in the field of the execution of sentences.

The convicted person on whom punishment in the form of a fixed term of imprisonment is imposed by way of commutation to a less severe punishment (and who has the right to parole) shall additionally submit to the court a report on the implementation of the individual reform and resocialisation plan while serving the less severe sentence – including an analysis of the reasons for the success or failure to implement the measures set forth in such a plan."

16. Under the same Act, Article 140 of the Code was supplemented by the provision that those prisoners serving a life sentence (hereinafter "life prisoners") whose punishment had been commuted to a fixed term of imprisonment should be placed in ordinary residential premises in a maximum-security prison (as opposed to cell-type premises).

17. Article 151 of the Code was amended to allow life prisoners to apply for presidential clemency after fifteen years of serving their sentences, and not after twenty years, as had been provided previously.

D. Order no. 294/5 of the Ministry of Justice of 19 January 2023 on the determination of the degree to which a prisoner has been reformed

18. The Order, which entered into force on 2 February 2023, approved the procedure and methodology for determining the degree to which a prisoner has been reformed and for drawing up an individual plan for that prisoner's reform and resocialisation.

19. The procedure applies both to the releasing of a prisoner on parole and to the commuting of a punishment to a less severe one. Under the methodology, when a prisoner applies or is eligible for parole or the commutation of his or her punishment, the degree to which he has been reformed shall be assessed (and points shall be awarded) according to his attitude to: the crime committed by the prisoner, social life, prison rules, work, private (family) life, the consumption of narcotics/alcohol, and making plans for his future life. The overall assessment of the prisoner further includes an assessment of the risk of his reoffending, his progress in respect of the implementation of an individual programme of social educational work, his behaviour while serving his sentence service, and his psychological characteristics. The findings of such an assessment is reflected in the number of points obtained by the prisoners; those who score sixty-one points or more are considered to be "embarked on the path of reform (rehabilitated)" under Articles 81 and 82 of the Criminal Code, and they could be recommended for a change to the punishment imposed on them and the application to that end is lodged with a court.

E. Order no. 957/21269 of the Ministry of Justice of 14 June 2012 on approval of instructions regarding work of units (groups, sectors, senior inspectors) in order to oversee the execution of judgments by prison institutions and pre-trial detention centres

20. By means of Order no. 631/5 of the Ministry of Justice – which was adopted on 17 February 2023 and which entered into force on 3 March 2023 – the Instruction was amended to include details of work to be undertaken by units with prisoners sentenced to life imprisonment, in accordance with amendments introduced in respect of the Code on the Execution of Sentences (see paragraph 15 above).

F. Decision of 17 January 2024 delivered by the Constitutional Court regarding the constitutionality of Article 81 § 3 (3) of the Criminal Code

21. The Constitutional Court examined the constitutional complaint lodged by Mr L., who argued that the newly-introduced system whereby life sentences could be commuted to fixed-term sentences (see paragraph 12 above) was contrary to the Constitution, the Court's case-law and the above-mentioned decision of the Constitutional Court of 16 September 2021 (see paragraph 10 above). The court rejected the complaint as unfounded on the grounds that the complainant simply disagreed with the way in which the legislature regulated the procedure for releasing life prisoners on parole.

G. Decisions delivered by courts of general jurisdiction regarding the commutation of life sentences

22. According to the information provided to the Government Agent by the Department for the Execution of Criminal Sentences of the Ministry of Justice, between 19 January and 1 August 2023 eighteen life prisoners had their life sentence commuted to a fixed term of imprisonment.

III. INTERNATIONAL MATERIAL

23. The relevant texts of the Council of Europe and other international legal texts concerning the imposition and reviewing of life sentences, and the importance to be attached to rehabilitation, are set out in *Kafkaris v. Cyprus* ([GC], no. 21906/04, §§ 68-76, ECHR 2008); *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, §§ 60-67, ECHR 2013 (extracts)); and *Murray v. the Netherlands* ([GC], no. 10511/10, §§ 70-76, 26 April 2016).

24. A summary of, and relevant extracts from, the 25th General Report of the CPT entitled "Situation of life-sentenced prisoners" (CPT/Inf(2016)10-part) can be found in the Court's judgment in the case of *Matiošaitis and Others v. Lithuania* (nos. 22662/13 and 7 others, §§ 114-15, 23 May 2017).

25. The relevant excerpt from the Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 8 to 21 December 2017 (CPT/Inf (2018) 41) read as follows (original emphasis, footnotes omitted):

"5. Life-sentenced prisoners

78. Concerning the regime for life-sentenced prisoners, the situation has remained basically unchanged as the relevant legislation has not been amended despite the CPT's long-standing recommendations. Lifers continued to be segregated from other prisoners and spent up to 23 hours per day in their (usually) double or triple-occupancy cells, with little in terms of organised activities and association (with the exception of occasional work and limited access to the gym, table tennis and the Internet – up to one hour per

day – in Lviv and Ivano-Frankivsk). The situation was particularly difficult for those of the inmates who were accommodated alone in their cells (either on their own request or on security grounds, because they were deemed to represent a danger to their fellow prisoners), whose regime *de facto* amounted to solitary confinement, for years on end.

79. The CPT remains of the view that the regime for life-sentenced prisoners in Ukraine should be fundamentally reviewed, so as to include a structured programme of constructive and preferably out-of-cell activities; social workers and psychologists should be proactive in working with life-sentenced prisoners to encourage them to take part in that programme and attempt to engage them safely with other prisoners for at least a part of each day. There is no justification to systematically segregate life-sentenced prisoners from the rest of prisoner population.

Consequently, **the CPT once again calls upon the Ukrainian authorities to develop the regime for life-sentenced prisoners, in particular by providing more communal activities (including access to work and education). Access to the Internet should be offered to life-sentenced prisoners at Kyiv SIZO.**

The Committee also once again urges the Ukrainian authorities to integrate life-sentenced prisoners into the general prison population as soon as possible following their conviction (taking into account the European Prison Rules and the Committee of Ministers' Recommendation Rec (2003) 23 on the management by prison administrations of a life sentence and other long-term prisoners).

80. Furthermore, in all the establishments accommodating life-sentenced prisoners (except Ivano-Frankivsk SIZO), custodial staff continued to use unmuzzled service dogs inside the lifers' units, when escorting prisoners outside their cells including for outdoor exercise. **The CPT once again calls upon the Ukrainian authorities to stop this dangerous and intimidating practice immediately.**

81. Further, the Committee must recall the basic principle that, in order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee the safety of the outside community, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentence prisoners. This is still not the case at present.

The CPT once again calls upon the Ukrainian authorities to amend the legislation with a view to making conditional release (parole) available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment. Reference is also made here to the CPT's 25th General Report."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained of the fact that contrary to Article 3 of the Convention his life sentence could not be reduced and maintained that the new release on parole mechanism for persons sentenced to life imprisonment did not remedy the situation. Article 3 of the Convention reads as follows:

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

A. Admissibility

27. The Government argued that the new release on parole mechanism was both accessible and effective and that the application should accordingly be rejected as manifestly ill-founded. For the same reason, it could be rejected for being incompatible *ratione personae* with the applicant's loss of victim status. Lastly, the Government submitted that the applicant could have (i) challenged before the domestic courts the finding issued on 1 December 2022 by the above-mentioned commission regarding whether he deserved his sentence to be commuted or (ii) applied directly to those courts for the commutation of his sentence, but had failed to do so; he had thus not exhausted the available domestic remedies.

28. The applicant disputed each of these assertions.

29. The Court notes that the Government's objections and the arguments submitted in reply by the applicant are closely linked to the merits of the application. It therefore joins them to the merits and will examine them in the course of the examination on the merits.

30. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *Arguments of the parties*

(a) The applicant

31. The applicant submitted that prior to the amendments of 18 October 2022 (which came into force on 9 November 2022) his situation had not been different to that examined by the Court in the case of *Petukhov (no. 2)* (cited above), in which it had been established that there was no practical and effective possibility of early release for life prisoners in Ukraine (*ibid.*, §§ 169 to 187). In the applicant's opinion, the same should hold true for the period between 9 November 2022 and 3 March 2023, when the newly adopted release on parole mechanism had not yet become operational.

32. The applicant further maintained that even after the full implementation of the release on parole mechanism, it had not met the requirements of the Court's case-law on the matter. The applicant submitted that the relevant case-law provided that a prisoner serving a life sentence should have a realistic opportunity of release after serving no more than twenty-five years' imprisonment. Under the release on parole mechanism introduced in Ukraine, the minimum period of detention was twenty-six years and three months (corresponding to fifteen years of the original sentence, plus eleven years and three months – which constituted three quarters of the further fixed-term fifteen-year sentence that could be imposed as a result of commutation).

33. The applicant argued that the release on parole mechanism was discriminatory as it did not take into account the situation of those life prisoners who had already served more than fifteen years of their respective sentences by the time the new system had become operational. Thus, in reality, the minimum sentence to be served by many life prisoners would be much longer than twenty-six years and three months, as the majority of persons sentenced to life imprisonment will have served more than fifteen years of their original sentence. The applicant himself had served at the time of the submission of his observations twenty-one years, eight months and four days of his life sentence; if the minimum further sentence of eleven years and three months were to be set for him, he would face a total of thirty-three years of imprisonment. However, under the domestic law the courts could fix a longer term of twenty years after the commutation of his original sentence. Given the life expectancy of those in detention due to poor conditions, the strict regime and a lack of medical assistance, the prospects of release for them remained non-existent. The applicant further submitted that the shortcomings of the new release on parole mechanism had been raised by national and international experts and that the release on parole mechanism introduced by the legislature did not comply with the decision of the Constitutional Court of 16 September 2021 as to the possibility of immediate release for a person convicted to life imprisonment without his or her life sentence being first replaced by a fixed-term sentence (see paragraph 10 above).

34. The applicant further argued that the new system lacked predictability and was discretionary in nature. The methodology employed for assessing the degree to which a prisoner had reformed was confusing and operated with different terminology – “embarked on the path of reform” and “rehabilitated” for those who scored more than 61 points (see paragraph 19 above); moreover, it was not clear why for some prisoners attaining 61 points or more would simply release and for others only a commutation of their sentences. He further pointed to the statistical data according to which of 1,204 life prisoners only sixty-two had scored more than 61 points and only eight had succeeded in obtaining a positive court decision commuting their sentences to fixed terms of imprisonment. In the applicant’s opinion, those figures illustrated a lack of clarity and predictability in respect of this issue.

35. The applicant further submitted that the two-step release on parole mechanism – which involved very long intervals between the two steps – had a negative impact on prisoners who employed it. The applicant pointed to the long timeframe involved – that is, prisoners only became eligible for release fifteen or twenty years after a court had taken into account the progress made towards reform: this led to a situation in which even if the judges found that the prisoner concerned was engaged in a positive dynamic, he was nevertheless confronted with only a very distant and hypothetical prospect of release. The applicant argued that instead of taking advantage of this

favourable moment to construct a strategy for the prisoner's reintegration into society, the system postponed the decision until a distant date, with nothing planned for the intervening period. Thus, rather than creating a tangible hope of release, this initial decision simply sent the prisoner back to serving a sentence of such a length that any plans for release were completely unrealistic.

36. The applicant considered that the process of assessment conducted by prison authorities was completely arbitrary as they were not required to justify their assessment, and the person concerned had no involvement and did not have an opportunity to comment on it.

37. The applicant also indicated that prison conditions were not conducive to the possibility of rehabilitation, and the prison authorities did not provide the conditions that could help detainees to demonstrate good behaviour and positive attitude to work that are criteria taken into account when assessing the reformation of prisoners.

38. He noted that although a prisoner could seek presidential clemency after serving fifteen years of a life sentence under the amended Law (see paragraph 16 above), the process for seeking presidential clemency remained the same as before, and the Court's findings in the *Petukhov (no. 2)* judgment (cited above) concerning its ineffectiveness were equally pertinent to the present case.

39. The applicant considered that he could still claim to be a victim of a violation of his rights (as guaranteed by Article 3 of the Convention), as the new system did not comply with the requirements of the above-mentioned Article.

40. Lastly, the applicant submitted that the Government had accused him of not informing the Court of the finding issued on 1 December 2022 by the above-mentioned commission (see paragraph 8 above). However, he pointed out that that finding had been approved only in January 2023; he suggested that the text of the assessment had been drawn up retrospectively. He also denied having been served with the finding in December 2022 and maintained that he had first read it in mid-August 2023. He saw in the Government's actions a violation of Article 34 of the Convention, as in his opinion the Government had attempted to deprive him of the right to have his case examined by the Court. The authorities' failure to acquaint him in a timely fashion with the contents of the commission's above-mentioned finding, the falsification of the documents by the Government and the ineffectiveness of the new release on parole mechanism had also constituted reasons for the applicant not applying to the domestic courts for the commutation of his sentence.

(b) The Government

41. The Government submitted that the new system by which a life sentence could be commuted to a fixed-term sentence (with the additional

possibility of early release) corresponded to the requirements established by the Court's case-law; furthermore, the Government argued, the minimal total duration of twenty-six years and three months could be considered acceptable. They referred in particular to the Court's judgment in the case of *Bodein v. France* (no. 40014/10, §§ 53 to 62, 13 November 2014), in which the possibility of a review of the applicant's life sentence twenty-six years after his conviction had been found to be acceptable. The Government stressed that Ukrainian law clearly prescribed the procedure to be followed in respect of the commutation of a punishment with a relatively low threshold of the term of service of punishment in order for a prisoner to apply for the commutation of his sentence of life imprisonment to a fixed term of imprisonment.

42. The Government also noted that the possibility to seek presidential clemency had not been annulled by the adoption of the legislative changes of 18 October 2022. Rather, the relevant legal provisions had been expanded to provide an alternative means of securing such a commutation; this had had a positive effect on the national legislation.

43. As to the applicant's allegations that the new procedure was ineffective, the Government maintained that the applicant had failed to inform the Court of his assessment by the prison commission in December 2022 (see paragraph 8 above). They submitted that rendering the new procedure fully operational had taken a certain amount of time as the secondary legislation had had to be amended accordingly, but that even prior to that the commission had assessed the applicant and had concluded that he had not scored enough points to be considered eligible to apply to a court for his sentence to be commuted to a less severe one. The Government referred to the fact that several persons had used the new release on parole mechanism effectively and that their terms of life imprisonment had been commuted to fixed terms of imprisonment. According to the Government, the absence of a positive outcome did not necessarily mean that the Convention had been violated; it had been open to the applicant to lodge an application for a domestic court to assess the material collected and produced by the commission and to apply directly to that court for the commutation of his life imprisonment. However, he had not followed that path.

44. The Government further submitted that, although the Amendment Act of 18 October 2022 had come into force on 6 November 2022, the release on parole mechanism had only become fully operational on 19 January 2023, when the implementing Order of the Ministry of Justice (see paragraph 19 above) had been adopted. From that date the applicant had no longer been able to complain that his life sentence could not be reviewed.

45. The Government accordingly concluded that there had been no violation of any of those of the applicant's rights that were guaranteed by the Convention.

2. *Appreciation of the Court*

(a) **Relevant principles concerning life sentences and rehabilitation and the prospect of release for life prisoners**

46. It is well established in the Court's case-law that the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention, provided that it is not grossly disproportionate. However, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3. A life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is *de jure* and *de facto* reducible. A life sentence can remain compatible with Article 3 of the Convention only if there is both a prospect of release and a possibility of review – both of which must exist from the date of the imposition of the sentence (see *Murray v. the Netherlands* [GC], no. 10511/10, § 99, 26 April 2016, with further references).

47. A prisoner cannot be detained unless there are legitimate penological grounds for incarceration, which include punishment, deterrence, public protection and rehabilitation. While many of these grounds will be present at the time a life sentence is imposed, the balance between these justifications for detention is not necessarily static and might shift in the course of the execution of the sentence. It is only by carrying out a review of the justification for continued detention at an appropriate point in the sentence, that these factors or shifts can be properly evaluated. The review required in order for a life sentence to be reducible should therefore allow the domestic authorities to consider whether, in the course of the sentence, any changes in the life prisoner and progress towards his or her rehabilitation are of such significance that continued detention is no longer justified on legitimate penological grounds. This assessment must be based on rules having a sufficient degree of clarity and certainty and the conditions laid down in domestic legislation must reflect the conditions set out in the Court's case-law. Thus, the assessment must be based on objective, pre-established criteria. The prisoner's right to a review entails an actual assessment of the relevant information, and the review must also be surrounded by sufficient procedural guarantees. To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided, and this should be safeguarded by access to judicial review. Lastly, in assessing whether the life sentence is reducible *de facto* it may be of relevance to take account of statistical information on previous use of the review mechanism in question (*ibid.*, § 100, with further references).

48. Furthermore, the review required in order for a life sentence to be reducible should permit the authorities to assess any changes in the life prisoner and any progress towards rehabilitation made by him or her. It would

be incompatible with human dignity – which lies at the very essence of the Convention system – forcefully to deprive a person of his freedom without striving towards his rehabilitation and providing him with the chance to regain that freedom at some future date. Notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court’s case-law presupposes that convicted persons, including life prisoners, should be allowed to rehabilitate themselves. A life prisoner must be realistically enabled, to the extent possible within the constraints of the prison context, to make such progress towards rehabilitation that it offers him or her the hope of one day being eligible for parole or conditional release. This could be achieved, for example, by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life (*ibid.*, §§ 100 to 103, with further references).

49. Although States are not responsible for achieving the rehabilitation of life prisoners, they nevertheless have a duty to make it possible for such prisoners to rehabilitate themselves. Were it otherwise, a life prisoner could in effect be denied the possibility of rehabilitation, with the consequence that the review required for a life sentence to be reducible, in which a life prisoner’s progress towards rehabilitation is to be assessed, might never be genuinely capable of leading to the commutation, remission or termination of the life sentence or to the conditional release of the prisoner. In this connection the Court reiterates the principle – well established in its case-law – that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective. The obligation to offer a possibility of rehabilitation is to be seen as an obligation of means, not one of result (*ibid.*, § 104, with further references).

50. The Court has previously held that a State’s choice of criminal-justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision carried out by the Court (see *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 250, ECHR 2014 (extracts)).

(b) Application of those principles in the present case

51. The Court considers that it should first answer the question regarding whether the above-mentioned legislative reform rendered life sentences in Ukraine *de jure* and *de facto* reducible, in line with the requirements of Article 3 of the Convention (see paragraphs 46 to 49 above).

52. The Court notes that the amendments inserted into the criminal legislation a mechanism under which, after serving fifteen years of their original sentence, persons sentenced to life imprisonment could expect their sentence to be commuted to a fixed term of imprisonment that could further be reduced. The requirements to be met by prisoners in order for them to be eligible for such commutation and the procedure for the assessment of their

reformation are set forth in the Code on the Execution of Sentences (see paragraph 15 above) and are further detailed in the legal instruments issued by the Ministry of Justice (see paragraphs 18 to 20 above).

53. In view of the fact that the States are in principle free to choose their own criminal-justice systems and while the introduced release on parole mechanism does not foresee the possibility of direct release from life imprisonment apart from through the commutation thereof by means of a court decision, such an approach to the possibility of reducing life sentences has been examined by the Court before and was found to be satisfactory (see *Dardanskis and Others v. Lithuania* (dec.), nos. 74452/13 and 15 others, § 26, 18 June 2019).

54. It appears from the relevant legislation that a life prisoner can expect his life imprisonment to be commuted to a further fifteen to twenty years of imprisonment as early as the point at which that prisoner has served fifteen years of the original sentence (calculated furthermore from the start of the prisoner's pre-trial detention and not from the date of imposition of a life sentence like in *Bodein v. France* (cited above, § 61)). It already provides the prisoner with the hope that in the event that he has engaged in good behaviour and shown signs of resocialisation, his or her original life sentence will be downgraded in practice to a fixed term of imprisonment of thirty years. Furthermore, if the prisoner remains on the path of reform, he or she can expect to be released after serving twenty-six years and three months of his or her original sentence (compare, *ibid.*). In the Court's opinion such a system provides a life prisoner with a sufficiently defined procedure that offers a clear timeframe and indicates an attempt to achieve a proper balance between the interests of the person concerned and the society to which he or she strives to return.

55. As to the applicant's contention that confusion may arise from the fact that the assessment of a prisoner's suitability for a reduction in his sentence is made according to the same criteria used to assess suitability for release on parole (see paragraph 34 above), the Court notes that that system allows for a uniformity of approach to the assessment of prisoners' rehabilitation and reformation. When considered in conjunction with the relevant provisions of the Criminal Code and the Code on the Execution of Sentences (see paragraphs 12 and 15 above), it appears clear that each assessment is conducted in order to determine whether the prisoner in question is ready for the commutation of his sentence or for early release – but not for both at the same time. Depending on the expected outcome, the two types of assessment can be arguably said to be focused on different questions: – namely, (i) the progress that a prisoner has made in reforming (which can lead to a commutation of his or her sentence), and (ii) the degree of a prisoner's rehabilitation (which can lead to early release). A commission convened within a prison is not qualified (or indeed cannot be called on at that stage) to assess the suitability of a life prisoner for early release: the purpose of such

an assessment is purely to determine the degree of rehabilitation that a life prisoner has achieved for the purpose of deciding whether to commute that prisoner's life sentence to a fixed term of imprisonment – it is *not* to determine whether that prisoner has earned the right to an immediate early release. Therefore, it cannot be said that the contested methodology is confusing, misleading or insufficiently clear.

56. The Court further notes that the provisions of Article 154 § 12 of the Code on the Execution of Sentences (see paragraph 15 above) state that the ultimate decision in all assessments of life prisoners' suitability for a reduction in their sentence is taken by the domestic courts, which have jurisdiction to review in court proceedings any findings reached by prisons and to assess all material contained in a prisoner's prison file. Such decisions are taken by three judges, with the participation of the prisoner in question and his or her lawyer (see paragraph 14 above).

57. Lastly, the Court notes that the State has not overlooked the need for life prisoners to undergo continuous rehabilitation (including the application to them of enhanced social-rehabilitation measures) – even after a life sentence has been changed to a fixed-term sentence, with a view to possible release on parole and eventual reintegration into society (see paragraphs 15, 18 and 19 above; also see *Harakchiev and Tolumov*, cited above, § 245 *in fine*). The Court also considers this measure to be in conformity with the requirements set out by Article 3 of the Convention. It has already emphasised the States' duty to make it possible for life prisoners to rehabilitate themselves (see *Murray*, cited above, § 104) and can only reiterate once again the importance of providing life prisoners with appropriate means and conditions for such rehabilitation (see paragraph 25 above).

58. In the light of the above-noted considerations and the fact that some life prisoners have succeeded in securing the commutation of their life sentence to a fixed-term sentence (see paragraph 22 above), it could not be said that the system is not efficient in theory or in practice.

59. As to the date from which the release on parole mechanism should be considered fully operational, the parties have agreed that the relevant primary legislation (even after its entry into force) has not proved to be sufficient and that the secondary legislation had to be awaited. They disagree, however, regarding the date on which the relevant legal instruments rendered the system fully operational. According to the Government, it was the date of the issuance of Order no. 294/5 of the Ministry of Justice – namely, 19 January 2023 (see paragraphs 18 and 44 above); according to the applicant it was 3 March 2023, when the relevant instructions for prisons were updated and the amending Order no. 631/5 of the Ministry of Justice entered into force to that end (see paragraphs 20 and 31 above). The Court in its turn cannot accept the date proposed by the Government, as the Order of 19 January 2023 had not been published and entered into effect by that date; rather, it was

published and came into force only on 2 February 2023 (see paragraph 17 above). Furthermore, given that the domestic authorities themselves considered that it was further necessary to amend the instruction to prison personnel concerning the assessment of the degree to which life prisoners had been reformed, the Court considers that the release on parole mechanism only became fully operational on 3 March 2023.

60. The Court considers that during the period between the applicant's final sentencing to life imprisonment (on 2 October 2003) and the date on which the new release on parole mechanism became fully operational (3 March 2023) the applicant found himself in a situation of uncertainty, and there was a lack of any clear and realistic prospects of early release – in violation of Article 3 of the Convention (see *Petukhov*, cited above, §§ 169-87). In the light of these findings the Court does not see any necessity to enter into an assessment of other complaints or allegations made by the parties with respect to the events and decisions that took place prior to 3 March 2023, including those which concerned admissibility (see paragraphs 27 and 28 above). The same holds true as regards the applicant's allegations that he could not benefit (and could not have benefitted) from the minimum duration offered by the new system as he had already served more than fifteen years of his sentence, given the fact that his detention was in breach of Article 3 of the Convention, regardless of its length.

61. The Court further considers that after 3 March 2023 the newly established release on parole mechanism offered the applicant the realistic opportunity to have his life sentence reviewed within the above-noted well-defined timeframe and under clear conditions. Thus, there was no violation of Article 3 of the Convention after that date.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government considers that claim to be unsubstantiated.

65. The Court notes that in cases in which a similar breach of Article 3 has been found concerning the possibility of reducing a life sentence it has considered that the finding of a violation constituted sufficient just satisfaction (see *Petukhov v. Ukraine (no. 2)*, cited above, § 201). It sees no

reason to depart from that practice as regards the instant case and considers that the finding of a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage caused to the applicant.

B. Costs and expenses

66. The applicant also claimed EUR 3,975 for the costs and expenses incurred before the Court.

67. The Government considers the claimed amount to be excessive and unsubstantiated.

68. 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, the Court notes that the applicant received EUR 850 towards his legal expenses under the legal-aid scheme. Regard being had to the documents in its possession and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 3,125 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant. This amount is to be transferred directly into the account of the applicant's lawyer, Mr Tarakhkalo.¹

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the period of the applicant's detention between 2 October 2003 and 3 March 2023;
3. *Holds* that there has been no violation of Article 3 of the Convention for the period after 3 March 2023;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, 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 3,125 (three thousand one

¹ Rectified on 7 November 2024: the sentence "*This amount is to be transferred directly into the account of the applicant's lawyer, Mr Tarakhkalo.*" was added.

hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the account of the applicant's lawyer Mr Tarakhkalo¹;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-noted 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President

¹ Rectified on 7 November 2024: the phrase “, to be transferred directly to the account of the applicant's lawyer Mr Tarakhkalo” was added.