



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

FOURTH SECTION

CASE OF F.B. AND OTHERS v. THE NETHERLANDS

*(Applications nos. 28157/18 and 6 others –
see appended list)*

JUDGMENT

Art 3 (substantive) • Inhuman or degrading punishment • Life sentences reducible *de jure* under the new mandatory *ex officio* mechanism of executive review of life-sentences after twenty-eight years of detention in compliance with Art 3 • Review mechanism enabled the applicants to know what they must do to be considered for release and the conditions of review of their sentence • Review system involved reasoned decision-making by the executive combined with the possibility of judicial review • Sufficient procedural guarantees • Post-2017 statistical data did not show lack of reducibility of life-sentences in practice, that a life prisoner had negligible prospects of release or that pardon would always be an isolated exception • Review criteria publicly accessible, objective, sufficiently clear and adequately reflected the legitimate penological grounds as recognised in the Court's case-law • Applicants' life sentences will all be reviewed no later than twenty-five years after their imposition by the relevant appellate criminal court • Applicable time frame for review within the respondent State's margin of appreciation and did not exceed any thresholds identified in the Court's case-law • Applicants' life sentences could not be regarded as *de jure* or *de facto* irreducible given their individual circumstances • Circumstances in

which life-sentence prisoners might seek release, with reference to the legitimate penological grounds for detention, could be further specified through procedural refinement, domestic case-law and practice

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 April 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of F.B. and Others v. the Netherlands,

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

Lado Chanturia, *President*,

Jolien Schukking,

Lorraine Schembri Orland,

Anja Seibert-Fohr,

Anne Louise Bormann,

Sebastian Rădulețu,

András Jakab, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 28157/18 and six others) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by one Azerbaijani national, one Moroccan national and five Dutch nationals listed in the appended table (“the applicants”), on the dates indicated in that table;

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

the decision to grant one of the applicants (in application no. 28157/18) anonymity, in accordance with Rule 47 § 4 of the Rules of Court;

the decision of 7 November 2024 to re-communicate the case and invite the parties to submit further observations;

the parties’ observations;

the fact that the Azerbaijani Government did not express a wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

Having deliberated in private on 24 March 2026,

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

INTRODUCTION

1. The applicants complained that Dutch legislation and practice made their life sentences *de jure* and *de facto* irreducible, contrary to Article 3 of the Convention.

THE FACTS

2. The applicants’ details are set out in the appended table.

3. The Government were represented by their Agent, Mrs B. Koopman, of the Ministry of Foreign Affairs.

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

DOMESTIC PROCEEDINGS

A. Mr F.B. (application no. 28157/18)

5. The applicant was arrested on 20 May 2011. He has been in custody since then.

6. On 11 October 2012 the Dordrecht Regional Court convicted the applicant of three counts of murder, manslaughter, attempted manslaughter and illegal possession of a firearm. He was sentenced to life imprisonment.

7. On 8 November 2012 the applicant lodged an appeal against the judgment of the Regional Court in relation to the convictions for murder and illegal possession of a firearm.

8. On 19 January 2015 the Court of Appeal of The Hague convicted the applicant of three counts of murder and illegal possession of a firearm (ECLI:NL:GHDHA:2015:37). He was sentenced to life imprisonment. Like the first-instance court, the Court of Appeal did not consider this incompatible with Article 3 of the Convention because life-sentence prisoners had been granted a pardon in 1986 and 2009 and the civil courts could rule on the lawfulness of the execution or continued execution of the sentence. It was thus possible for the length of a life sentence to be reviewed at some point.

9. On 19 January 2015 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention.

10. On 24 May 2016 the Advocate-General at the Supreme Court delivered an initial advisory opinion indicating that the manner in which life sentences were executed at that time was incompatible with Article 3 of the Convention (ECLI:NL:PHR:2016:406).

11. On 5 July 2016 the Supreme Court gave an interlocutory judgment in the applicant's case (ECLI:NL:HR:2016:1325). Referring to the relevant principles as set out in *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, §§ 104-122, ECHR 2013 (extracts)) and *Murray v. the Netherlands* ([GC], no. 10511/10, §§ 99-112, 26 April 2016), it held that the imposition of a life sentence was incompatible with Article 3 of the Convention:

“3.4. Dutch law (as yet) has no specific possibility of review of life imprisonment. Partly in view of what has been mentioned in the Advocate-General's opinion ..., the Supreme Court considers that the current practice of execution [of a life sentence] is incompatible with the requirements of Article 3 of the Convention. The imposition of a life sentence will constitute a violation of Article 3 of the Convention [where] this practice has not changed so that a person sentenced to life imprisonment has a real possibility of review of the sentence ... which may lead to a reduction of the sentence or (conditional) release.

3.5. The incompatibility with Article 3 of the Convention will cease if provision is made for the possibility of review of a life sentence ... (cf. also [*Čačko v. Slovakia*, no. 49905/08, 22 July 2014]).

On 2 June 2016 the Deputy Minister of Security and Justice sent a letter to the Lower House of Parliament, outlining intended changes to the execution of a life sentence (Parliamentary Papers II 2015/16, 29 279, no. 325). As a result of this letter, it can be assumed that further political decision-making will take place ...

3.6. It should be noted that ... even if at the time of the imposition of a life sentence the procedure of review fulfils the applicable conditions, the question of how [that procedure] relates to the requirements arising from Article 3 of the Convention may arise during the execution [of a life sentence].

For example, the possibility of review during execution must continue to meet the above-mentioned conditions, and during execution – and also before the above-mentioned possibility of review can be used – the sentenced person must be able to prepare for a possible return to society.

The assessment of the manner of execution will have to take place during the execution, and the lawfulness of the (continued) execution of that sentence may be assessed in accordance with the provisions of the Prisons Act [designated] for that purpose, or in the context of civil proceedings.”

12. The Supreme Court adjourned further consideration of the case until 5 September 2017.

13. On 5 September 2017 the Advocate-General delivered a supplementary advisory opinion (ECLI:NL:PHR:2017:874). The Advocate-General retracted the earlier opinion (see paragraph 10 above) and recommended that the appeal on points of law be dismissed because a real possibility of review of a life sentence had been introduced in the meantime, following the entry into force of the Advisory Board Life-Sentence Prisoners Decree (*Besluit Adviescollege levenslanggestraften* – “the Advisory Board Decree”) and other implementing legislation (see paragraphs 69-80 below).

14. On 19 December 2017 the Supreme Court gave its final judgment in the applicant’s case (ECLI:NL:HR:2017:3185). It held that as a result of the entry into force of the Advisory Board Decree and other implementing legislation, Dutch law now had in place a review mechanism that allowed for the reduction of life sentences in appropriate cases, which meant that the imposition of a life sentence was not in itself incompatible with Article 3 of the Convention:

“3.5.2. On the basis of case-law of the European Court of Human Rights, the point of departure is that the (first) review takes place no more than 25 years after the imposition of a life sentence, and that the possibility of review is offered periodically thereafter. It is not incompatible with this that Article 4 ... of the Advisory Board Decree provides that the *ex officio* assessment [by the responsible Minister] of the possibility of a pardon [under section 19 of the Pardons Act] takes place no later than 27 years after the start of detention, taking into account that, in accordance with Article 1 point g. of the Decree, this period starts from the moment [a person is taken into] police custody or [held in] pre-trial detention for the offence for which the life sentence has been imposed [a footnote refers to *Bodein v. France*, no. 40014/10, § 61, 13 November 2014]. Furthermore, on the basis of the Pardons Act, the convicted person is entitled to submit an application for a pardon at any time. If a request for pardon in respect of a life sentence is submitted after the above-mentioned 27-year period, the Advisory Board is charged with the task of informing the Minister on the progress of

resocialisation and reintegration activities [a footnote refers to the opening words and points b. and d. of Article 4 § 1 of the Advisory Board Decree].

3.5.3. In view of the requirements of Article 3 of the Convention, the question during review must be whether such changes on the part of the convicted person have taken place and [whether] such progress has been made in his or her resocialisation that continued execution of the life sentence is no longer justified. The general yardstick applied ... under section 2(b) of the Pardons Act is whether it has become plausible that the execution of the court decision or its continuation does not reasonably serve an objective to be pursued with the application of criminal law. With a view to applying this criterion, it is important to note that in the review procedure ..., the decision on pardon is inextricably linked to the advice given by the Advisory Board concerning the provision of reintegration activities, and this advice can be regarded as ‘the preliminary stage of the pardon procedure’.

The criteria applied by the Advisory Board, as included in Article 4 § 4 of the Decree, are therefore also important for the decision concerning the granting of a pardon. Accordingly, the *ex officio* assessment of the possibility of granting a pardon or the assessment of a request for a pardon submitted after [that *ex officio* assessment] boils down to the question of whether, in view of the behaviour and development of the convicted person during his detention, and taking into account the other criteria mentioned in Article 4 § 4 of the Decree, continued execution of the life sentence is no longer justified. Because of this connection between the yardstick applicable in the pardon procedure on the one hand, and the advice given by the Advisory Board on the other, Article 4 § 4 of the Decree also provides the convicted person with sufficient insight into the objective criteria that are applied ... in the review procedure [a footnote refers to *Hutchinson v. the United Kingdom* [GC], no. 57592/08, §§ 59-65, 17 January 2017, and *Matiošaitis and Others v. Lithuania*, nos. 22662/13 and 7 others, § 168, 23 May 2017].

3.5.4. With regard to the procedural guarantees in connection with the *ex officio* assessment of the possibility of a pardon or the assessment of a pardon request, the following is important.

After advice has been given by the Advisory Board, the Minister takes a decision on whether or not to offer reintegration activities under Article 7 of the Decree. The Minister can only deviate from the Advisory Board’s advice to offer those activities by giving reasons [a footnote refers to Article 7 § 2 of the Advisory Board Decree]. If the course of the procedure or (the reasoning in) the Minister’s decision gives cause to do so, the convicted person can challenge that decision in proceedings before [a] civil court.

The Pardons Act has no time-limit within which a decision on whether or not to grant a pardon must be taken. However, if the decision ... is not taken within a reasonable period of time, the civil court may, at the convicted person’s request, order that that decision be taken within a period of time set for that purpose.

Furthermore, the Pardons Act does not provide for an appeal against a (negative) decision regarding the granting of a pardon. However ..., the convicted person can appeal to the civil court in connection with that decision. The latter can assess whether the negative decision on the granting of a pardon is unlawful in the light of the requirements set by Article 3 of the Convention. This assessment focuses in particular on the reasons given for the decision. If a request for a pardon is rejected, this obligation to state reasons is based on section 18(2) of the Pardons Act. A similar obligation to state reasons must be assumed, in the light of the case-law of the European Court of Human Rights [a footnote refers to *Matiošaitis and Others*, cited above, § 181], if the

ex officio assessment referred to in Article 4 § 3 of the Decree does not lead to the granting of a pardon. Proper reasoning in the negative decision to grant a pardon is particularly important if it deviates from the opinion of the court that imposed the sentence, since this opinion is, as confirmed in the parliamentary documents, leading (*leidend*) in principle as regards taking the decision to grant a pardon.

3.5.5. Within the framework of the execution of the life sentence, in accordance with the requirements of Article 3 of the Convention, before the expiry of the 25-year period referred to in [Article 4 of the Advisory Board Decree], the sentenced person should be offered activities – including work, education and behavioural interventions – that enable him [or her] to develop during the period of imprisonment, as well as to gain insight into the relevant and necessary development opportunities, for the benefit of a possible return to society and with a view to advising and deciding on the offer of reintegration activities after the end of that period. The [Advisory Board Decree and other implementing legislation] do not exclude [the possibility] that such activities are offered, and it is also important that, in connection with the convicted person being provided with appropriate (medical) treatment and (psychiatric) care, a behavioural expert report is drawn up in the year after the life sentence has become irrevocable.

The Prisons Act provides for the right of (complaint and) appeal against decisions related to [a] detention and reintegration plan and the activities to be included therein, even before the end of the above-mentioned 25-year term, and [against] decisions regarding the granting of reintegration leave. The question of whether detention in an individual case complies with the requirements of Article 3 of the Convention is addressed in this post-sentencing judicial process.

3.6. In view of the content of the [Advisory Board Decree and other implementing legislation], and taking into account what has been considered under [paragraph] 3.5 with regard to the assessment possibilities of the civil judge and the post-sentencing judge in the phase of execution, the Supreme Court is of the opinion that Dutch law now provides for a system of review on the basis of which, in appropriate cases, a life sentence may be reduced, so that the imposition of a life sentence is not in itself contrary to Article 3 of the Convention ... [I]f at any time it should be established that a life sentence is never reduced in practice, even under the new system of review, this will certainly be a significant factor in determining whether the imposition or continued execution [of such a sentence] is compatible with Article 3 of the Convention. However, that question is not currently under discussion.”

15. In the light of the above, the Supreme Court dismissed the applicant’s appeal on points of law, as a result of which the Court of Appeal’s judgment of 19 January 2015 (see paragraph 8 above) became final.

B. Mr Remmers (application no. 55483/19)

16. The applicant was arrested and detained in Morocco in 2007. On 22 January 2008 he was extradited to the Netherlands to be prosecuted in the context of the “Passage” investigation, which concerned eleven defendants accused of involvement in one or more murders (see also paragraphs 24 and 34 below). He has been in custody in the Netherlands since then.

17. On 29 January 2013 the Amsterdam Regional Court convicted the applicant of complicity in soliciting murder, multiple counts of complicity in

attempted murder, multiple counts of complicity in murder, and participation in a criminal organisation. He was sentenced to life imprisonment.

18. On 8 February 2013 the applicant lodged an appeal against the judgment of the Regional Court.

19. On 29 June 2017 the Amsterdam Court of Appeal convicted the applicant of complicity in soliciting murder, multiple counts of complicity in murder, two counts of complicity in attempted murder, being an accessory to murder, and participation in a criminal organisation (ECLI:NL:GHAMS:2017:2497). He was sentenced to life imprisonment. The court found no grounds to rule that the applicable time frame and review criteria in the pardon procedure were unforeseeable or otherwise incompatible with Article 3 of the Convention. The applicant could realistically expect that the execution of a life sentence offered a prospect of rehabilitation in accordance with the requirements of the Convention, and adequate safeguards were in place for the development of reintegration activities which ensured that the results of these activities would be of substantive importance in the review of the continued execution of the sentence. As a final observation, the court noted that its conclusion was without prejudice to the future application of the review procedure, which had been in force for only a very limited amount of time.

20. On 18 December 2017 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention.

21. On 18 December 2018 the Advocate-General at the Supreme Court recommended that the applicant's appeal on points of law be dismissed (ECLI:NL:PHR:2018:1389). It was not considered unreasonable for admission to the reintegration phase to depend on the development of the prisoner in question. During the first twenty-five years of their imprisonment, life-sentence prisoners worked on their personal development, as well as on restoration *vis-à-vis* their networks, victims (and/or victims' next of kin) and/or society as a whole, and by doing so, they could show that the continued execution of the sentence no longer served any legitimate purpose. Moreover, social rehabilitation activities were set out in a personalised sentence plan, which offered opportunities to have the first part of the life sentence proceed in accordance with the "progression principle" prescribed by the Court. Life-sentence prisoners could be granted incidental leave, and life-sentence prisoners admitted to the reintegration phase could be granted reintegration leave; a denial of leave could be challenged in court. It remained to be seen whether a two-year period was sufficient in practice to pursue reintegration activities leading to a pardon, and the review and leave conditions as laid down in domestic legislation and case-law were deemed to be sufficiently clear and objective.

22. On 23 April 2019 the Supreme Court held that the applicant's life sentence was not incompatible with Article 3 of the Convention (ECLI:NL:HR:2019:600). Its reasoning included the following:

“10.3.1. In view of [the entry into force of the Advisory Board Decree and other implementing legislation and the judgment of the Supreme Court of 19 December 2017 (see paragraph 14 above)], the complaint on points of law fails in so far as it argues that the imposition of a life sentence violates Article 3 of the Convention. Dutch law provides for a system of review on the basis of which, in appropriate cases, a life sentence may be reduced, [therefore] the imposition of a life sentence is not contrary to Article 3 of the Convention.

Contrary to what the complaint on points of law alleges, it cannot be said that it is insufficiently clear to the defendant what criteria are applied in this review procedure. After all, in the *ex officio* assessment of the possibility of a pardon or the assessment of a request for a pardon submitted after [that *ex officio* assessment], the question is whether, in view of the behaviour and development of the convicted person during his [or her] detention, and taking into account the other criteria mentioned in Article 4 § 4 of the Advisory Board Decree, including the risk of reoffending (*recidiverisico*) and the risk of offending (*delictgevaarlijkheid*), continued execution of the life sentence is no longer justified.

The complaint that it is uncertain whether the accused [will be] offered sufficient rehabilitation-oriented activities during his detention to be eligible for a reduction of [his] life sentence in the above-mentioned review, and [that this is] therefore in violation of Article 3 of the Convention, also fails. The fact that decisions on the provision of activities are only taken during the execution of a life sentence and that, to that extent, when the sentence is imposed it is to some degree uncertain what form such provision will take, does not entail that the imposition of a life sentence violates Article 3 of the Convention. The mere circumstance that in the first phases of execution these activities focus in particular on resocialisation, and that reintegration activities aimed specifically at a return to society, including leave, are included only after a positive decision by the Advisory Board, does not alter this.

10.3.2. ... The manner in which the new review system will be applied in practice – both in general, and specifically with regard to the execution of the sentence imposed on the defendant – [will become clear] in the future. However, the inevitable uncertainties arising from that reality do not deprive the imposition of a life sentence of its compatibility with Article 3 of the Convention, in particular ... because every person sentenced to life imprisonment can submit [his or her views] on the actual manner of execution of his [or her] sentence to the post-sentencing and civil courts. [Those courts] ensure that such execution is in accordance with the guarantees arising from Article 3 of the Convention, including as regards the review of the continued execution of the sentence and the activities to be offered to the sentenced person in connection with that review.

Lastly, it is important to note that if at any point it is established that, in practice, life sentences are never reduced, even under the new review system, this circumstance will certainly be a significant factor in answering the questions that will arise concerning the compatibility with Article 3 of the Convention of the imposition of a life sentence in new cases on the one hand, and continued execution in cases where a life sentence has already been imposed on the other hand. However, those questions are not currently at issue.”

23. In view of the above, the Supreme Court dismissed the applicant's appeal on points of law, as a result of which the Court of Appeal's judgment of 29 June 2017 (see paragraph 19 above) became final.

C. Mr Soerel (application no. 55021/19)

24. The applicant was arrested on 21 September 2010 in the context of the "Passage" investigation (see paragraph 16 above). He was detained on remand until 12 April 2012.

25. On 29 January 2013 the Amsterdam Regional Court convicted the applicant of possession of a forged or falsified travel document and money laundering. The court sentenced him to six months' imprisonment.

26. On 25 February 2013 the Public Prosecution Service lodged an appeal against the judgment of the Regional Court.

27. On 29 June 2015 the applicant was detained pending the proceedings on appeal. He has been in custody since then.

28. On 29 June 2017 the Amsterdam Court of Appeal convicted the applicant of two counts of complicity in soliciting murder, participation in a criminal organisation and multiple counts of possession of a forged or falsified travel document (ECLI:NL:GHAMS:2017:2496). The court sentenced him to life imprisonment (for its reasoning on the compatibility of a life sentence with Article 3 of the Convention, see paragraph 19 above).

29. On 2 July 2018 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention.

30. On 18 December 2018 the Advocate-General at the Supreme Court recommended that the applicant's appeal on points of law be dismissed (ECLI:NL:PHR:2018:1390). Referring to the judgment of the Supreme Court of 19 December 2017 (see paragraph 14 above), the Advocate-General considered that the existing legal conditions and criteria for review of a life sentence were objective, foreseeable and fixed in advance, and that further application of the new review mechanism would be a significant factor in determining whether it continued to offer, in practice, a realistic prospect of release as required under Article 3 of the Convention.

31. On 23 April 2019 the Supreme Court dismissed the applicant's appeal on points of law (ECLI:NL:HR:2019:601 – for its reasoning on the compatibility of a life sentence with Article 3 of the Convention, see paragraph 22 above), as a result of which the Court of Appeal's judgment of 29 June 2017 (see paragraph 28 above) became final.

D. Mr Rasnabe (application no. 56209/19)

32. The applicant is a Moroccan national and held a Dutch residence permit from 12 June 1981 to 21 April 2022. On the latter date the responsible

Deputy Minister revoked the applicant's residence permit with retroactive effect from 1 April 1993, issued a return decision with immediate effect, and imposed a ten-year entry ban. The applicant did not lodge an objection against that decision.

33. On 22 June 2006 the applicant was arrested and detained in Spain under a European Arrest Warrant which had been issued by the Dutch authorities in respect of a conviction in 2004 for drugs-related offences. Following his transfer to the Netherlands, the applicant remained in custody in execution of his sentence from 14 August 2006 until 30 October 2007 and from 13 November 2007 until 19 February 2008.

34. Meanwhile, on 30 October 2007 the applicant was arrested on murder charges in the context of the "Passage" investigation (see paragraph 16 above). In this connection, the applicant was in custody from 30 October 2007 until 12 November 2007 and has been in custody since 19 February 2008.

35. On 29 January 2013 the Amsterdam Regional Court convicted the applicant of multiple counts of complicity in murder, and complicity in attempted murder. He was sentenced to life imprisonment.

36. On 30 January 2013 the applicant lodged an appeal against the judgment of the Regional Court.

37. On 29 June 2017 the Amsterdam Court of Appeal convicted the applicant of multiple counts of complicity in murder, being an accessory to murder and complicity in attempted murder (ECLI:NL:GHAMS:2017:2618). The court sentenced him to life imprisonment (for its reasoning on the compatibility of a life sentence with Article 3 of the Convention, see paragraph 19 above).

38. On 15 December 2017 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention, also in the light of his status as foreign national without a residence permit. The applicant alleged that his status prevented him from pursuing social rehabilitation and reintegration activities aimed at a return to society.

39. On 18 December 2018 the Advocate-General at the Supreme Court recommended that the applicant's appeal on points of law be dismissed (ECLI:NL:PHR:2018:1386 – for the Advocate-General's reasoning on the compatibility of a life sentence with Article 3 of the Convention, see paragraphs 21 and 30 above). The applicant's status as a foreign national without a residence permit did not lead to a different conclusion. In this connection, the Advocate-General noted that rehabilitation activities did not relate to a return to society, and that the applicant could be offered tailor-made (*maatwerk*) reintegration activities aimed at a return to (any) society if the Advisory Board were to issue a positive opinion after twenty-five years of detention.

40. On 23 April 2019 the Supreme Court gave judgment in the applicant's case (ECLI:NL:HR:2019:602 – for its reasoning on the compatibility of a life sentence with Article 3 of the Convention, see paragraph 22 above). In respect of the applicant's complaint that his status as a foreign national without a residence permit precluded any rehabilitation and reintegration activities, the court held:

“6.3.2. This complaint fails, as the lack of that residence status does not prevent the application of ... the system of review of the continued execution of the life sentence and the associated guarantees. After all, the lack of that residence status does not make it impossible to offer activities aimed at rehabilitation, nor does it prevent the granting of a pardon from the outset. Another important point here is that ... the question of whether the course of detention of a life-sentence prisoner complies with the requirements of Article 3 of the Convention, even if he [or she] does not have valid residence status, can be submitted to the post-sentencing and civil courts.”

41. In the light of the above, the Supreme Court dismissed the applicant's appeal on points of law, as a result of which the Court of Appeal's judgment of 29 June 2017 (see paragraph 37 above) became final.

E. Mr Admilson Richter (application no. 59806/19)

42. The applicant and his brother (see application no. 59814/19 at paragraphs 49-55 below) were arrested on 3 March 2014. They have been in custody since then.

43. On 24 November 2015 the North Netherlands Regional Court convicted the applicant of two counts of complicity in murder and aggravated manslaughter. Referring to *Vinter and Others* (cited above), the Regional Court held that the pardon procedure in place at the time of the judgment offered little prospect in practice of a reduction in a life sentence, which was incompatible with Article 3 of the Convention. It was for this reason that it decided not to impose one. The court sentenced the applicant to the maximum determinate sentence of thirty years' imprisonment and imposed an order for his placement at the disposal of the Government with confinement in a custodial clinic (*terbeschikkingstelling met bevel tot verpleging van overheidswege*).

44. On 7 and 8 December 2015 respectively, the Public Prosecution Service and the applicant lodged appeals against the Regional Court's judgment.

45. On 15 March 2018 the Arnhem-Leeuwarden Court of Appeal convicted the applicant of three counts of complicity in murder (ECLI:NL:GHARL:2018:2456). Like the first-instance court, the Court of Appeal found that the severity and extent of the applicant's personality or psychiatric disorder had not limited his freedom of choice to such an extent as to justify a defence of diminished responsibility. The applicant could thus be held entirely responsible for the offences. Referring to the judgment of the Supreme Court of 19 December 2017 (see paragraph 14 above), the Court of

Appeal held that the review mechanism now provided for by Dutch law meant that the imposition of a life sentence was not incompatible with Article 3 of the Convention. The court sentenced the applicant to life imprisonment.

46. On 13 November 2018 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention, also taking into account his personality or psychiatric disorder.

47. On 19 March 2019 the Advocate-General at the Supreme Court recommended that the applicant's appeal on points of law be dismissed (ECLI:NL:PHR:2019:255). Referring to the Supreme Court's judgment of 19 December 2017 (see paragraph 14 above), the Advocate-General submitted that the Dutch review mechanism was not incompatible with Article 3 of the Convention:

“3.5.6. ... [I]n addition to possible reintegration leave, reintegration activities consist of supporting the convicted person in obtaining a valid identity document, shelter immediately after [his or her] release from detention, income from work or (temporary) social benefits to be able to provide for initial living expenses after [his or her] release from detention and, if work is not available, a form of daytime activities, insight into debt problems and ... (continued) care and health insurance.

3.5.7. To me, it makes sense that this [reintegration] support is not offered during the first 25 years of detention, because it forms, as it were, the capstone (*sluistuk*) of the review procedure in which the Advisory Board must advise under Article 7 of the Advisory Board Decree, and ... is also, by its nature, linked to leaving the institution. The fact that a life-sentence prisoner must also be able to leave the institution during the first 25 years of his [or her] detention cannot be derived from the case-law of the European Court of Human Rights ...

3.5.8. ... The Supreme Court notes [in its judgment of 19 December 2017] that [during the first twenty-five years of detention] the convicted person must be offered activities, including in the form of work, training and behavioural interventions, which enable him [or her] to develop during detention. The Supreme Court [has] held that the review mechanism does not exclude such activities, and that appropriate medical and psychiatric care must also be offered. Decisions in this regard can be assessed in the context of the complaints and appeals regulations of the Prisons Act, where the course of detention can be assessed against the requirements of Article 3 of the Convention.

3.5.9. ... The written grounds of appeal on points of law do not disclose any facts or circumstances from which it could be deduced that what the Supreme Court noted in its judgment about resocialisation activities and psychiatric care is not carried out in practice, or that the psychological and/or psychiatric care [provided] during the first phase of the execution of a life sentence is inadequate. Nor can I discern, in the explanation of the grounds of appeal on points of law, any facts or circumstances which indicate that the situation has changed since the Supreme Court's judgment ... to such an extent that a life sentence (nevertheless) violates Article 3 of the Convention on account of the system '*de facto*' offering no real prospect of release.

3.5.10. The written grounds of appeal on points of law state that the possibility of reintegration should be offered well before the time of the first review, so that release is possible earlier than as provided for in the current regulation. However, I fear this is reading more into the Strasbourg case-law ... than can be inferred from it.

3.5.11. ... The Supreme Court was right ... to consider, at paragraph 3.6 of its judgment of 19 December 2017, that it may possibly be established at some point that a life sentence will never be shortened in practice even under the new regime, and that the question of whether execution is compatible with Article 3 of the Convention will then have to be decided again. In my opinion, the current regulations offer sufficient (procedural) tools (*handvatten*) through the post-sentencing complaints procedure and the civil court[s] to raise or bring this to light [a footnote refers to paragraphs 3.5.4-3.6 of the judgment of the Supreme Court of 19 December 2017]. In the present case, the Court of Appeal, referring to the judgment of the Supreme Court, therefore considered that this could only be judged after some time had passed, because the practical application of the new regulations would show whether practice was in line with the requirements arising from Article 3 of the Convention [a footnote refers to, *inter alia*, the Advocate-General's opinion as reflected in paragraph 21 above].

...

3.6.9. [The] case [of *Petukhov v. Ukraine (No. 2)*, no. 41216/13, 12 March 2019] provides insight into how the European Court of Human Rights applies the criteria formulated most recently in *Hutchinson* [cited above]. In my opinion, no arguments can be derived from [*Petukhov (No. 2)*] that the Dutch regulations would be in violation of Article 3 of the Convention as regards the foreseeability and clarity of the procedure, the requirement to give reasons for decisions relating to the continuation or reduction of a life sentence, the requirements that can be set in relation to the detention regime in which the person sentenced to life [imprisonment] finds himself or herself, and the possibility of judicial review. The Dutch mechanism meets the requirements that can be derived from the review carried out by the European Court of Human Rights in *Petukhov [(No.2)]*, at least on paper and thus *de jure*. Whether this is also the case *de facto* remains to be seen, as noted above. I believe it is too early to pass judgment on this at this stage."

48. On 14 May 2019 the Supreme Court dismissed the applicant's appeal on points of law because it could not lead to the quashing of the impugned judgment (ECLI:NL:HR:2019:720). On the basis of section 81(1) of the Judiciary Act (*Wet op de rechterlijke organisatie*), this required no further reasoning, as the applicant's appeal had not given rise to a need for a determination of legal issues in the interests of legal uniformity or legal development. As a result of this, the Court of Appeal's judgment of 15 March 2018 (see paragraph 45 above) became final.

F. Mr Marcos Richter (application no. 59814/19)

49. The applicant and his brother (see application no. 59806/19 at paragraphs 42-48 above) were arrested on 3 March 2014. They have been in custody since then.

50. On 24 November 2015 the North Netherlands Regional Court convicted the applicant of two counts of complicity in murder, and robbery with violence committed jointly with others and resulting in death. The applicant was sentenced to the maximum determinate sentence of thirty years' imprisonment (for the court's reasoning as to the incompatibility of a life sentence with Article 3 of the Convention, see paragraph 43 above).

51. On 7 December 2015 the Public Prosecution Service and the applicant lodged appeals against the Regional Court's judgment.

52. On 15 March 2018 the Arnhem-Leeuwarden Court of Appeal convicted the applicant of three counts of complicity in murder and sentenced him to life imprisonment (ECLI:NL:GHARL:2018:2457 – for its reasoning as to the compatibility of a life sentence with Article 3 of the Convention, see paragraph 45 above).

53. On 16 November 2018 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention.

54. On 19 March 2019 the Advocate-General at the Supreme Court recommended that the applicant's appeal on points of law be dismissed (ECLI:NL:PHR:2019:256). The Advocate-General reiterated her reasoning as to the compatibility of a life sentence with Article 3 of the Convention (see paragraph 47 above). In respect of the applicant's complaint that the review mechanism lacked a sufficient degree of clarity and certainty, the Advocate-General noted as follows:

“3.7.2. The argument that the Advisory Board can issue only an opinion, from which the Minister can deviate, does not mean that the procedure lacks clear criteria or is otherwise unclear. The guarantee that the advice will be taken seriously [is] the condition that the Minister can only deviate from such advice by giving reasons, and that the decision can be assessed by the (civil) court.

3.7.3. ... The Supreme Court has held that the criteria applied by the Advisory Board, as set out in Article 4 § 4 of the Advisory Board Decree, are also relevant to a decision on pardon. In my opinion, this makes it sufficiently clear which criteria are (to be) used to assess whether the convicted person is eligible for a reintegration phase that could lead to a pardon or to a reduction in sentence in some other way.

3.7.4. I do not see why the impact of a pardon on the victim or the next of kin or [on] the matter of retribution would be insufficiently clear as a criterion. I do understand that some people think that ... after 25 years such [impact] does (or should) not play a role in a pardon, but even that position cannot be derived from the requirements set by the European Court of Human Rights to prevent a violation of Article 3 of the Convention ...

3.7.5. In short, the complaint does not convincingly substantiate that the stated conditions provided for by the review framework of the current system do not meet the requirements arising from Article 3 of the Convention.”

55. On 14 May 2019 the Supreme Court summarily dismissed the applicant's appeal on points of law (ECLI:NL:HR:2019:718) because it could not lead to the quashing of the impugned judgment (see paragraph 48 above). As a result of this, the Court of Appeal's judgment of 15 March 2018 (see paragraph 52 above) became final.

G. Mr Henriquez (application no. 15199/20)

56. The applicant was arrested on 4 December 2013. He has been in custody since then.

57. On 14 January 2016 the Amsterdam Regional Court convicted him of two counts of murder and charges relating to fraud. He was sentenced to life imprisonment.

58. On 28 January 2016 the applicant lodged an appeal against the judgment of the Regional Court.

59. On 4 December 2017 the Amsterdam Court of Appeal convicted the applicant of two counts of murder and charges relating to fraud (ECLI:NL:GHAMS:2017:5021). He was sentenced to life imprisonment. Referring to its judgments of 29 June 2017 (see paragraphs 19, 28 and 37 above), the court held that the imposition of a life sentence was not incompatible with Article 3 of the Convention:

“13.3. ... The desirability of the political choices underlying the review framework in the [Advisory Board] Decree may be the subject of different social opinions, yet it is not those political choices that are at issue here, but the legal question of whether the imposition of a life sentence violates Article 3 of the Convention. The Court of Appeal answers that question in the negative.

Moreover, the court does not agree with the defence’s position that it follows from the case-law of the European Court of Human Rights ... that the imposition [of a life sentence] complies with Article 3 of the Convention only if a review is carried out by an independent judge. That requirement does not follow from the Strasbourg case-law. In its most recent judgment in the case of *Matiošaitis and Others* [cited above], the European Court of Human Rights referred to the general principles [set out] in its earlier judgments in *Murray* [cited above] and *Hutchinson* [cited above]. The European Court of Human Rights explicitly considered that it was for the States to determine whether the review of a life sentence was carried out by an administrative or a judicial authority ... It has not been disputed by the defence – and the Court of Appeal assumes – that the [responsible] Minister ... qualifies as an administrative authority in the sense intended by the European Court of Human Rights.

... The [Court’s] case-law leaves open [the question of] what form a review procedure may take. [The matter of] whether this procedure takes the form of a regulation or otherwise finds a basis in the law of the member State is also expressly left to the member States by the European Court of Human Rights. In general, the Convention requires that such a provision must meet the requirements of foreseeability and knowability (*voorzienbaarheid en kenbaarheid*). It has not been refuted by the defence – and the court assumes – that the review procedure [set out] in the [Advisory Board] Decree, a ministerial regulation, meets those requirements.”

60. On 12 December 2017 the applicant lodged an appeal on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the Convention.

61. On 28 May 2019 the Advocate-General at the Supreme Court recommended that the applicant’s appeal on points of law be dismissed (ECLI:NL:PHR:2019:565). Referring to the judgments of the Supreme Court of 23 April 2019 (see paragraphs 22, 31 and 40 above) and 14 May 2019 (see

paragraphs 48 and 55 above), the Advocate-General submitted that the complaint concerning the compatibility of a life sentence with Article 3 of the Convention stood no chance of success, that it was unlikely that the Supreme Court would change its mind on this matter, and that it could not (yet) be said that a life sentence was irreducible in practice.

62. On 1 October 2019 the Supreme Court summarily dismissed the applicant's appeal on points of law (ECLI:NL:HR:2019:1455) because it could not lead to the quashing of the impugned judgment (see paragraph 48 above). As a result of this, the Court of Appeal's judgment of 4 December 2017 (see paragraph 59 above) became final.

RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The Constitution

63. Article 122 § 1 of the Netherlands Constitution (*Grondwet*) provides:

“Pardon is granted by royal decree (*Koninklijk besluit*) after obtaining advice from a court designated by law and subject to regulations to be laid down by or pursuant to the law.”

64. A royal decree is a decree signed by the Monarch and the minister or deputy minister responsible (Article 47 of the Constitution).

65. Article 93 of the Constitution provides that the Convention forms part of domestic law. Pursuant to Article 94 of the Constitution, the provisions of the Convention take precedence over domestic statutory rules in the event of a conflict. Dutch courts are expected, as far as is possible, to interpret and apply domestic law in such a way that the State meets its treaty obligations (*verdragsconforme uitleg*; see, for example, the Supreme Court judgment of 16 November 1990, ECLI:NL:HR:1990:ZC0044).

B. The Pardons Act

66. In accordance with the Pardons Act (*Gratiewet*), a review of a sentence, including a life sentence, takes the form of a pardon procedure. This can be initiated either by the sentenced person at any time, or by the responsible Minister acting *ex officio*. The relevant parts of the Pardons Act read as follows:

Section 2

“A pardon (*gratie*) may be granted

a. ...

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b. if it has become apparent that the execution or continued execution of the sentence cannot reasonably serve any penological purpose (*geen met de strafrechtstoepassing na te streven doel in redelijkheid wordt gediend*)."

Section 3

"1. The request [for the reduction, modification or remission (*vermindering, verandering of kwijtschelding*) of sentences] shall be signed and must include in any case:

a. ...

d. the reasons for requesting pardon.

..."

Section 4

"1. Regarding requests ... for the reduction, modification or remission of sentences ... imposed by a decision of a criminal court in the Netherlands, Our Minister shall, before deciding thereon, seek the opinion of the court that imposed the sentence ...

2. ..."

Section 5

"1. In response to a request, Our Minister may obtain information about the convicted person from the relevant authorities, institutions or persons. These shall provide their cooperation.

2. Our Minister may hear the convicted person if, in his [or her] opinion, there is reason to do so.

3. Our Minister shall draw up a report of findings on the basis of the information provided by the person making the request and the information gathered under subsections 1 and 2.

4. In cases in which the request relates to a judgment or verdict rendered by a full-bench chamber (*meervoudige kamer*) [which is always the case if the public prosecutor seeks the imposition of a life sentence] ..., Our Minister shall send the request and his [or her] report of findings to the Public Prosecution Service for advice. The Public Prosecution Service shall state their opinion in a report and then send the documents to the court designated in section 4.

5. ..."

Section 6

"1. In response to the documents received pursuant to section 5(4) ..., the court may seek information from the relevant authorities, institutions or persons. The court shall send its opinion to Our Minister, together with the opinion of the Public Prosecution Service issued pursuant to section 5(4).

2. ..."

Section 7

"1. The court's opinion shall be reasoned and signed.

2. ...”

Section 18

“1. ...

2. If the request is denied, Our Minister shall notify the person on whom the punishment ... was imposed ..., stating the reasons.”

67. Section 19 of the Pardons Act provides that the responsible Minister may decide to grant a pardon in the absence of a prior request in that regard (*ex officio*), in which case the opinion of the criminal court that imposed the sentence (see section 4(1) of the Act) must likewise be obtained and, unless decided otherwise, sections 5 to 7 of the Act will apply *mutatis mutandis*.

68. By a letter of 8 June 2022 (Parliamentary Documents, Lower House of Parliament (Kamerstukken II) 2021/22, 29 279, no. 718), responding to the recommendations contained in an evaluation published by the Erasmus University of Rotterdam in 2021 (see paragraphs 92-93 below), the Minister for Legal Protection informed the Lower House of Parliament that an alternative way of reviewing life sentences, in the form of conditional release by a judge, was under consideration. The Court has not been informed of any further developments in this respect.

C. The Advisory Board Life-Sentence Prisoners Decree

69. In response to the judgments in *Vinter* and *Murray* (both cited above) and the Supreme Court’s judgment of 5 July 2016 (see paragraph 11 above), a mechanism for reviewing the execution of life sentences was established in the Netherlands with a view to complying with Article 3 of the Convention.

70. The Advisory Board Life-Sentence Prisoners Decree (*Besluit Adviescollege levenslanggestraften* – “the Advisory Board Decree”), which provides for such a mechanism, entered into force on 1 March 2017 (Government Gazette (*Staatscourant*) 2016, no. 65 365) and has been amended since. It applies in the European part of the Kingdom of the Netherlands and the special municipalities (*openbare lichamen*) of Bonaire, Sint Eustatius and Saba.

71. At the time the applicants lodged their applications with the Court (see the appended table), the Advisory Board Decree read as follows:

Article 1 – Definitions

“The following definitions apply:

...

f. reintegration activities: activities, including leave, which, in addition to resocialisation activities, enable the prisoner to work on preparing for his [or her] possible return to society;

g. detention: the period of deprivation of liberty [starting] from the time [a person is taken into] police custody (*inverzekeringstelling*) or [held in] pre-trial detention (*voorlopige hechtenis*) for the offence for which the life sentence was imposed.”

Article 2 – Composition and appointment of chairperson and members of the Advisory Board

“1. There is an Advisory Board Life-Sentence Prisoners. The Advisory Board [is composed of] a chairperson ... with a legal background, and ... lawyers, ... psychiatrists, ... psychologists and ... members from the scientific community, preferably with specific expertise in the position and interests of victims and next of kin ... The chairperson and members appointed for their legal, psychological or psychiatric expertise will also have extensive expertise in criminal law practice and the execution of sentences.

2. ...”

Article 4 - Tasks

“1. The Advisory Board has the following tasks:

- a. advising on which reintegration activities a life-sentence prisoner is eligible for;
- b. following the start of a pardon procedure, informing the Minister on the progress of the life-sentence prisoner’s resocialisation and reintegration activities, in cases where the Advisory Board has previously issued an opinion as referred to in point a.;
- c. advising on the provision of reintegration activities, at the Minister’s request;
- d. at the Minister’s request, informing [him or her] about the progress of the resocialisation and reintegration activities of the life-sentence prisoner, in cases other than those referred to in point b.

2. The first opinion of the Advisory Board referred to in paragraph 1 point a. shall be issued twenty-five years after the start of detention.

3. No later than two years after the point of time referred to in the second paragraph, the possibility of a pardon will be assessed on the basis of ... section 19 of the Pardons Act.

4. When advising, the Advisory Board uses the following criteria:

- a. the risk of reoffending (*recidiverisico*);
- b. the risk of offending (*delictgevaarlijkheid*);
- c. the behaviour and development of the life-sentence prisoner during detention;
- d. the impact on victims and next of kin and, in that context, [on] retribution.

5. The life-sentence prisoner is heard by the Advisory Board. The next of kin and victims are heard by the Advisory Board. ...

6. When giving its opinion as referred to in paragraph 1 point a., the Advisory Board shall also determine when it will issue a follow-up opinion.”

Article 5 - Competences

“1. The Advisory Board may take note of all information and documents that are important for the fulfilment of its task, and it has access at all times to all custodial institutions where the life sentence is executed.

2. In accordance with the provisions of the second [part] of the first paragraph, the Advisory Board shall in any event receive from the Minister the prison case file ... and any other relevant information necessary to advise on reintegration activities.

3. ...”

Article 7 – Advisory role

“1. If the Advisory Board advises that reintegration activities should not be offered, the Minister shall decide accordingly.

2. If the Advisory Board advises that reintegration activities should be offered, the Minister may take a different decision, stating the reasons [for that decision].”

Article 10 – Adoption of opinions

“1. When issuing an opinion, the Advisory Board shall receive no instructions from the Minister on the methodology to be used, its assessment [or] advice.

2. The Advisory Board shall send a copy of each opinion to the Minister immediately after it has been adopted.”

72. By a letter of 3 February 2023 (Parliamentary Documents, Lower House of Parliament 2022/23, 29 279, no. 768), responding further to the recommendations contained in an evaluation published by the Erasmus University of Rotterdam in 2021 (see paragraphs 92-93 below), the Minister for Legal Protection informed the Lower House of Parliament of his intention to start the *ex officio* pardon procedure for life-sentence prisoners after twenty-eight years instead of twenty-seven years, thus effectively extending the reintegration phase with one year, because two years of reintegration was deemed too short a period for a prisoner to be gradually prepared for possible release. A legislative amendment to that effect entered into force on 1 July 2023 (Government Gazette 2017, no. 18 241).

In the same letter, the Minister also announced that he would re-examine the options for a life-sentence prisoner to take leave, including overnight leave, as a final step in the reintegration phase. The Court has not been informed of any further developments in this respect.

73. As a matter of policy, opinions issued by the Advisory Board under Article 4 of the Advisory Board Decree, reports drawn up by the Pieter Baan Centrum under section 12(2) of the Detainees (Selection, Placement and Transfer) Regulation (see paragraphs 77-78 below) and reports drawn up by the probation service (see paragraph 79 below) are sent to life-sentence prisoners as annexes to decisions issued by the responsible Minister under Article 7 of the Advisory Board Decree.

74. Practical matters covered during the reintegration phase include arrangements for post-release accommodation, income, identity papers, health insurance, debt counselling and digital skills.

D. The Prisons Act

75. The Prisons Act (*Penitenciaire Beginselenwet*) constitutes the general framework for the execution of detention. On 24 June 2020 the following provision was inserted into the Prisons Act (Government Gazette 2020, no. 224), effective as from 1 July 2021:

Section 18a

“1. The governor shall ensure that a detention and reintegration plan (*detentie- en re-integratieplan*) is drawn up no later than four weeks after a detainee enters an institution, as much as possible in consultation with him [or her]. The detention and reintegration plan may be adjusted during detention, as much as possible in consultation with the detainee.

2. The detention and reintegration plan shall include at least

- a. the individual supervision plan, including any care required by the detainee;
- b. the behavioural and reintegration goals which the detainee is trying to achieve;
- c. the activities in which the detainee participates, and the activities and leave for which the detainee is eligible for good behaviour;
- d. [if necessary,] the essential conditions for the detainee’s participation in society.

3. ...

4. ...

5. The governor shall ensure that the [execution of the sentence] takes place in accordance with the detention and reintegration plan.”

76. As a matter of policy, every life-sentence prisoner is to be assessed on an outpatient basis by a psychiatrist and a psychologist within one year after his or her sentence becoming final and unappealable to determine whether the life-sentence prisoner suffers from a specific disorder that increases his or her risk of reoffending (colloquially known as the “Murray assessment”, after the Court’s judgment in *Murray*, cited above). If this is the case, the psychiatrist and psychologist are asked whether there is a therapy that would reduce the risk of reoffending and, if so, when this therapy should begin. According to publicly available information, Murray assessments are carried out since 2020 and require the prisoner’s consent.

E. The Detainees (Selection, Placement and Transfer) Regulation

77. At the time the applicants lodged their application with the Court (see the appended table), the relevant parts of the Detainees (Selection, Placement

and Transfer) Regulation (*Regeling selectie, plaatsing en overplaatsing van gedetineerden* – “the Detainees Regulation”) read as follows:

Section 1 – Definitions

“a. ...

i. basic programme: the day programme offered in prison;

j. plus programme: the programme offered in a prison consisting of the components of the basic programme, supplemented with extra educational facilities, qualified work or work with more freedom, behavioural interventions, extra reintegration activities as well as the possibility to indicate the time of participation in certain activities;

k. ...”

Section 1c – Detention and reintegration plan

“For life-sentence prisoners, the detention and reintegration plan shall not include [any reintegration] activities ... during the period when these activities are not offered to them.”

Section 12

“1. ...

2. A life-sentence prisoner may be placed at the Pieter Baan Centrum [an observation clinic belonging to the Netherlands Institute for Forensic Psychiatry and Psychology – *Nederlands Instituut voor Forensische Psychiatrie en Psychologie*] for the purpose of an examination focused on risk analysis, the risk of offending and personality development (*risicoanalyse, delictgevaarlijkheid en persoonlijkheidsontwikkeling*) ...

3. If the examination is carried out on behalf of the Advisory Board Life-Sentence Prisoners, the placement referred to in subsection 2 shall be no later than six months prior to the time referred to in Article 4 § 2 of the Advisory Board Life-Sentence Prisoners Decree ...”

78. As a matter of policy, for the purposes of a diagnosis under section 12(3) of the Detainees Regulation, the Pieter Baan Centrum carries out an assessment that lasts up to twelve weeks, during which time the life-sentence prisoner is interviewed and observed by a team of behavioural experts, including psychiatrists and psychologists. The assessment focuses on whether the prisoner is suffering from a pathological disorder and/or defective development, possible treatments and behavioural interventions, the prisoner’s perception of the crime for which he or she has been sentenced, his or her criminal propensity and risk of reoffending, and other forensically relevant factors. The findings are put in a report that is discussed with the life-sentence prisoner at a meeting. The probation service attends that meeting as an observer.

79. As a matter of policy, following the assessment by the Pieter Baan Centrum, the probation service arranges for a behavioural risk advisory report to be produced by psychologists about the risk of the prisoner reoffending and risk management, and the feasibility of possible treatments or

behavioural interventions and reintegration activities. The findings of the Pieter Baan Centrum constitute the most important basis for the probation service's advisory report, together with interviews with the life-sentence prisoner and other information on file. The results of that assessment are put in a report that is discussed with the prisoner.

F. The Temporary Leave (Custodial Institutions) Regulation

80. At the time the applicants lodged their application with the Court (see the appended table), the relevant parts of the Temporary Leave (Custodial Institutions) Regulation (*Regeling tijdelijk verlaten van de inrichting* – “the Temporary Leave Regulation”) read as follows:

Section 3 – Information and advice

“1. ...

...

3. The [prison] governor may ask the Advisory Board Life-Sentence Prisoners for advice on granting reintegration leave to a life-sentence prisoner.

4. ...”

Section 4 – Grounds for refusal

“Leave will be refused if it concerns:

a. ...

1. a detainee who has been declared undesirable (*ongewenst verklaard*), [or] against whom proceedings for a declaration of undesirability are pending, unless suspensive effect has been granted, or in respect of whom it has been established that he [or she] will be expelled after detention.

m. ...”

Section 20d – Reintegration leave for life-sentence prisoners

“1. In the context of participation in reintegration activities as referred to in Article 1 point f. of the Advisory Board Decree, a life-sentence prisoner may be granted leave at [his or her] request, in accordance with what is provided for in the detention and reintegration plan as regards frequency of leave.

2. In his [or her] request, the life-sentence prisoner shall clarify how the leave supports the reintegration goals set out in the detention and reintegration plan.

3. Without prejudice to the provisions of section 4, reintegration leave for life-sentence prisoners shall be refused in the case of:

a. a request for reintegration leave for a life-sentence prisoner who has not been admitted to the reintegration phase;

b. a negative opinion from the Advisory Board on a life-sentence prisoner's request for reintegration leave;

c. a request for reintegration leave which does not adequately indicate the way in which the leave supports the reintegration of the life-sentence prisoner;

d. a request for reintegration leave conflicting with the frequency of leave provided for in the detention and reintegration plan.

4. Leave is electronically monitored. During [a prisoner's] first year of participation in reintegration activities, reintegration leave shall be granted under supervision and guidance. On the basis of the life-sentence prisoner's behaviour during detention and during the leave which is granted, it may be decided that during the second year of participation in reintegration activities, the leave granted will be without supervision and monitoring. This may be deviated from on the basis of advice from the Advisory Board.

5. Leave ends on the same day it starts.

6. ...”

Section 21 – Conditions [for incidental leave on compassionate grounds]

“1. Incidental leave may be granted [so that a detainee may] attend events occurring in [his or her] personal sphere, where his or her presence is necessary.

2. Incidental leave may be accompanied or supervised if necessary.

3. ...”

G. Legal remedies

81. Life-sentence prisoners may bring civil proceedings against the State for a wrongful act or tort on the part of a public authority (*onrechtmatige overheidsdaad*), on the basis that the detention or execution thereof constitutes a wrongful act within the meaning of Article 6:162 of the Civil Code (*Burgerlijk Wetboek*), which provides:

“1. A person who commits a wrongful act (*onrechtmatige daad*) against another which is attributable to him [or her], must repair the damage suffered by the other [person] in consequence.

2. Except where there are grounds for justification, the following acts are deemed to be wrongful: the violation of a right, and an act or omission violating a duty imposed by law or a rule of unwritten law pertaining to proper social conduct.

3. A wrongdoer is responsible for the commission of a wrongful act if it is due to his [or her] fault or [due] to a cause for which he or she is accountable by law or in accordance with generally accepted principles (*de in het verkeer geldende opvatting*).”

82. An assessment by a civil court focuses on whether it is apparent from the reasons given (for example, in case of a refusal to admit a life-sentence prisoner to the reintegration phase or a refusal to grant a pardon) that sufficient account was taken of the substantive criteria of Article 4 § 4 of the Advisory Board Decree (see paragraph 71 above) and Article 3 of the Convention when the relevant decision was taken (see the Supreme Court judgment of 19 December 2017 cited in paragraph 14 above). If the civil court concludes that the decision was insufficiently reasoned and thus unlawful, it

shall order the responsible Minister to take a fresh decision, taking into account the factors on which it based its decision (see the Supreme Court judgment of 6 November 2020 summarised in paragraph 89 below).

83. Section 60 *et seq.* of the Prisons Act enables a life-sentence prisoner to lodge a complaint (*beklag*) to the Complaints Commission of an institution and an appeal to the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection against decisions made by the governor of an institution (for example, as regards the nature of reintegration activities provided for in a detention and reintegration plan). An appeal against a decision with regard to leave is made directly to the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection (section 72(3) of the Prisons Act).

84. In civil proceedings and proceedings before the Complaints Commission and the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection, a life prisoner and his or her lawyer have a right to be present in the courtroom to make submissions.

H. The Criminal Code and the Code of Criminal Procedure

85. Article 197 of the Criminal Code (*Wetboek van Strafrecht*) provides that an alien who stays in the Netherlands while he or she knows, or has serious reasons to suspect, that an exclusion order has been imposed on him or her or in respect of whom an entry ban has been imposed, commits a criminal offence.

86. In accordance with its discretionary powers (*opportuiniteitsbeginsel*) laid down in Article 167 § 2 of the Code of Criminal Procedure (*Wetboek van Strafvordering*), it remains for the Public Prosecution Service to decide in each individual case and in line with the general policy rules defined by the Board of Procurators General (*College van procureurs-generaal*) whether to prosecute or not.

II. DOMESTIC CASE-LAW AND PRACTICE

A. Decision of the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection of 19 May 2015

87. In a decision of 19 May 2015 (14/3242/GV) the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection (*Raad voor Strafrechtstoepassing en Jeugdbescherming*) held that, given the extraordinary circumstances of a life-sentence prisoner who had been declared an undesirable alien, the responsible Minister had the power to grant (supervised) incidental leave on the basis of section 21(1) of the Temporary Leave Regulation to enable the prisoner concerned to prepare effectively for his possible release and return to his home country.

B. Judgment of the Regional Court of The Hague of 4 September 2020

88. In a judgment of 4 September 2020 (ECLI:NL:RBDHA:2020:8574) the Regional Court of The Hague held that, while the Advisory Board had noted that the life-sentence prisoner concerned had refused to admit all but one of the crimes of which he had been convicted, this was not considered decisive for the Advisory Board's advice that he should not be admitted to the reintegration phase. The court noted that the Advisory Board had issued negative advice because during his examination at the Pieter Baan Centrum, the prisoner concerned had also refused to provide sufficient insights into the one crime that he had actually admitted (murder) and into other relevant factors, such as his family and social network, education, work experience and plans for after his release.

C. Judgment of the Supreme Court of 6 November 2020

89. In a judgment of 6 November 2020, in interim proceedings on a pardon request made by a life-sentence prisoner which had been denied (ECLI:NL:HR:2020:1747), the Supreme Court held that, although a pardon was granted by royal decree upon a recommendation of the responsible Minister and a civil court had no say in the content of the decision on the pardon, the court could order the Minister to make a fresh decision on the pardon request if it concluded that the pardon decision was unlawful. That fresh decision also had to take into account the factors on which the civil court had based its decision. The Supreme Court also held that the advice of a sentencing court was, in principle, decisive (*leidend*) for the question of whether a pardon should be granted or refused, and that only in special circumstances could the Minister depart from the sentencing court's advice to the detriment of the life-sentence prisoner.

D. Judgment of the Supreme Court of 8 July 2025

90. In a judgment of 8 July 2025 the Supreme Court ruled – in an appeal on points of law lodged by someone sentenced to life imprisonment by the Court of Appeal on 12 December 2023 – that the current system of review of life sentences did not violate Article 3 of the Convention (ECLI:NL:HR:2025:1114). In particular, the Supreme Court held as follows:

“2.4.1. ... Whether the (further) execution of the life sentence in the individual case is contrary to Article 3 of the Convention depends primarily on the course of the execution of the life sentence and, in connection with this, the care with which the decisions of the Minister and other parties involved are made in the specific case. The necessary legal protection in individual cases is provided in proceedings before the post-sentencing judge and the civil court. These proceedings also offer legal protection if no decision is made. If necessary ... to prevent a violation of Article 3 of the

Convention in the individual case, the civil court may prohibit the further execution of a life sentence.

... The fact that in certain cases no pardon is granted or that (otherwise) the review procedure takes a long time does not in itself mean that life imprisonment as such is ‘*de facto* irreducible’. When imposing a life sentence, the question is whether the system as a whole offers sufficient guarantees to assume that, after the sentence has been imposed, its enforcement will not be contrary to the requirements of Article 3 of the Convention. To date, the Supreme Court has answered this question in the affirmative, partly in light of the existing possibilities for decisions on the manner of enforcement and on whether or not to grant pardon, to be reviewed by the (post-sentencing or civil) courts.

2.4.2. The fact that the current system of review as a whole offers sufficient guarantees that the execution of a life sentence is in accordance with Article 3 of the Convention does not preclude the court from concluding at some point (*op enig moment*) that a life sentence can no longer be imposed because it has become apparent that there is no real possibility of ... a reduction of the sentence or ... (conditional) release. That judgment must then be based on sufficient factual findings about the way in which the relevant provision is applied in practice, based on what has been discussed during the trial ... In this context, it will not only be relevant whether and, if so, how often pardons are granted, but also any structural shortcomings in the practice of execution [of life sentence] from which it must be inferred that the proceedings before the post-sentencing judge and the civil court are insufficiently effective, or which amount to insufficient follow-up of those court decisions. As more experience is gained with review procedures, improvements can be expected in the design of the system (also when it comes to reintegration activities to prepare for review) and in monitoring and promoting the timely completion of the procedure. If ... the interventions of the post-sentencing and/or civil courts would continue to be necessary in the future, this will, as time passes, carry increasing weight in the assessment of whether there are structural shortcomings in practice.

2.4.3. ... [Since the review system was put in place in 2017], pardon has been granted and the civil courts have ordered the Minister several times to take new decisions in accordance with their judgments, which the Minister has complied with, granting pardons where appropriate. Accordingly, there are insufficient grounds to conclude that, under the current system, the enforcement of a life sentence will in all cases or in a large number of cases be contrary to the requirements of Article 3 of the Convention.

...

2.5. The [Court of Appeal] ruled – referring to the case law of the Supreme Court [see its judgment of 19 December 2017 quoted in paragraph 14 above, and its judgment of 6 November 2020 quoted in paragraph 89 above] and the possibility for prisoners serving life sentences to submit the manner in which the sentence is actually executed to the post-sentencing and civil courts – that ‘there is no reason to assume that the current procedure for the execution and review of life sentences is contrary to Article 3 of the Convention.’ That judgment does not ... reflect an incorrect interpretation of the law and is not incomprehensible, even in the light of the arguments put forward on behalf of the defendant.”

E. Statistical information

91. In their additional observations of 27 and 29 November and 4 and 5 December 2024, the parties informed the Court of the following statistics:

The Advisory Board has advised the responsible Minister in seven cases regarding admission to the reintegration phase. In three cases it has provided information regarding progress made in the reintegration phase.

Three life-sentence prisoners have been admitted to the reintegration phase on the basis of an opinion issued by the Advisory Board.

One life-sentence prisoner has been pardoned under the system put in place by the Advisory Board Decree (see paragraphs 69-74 above). This took place on 25 October 2023, by which time the person concerned had been detained for almost thirty-one years.

III. OTHER RELEVANT MATERIAL

A. Evaluation report by the Erasmus University of Rotterdam

92. At the request of the Ministry of Justice and Security, the Erasmus University of Rotterdam evaluated the Advisory Board Decree in the light of four years of practice to identify, in particular, any areas for improvement and bottlenecks in the application of the Decree and the way in which the Advisory Board had been fulfilling its responsibilities. The results of the evaluation are set out in a report, which the Minister for Legal Protection presented to the Lower House of Parliament on 30 November 2021 (Parliamentary Documents, Lower House of Parliament 2021/22, 29 279, no. 689 and annex).

93. By way of general conclusion the evaluation report indicates that the Advisory Board Decree and the outlined decision-making are adequate, and that it provides the basis for a system for reviewing life sentences which is necessary to meet the requirements of the case law of the Court. At the same time, the report notes, in particular, that improvements are needed to ensure that the re-integration phase functions well system-wide. In this connection the report considers that the reintegration phase is too short, limited in terms of structure and content, ambiguous and prone to lead to many unnecessary interim decisions.

B. Bi-annual report of the Advisory Board

94. In its third bi-annual report of April 2023, the Advisory Board notes that it was very important not to lose sight of the bottlenecks within the review framework and to work on resolving those. In particular, the Advisory Board pointed to the limited possibilities for leave and reintegration, the position of victims and next of kin, the quality of the prison file, and the need for additional examinations by behavioural experts to take place between the

Murray assessment (see paragraph 76 above) and the examination by the Pieter Baan Centrum (see paragraph 78 above).

C. Relevant international material

95. The relevant texts of the Council of Europe and other international legal texts on the imposition and review of life sentences, as well as 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* (cited above, §§ 60-67), *Murray* (cited above, §§ 70-76) and *Matiošaitis and Others* (cited above, §§ 113-15).

96. The relevant parts of the Report on the periodic visit to the Kingdom of the Netherlands carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) from 10 to 25 May 2022 (CPT/Inf(2023)12, 23 June 2023) read as follows (original emphasis, some footnotes omitted):

“137. The Committee takes note of the policy framework for the enforcement of life imprisonment announced by the Dutch government in 2016, which has come into effect in 2017.

The new rules provide for a gradual assessment of persons sentenced to life imprisonment and a procedure for the reassessment of their life sentences, thus taking into account the jurisprudence of the European Court of Human Rights [a footnote refers to the Court’s judgments in *Vinter* and *Murray*, both cited above]. Specifically, one year after the life sentence has been confirmed following the exhaustion of the right to appeal, the person concerned is examined by an outpatient psychiatrist and psychologist to establish whether this person suffers from a specific psychiatric disorder that increases the risk of recidivism and whether a therapy that reduces this risk must be started [a footnote notes that as part of a catch-up operation, all persons currently serving a life sentence are being examined].

It is still the case that the reassessment of the continuation of the deprivation of liberty under the new rules takes place in the context of a pardon procedure. 25 years after the start of the imprisonment, a first assessment is now carried out by the newly established Advisory Board on Life Sentences, which evaluates whether the detained person concerned can be admitted to the reintegration phase, thereby granting the possibility to participate in resocialisation activities and qualify for reintegration leave. This decision is based on the following four criteria: the risk of re-offending, criminal threat posed, conduct and behaviour during detention, and impact on victims and survivors. In the event of a negative decision, the Advisory Board determines when the next review would be carried out.

Two years later (that is no earlier than 27 years after the start of the detention), an *ex officio* pardon procedure takes place, in accordance with the Pardon Act (*Gratiewet*), to assess whether the life-sentenced prisoner has made such progress in terms of resocialisation and reintegration that further enforcement of the life sentence no longer serves any purpose in the administration of criminal justice and, hence, is no longer justified. The Minister, who is informed by the Advisory [Board] on the progress made by the person concerned, then seeks the advice of the Public Prosecutor’s Office and the criminal court that imposed the life sentence. It however remains the case that the final decision on whether to grant a pardon is taken, on a discretionary basis, by the

competent Minister (on behalf of the Crown). The Dutch Supreme Court has endorsed the new policy framework and ruled that the system for the enforcement of life imprisonment is structured in such a way that it does not violate Article 3 of the European Convention on Human Rights [a footnote refers to the Supreme Court judgments of 19 December 2017 (see paragraph 14 above) and 23 April 2019 (see paragraph 22 above)].

138. Although persons sentenced to life imprisonment might receive treatment during the first 25 years of their detention, they do not qualify for activities aimed at reintegration into society [a footnote refers to section 1c of the Detainees Regulation (see paragraph 77 above)] and do not have clearly defined objectives in their sentence plan to reach this goal. From the information gathered by the delegation during the visit, it also appears that the assessment and conclusions reached by the Advisory [Board] on Life Sentences with respect to two persons sentenced to life imprisonment with whom the delegation spoke had not been fully considered in the decision-making process.

Moreover, in the CPT's view, the current pardon procedure, which is based on ministerial discretion rather than on a decision taken by the judicial authorities, is open to political influences and does not provide for the necessary procedural safeguards in terms of independence and impartiality.

Further, the person sentenced to life imprisonment cannot appeal the decision if the Minister refuses to grant a pardon (except by way of lengthy civil court proceedings).

The CPT recommends that the Dutch authorities develop a reassessment mechanism for persons sentenced to life imprisonment, based on a judicial review instead of the current pardon procedure. Further, individual sentence-planning objectives should already be defined at the outset of the sentence, offering the persons concerned a real and effective possibility of conditional release into the community. The Committee would also like to be informed of the outcome of the evaluation of the [Advisory Board] Decree setting up the Advisory Committee for life sentences and of any further developments on this matter."

97. The relevant parts of the response of the Government of the Netherlands (CPT/Inf(2023)13, 23 June 2023) read as follows:

"60. ... On 8 June 2022, the Minister for Legal Protection announced by letter to the House of Representatives his intention to make provision for an alternative mode of reassessment [see paragraph 68 above]. A Bill is currently being drafted to provide for a release on parole scheme specifically for life sentence prisoners, under which the courts will make the decision. This scheme will replace the current reassessment system, which consists of an automatic review system under which the life sentence prisoner concerned can be granted a pardon. In line with European case law, the court's assessment will hinge – as in the current automatic review procedure – on the question of whether changes in the life of the convicted person and progress in his or her resocialisation are sufficiently significant that continuation of the sentence is not justified because it can no longer be seen as reasonably serving a legitimate punitive purpose (such as retribution). If a legitimate punitive purpose is still present, the court will not grant release on parole and the person will continue to serve their life sentence. The court can then conduct a new assessment after some time has elapsed. Following on from this, in accordance with European case law, life sentence prisoners must be able to prepare for the reassessment. This means that elements of the current system regarding the reintegration phase of life sentence prisoners should be incorporated into a new release on parole scheme. Even in the case of a release on parole scheme for life sentence prisoners, a certain preliminary procedure in the form of admission to

reintegration will have to remain in place, as is the case with the current automatic review procedure, which is based on the Advisory Board Life-Sentence Prisoners Decree.

On 30 November 2021, the Minister for Legal Protection presented the evaluation report by Erasmus University Rotterdam on the Advisory Board Decree [see paragraphs 92-93 below] to the House of Representatives ... [It] includes points to build on to make improvements for the period prior to the reassessment of life imprisonment. The recommendations were discussed with experts within the justice system. By letter of 3 February 2023 [see paragraph 72 above], the House of Representatives was informed of the plans for following up on the recommendations. It was announced that the reintegration phase would be extended by one year by delaying the point at which the automatic review procedure takes place by one year (that is, after 28 rather than 27 years of detention). This will allow more time for a gradual expansion of reintegration activities once the person serving a life sentence has been admitted to the reintegration phase.”

THE LAW

I. JOINDER OF THE APPLICATIONS

98. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

99. The applicants complained that the Dutch review mechanism does not meet the Convention standards, making their life sentence *de jure* and *de facto* irreducible, in violation 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

100. 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) System of review

(i) *The applicants*

101. As for the nature and scope of a review, the applicants took issue with the fact that preliminary and final decisions on pardon were made by the responsible Minister in the exercise of his or her discretionary powers, rather than by an independent court. They submitted that the Minister could refuse to admit a life-sentence prisoner to the reintegration phase or refuse to pardon him or her even after obtaining a positive opinion from the Advisory Board or the sentencing court, as long as reasons were given. The applicants claimed that many years of litigation in a myriad of procedures concerning two other life-sentence prisoner (Mr L.C. and Mr C.Y.) had shown that the Minister took a positive decision only when compelled to do so by a civil court.

102. They also argued that the chances to have their sentences reduced were further restricted because the civil courts could merely conclude that a decision made by the Minister was unlawful. The courts could not order a prisoner's release if that was deemed necessary to comply with Article 3 of the Convention, and a fresh decision by the Minister might still be a refusal. Furthermore, the civil courts had only limited authority and could examine only whether the Minister had taken a decision in a reasonable manner and whether he or she could reasonably have taken the impugned decision (*marginale toetsing*) in the light of the interests at stake. This distinguished the applicants' situation from the one examined by the Court in *Hutchinson v. the United Kingdom* ([GC], no. 57592/08, § 52, 17 January 2017), where the English courts could re-examine the merits in full and had the power to release a prisoner. The applicants also submitted that the opinion issued by the Advisory Board was confidential, which created a knowledge gap during civil proceedings aimed at challenging a decision of the Minister.

103. With respect to the criteria and conditions for a review, the applicants claimed that the impact, scope and weight of the imprecise and subjective criteria in Article 4 of the Advisory Board Decree (see paragraph 71 above) were valued differently by the Advisory Board, the criminal courts and the Minister. Giving much more weight to the interests of biased and emotionally involved victims, the Minister could put forward as many objections as possible to achieve the desired outcome of a refusal to grant a pardon. There were also no legal incentives and clearly fixed deadlines for the Minister to guarantee the continuity and success of the reintegration process and his or her decision-making.

104. Lastly, as regards the time frame for a review, the applicants pointed out that they were not eligible for any reintegration activities during the first twenty-five years of their life sentences, which made the first phase of their

detention too long a period. Moreover, the reintegration phase of three years that followed for eligible prisoners was too short a period to provide an adequate basis for a pardon decision, and it involved many uncertainties and intermediate steps. This, combined with the fact that the Minister rarely granted leave and section 20(d)(5) of the Temporary Leave Regulation (see paragraph 80 above) ruled out overnight leave, deprived life-sentence prisoners of essential possibilities to grow accustomed to more freedoms and demonstrate and improve their conduct. Accordingly, the applicants claimed that the time frame for a review of their life sentence exceeded the standards identified in the Court's case-law.

(ii) The Government

105. Referring at the outset to the States' wide margin of appreciation in matters of criminal justice and sentencing, the Government submitted that the criteria and conditions for a review were sufficiently clear and certain for the applicants to know, at the outset of their sentences, what they had to do to be considered for release, and under what conditions a review of their sentences would take place.

106. In respect of the nature and scope of a review, the Government pointed out that decisions on pardon were taken by the executive after obtaining advice from the sentencing court, the Public Prosecution Service and the Advisory Board. The responsible Minister had to give reasons for departing from a recommendation issued by the Advisory Board that a life-sentence prisoner be admitted to the preliminary reintegration phase. Judicial review by the civil courts ensured that executive decisions were sufficiently reasoned and in line with the criteria in Article 4 § 4 of the Advisory Board Decree (see paragraph 71 above). The Supreme Court judgment of 6 November 2020 (see paragraph 89 above) showed that the civil courts provided an effective remedy. Life-sentence prisoners also had a legal remedy against decisions regarding detention and reintegration plans and leave (see paragraph 83 above). The Government were of the opinion that the Court's case-law did not require that pardons be granted by domestic courts.

107. In the Government's view, there were sufficient procedural safeguards in relation to pardons. The recommendation of a criminal court was, in principle, binding. The Minister could depart from it only in special circumstances and by giving reasons. A decision had to be taken within a reasonable time and had to take into account the opinion of the Advisory Board on the progress of reintegration activities. The opinion was available to the prisoner in question as an annex to the Minister's decision.

108. As regards the criteria and conditions for a review, the Government submitted that the Advisory Board and the Minister were to take into account clear and objective criteria as laid down in Article 4 § 4 of the Advisory Board Decree (see paragraph 71 above). The criteria reflected legitimate grounds on the basis of which it could be decided whether the continued execution of a

life sentence could still be justified on legitimate penological grounds, as had also been determined by the Supreme Court (see paragraphs 14 and 22 above) in rulings which were neither arbitrary nor manifestly unreasonable.

109. In respect of the timing of a review, the Government noted that the first step of the review process started no later than twenty-five years after the start of police custody or pre-trial detention (thus before the date on which a sentence was imposed or became final, comparable to the system of review examined in *Bodein v. France*, no. 40014/10, 13 November 2014), when the Advisory Board assessed for the first time whether a life-sentence prisoner could be admitted to the reintegration phase. In the applicants' cases, this would be in 2031 (Mr Rasnabe, application no. 56209/19), 2033 (Mr Remmers, application no. 55483/19), 2035 (Mr Soerel, application no. 55021/19), 2036 (Mr F.B., application no. 28157/18), 2038 (Mr Marcos Richter, application no. 59814/19, and Mr Henriquez, application no. 15199/20) and 2039 (Mr Admilson Richter, application no. 59806/19). If the Minister refused a life-sentence prisoner's admission to the reintegration phase, he or she had to provide reasons for doing so.

110. An *ex officio* decision by the Minister on whether to pardon a prisoner was taken three years later. In the applicants' cases, this would be in 2034 (Mr Rasnabe, application no. 56209/19), 2036 (Mr Remmers, application no. 55483/19), 2038 (Mr Soerel, application no. 55021/19), 2039 (Mr F.B., application no. 28157/18), 2041 (Mr Marcos Richter, application no. 59814/19, and Mr Henriquez, application no. 15199/20) and 2042 (Mr Admilson Richter, application no. 59806/19). When taking such a decision, the Minister had to take into account the Advisory Board's follow-up report regarding the prisoner's progress and the advisory reports of the Public Prosecution Service and the sentencing court. If the Minister decided not to grant a pardon or to deviate from the opinion of the court that had imposed the sentence, he or she had to give reasons for that decision (the Government referred to the Supreme Court judgment of 6 November 2020 summarised in paragraph 89 above).

111. The Government disputed that twenty-five years of detention aimed at social rehabilitation (including work and education), without specific activities aimed at reintegration and release, had such a negative effect on the applicants' functioning or well-being that their chances of being admitted to the reintegration phase and subsequently released were reduced or eliminated. The applicants were not known to have acute medical problems. If necessary, their situation could be discussed at a medical consultation with a psychologist present, and they were entitled to adequate medical care for any physical or psychological complaints if their medical situation necessitated this. In the first year after a life sentence became final, a Murray assessment (see paragraph 76 above) was to be carried out to ensure that appropriate care was provided.

112. Lastly, the Government submitted that leave was possible for life-sentence prisoners in the reintegration phase, and that the further a prisoner progressed in this phase, the more leave he or she could have. The Government disputed the applicants' argument that the right to overnight leave for life-sentence prisoners could be derived from the Court's case-law.

(b) Individual situations

113. In the context of the applicants' complaint that the review mechanism does not meet the Convention standards, making their life sentence *de jure* and *de facto* irreducible, also the following issues were raised by them and addressed by the Government.

(i) Mr F.B. (application no. 28157/18)

114. The applicant pointed out that no mandatory detention and reintegration plan had been drawn up on account of his life sentence. Drawing the Court's attention to extracts from his prison file, he also alleged that he was in no way eligible for any freedoms or privileges (including work) or mentoring interviews. In this connection, the applicant referred to a letter of 20 August 2019, in which the deputy governor of Vught Custodial Institution informed him that for the first twenty-five years of his detention he would not be eligible for reintegration activities aimed at a return to society. A detention plan setting out the social rehabilitation activities – aimed at providing meaningful daytime activities such as work and education – would be drawn up and discussed with him. Providing such activities was considered an obligation of effort and it was largely up to the applicant to show some initiative. According to the deputy governor, the applicant had so far failed to do so.

115. The applicant further pointed out that his Murray assessment had been carried out too late (that was, in early 2024).

116. The Government submitted that mentoring was always on offer and that it had taken place several times in the applicant's case. It had not been continuous because the applicant had refused contact with his mentor on several occasions. The Government further submitted that the applicant had so far been reluctant to cooperate in drawing up a detention and reintegration plan, that the prison file showed that he preferred to remain in his cell, and that he had declined an offer to enrol on a course and a job. Lastly, the Government asserted that the compatibility of the applicant's life sentence with Article 3 of the Convention was not altered by the delay in carrying out his Murray assessment.

(ii) Mr Remmers (application no. 55483/19)

117. The applicant submitted that he could not and would not participate in an assessment carried out by the Pieter Baan Centrum under section 12 of

the Detainees Regulation (see paragraphs 77-78 above) because it would focus on his individual perception of the crimes for which he had been sentenced and his risk of reoffending. Successful participation in an assessment like that would thus be possible only for prisoners who, unlike him, had admitted that they were guilty of the crime for which a life sentence had been imposed. He also pointed out that, even though he had given his consent in writing on 21 February 2023, no Murray assessment had been initiated or carried out.

118. Referring to the judgment of the Regional Court of The Hague of 4 September 2020 (see paragraph 88 above), the Government submitted that the applicant's denial of the offences for which he had been sentenced to life imprisonment would not necessarily hinder his admission to the reintegration phase. The Government also submitted that the initiation of the applicant's Murray assessment had been delayed because of the applicant's own conduct (in that his consent of 21 February 2023 was subject to conditions which the domestic authorities deemed unacceptable), the complexity of the case and the shortage of staff. Moreover, this delay did not alter the compatibility of the applicant's life sentence with Article 3 of the Convention.

(iii) Mr Soerel (application no. 55021/19)

119. The applicant pointed out that his Murray assessment had been initiated more than three years too late (that was, in August 2023).

120. The Government asserted that the compatibility of the applicant's life sentence with Article 3 of the Convention was not altered by the delay in carrying out his Murray assessment (for which he had given consent on 27 October 2022).

(iv) Mr Rasnabe (application no. 56209/19)

121. Drawing the Court's attention to the fact that his residence permit had been revoked (see paragraph 32 above) and that he would be expelled from the Netherlands if he were ever released from prison, the applicant claimed that he was effectively prevented from being admitted to the reintegration phase, from being eligible for reintegration leave (pursuant to section 4 sub 1. of the Temporary Leave Regulation, see paragraph 80 above), and thus ultimately from being pardoned. Moreover, even if he were granted reintegration leave, he would be criminally liable under Article 197 of the Criminal Code (see paragraph 85 above) as soon as he stepped outside the prison.

122. In the Government's view, the applicant's residence status did not preclude his admission to the reintegration phase, nor did it restrict the nature of the activities to be offered during that phase. For the purposes of the reintegration phase, it would be assumed that, if pardoned, the applicant would be expelled to Morocco. Reintegration activities, including

reintegration leave, would centre as much as possible on his return to Moroccan society. In addition to the standard matters covered in the reintegration phase (see paragraph 74 above), the activities to be provided to the applicant would include language lessons, cultural programmes relating to Morocco, and extra video calls and telephone calls with family members in that country.

123. With respect to the applicant's position that his residence status would prevent him from going on leave during the reintegration phase, the Government submitted that in practice, exceptions in the form of special permission for leave had been made in the past. By way of illustration, the Government referred to the decision adopted by the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection on 19 May 2015 (see paragraph 87 above).

124. As regards the applicant's reliance on Article 197 of the Criminal Code (see paragraph 121 *in fine* above), the Government submitted that it followed from the case-law of the Court of Justice of the European Union that provisions criminalising a person's illegal stay in the Netherlands could not be enforced as long as the possibilities for return had not been exhausted, which was the case if a prisoner needed to remain in the Netherlands to serve his or her sentence. Coordination between the relevant national authorities and orders to spend leave within a specified area would prevent criminal law provisions on a person's illegal stay from being applied, and would enable eligible life-sentence prisoners to go on leave during the reintegration phase. Under these specific circumstances, the Public Prosecution Service would refrain from prosecuting a person for his or her illegal stay.

(v) *Mr Admilson Richter (no. 59806/19)*

125. The applicant, referring to the Regional Court's judgment of 24 November 2015 (see paragraph 43 above), submitted that his unresolved psychological disorder could put him at an increased risk of reoffending and thus prevent him from ever being admitted to the reintegration phase and pardoned.

126. The Government submitted that the applicant was being supported in dealing with his disorder, and he frequently visited psychologists and other (mental) healthcare professionals and received treatment from them if necessary.

(vi) *Mr Marcos Richter (no. 59814/19)*

127. The parties did not make any submissions in respect of the applicant's individual situation.

(vii) *Mr Henriquez (no. 15199/20)*

128. The applicant pointed out that his Murray assessment had been carried out more than three years too late (that was, in June 2024).

129. The Government asserted that the compatibility of the applicant's life sentence with Article 3 of the Convention was not altered by the delay in carrying out his Murray assessment.

2. *The Court's assessment*

(a) **General principles**

130. The general principles established in the Court's case-law on life sentences have been summarised by the Grand Chamber in *Sanchez-Sanchez v. the United Kingdom* ([GC], no. 22854/20, §§ 79-81, 3 November 2022) as follows:

"79. In *Kafkaris v. Cyprus* ([GC], no. 21906/04, ECHR 2008) a mandatory life sentence had been imposed on the applicant after he was convicted in Cyprus on three counts of pre-meditated murder. The Court acknowledged 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 (see *Kafkaris*, cited above, § 97, together with the cases cited therein). At the same time, it recognised that the imposition of an irreducible life sentence on an adult might raise an issue under Article 3 of the Convention (see *Kafkaris*, cited above, § 97, together with the cases cited therein). For the Court, the principal question to be determined was whether a life prisoner could be said to have any prospect of release. It was enough for the purposes of Article 3 that a life sentence was *de jure* and *de facto* reducible (see *Kafkaris*, cited above, § 98). It therefore ruled that the possibility of early release, even where such a decision was at the discretion of the Head of State, was sufficient to establish such a possibility (see *Kafkaris*, cited above, § 103). In *Iorgov v. Bulgaria (no. 2)* (no. 36295/02, §§ 51-60, 2 September 2010) the Court subsequently confirmed that the hope of Presidential clemency in the form of either a pardon or a commutation of sentence was sufficient to establish a prospect of release.

80. In *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts)) the Grand Chamber revisited the issue. The applicants in that case were also serving life prisoners, having already received 'whole life orders' following their conviction in the United Kingdom for murder, and they challenged the compatibility of those whole life orders with Article 3 of the Convention. The Court stated that a sentence of imprisonment would violate Article 3 of the Convention if it was 'grossly disproportionate' (see *Vinter and Others*, cited above, § 102), or if – as it had found in *Kafkaris* – it was an irreducible life sentence (see *Vinter and Others*, cited above, § 107).

81. In respect of the latter, the Court, having regard to the prevention and rehabilitation aims of the penalty, shifted the emphasis from 'reducibility' *per se* (see *Kafkaris*, cited above, § 98) to the existence of a review mechanism focused on the prisoner's rehabilitation (see *Vinter and Others*, cited above, § 109, et seq.)."

131. With regard to the question of how to determine whether, in a given case, a life sentence could be regarded as reducible, the Court established the following principles in *Vinter and Others* (cited above, §§ 119-122):

“119. For the foregoing reasons, the Court considers that, in the context of a life sentence, Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider 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.

120. However, the Court would emphasise that, having regard to the margin of appreciation which must be accorded to Contracting States in the matters of criminal justice and sentencing ..., it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place. This being said, the Court would also observe that the comparative and international law materials before it show 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 ...

121. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.

122. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.”

132. In the case of *Murray v. the Netherlands* ([GC], no. 10511/10, § 100, 26 April 2016, with further references), the Court further developed the safeguards required in the domestic context to ensure the effectiveness of the review mechanism. In particular, it noted that a prisoner’s right to a review had to entail an actual assessment of the relevant information and had to be surrounded by sufficient procedural guarantees. To the extent necessary for the prisoner to know what he or she had to do to be considered for release and under what conditions, reasons might have to be provided, and this should be safeguarded by access to judicial review. Finally, in assessing whether the life sentence is reducible *de facto* statistical information on prior use of the review mechanism might be relevant (see also *Sanchez-Sanchez*, cited above, § 82).

(b) Application of these principles*(i) Preliminary remarks*

133. The Court reiterates that in *Murray* (cited above) it examined the merits of the complaint about life imprisonment on the basis of the facts and circumstances which existed at the time the applicant lodged his application with the Court (§ 125). This general principle does not, however, prevent the Court from considering subsequent developments in law and practice in as much as they have a bearing on the question whether an applicant's life sentence is – and remains – *de jure* and *de facto* reducible (see, for instance, *Čačko*, cited above, §§ 79-80; *Dardanskis and Others v. Lithuania* (dec.), nos. 74452/13 and 15 others, §§ 21-32, 18 June 2019; and *Koky v. Slovakia* (dec.), no. 27683/13, §§ 32-37, 16 May 2017). Accordingly, the Court will examine the applicants' complaint in the light of the situation that obtained on the date of their applications (between June 2018 and March 2020, see the appended table) and later developments in law and practice, in particular the legislative amendment which has entered into force on 1 July 2023 (see paragraph 72 above).

134. The Court considers it appropriate to examine the system of review put in place by the Advisory Board Decree (see paragraphs 135-149 below) before turning to the applicants' individual situations (see paragraphs 150-165 below).

*(ii) System of review**(α) Nature and scope of review*

135. Having regard to the margin of appreciation that must be accorded to Contracting States, the Court has emphasised that it is for each State to determine whether the review of a sentence is conducted by the executive or the judiciary (see *Murray*, cited above, § 99, with further references). In particular, the Court has held that an executive review is not in itself contrary to the requirements of Article 3 (see *Hutchinson*, cited above, §§ 49-50, with further reference), as long as it is surrounded by sufficient procedural guarantees (see *Matiošaitis and Others v. Lithuania*, nos. 22662/13 and 7 others, §§ 174 and 181, 23 May 2017, with further references).

136. Turning to the present case, the Court notes that under Dutch law a decision whether to grant a pardon must be taken by the responsible Minister, either in response to a request by a life-sentence prisoner or acting *ex officio* (see sections 5 and 19 of the Pardons Act, respectively – see paragraphs 66 and 67 above). Reasons must be given if the Minister denies a prisoner's request to be pardoned (see section 18(2) of the Pardons Act) or if a negative decision is taken *ex officio* (see the Supreme Court judgment of 19 December 2017, cited in paragraph 14 above; see also *Hutchinson*, cited above § 51; compare and contrast *Matiošaitis*, cited above, § 170, and *Petukhov v. Ukraine* (no. 2), no. 41216/13, § 177, 12 March 2019).

137. The Court notes further that judicial review by a civil court is open to the life-sentence prisoners in case of a refusal to admit a life-sentence prisoner to the reintegration phase or a refusal to grant a pardon (see paragraphs 81-82 above; see also *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 258, ECHR 2014 (extracts); compare and contrast *Matiošaitis*, §§ 170 and 181, and *Petukhov (no. 2)*, § 179, both cited above). The Court considers that life-sentence prisoners are able to actively participate in those judicial proceedings for the review of their life sentence, in which a court must adopt a reasoned ruling, against which an appeal may subsequently be lodged with a higher court. That review contains sufficient procedural guarantees, since both a life prisoner and his or her lawyer have a right to be present in the courtroom to plead that the life prisoner has reformed (see paragraph 84 above; see also *Dardanskis and Others* (dec.), cited above, § 28). The same applies to proceedings regarding interim decisions – for example, as regards leave and the nature of reintegration activities provided for in a detention and reintegration plan – that are open to challenge before the Complaints Commission and the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection (see paragraphs 83-84 above).

138. The Court takes note of the fact that, as the applicants submitted, in the above-mentioned civil review proceedings the courts will examine only whether the Minister has taken a decision in a reasonable manner and whether he or she could reasonably have taken the impugned decision in the light of the interests at stake, and that those courts do not have the power to release prisoners (see the applicants' arguments summarised in paragraph 102 above). In that connection, the Court is mindful that in *Hutchinson* (cited above, §§ 52 and 53) it found "a significant judicial safeguard" in the fact that executive decisions were subject to full judicial review and courts had the power to release prisoners, and the system was found to be compatible with Article 3 of the Convention. However, that consideration does not imply, as the applicants appear to claim, that such a standard of review is a minimum requirement for a State to meet its obligation to provide life-sentence prisoners with a realistic prospect of release. What is required from States is that "the review should entail either the executive giving reasons *or* judicial review, so that even the appearance of arbitrariness is avoided" (see *Matiošaitis*, § 181, and *Petukhov (no. 2)*, § 178, both cited above, emphasis added). Similarly, the Court held in *Murray* (cited above, § 100) that 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 (see paragraph 132 above). In the present cases, the pardon system involves reasoned decision-making by the executive, combined with the possibility of judicial review.

139. The Court notes that according to the statistical data provided by the parties towards the end of 2024 (see paragraph 91 above), three life-sentence prisoners have been admitted to the reintegration phase on the basis of an opinion issued by the Advisory Board, and one life-sentence prisoner has been pardoned in 2023 under the system put in place by the Advisory Board Decree. It cannot therefore be said that life imprisonment in the Netherlands is never reduced in practice (see, *mutatis mutandis*, *Harakchiev and Tolumov*, cited above, § 260). The lack of much practice under the system established by the Advisory Board Decree is unsurprising, given the fact that it has been in place only since 2017. This does not necessarily count against the domestic system, just as it did not count against other national systems which were found to be in conformity with Article 3 of the Convention where there was reference to little or even no previous practice (see *Hutchinson*, § 53, and *Bodein*, § 60, both cited above). Thus, at present it cannot be said that statistical data show only negligible prospects of release, or that pardon will always be an isolated exception (compare and contrast *Petukhov (no. 2)*, § 186, and *Matiošaitis*, § 172, both cited above).

(β) Criteria and conditions for review

140. The Court reiterates that the basis of a review of a life sentence must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the prisoner (these include punishment, deterrence, public protection and rehabilitation; see *Vinter*, cited above, § 111). The balance between them is not necessarily static and may shift in the course of a sentence, so that the primary justification for detention at the outset may not be so after a lengthy period of service of sentence. The requisite review must take account of the progress that the prisoner has made towards rehabilitation, which must be examined in the light of the applicable prison regime and conditions of detention, including physical and mental health aspects (see the extensive summary in *Murray*, cited above, §§ 100-112).

141. Turning to the present case, the Court notes at the outset that the review criteria laid down in Article 4 § 4 of the Advisory Board Decree (see paragraph 71 above) are publicly accessible and the applicants can be expected to be familiar with them, thus increasing the transparency of the pardon procedure and constituting a guarantee contributing to consistency in the exercise of the Minister's powers in that respect (see also *Matiošaitis*, cited above, §§ 167-68; compare and contrast *László Magyar v. Hungary*, no. 73593/10, § 57, 20 May 2014).

142. Like the Supreme Court held in its judgment of 19 December 2017 (see paragraph 14 above), the Court considers that the review criteria in domestic law – namely the risk of reoffending, the risk of offending, the behaviour and development of the life-sentence prisoner during detention, and the impact on victims and next of kin and, in that context, the matter of

retribution – adequately reflect the legitimate penological grounds as recognised in the Court’s case-law (see also *Matiošaitis*, § 168; *Dardanskis and Others*, § 29; and *Petukhov (no. 2)*, §§ 172-73, all cited above). The Court further agrees with the judgment of the Supreme Court of 23 April 2019 (see paragraph 22 above) and the Advocate-General’s opinion of 19 March 2019 (see paragraph 54 above) that the applicable criteria are objective and sufficiently clear, even if their application in individual cases cannot be predicted beforehand with absolute certainty. It does not appear, nor has this been alleged, that the review criteria in Article 4 § 4 of the Advisory Board Decree present a partial picture of the decision-making process, nor that they are based solely on compassionate and/or exceptional grounds (compare and contrast *Vinter*, §§ 126-27, and *Petukhov No 2*, § 173, both cited above).

143. The Court also notes that during the first twenty-five years of their detention, life-sentence prisoners are given the opportunity to rehabilitate themselves, for instance through work and education (see section 1, under point i. and j. of the Detainees Regulation, quoted in paragraph 77 above; see also *Dardanskis and Others*, cited above, § 30; compare and contrast *Harakchiev and Tolumov*, § 266, and *Petukhov (no. 2)*, §§ 182-83, both cited above). In order to address any risk of reoffending, and unless the life-sentence prisoner objects, a Murray assessment is to be carried out in the first year after the life sentence becomes final (see paragraph 76 above), and an assessment is to be carried out by the Pieter Baan Centrum no later than six months before the Advisory Board issues an opinion on the prisoner’s admission to the reintegration phase (see paragraphs 77-78 above). The Court is of the opinion that the emphasis on retribution, combined with meaningful daytime activities during the first twenty-five years of detention, followed by reintegration activities and leave for eligible detainees, falls well within the State’s margin of appreciation and is not in violation of the State’s positive obligations under Article 3 of the Convention.

144. Lastly, the Court wishes to add that it has never required that a State provide overnight leave to comply with its positive obligations in relation to rehabilitation (see, in this respect, the applicants’ arguments summarised in paragraph 104 above).

(γ) Time frame for review

145. In a number of cases, the Court observed that there was 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 (see *Vinter and Others*, § 120, and *Murray*, § 99, both cited above).

146. The Court reiterates that at the time the applicants lodged their applications (see the appended table), it followed from Article 4 of the Advisory Board Decree that the responsible Minister had to take a review decision *ex officio* after twenty-seven years of detention (see paragraph 71 above), counted from the time they were first taken into police custody or

held in pre-trial detention for the offences for which their life sentences were imposed (see Article 1 point g. of the Advisory Board Decree). On 1 July 2023 a legislative amendment entered into force, which increased this period to twenty-eight years, still counted from the start of detention on remand (see paragraph 72 above).

147. In *Bodein v. France* (cited above, § 61), the Court examined a system whereby life sentences were reviewed after thirty years of imprisonment. In finding that it was compatible with Article 3, the Court gave particular weight to the fact that the starting point for the calculation of a whole-life term under French law included time spent in pre-trial detention. Bearing in mind that the applicant in that case would effectively be able to apply for parole twenty-six years after the relevant appellate court had imposed his life sentence in 2008, the Court concluded that this complied with Article 3 of the Convention.

148. Having regard to the years in which the applicants' life sentences were imposed (see paragraphs 8, 19, 28, 37, 45, 52 and 59 above) and the point in time when, according to the Government's submissions, the Minister will take an *ex officio* decision (see paragraph 110 above), the Court notes that the applicants' life sentences will be reviewed no later than twenty-five years after their imposition by the relevant appellate criminal court. Accordingly, the Court considers that the time frame for review falls within the respondent State's margin of appreciation and does not exceed any of the thresholds identified in the Court's case-law (see *Vinter*, and *Bodein*, both cited above).

149. Noting further that the above-mentioned dates and calculation methods were not disputed by the applicants (compare and contrast, *Petukhov* (no. 2), cited above, §§ 175-76), the Court has no grounds to conclude that the applicable time frame as set out in the Advisory Board Decree is incompatible with the requirements of Article 3 of the Convention (see, *mutatis mutandis*, *Čačko v. Slovakia*, no. 49905/08, § 77, 22 July 2014; compare and contrast *T.P. and A.T. v. Hungary*, nos. 37871/14 and 73986/14, § 45, 4 October 2016).

(iii) *Individual situations*

(α) Mr F.B. (application no. 28157/18)

150. The core of the applicant's argument (see paragraph 114 above) is that his prison file shows that he is not allowed to work or enjoy other privileges on account of his life sentence, that no mandatory detention and reintegration plan had been drawn up on account of his life sentence.

151. The Court notes that the extracts of the prison file which were submitted to it, include records which show that the applicant has done some work (painting) at various points in time and that he has shown some initiative and a willingness to do (more) work and pursue education. At the same time,

the Court observes that the submitted extracts also show that the applicant has received disciplinary punishments for refusing to work (*werkweigeren*) and being in possession of prohibited items, all of which – the Court assumes – may have temporarily affected his eligibility to work. In view of this, the Court considers that the applicant has not substantiated his claim that he is systematically denied the opportunity to work or enjoy other privileges, and that this has led to a situation whereby he is effectively permanently excluded from being pardoned. The applicant's lack of work, education and mentoring cannot be held against the Government if this is due to his own conduct.

152. The Court also wishes to add that it does not discern an issue under Article 3 on account of the fact that the review mechanism was introduced on 1 March 2017 (see paragraph 70 above), that is to say only after the applicant's conviction to life imprisonment by the Court of Appeal of The Hague on 19 January 2015 (see paragraph 8 above) (see also *Čačko*, cited above, §§ 79-80, concerning a remedy that was introduced less than one year after conviction; compare and contrast *Medvid v. Ukraine*, no. 7453/23, §§ 59-60, 10 October 2024, concerning a remedy that became fully operational some twenty years after conviction). In this connection, the Court cannot but note that the Court of Appeal's judgment acquired the force of law as a result of the judgment of the Supreme Court (see paragraphs 14-15 above), by which time the new review system had already entered into force. In fact, the Supreme Court had suspended its examination precisely to await legislative developments (see paragraphs 11 and 12 above) and it subsequently held in an extensively reasoned judgment that the applicant's situation was not incompatible with Article 3 of the Convention.

(β) Mr Remmers (application no. 55483/19)

153. The Court is not persuaded by the applicant's argument (see paragraph 117 above) that only prisoners who, unlike him, have admitted that they are guilty of the crimes for which they have been sentenced to life imprisonment can successfully participate in assessments carried out by the Pieter Baan Centrum, and that he was thus deprived of a realistic prospect of release. In this connection, the Court notes that the Government (see paragraph 118 above) referred to a judgment of the Regional Court of The Hague of 4 September 2020 in the case of another life-sentence prisoner (see paragraph 88 above) which convincingly demonstrates that someone's denial of a murder charge does not necessarily hinder that person's admission to the reintegration phase. In particular, it follows from that judgment that an examination by the Pieter Baan Centrum looks beyond a person's denial of a crime, by also taking into account other relevant factors – such as his or her family, social network, education, employment and future perspectives – to determine whether a life-sentence prisoner is at risk of reoffending. The Court sees no reason why this would be any different in relation to a Murray assessment.

154. Furthermore, and while this is by no means decisive, the Court considers it useful to draw a parallel between the applicant's situation and the one examined by the Court in its judgment in *Marcello Viola v. Italy* (No. 2) (no. 77633/16, 13 June 2019), which concerned a person sentenced to life imprisonment for mafia crimes who had been denied the possibility of review of his life sentence because he had not met the statutory requirement of "cooperation with the judicial authorities". The Court held that this requirement had given rise to a presumption of dangerousness without an individual assessment of the applicant's progress, and had ignored the fact that a person's refusal to cooperate with the authorities might not be truly voluntary and might instead be due to fear of reprisals.

155. The applicant in the present case also claimed that he was effectively prevented from cooperating with the domestic authorities. His situation, however, differs from that of the applicant in *Marcello Viola* (cited above), in that his denial of the offences in question does not necessarily create an irrebuttable presumption of dangerousness, and his refusal to admit to the crimes or cooperate with the domestic authorities in the necessary preliminary assessments is not the result of any coercion or otherwise involuntary (compare and contrast *Marcello Viola*, cited above, §§ 117-18 and 128-29).

156. In view of the above, the Court considers that the applicant's continued denial of the offences for which he has been sentenced to life imprisonment does not effectively deprive him of the possibility of demonstrating – at the relevant moment in the future – that no legitimate penological grounds exist for his continued detention. In these circumstances, the Court considers that the applicant's refusal to participate in a Murray assessment or an assessment by the Pieter Baan Centrum cannot be held against the Government.

(γ) Mr Rasnabe (application no. 56209/19)

157. The Court does not accept the applicant's argument (see paragraph 121 above) that his status as an undesirable alien poses a *de facto* obstacle to his successful reintegration and release. In particular, the Court considers that the Supreme Court's judgment of 23 April 2019 (see paragraph 40 above), the decision of 19 May 2015 by the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection (see paragraph 87 above), the Government's submissions on this point (see paragraphs 122-124 above) and the discretionary powers of the Public Prosecution Service in this respect (see paragraphs 85-86 above) convincingly demonstrate that the applicant's status will not necessarily prevent him from being admitted to the reintegration phase, from enjoying incidental leave during that phase, and from being pardoned.

(δ) Mr Admilson Richter (application no. 59806/19)

158. The applicant emphasised that the North Netherlands Regional Court had imposed on him a thirty-year custodial sentence and an order for his placement at the disposal of the Government with confinement in a custodial clinic owing to his personality disorder and the seriousness of the offences in question (see paragraph 43 above). From this, the applicant inferred that his unresolved psychological disorder and the associated risk of his reoffending might prevent him from ever being admitted to the reintegration phase and pardoned (see paragraph 125 above).

159. The Court does not accept this argument. The applicant referred to a judgment that was quashed when the Arnhem-Leeuwarden Court of Appeal convicted him and sentenced him to life imprisonment (see paragraph 45 above). While the Court of Appeal agreed with the Regional Court that the applicant suffered from psychological problems, it deemed these problems insufficiently serious for the imposition of an order for confinement in a custodial clinic. That finding became final when the Supreme Court's judgment was issued (see paragraph 48 above). The Court sees no reason to conclude that the applicant has suffered or is still suffering from psychological or psychiatric problems in detention for which necessary treatment has been withheld (contrast *Murray*, cited above, §§ 115-127, and *Horion v. Belgium*, no. 37928/20, §§ 65-76, 9 May 2023).

(ε) Mr Marcos Richter (application no. 59814/19)

160. The parties did not make any submissions in respect of the applicant's individual situation (see paragraph 127 above).

(στ) Mr F.B. (application no. 28157/18), Mr Soerel (application no. 55021/19) and Mr Henriquez (application no. 59814/19)

161. Mr F.B., Mr Soerel and Mr Henriquez complained that their Murray assessments had been carried out too late (see paragraphs 115, 119 and 128 respectively).

162. The Court notes that Mr Soerel gave the necessary consent for a Murray assessment on 27 October 2022 (see paragraph 120 above), and that the assessment was initiated in August 2023 (see paragraph 119 above). In these circumstances and considering what will be discussed below (see paragraph 164 below), the Government cannot be faulted for the fact that the Murray assessment has been carried out after the deadline set for that purpose (see paragraph 76 above).

163. The Court notes further that Mr F.B.'s sentence became final in December 2017 (see paragraph 15 above) and his assessment (due one year later – see paragraph 76 above) was carried out in early 2024 (see paragraph 115 above), while Mr Henriquez' sentence became final in October 2019 (see

paragraph 62 above) and his assessment was carried out in June 2024 (see paragraph 128 above).

164. The Court considers that once the first Murray assessments started in 2020 (see paragraph 76 above), it would be unrealistic and too rigid an approach to expect the authorities to ensure that a place at the Netherlands Institute for Forensic Psychiatry and Psychology is immediately available for all eligible life-sentenced prisoners, without some form of catch-up operation. For reasons linked to the efficient management of public funds, a certain friction between available and required capacity is inevitable and must be regarded as acceptable (see also *Hunde v. the Netherlands* (dec.), no. 17931/16, § 59, 5 July 2016; see, *mutatis mutandis*, *Brand v. the Netherlands*, no. 49902/99, § 64, 11 May 2004, and *Morsink v. the Netherlands*, no. 48865/99, § 67, 11 May 2004, both within the context of Article 5 of the Convention).

165. Accordingly, the Court does not consider that these delays, which occurred in the first years of a catch-up operation, raise any issues under Article 3 of the Convention.

(c) Conclusion

166. In view of the above, the Court considers that the domestic authorities have set up a system for the review of life sentences which enables the applicants to know what they must do to be considered for release, and under what conditions a review of their sentences will take place. Moreover, the applicants' life sentences cannot be regarded as irreducible, either *de jure* or *de facto*, given their individual circumstances, as submitted for examination by this Court.

167. The Court notes that the circumstances in which life-sentence prisoners may seek release, with reference to the legitimate penological grounds for detention, could be further specified through procedural refinement (for example, in the form of a conditional release decision by a judge – see paragraph 68 above), domestic case-law and practice. The constitutional obligation on national courts to take into account both Article 3 of the Convention and the Court's case-law as it may develop in the future (see paragraph 65 above) provides an important additional safeguard to ensure continued compliance with the Convention (see also *Hutchinson*, cited above, § 70).

168. There has accordingly been no violation of Article 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;

3. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 21 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski
Deputy Registrar

Lado Chanturia
President

APPENDIX

List of applications:

No.	Application no.	Lodged on	Applicant, year of birth, nationality	Represented by
1.	28157/18	12 June 2018	F.B., 1985, Azerbaijani	J. Boksem (Leeuwarden) initially also by: T. Kodrzycki (Amsterdam)
2.	55483/19	17 October 2019	Jason Franklin REMMERS, 1968, Dutch	D.N. de Jonge (Rotterdam) initially also by: R. van Leusden (Amsterdam)
3.	55021/19	16 October 2019	Dino SOEREL, 1960, Dutch	H.M. Dunsbergen (Breda)
4.	56209/19	23 October 2019	Mohamed RASNABE, 1972, Moroccan	M. Berndsén (Amsterdam)
5.	59806/19	13 November 2019	Admilson RICHTER, 1984, Dutch	N. van Schaik (Utrecht) initially by: S.D. Groen (Utrecht)
6.	59814/19	13 November 2019	Marcos RICHTER, 1985, Dutch	M. Berndsén (Amsterdam)
7.	15199/20	12 March 2020	George Angel HENRIQUEZ, 1990, Dutch	J. Boksem (Leeuwarden)