



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

GRAND CHAMBER

CASE OF LÉGER v. FRANCE

(Application no. 19324/02)

JUDGMENT
(Striking out)

STRASBOURG

30 March 2009

This judgment is final but may be subject to editorial revision.

In the case of Léger v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Christos Rozakis, *President*

Jean-Paul Costa,

Nicolas Bratza,

Josep Casadevall,

Corneliu Bîrsan,

Nina Vajic,

Vladimiro Zagrebelsky,

Alvina Gyulumyan,

Ljiljana Mijović,

Dean Spielmann,

Renate Jaeger,

Sverre Erik Jebens,

Ján Šikuta,

Ineta Ziemele,

Mark Villiger,

Luis López Guerra,

Ledi Bianku, *judges*

and Erik Fribergh, *Registrar*,

Having deliberated in private on 30 April 2008 and on 11 March 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 19324/02) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a French national, Mr Lucien Léger (“the applicant”), on 6 May 2002.

2. The applicant alleged that his continued detention as a result of his life sentence amounted in practice to a whole-life term, was arbitrary in breach of Article 5 § 1 (a) of the Convention, and constituted inhuman and degrading treatment within the meaning of Article 3.

3. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 21 September 2004 it was declared partly admissible by a Chamber of that Section composed of the following judges: András Baka, President, Jean-Paul Costa, Loukis Loucaides, Karel Jungwiert, Volodymyr Butkevych, Wilhelmina Thomassen and Mindia Ugrehelidze, and also of Sally Dollé, Section Registrar. A hearing

took place in public in the Human Rights Building, Strasbourg, on 26 April 2005 (Rule 59 § 3). On 11 April 2006 a Chamber of the same Section, composed of the following judges: András Baka, President, Jean-Paul Costa, Rıza Türmen, Karel Jungwiert, Mindia Ugrekhelidze, Antonella Mularoni and Elisabet Fura-Sandström, and also of Sally Dollé, Section Registrar, delivered a judgment in which it held by a majority that there had been no violation of Article 3 and Article 5 § 1 (a) of the Convention. The partly dissenting opinion of Judge Costa, the partly concurring, partly dissenting opinion of Judge Mularoni and the dissenting opinion of Judge Fura-Sandström were appended to the judgment.

4. In a letter of 7 July 2006 the applicant requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention and Rule 73. The panel of the Grand Chamber granted that request on 13 September 2006.

5. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

6. The applicant, but not the Government, filed additional observations on the merits.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 30 April 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms A.-F. TISSIER, Head of the Human Rights Section, Department of Legal Affairs, Ministry of Foreign Affairs, *Agent*,
 Ms M. MONGIN-HEUZÉ, *magistrat*, on secondment to the Human Rights Section, Ministry of Foreign Affairs,
 Mr R. DUBANT, Head of the Sentence Enforcement and Pardons Office, Ministry of Justice,
 Ms A. SALISSE, drafting secretary, Legal Action and Prison Law Office, Department of Prison Affairs, Ministry of Justice,
 Ms M.-A. RECHER, drafting secretary, European and International Affairs Department, Ministry of Justice, *Advisers*;

(b) *for the applicant*

Mr J.-J. DE FELICE, member of the Paris Bar, *Counsel*,
 Mr H. DE SUREMAIN, legal officer, International Prison Watch, French section,
 Ms B. BELDA, lecturer, University of Montpellier I, *Advisers*.

The applicant was also present.

The Court heard addresses by Ms Tissier and Mr de Felice.

8. The applicant was found dead at his home on 18 July 2008. His representative himself died on 27 July 2008. On 11 August 2008 Ms I. Terrel stated that she would be taking over the case from Mr de Felice. On 8 September 2008 Ms Terrel produced a form of authority drawn up in her name by Mrs Viviane Hirardin, née Derveaux.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1937 and died in July 2008.

A. The applicant's conviction in 1966

10. In July 1964 the applicant was prosecuted for the abduction and murder of Luc Taron, an 11-year-old boy, on 26 and 27 May 1964.

11. On 5 July 1964, while in police custody, the applicant signed a confession which was not retracted during the first ten months of the investigation. Later that day he was placed in pre-trial detention. The investigating judge questioned him on several occasions about the reasons for his conduct, which was at odds with his confession, but the applicant refused to offer an explanation.

12. On 21 December 1964 a panel of experts in neuropsychiatry submitted a report, concluding that there had been no sign of mental illness at the time of the events. The experts contended that the physiological and psychological abnormalities observed, coupled with the applicant's alleged memory loss at the time of the killing, “[made] it impossible to rule out the presence of an epileptic symptom with a twilight state and dimming of consciousness”. They concluded that the applicant was “dangerous” and “liable to a criminal penalty” and that the organic disorders observed would be amenable to palliative treatment alone, meaning that “his social rehabilitation could be envisaged only with the utmost caution”.

13. A second report, submitted on 30 April 1965, concluded that the applicant was fit to stand trial and to answer for his actions in court and was a danger to public safety.

14. On 11 June 1965 the applicant withdrew his confession, while refusing to expand on his explanations. From that date on he maintained his innocence. He was committed for trial in the Assize Court for the *département* of Seine-et-Oise.

15. Following the hearing in the Assize Court, the prosecution did not seek any particular penalty.

16. In a judgment of 7 May 1966 the Assize Court dismissed the charge of premeditated murder but found the applicant guilty of abduction and subsequent murder, with mitigating circumstances. The applicant was sentenced to life imprisonment, no minimum term being set.

17. On 29 November 1966 the Court of Cassation dismissed an appeal on points of law by the civil party.

18. On 17 June 1971 the applicant, through his lawyer, lodged an initial application for a retrial, which was apparently not examined.

19. On 6 September 1974 the applicant's lawyer lodged a second application for a retrial with the Minister of Justice. The application gave rise to an investigation, the findings of which were due to be disclosed to the lawyer. However, the lawyer died before the report was submitted and the findings of the investigation were never forwarded to the applicant. Several months later, the applicant was notified orally that the application had been dismissed.

B. Applications for release from 1979 to 2000

20. On 5 July 1979, on the expiry of the probationary period of 15 years expressly provided for in the Code of Criminal Procedure, the applicant became eligible to apply for release; he subsequently made several such applications. In 1984 he received the support of the President of the Human Rights League (*Ligue des droits de l'homme*), while the civil party threatened the applicant with death should he be released from prison.

21. The applicant's applications for release on licence were transmitted to the Minister of Justice, the competent authority at the time, in 1985, 1988, 1990, 1991, 1992, 1993, 1994, 1995 and 1997. They were each refused, among other reasons for the applicant's own safety despite "evidence supporting them", as a former Minister of Justice (from 1995 to 1997) explained in a press article on 8 June 2000.

22. The applicant also made several applications for a presidential pardon, but without success. The last refusal occurred in 1998, after an expert medical assessment had concluded that the applicant's state of health was compatible with detention.

23. On 18 March 1999 a member of the Lille Bar applied for the applicant's release on licence.

24. The sentence enforcement board gave a positive opinion, but consideration of the application was adjourned pending the submission of a fresh expert report.

25. On 4 October 1999 the experts submitted their report, focusing entirely on aspects of the applicant's personality from a strictly psychiatric and forensic standpoint. They concluded that there were no formal obstacles to his release.

26. The report also stated that the previous experts had already found that there did not appear to be a risk of a further offence involving a child and that only the risk of a surge of paranoia and querulousness had held them back. The experts considered that there was nothing standing in the way of the applicant's release on licence, and that it was ultimately the continuity, consistency and solidity of the reference points provided to him that should prevent a reaction of psychological destabilisation after such a lengthy period of imprisonment. They therefore took the view that it would be helpful for the applicant, at least initially, to receive support through psychological counselling.

27. On 7 February 2000 the judge responsible for the execution of sentences gave his opinion, concluding that there were no obstacles to the applicant's release.

28. Following the reform of the post-sentencing system under Law no. 2000-516 of 15 June 2000, in particular the conditions and procedure for releasing long-term prisoners on licence, the Minister of Justice refused the applicant's application and referred his case to the newly established courts.

C. The applicant's 2001 application for release on licence

29. On 16 January 2001 the applicant submitted an application under the new judicial procedure. In it he again stated that, on his release, friends would provide him with accommodation in an outbuilding at their home and with employment in their bakery.

30. On 5 February 2001 the sentence enforcement board issued a unanimous opinion in favour of his release on licence. The applicant's resettlement and probation officer likewise expressed an opinion strongly in favour of the application.

31. At the hearing in the Douai Regional Parole Court the advocate-general submitted that the applicant's application should be refused in view of his "failure to make amends" for the acts that had led to his conviction.

32. In a decision of 6 July 2001 the Regional Parole Court, observing that the applicant denied having committed the offence of which he had been convicted, refused his application, basing its decision in particular on the psychiatric expert assessments carried out between 1965 and 1999.

33. The applicant appealed to the National Parole Court. His lawyer observed that the applicant was assured of work and accommodation on his release and that the most recent psychiatric report submitted by a panel of experts on 4 October 1999 had concluded that nothing stood in the way of his release on licence as there no longer appeared to be any risk of his reoffending. Relying on Article 3 of the Convention, he argued that making the applicant's release conditional on a confession was tantamount to a slow death sentence.

34. On 12 November 2001 the applicant's friends attested that their offer of accommodation and employment, which they had repeatedly made over a period of seventeen years, was still valid even though their bakery was in the process of being sold to a private company founded by their children, as there was another business operating at their home address.

35. In a judgment of 23 November 2001 the National Parole Court upheld the Regional Parole Court's decision, holding that the offers of employment and accommodation referred to by the applicant in support of his application as evidence of a social resettlement plan were closely interlinked and were in doubt as a result of the bankruptcy order against the person who had made them; it added that the paranoid tendencies still observed by the most recent expert would have required psychological counselling, which the applicant did not envisage undergoing.

36. Following a proposal to commute the applicant's sentence, a fresh psychiatric assessment was carried out in May 2004. The expert considered that there had been no particularly perceptible change in the applicant's mental state since the psychiatric assessments in 1999; that his character and personality traits did not make it possible to rule out with absolute certainty the risk of manifest dangerousness in the community, in the psychiatric sense of the term; and that he had to reserve judgment as to the applicant's prospects of readjusting.

D. The 2005 application for release on licence

37. On 25 January 2005 the applicant lodged a further application for release on licence with the Arras Post-sentencing Court (*tribunal de l'application des peines*).

38. The prison authorities recommended applying a probationary semi-custodial regime. The public prosecutor was opposed to the applicant's release on licence, contending that such a measure would create a dual risk for society of his reoffending and of his decompensation.

39. In a judgment of 1 July 2005, which was upheld on 31 August 2005 by the Post-sentencing Division of the Douai Court of Appeal, the applicant was released on licence with effect from 3 October 2005 until 2 October 2015, on which date the monitoring and supervision arrangements would expire. In addition to the standard requirements which he was to observe (place of residence, contact with the judge responsible for execution of sentences and Prison Service social workers, permission for travel), particular obligations were imposed on the applicant: to undergo medical examinations, treatment or care, including in a hospital environment, and to refrain from contacting the victim's mother, from distributing any publication or audiovisual work produced or co-produced by himself relating, in whole or in part, to the offence committed, and from making any public comment on the offence.

40. The courts held that the applicant now satisfied the conditions laid down in Article 729 of the CCP and based their decision on three aspects. Firstly, he had a stable and long-term plan, which was coherent in terms of both accommodation (with long-standing friends who had already assisted a number of people in difficulty) and voluntary work for the Red Cross. Furthermore, with regard to the applicant's attitude towards the victims, the courts pointed out that he had not made the slightest gesture to them and was taking refuge behind his alleged innocence, but considered “that Mr Léger's conduct [did] not, after 41 years of imprisonment, represent an obstacle to his release on licence as it might have done in the past”. Lastly, they noted that the risk of his reoffending was limited (“a zero risk of reoffending is so rare”) and that the recent expert reports were generally in favour of his release on licence. The Post-sentencing Court therefore concluded by noting that there was no cause to expect a more positive development in the applicant's case, and that a refusal of his application for release on licence would amount to his virtually permanent exclusion from society, which did not appear justified in view of his resettlement plan and the limited nature of the risk of his reoffending. On 3 October 2005 the applicant was indeed released.

41. On 17 November 2006 a follow-up report on the applicant, giving an assessment of the first year following his release on licence, was submitted by social workers. In their conclusions they referred, among other things, to an improvement in his health and to genuine progress in terms of personal autonomy. They noted that there had been no change in his statements regarding his innocence and his desire to make it known. While observing that the applicant was meeting his obligations, they expressed the view that he did not accept them in that he disputed the legitimacy of the obligation not to comment on the events, continually argued that the meetings with the psychiatrist were of no use and regarded the social workers' intervention as a restriction of his liberty.

THE LAW

42. The Court observes that Article 37 § 1 of the Convention provides:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

43. It also notes that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings (see *Deweert v. Belgium*, 27 February 1980, §§ 37-38, Series A no. 35; *X v. the United Kingdom*, 5 November 1981, § 32, Series A no. 46; *Vocaturio v. Italy*, 24 May 1991, § 2, Series A no. 206-C; *G. v. Italy*, 27 February 1992, § 2, Series A no. 228-F; *Pandolfelli and Palumbo v. Italy*, 27 February 1992, § 2, Series A no. 231-B; *X v. France*, 31 March 1992, § 26, Series A no. 234-C; and *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A), or the existence of a legitimate interest claimed by a person wishing to pursue the application (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

44. On the other hand, it has been the Court's practice to strike applications out of the list of cases in the absence of any heir or close relative who has expressed the wish to pursue an application (see, among other authorities, *Scherer v. Switzerland*, 25 March 1994, §§ 31-32, Series A no. 287; *Öhlinger v. Austria*, no. 21444/93, Commission's report of 14 January 1997, § 15; and *Thévenon v. France* (dec.), no. 2476/02, ECHR 2006-III).

45. In the instant case the applicant was found dead at his home on 18 July 2008. The Court was informed of this by the media and not by the applicant's lawyer, Mr de Felice, who himself died on 27 July 2008.

46. On 11 August 2008 Ms I. Terrel stated that she would be taking over the case from Mr de Felice, although she did not produce a form of authority completed in her name. In a letter of 12 August 2008 the Registry asked her to indicate whether any heirs had come forward and, if so, whether they had expressed the wish to pursue the proceedings; in the latter event she was asked to produce a form of authority completed in her name.

47. On 8 September 2008 Ms Terrel produced a power of attorney drawn up in her name by Mrs Viviane Hirardin, née Derveaux, who was referred to as the applicant's niece and the sole heir who had come forward after his death.

48. On 26 September 2008 the Government stated, firstly, that the documents produced did not appear to establish the existence of the alleged family relationship and, secondly, that even assuming that such a relationship were established, there was no evidence that Mrs Hirardin had accepted the estate; they further noted the insufficient legitimate interest on Mrs Hirardin's part in having the proceedings pursued on her behalf, observing in particular that she did not appear to have ever visited the applicant in prison.

49. In a letter of 30 September 2008 the Registry invited Ms Terrel to submit her comments by 10 October. No response has been forthcoming.

50. The Court observes that the request to pursue the proceedings was submitted by a person who has provided no evidence either of her status as an heir or close relative of the applicant, or of any legitimate interest (see, among other authorities, *mutatis mutandis*, *Thévenon*, cited above).

51. In the light of the foregoing, in accordance with Article 37 § 1 (c) of the Convention, the Court considers that it is no longer justified to continue the examination of the application. Furthermore, having regard to the fact that the relevant law has changed and that similar issues have been resolved in other cases before it (see, for example, *Kafkaris v. Cyprus* [GC], no. 21906/04, ECHR 2008-...), the Court considers that respect for human rights does not require it to continue the examination of the case (see, *mutatis mutandis*, *Scherer*, cited above).

FOR THESE REASONS, THE COURT

Decides by thirteen votes to four to strike the application out of its list of cases.

Done in English and in French, and notified in writing on 30 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik Fribergh
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Spielmann joined by Judges Bratza, Gyulumyan and Jebens is annexed to this judgment.

C.L.R.
E.F.

DISSENTING OPINION OF JUDGE SPIELMANN, JOINED BY JUDGES BRATZA, GYULUMYAN AND JEBENS

1. I voted against striking the application out of the list of cases because in my view the case reveals special circumstances affecting respect for the rights guaranteed by the Convention that required the Court to continue the examination of the case.

2. Pursuant to Article 37 § 1 (c) *in fine* of the Convention “the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.”

3. The mere fact that the domestic law has changed (see paragraph 51 of the majority judgment) is in my view irrelevant. Interpreting Article 37 § 1 (c) *in fine*:

“[t]he Court has repeatedly stated that its 'judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties' (see *Ireland v. the United Kingdom*, cited above, p. 62, § 154, and *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, p. 31, § 86). Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of Convention States”.¹

4. In the present case, the Court could have taken a decision to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of Convention States. After all, a panel of five judges of the Grand Chamber accepted the referral of the case, taking the view that it met the criteria set out in Article 43 of the Convention. According to this provision, only an “exceptional case” raising “a serious question affecting the interpretation or application of the Convention ... or a serious issue of general importance” can be re-examined. Based on the fact that it was referred to the Grand Chamber, I think there is a strong presumption in favour of considering the case as one which required the Court to continue the examination of the application, notwithstanding the fact that the applicant died in the meantime.

5. Nor do I believe that the Court would have been in any way hampered in its further consideration of the case by the death of the applicant and his lawyer. The case had been fully argued by the parties in both written and oral submissions before the Grand Chamber and was ready for determination.

1. *Karner v. Austria*, no. 40016/98, § 26, ECHR 2003-IX.

6. In the Chamber judgment of 11 April 2006, the Court found no violations of Article 5 § 1 (a) and Article 3 of the Convention.

7. By re-examining the case, the Grand Chamber would have had the opportunity to elaborate under Article 5 on the difficult question of the “lawfulness” of the applicant's continued detention *after more than four decades of incarceration*, in particular taking into account the important aspect of reintegration into the community. This distinguishes the present case from the case of *Kafkaris*¹, referred to in paragraph 51 of the majority judgment. In addition, in *Kafkaris*, the problem examined under Article 5 § 1 (a) mainly concerned the potential impact of the notice issued by the prison authorities, on the basis of the Prison Regulations in force at the time, setting a conditional release date.

8. Moreover, the Court has never had the opportunity to rule on the difficult *question of principle* as to whether irreducible life sentences are, *as such*, incompatible with Article 3. In the case of adults, the Court has not ruled out the possibility that in special circumstances an irreducible life sentence might also raise an issue under the Convention where there is no hope of entitlement to a measure such as parole.² In this context, I would recall that the German Federal Constitutional Court decided, as far back as 1977, that an irreducible life sentence, if there was no hope of early release, would violate the principle of human dignity as enshrined in Article 1 of the German Basic Law, and the constitutional principle of proportionality.³

1. *Kafkaris v. Cyprus* [GC], no. 21906/04, ECHR 2008-...

2. *Kafkaris*, cited above, § 97; see also *Nivette c. France* (dec.), no. 44190/98, ECHR 2001-VII; *Einhorn v. France* (dec.), no. 71555/01, ECHR 2001-XI; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI; *Partington v. the United Kingdom* (dec.), no. 58853/00, 26 June 2003; *Stanford v. the United Kingdom* (dec.), no. 73299/01, 12 December 2002; and *Wynne v. the United Kingdom* (dec.), no. 67385/01, 22 May 2003.

3. German Constitutional Court, 21 June 1977, BVerfGE, 45, 187; EuGRZ, 1977, 267. See also P. Bon and D. Maus, *Les grandes décisions des cours constitutionnelles européennes*, (Coll. Grands arrêts), Paris, Dalloz, 2008, no. 32, note Fromont.

The German Constitutional Court decided, in its ruling of 21 June 1977, as follows:

“1. Die lebenslange Freiheitsstrafe für Mord (§ 211 Abs. 1 StGB) ist nach Maßnahme der folgenden Leitsätze mit dem Grundgesetz vereinbar.

2. Nach dem gegenwärtigen Stand der Erkenntnisse kann nicht festgestellt werden, daß der Vollzug der lebenslangen Freiheitsstrafe gemäß den Vorschriften des Strafvollzugsgesetzes und unter Berücksichtigung der gegenwärtigen Gnadenpraxis zwangsläufig zu irreparablen Schäden psychischer oder physischer Art führt, welche die Würde des Menschen (Art. 1 Abs. 1 GG) verletzen.

3. Zu den Voraussetzungen eines menschenwürdigen Strafvollzugs gehört, daß dem zu lebenslanger Freiheitsstrafe Verurteilten grundsätzlich eine Chance verbleibt, je wieder der Freiheit teilhaftig zu werden. Die Möglichkeit der Begnadigung allein ist nicht zureichend; vielmehr gebietet das Rechtsstaatsprinzip, die Voraussetzungen, unter denen die Vollstreckung einer lebenslangen Freiheitsstrafe ausgesetzt werden kann, und das dabei anzuwendende Verfahren gesetzlich zu regeln.

4. Die Qualifikation der heimtückischen und der zur Verdeckung einer anderen Straftat begangenen Tötung eines Menschen als Mord gemäß § 211 Abs. 2 StGB verletzt bei einer

9. As regards the complaint under Article 3, the Court did not decide in *Kafkaris* whether the imposition and execution of an irreducible life sentence were *in principle* inconsistent with Article 3 of the Convention. As Judge Bratza rightly emphasised in his concurring opinion in *Kafkaris*:

“...the time has come when the Court should clearly affirm that the imposition of an irreducible life sentence, even on an adult offender, is in principle inconsistent with Article 3 of the Convention. What amounts to an 'irreducible' sentence for this purpose has been variously explained by the Court as being a sentence for the duration of the life of the offender with no 'possibility' or 'hope' or 'prospect' of release.”¹

10. There is no identity, factual or otherwise, between the issues in the cases of *Kafkaris* and *Léger*. Therefore, I cannot follow the majority view expressed in paragraph 51 of the judgment that, in *Kafkaris*, the Court dealt with similar issues. Indeed, in the instant case, the Court had the benefit of hindsight, a fact which distinguishes it from *Kafkaris*. The applicant, whose “prospects” or “hopes” of release were largely frustrated, remained in prison for more than 41 years. Given the consensus at European level as to the need to envisage and prepare for the resettlement of long-term prisoners, and State practice in this respect, I think it very unlikely that a parallel case raising similar issues will be brought before the Court in the near future.

an dem verfassungsrechtlichen Verhältnismäßigkeitsgrundsatz orientierten restriktiven Auslegung nicht das Grundgesetz.”

1. I would like to mention here that in *Kafkaris*, I voted in favour of finding a violation of Article 3. See the partly dissenting opinion of Judges Tulkens, Cabral Barreto, Fura-Sandström, Spielmann and Jebens.