Information Note on the Court's case-law No. 165

July 2013

Vinter and Others v. the United Kingdom [GC] - 66069/09, 130/10 and 3896/10

Judgment 9.7.2013 [GC]

Article 3

Degrading punishment

Inhuman punishment

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation: *violation*

Facts – In England and Wales murder carries a mandatory life sentence. Prior to the entry into force of the Criminal Justice Act 2003 the Secretary of State was empowered to set tariff periods for mandatory life-sentence prisoners indicating the minimum term they must serve before they became eligible for early release on licence. Since the entry into force of the Act, that power is now exercised by the trial judge. Prisoners whose tariff was set by the Secretary of State under the previous practice may apply to the High Court for a review.

All three applicants were given "whole life orders" following convictions for murder. Such an order means that their offences are considered so serious that they must remain in prison for life unless the Secretary of State exercises his discretion to order their release on compassionate grounds if satisfied that exceptional circumstances – in practice, terminal illness or serious incapacitation – exist. The whole life order in the case of the first applicant, Mr Vinter, was made by the trial judge under the 2003 Act and upheld by the Court of Appeal on the grounds that Mr Vinter already had a previous conviction for murder. The whole life orders in the cases of the second and third applicants had been made by the Secretary of State under the previous practice, but were confirmed on a review by the High Court under the 2003 Act in decisions that were subsequently upheld on appeal. In the case of the second applicant, Mr Bamber, it was noted that the murders had been premeditated and involved multiple victims; these factors, coupled with sexual gratification, had also been present in the case of the third applicant, Mr Moore.

In their applications to the European Court, the applicants complained that the imposition of whole life orders meant their sentences were, in effect, irreducible, in violation of Article 3 of the Convention.

In a judgment of 17 January 2012 (see Information Note 148), a Chamber of the Court held, by four votes to three, that there had been no violation of Article 3 of the Convention as the applicants' sentences did not amount to inhuman or degrading treatment. In particular, the applicants had failed to demonstrate that their continued detention served no legitimate penological purpose. The Chamber also laid emphasis on the fact that the applicants' whole life orders had either been recently imposed by a trial judge (in the case of Mr Vinter) or recently reviewed by the High Court (in the cases of Mr Bamber and Mr Moore).

Law – Article 3: The Grand Chamber agreed with and endorsed the Chamber's finding that a grossly disproportionate sentence would violate Article 3 of the Convention, although that test would be met only on rare and unique occasions. In the instant case, the applicants had not sought to argue that their whole life orders were grossly disproportionate; instead, they submitted that the absence of an in-built procedural requirement for a review constituted ill-treatment, not only, as the Chamber had found, when there ceased to be legitimate penological grounds to justify continued detention, but from the moment the order was made.

The Court reiterated that Contracting States must be allowed a margin of appreciation in deciding on the appropriate length of prison sentences for particular crimes and must remain free to impose life sentences on adult offenders for especially serious crimes. However, the imposition of an irreducible life sentence on an adult could raise an issue under Article 3. In determining whether a life sentence in a given case could be regarded as irreducible, the Court would seek to ascertain whether the prisoner could be said to have any prospect of release. Where national law afforded the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, that would be sufficient to satisfy Article 3.

There were a number of reasons why, for a life sentence to remain compatible with Article 3, there had to be both a prospect of release and a possibility of review. Firstly, it was axiomatic that a prisoner could not be detained unless there were legitimate penological grounds for that detention. The balance between the justifications for detention was not necessarily static and could shift in the course of the sentence. It was only by carrying out a review at an appropriate point in the sentence that these factors or shifts could be properly evaluated. Secondly, incarceration without any prospect of release or review carried the risk that the prisoner would never be able to atone for his offence, whatever he did in prison and however exceptional his progress towards rehabilitation. Thirdly, it would be incompatible with human dignity for the State forcefully to deprive a person of his freedom without at least providing him with the chance to someday regain that freedom. Moreover, there was now clear support in European and international law for the principle that all prisoners, including those serving life sentences, should be offered the possibility of rehabilitation and the prospect of release if rehabilitation was achieved.

Accordingly, Article 3 had to be interpreted as requiring reducibility of life sentences, in the sense of a review allowing 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. While it was not the Court's task to prescribe the form (executive or judicial) which that review should take or to determine when it should take place, the comparative and international law materials before it showed 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. A whole life sentence would not measure up to the standards of Article 3 where the domestic law did not provide for the possibility of such a review. Lastly, although the requisite review was 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 could raise the complaint that the legal conditions attaching to his sentence failed to comply with the requirements of Article 3. Whole life prisoners were entitled to know, at the outset of their sentence, what they must do to be considered for release and under what conditions, including when a review of

their sentence will take place or may be sought. Consequently, where domestic law did not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arose when the whole life sentence was imposed and not at a later stage of incarceration.

The Government had argued before the Court that the aim of the 2003 Act was to remove the executive from the decision-making process concerning life sentences, and this was the reason for abolishing the 25-year review by the Home Secretary which had existed beforehand. However, the Court considered that it would have been more consistent with the legislative aim to provide that the 25-year review would be conducted within a judicial framework, rather than completely eliminated.

The Court also found that the current law concerning the prospect of release of life prisoners in England and Wales was unclear. Although section 30 of the 1997 Act gave the Justice Secretary the power to release any prisoner, including one serving a whole life order, the relevant Prison Service Order provided that release would only be ordered if a prisoner was terminally ill or physically incapacitated. These were highly restrictive conditions and in the Court's view, compassionate release of this kind would not be what was meant by a "prospect of release" in *Kafkaris*.

In light, therefore, of this contrast between the broad wording of section 30 and the exhaustive conditions announced in the Prison Service Order, as well as the absence of any dedicated review mechanism for whole life orders, the Court was not persuaded that, at the present time, the applicants' life sentences could be regarded as reducible for the purposes of Article 3. The requirements of that provision had not, therefore, been met in relation to any of the three applicants.

The Court emphasised, however, that the finding of a violation in the applicants' cases should not be understood as giving them any prospect of imminent release. Whether or not they should be released would depend, for example, on whether there were still legitimate penological grounds for their continued detention and whether they should continue to be detained on grounds of dangerousness. These questions were not in issue in this case and were not the subject of argument before the Court.

Conclusion: violation (sixteen votes to one).

Article 41: Finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the first applicant. No claim made by the other applicants.

(See also *Kafkaris v. Cyprus* [GC], 21906/04, 12 February 2008, Information Note 105; *Iorgov v. Bulgaria (no. 2)*, 36295/02, 2 September 2010, Information Note 133; *Schuchter v. Italy* (dec.), 68476/10, 11 October 2011, Information Note 145; and *Harkins and Edwards v. the United Kingdom*, 9146/07 and 32650/07, 17 January 2012, Information Note 148)
