



## Life sentence imposed on prisoner which was subject to review 26 years later did not breach the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of **Bodein v. France** (application no. 40014/10) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights, and

**no violation of Article 3 (prohibition of inhuman or degrading treatment).**

The case concerned Mr Bodein's sentence to life imprisonment without any possibility of sentence reduction, and the issue of the reasons provided for Assize Court judgments.

The Court concluded that Mr Bodein had been afforded sufficient guarantees for him to understand his conviction.

The Court also considered that French law provided a facility for reviewing life sentences which was sufficient, in the light of the room for manoeuvre ("margin of appreciation") left to States in such matters, to conclude that the sentence imposed on Mr Bodein was reducible – or in other words there was a possibility of reviewing the sentence – for the purposes of Article 3 of the Convention.

### Principal facts

The applicant, Pierre Bodein, is a French national who was born in 1947 and is currently being held in Moulins Prison (France).

By a judgment of 11 July 2007 the Bas-Rhin Assize Court sentenced Mr Bodein to life imprisonment for three murders, including two committed against minors under the age of 15, preceded or accompanied by rape. The judgment also pointed out that Mr Bodein would be eligible for none of the sentence adjustment measures set out in Article 132-23 of the Criminal Code. His co-defendants were discharged or acquitted.

Mr Bodein appealed against his sentence. By a judgment of 2 October 2008 the Haut-Rhin Assize Court, on appeal, upheld the life sentence in view of Mr Bodein's history of reoffending since his conviction in 1996. By a special decision it also confirmed that he would not be granted any kind of sentence adjustment.

Mr Bodein lodged an appeal on points of law complaining of the lack of reasoning in the Assize Court judgment and the inhuman and degrading nature of his sentence. His appeal was dismissed by a judgment of the Court of Cassation of 20 January 2010.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Mr Bodein complained that no reasons had been provided for the judgment of the Assize Court of Appeal sentencing him to life imprisonment. He also alleged that his sentence was contrary to Article 3 (prohibition of inhuman or degrading

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

treatment) inasmuch as, in his view, he had been offered no possibility of any kind of sentence adjustment or any form of release measure, apart from a presidential pardon.

The application was lodged with the European Court of Human Rights on 13 July 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,  
 Angelika **Nußberger** (Germany),  
 Ganna **Yudkivska** (Ukraine),  
 Vincent A. **de Gaetano** (Malta),  
 André **Potocki** (France),  
 Helena **Jäderblom** (Sweden),  
 Aleš **Pejchal** (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*

## Decision of the Court

### Article 6 § 1

In accordance with the principles laid down in its case-law<sup>2</sup>, the Court considered whether the proceedings in Mr Bodein's case had provided sufficient safeguards against arbitrariness and were such as to allow the defendant to understand his sentence.

The Court first of all noted that all defendants, like Mr Bodein, were provided with certain information and afforded certain safeguards during French criminal proceedings: the indictment or the judgment of the Investigation Division was read out in full during the trial in the Assize Court; the charges were read out and were subject to adversarial argument in the presence of the defendant's lawyer; the judges, prosecutors and jurors withdrew immediately after the oral proceedings had ended and the questions were read out, and only adjudicated on the evidence which examined by the parties during the trial (they had no access to the case file); and decisions were subject to review by an assize court of appeal in an enlarged composition.

The Court went on to consider the combined effect of the indictment and the questions put to the jury. It held that even though the indictment had been limited in scope because it had been filed before the trial itself, which formed the crucial part of the proceedings, it had detailed the events which had originated the proceedings, emphasising that a wide variety of substantive, and particularly genetic, factors had very clearly established that Mr Bodein had been the main perpetrator of the offences committed in all three cases at issue. The Court further observed that the charges had subsequently been debated for 24 days and that Mr Bodein had been the only defendant appearing before the Assize Court of Appeal. As regards the questions put to the jury, the Court noted that there had been 27 such questions relating to all the criminal offences, with references to the aggravating circumstances of the victims' ages. Mr Bodein could not possibly have misunderstood the answers to these questions, which had corroborated his life sentence.

In conclusion, the Court considered that Mr Bodein had been afforded sufficient safeguards to enable him to understand why he had been found guilty.

Lastly, the Court took note of the reform of the Code of Criminal Procedure<sup>3</sup> which had been implemented since the relevant time, providing for a "statement of reasons form" appended to the

<sup>2</sup> See [Agnelet v. France](#), (no. 61198/08, 10 January 2013), [Oulahcene v. France](#) (no. 44446/10, 10 January 2013), [Voica v. France](#) (no. 60995/09, 10 January 2013), [Legillon v. France](#) (no. 53406/10, 10 January 2013) and [Fraumens v. France](#) (no. 30010/10, 10 January 2013).

<sup>3</sup> Under Law no. 2011-939 inserting a new Article 365-1 into the Code of Criminal Procedure.

sheet of questions put to the jury. Where the defendant was found guilty, the law required the statement of reasons to refer to the evidence which was presented during the deliberations and which had swayed the Assize Court in respect of each of the offences with which the defendant was charged. In the Court's view, this reform appeared, on the face of it, to significantly reinforce safeguards against arbitrariness and to improve the defendant's understanding of his sentence, in accordance with the requirements of Article 6 § 1 of the Convention.

The Court concluded in this regard that there had been no violation of Article 6 § 1.

### Article 3

The Court reiterated, in line with its position in *Vinter and Others v. the United Kingdom*<sup>4</sup>, that a life sentence was compatible with Article 3 if it was reducible, or in other words if there was a possibility of reviewing the sentence, of which the prisoner had to be apprised of all the terms and conditions at the outset of his or her sentence. The form of such review, as well as the question of how much of the sentence had to be served before a review could take place, were matters within the States' own margin of appreciation. Nevertheless, a clear trend was emerging in comparative and international law in favour of a mechanism guaranteeing a review of life sentences at the latest 25 years after their imposition.

The Court examined the prospects for a review of sentence as laid down in French law.

It began by discarding the fact that Mr Bodein could apply to the President of the French Republic for a pardon, which was merely a discretionary favour granted by the President. The same applied to the possibility of requesting a stay of sentence on medical grounds, which was not a mechanism corresponding to the concept of "prospect of release" linked to changes in the prisoner's conduct.

On the other hand, French law provided for judicial review of the convicted person's situation and possible sentence adjustment after 30 years' incarceration (under Article 720-4 of the Code of Criminal Procedure). In order to conduct this review, the post-sentencing judge appointed a panel of three medical experts to produce an opinion on the prisoner's dangerousness. On the basis of this opinion, a Court of Cassation judicial board then had to assess whether or not to continue implementing the special decision from the Assize Court not to grant any kind of sentence adjustment. In the event of a favourable decision the convicted prisoner would again be entitled to apply for such adjustment.

The Court took the view that such review, which was geared to assessing the prisoner's dangerousness and considering how his conduct had changed while he served his sentence, left no uncertainty as to the existence of a "prospect of release" from the outset of the sentence.

In the present case, after deducting the period of pre-trial detention, Mr Bodein would become eligible for a review of his sentence in 2034, that is to say 26 years after the Assize Court had sentenced Mr Bodein to life imprisonment, and if appropriate, could be released on parole.

As regards the margin of appreciation which States should have in the criminal justice and sentencing fields, the Court concluded that this possibility of reviewing life sentences was sufficient for it to consider that Mr Bodein's sentence was reducible for the purposes of Article 3 of the Convention. Accordingly, there had been no violation of that provision.

### Separate opinion

Judge Nußberger expressed a concurring opinion, which is annexed to the judgment.

<sup>4</sup> See [Vinter and Others v. the United Kingdom](#), nos. 66069/09, 130/10 and 3896/10 (Grand Chamber judgment, 9 July 2013), § 122.

*The judgment is available only in French.*

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### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel.: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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