



## Whole life orders under UK law open to review and thus compatible with European Convention on Human Rights

In today's Chamber judgment<sup>1</sup> in the case of [Hutchinson v. the United Kingdom](#) (application no. 57592/08) the European Court of Human Rights (ECtHR) held, by a majority, that there had been: **no violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights.

The case concerned the complaint of a man serving a whole life sentence for murder that his sentence amounted to inhuman and degrading treatment as he had no hope of release.

In a previous judgment, in the case of *Vinter and Others v. the United Kingdom*, of 9 July 2013, the ECtHR had found that the domestic law concerning the Justice Secretary's power to release a whole life prisoner was unclear.

However, in its judgment in *R v. Newell; R v. McLoughlin*, of 18 February 2014 the Court of Appeal had explicitly addressed those doubts and held that the Secretary of State for Justice was obliged under national law to release a person detained on a whole life order where "exceptional grounds" for release could be shown to exist, and that this power of release was reviewable by the national courts. Having regard to this clarification, in today's judgment, the ECtHR concluded that whole life orders were open to review under national law and therefore compatible with Article 3 of the Convention.

### Principal facts

The applicant, Arthur Hutchinson, is a British national who was born in 1941 and is detained in Her Majesty's Prison Durham (the United Kingdom).

In September 1984 Mr Hutchinson was convicted of aggravated burglary, rape and three counts of murder, the trial judge sentencing him to a term of life imprisonment with a recommended minimum tariff of 18 years. In December 1994 the Secretary of State informed Mr Hutchinson that he had decided to impose a whole life term and, in May 2008, the High Court found that there was no reason for deviating from this decision given the seriousness of Mr Hutchinson's offences. Mr Hutchinson's appeal was dismissed by the Court of Appeal in October 2008.

### Complaints, procedure and composition of the Court

Relying on Article 3, Mr Hutchinson alleged that his whole life sentence amounted to inhuman and degrading treatment as he had no hope of release.

The application was lodged with the European Court of Human Rights on 10 November 2008.

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).

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

Guido Raimondi (Italy), *President*,  
George Nicolaou (Cyprus),  
Ledi Bianku (Albania),  
Nona Tsotsoria (Georgia),  
Zdravka Kalaydjieva (Bulgaria),  
Paul Mahoney (the United Kingdom),  
Krzysztof Wojtyczek (Poland),

and also Fatoş Aracı, *Deputy Section Registrar*.

## Decision of the Court

### Article 3

In its Grand Chamber judgment in the case of *Vinter and Others v. the United Kingdom* (application nos. 66069/09, 130/10 and 3896/10) of 9 July 2013, the European Court of Human Rights (ECtHR) had found that the domestic law concerning the Justice Secretary's power to release a person subject to a whole life order was unclear. In addition, prior to the entry into force of the Criminal Justice Act 2003 a review of the need for a whole life order had automatically been carried out by a Minister 25 years into the sentence. This had been eliminated in 2003 and no alternative review mechanism put in place. In those circumstances, the ECtHR had not been persuaded that the whole life sentences of the applicants in the case of *Vinter and Others* were compatible with the Convention.

Mr Hutchinson submitted that his case was indistinguishable from *Vinter and Others*, in which the ECtHR had found a violation of Article 3. However, the United Kingdom Government pointed out that on 18 February 2014 the Court of Appeal had delivered its judgment in another case, *R v. Newell; R v. McLoughlin*, in which it had held that whole life orders were open to review under national law and therefore compatible with Article 3 of the Convention.

The ECtHR observed that the dispute between the parties centred on whether the Justice Secretary's discretion to release a whole life prisoner under the 2003 Act was sufficient to make the whole life sentence legally and effectively reducible.

The ECtHR found that the Court of Appeal's judgment in *R v. Newell; R v. McLoughlin* had indeed expressly responded to the ECtHR's concerns detailed in the *Vinter and Others* case. In particular, the Court of Appeal had underlined that if a whole life prisoner could establish that "exceptional circumstances" had arisen subsequent to the imposition of the sentence, the Justice Secretary had to consider – in a manner compatible with Article 3 of the Convention – whether such circumstances justified release. A decision by the Justice Secretary would have to be reasoned by reference to the circumstances of each case and would be subject to judicial review. Following the judgment in *R v. Newell; R v. McLoughlin* domestic law thus provided a whole life prisoner hope and the possibility of release in the event of circumstances in which the punishment was no longer justified.

The ECtHR underlined that it was primarily for the national courts to resolve problems of interpretation of domestic law. Having regard to the fact that the national court had specifically addressed the ECtHR's doubts and had set out a clear statement of the legal position, the ECtHR was satisfied that the Justice Secretary's power to release a whole life prisoner was sufficient to comply with Article 3. There had therefore been no violation of Article 3.

## Separate opinion

Judge Kalaydjieva expressed a dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.