CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 21906/04
by Panayi KAFKARIS
against Cyprus

The European Court of Human Rights (First Section), sitting on 11 April 2006 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 3 June 2004,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Panayiotis Agapiou Panayi, alias Kafkaris, is a Cypriot national, who was born in 1946. He is currently serving a sentence of life imprisonment in Nicosia Central Prison. He is represented before the Court by Mr A. Demetriades, a lawyer practising in Nicosia. The Cypriot

Government ("the Government") are represented by their Agent, Mr P. Clerides, the Attorney-General of the Republic of Cyprus.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 9 March 1989 the applicant was found guilty by the Limassol Assize Court on three counts of premeditated murder under, *inter alia*, section 203(1) and (2) of the Criminal Code (Cap. 154). On 10 March 1989 the Assize Court sentenced him to life imprisonment in respect of each count. The applicant had planted a bomb in a car and detonated it, causing the death of its passengers, a man and his two children, aged 11 and 13.

During the hearing before the Limassol Assize Court concerning the sentencing of the applicant, the prosecution invited the court to examine the meaning of the term "life imprisonment" in the Criminal Code and in particular to clarify whether it entailed imprisonment of the convicted person for the rest of his life or just for a period of twenty years as provided by the Prison (General) Regulations of 1981 and the Prison (General) (Amending) Regulations of 1987 ("the Regulations"), adopted under section 4 of the Prison Discipline Law (Cap. 286). If the court found that the latter was applicable, then the issue of whether the sentences should be imposed consecutively or concurrently would arise and the prosecution would propose consecutive sentences.

In its judgment the Limassol Assize Court relied on the findings of the Nicosia Assize Court in 1988 in the case of *The Republic of Cyprus v. Andreas Costa Aristodemou, alias Yiouroukkis* (judgment of 5 February 1988, case no. 31175/87) and accordingly stated that it was not competent to examine the validity of the regulations or take into account any possible repercussions they could have on the sentence.

The Assize Court found that the term "life imprisonment" used in the Criminal Code meant imprisonment for the remainder of the life of the convicted person. In view of this, the court did not consider it necessary to examine whether the sentences it imposed would run concurrently or consecutively.

On the day on which the applicant was admitted to prison, he was given written notice (F5 form, I.D. no. 7176) by the prison authorities that the date set for his release was 16 July 2002. His release was conditional upon his good conduct and industry during detention. Following the commission of a disciplinary offence, his release was postponed to 2 November 2002.

The applicant appealed against his conviction but not his sentence.

On 21 May 1990 the Supreme Court dismissed his appeal, upholding his conviction.

On 9 October 1992, in the case of *Hadjisavvas v. the Republic of Cyprus* (judgment of 8 October 1992, (1992) 1 A.A.D 1134), the Supreme Court declared the Regulations unconstitutional and *ultra vires*.

On 3 May 1996 the Prison Law of 1996 (Law 62(I)/96) was enacted, repealing and replacing the Prison Discipline Law (Cap. 286).

The applicant was not released on 2 November 2002.

On 8 January 2004 the applicant submitted a habeas corpus application to the Supreme Court (first instance), challenging the lawfulness of his detention. In this context he invoked Article 3, Article 5 § 4 and Article 7 of the Convention. The Supreme Court, after considering the above-mentioned provisions, dismissed the application on 17 February 2004.

In his judgment Kallis J stated, *inter alia*:

> "... What is of importance in the present case is the principle set out in the case of *Hogben* and not the differences in the details of the facts. The principle then that has been laid in the case of *Hogben* is that Article 7 applies only to the sentence that is imposed and not to the manner of serving the sentence. Therefore Article 7 does not prohibit a retrospective change in the law or in practice concerning release or conditional release from prison.
>
> I am therefore of the view that the principle set out in *Hogben* can be applied in the present case. Everything that the learned counsel of the applicant has pleaded has to do with the practice of release from prison. In the instant case the Assize Court imposed a sentence of life imprisonment on the applicant and explained to him at the same time that life imprisonment meant imprisonment for the remainder of his life. What the prison authorities then did, with the F5 form, constitutes an action concerning the execution of the sentence. After the case of *Hadjisavvas* the regulations on the basis of which the prison authorities gave the applicant the F5 form have ceased to apply, with the result that the sentence of life imprisonment imposed on the applicant by the Assize Court is applicable. What happened was a change in the legal situation concerning the time of the applicant's release. As in the *Hogben* case, Article 7 § 1 of the Convention is not applicable.
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> ...
>
> I endorse the principle set out in *Hogben*. I consider that the applicant cannot derive a right to judicial review on the basis of Article 5 § 4 of the Convention because of an alleged change in the date of his release from prison which does not change the legal basis for his detention. It should be emphasised that his detention is founded on the sentence of life imprisonment imposed on him by the Assize Court and that this had been explained to him as 'imprisonment for the remainder of his life'. It follows that the relevant suggestion by Mr Demetriades does not stand and is dismissed.
>
> On this occasion, I should add that the decision of the Commission on the issue of interpretation of Article 5 § 4 of the Convention is in line with the jurisprudence of the European Court of Human Rights (see the *De Wilde, Ooms and Versyp* cases ('Vagrancy cases'), judgment of 18 June 1971, Series A no. 12) ...
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> ...

> The fact that *Hogben* is a decision of the Commission does not render it less persuasive. It constitutes a decision of a specialised organ with vast experience in interpreting the Convention. It therefore constitutes an authority of great persuasiveness. I am satisfied about the correctness of the Commission's decision in *Hogben*, which I have endorsed.
>
> It was further the suggestion of Mr Demetriades that 'this kind of sentence imposed on the applicant without the possibility of examination by a Parole Board does not comply with Article 3 of the Convention'.
>
> ...
>
> I endorse the above approach [in *Hogben*]. Its essence is that the change in release policy does not constitute a violation of Article 3 of the Convention. The existence or not of a Parole Board does not form part of the *ratio* of the decision. This answers the suggestion of Mr Demetriades concerning the absence of a Parole Board in Cyprus. Consequently, his suggestion based on Article 3 of the Convention does not stand and is dismissed.
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> ...
>
> Finally, I must note that the applicant has sought his release from prison through an order of habeas corpus. As stated, however, in the case of *Doros Georgiades* (Civil Appeal no. 11355, 3 October 2002), adopting the relevant position of English jurisprudence (see Halsbury's Laws of England, 4th edition, Volume 11, §§ 1472 and 1473):
>
> 'In general the writ of habeas corpus will not be granted to persons convicted or in execution under legal process, including persons in execution of a legal sentence after conviction on indictment. The writ of habeas corpus will not be granted where the effect of it would be to review the judgment of one of the superior courts which might have been reviewed on appeal or to question the decision of an inferior court or tribunal on a matter within its jurisdiction; or where it would falsify the record of a court which shows jurisdiction on the face of it.'
>
> Consequently, the granting of a habeas corpus order in the present case would have been tantamount to reviewing the sentence that had been imposed by the Assize Court, whereas this could have been done in the context of an appeal."

On 26 February 2004 the applicant lodged an appeal with the Supreme Court (appeal jurisdiction).

The applicant in his grounds of appeal challenged the interpretation of the term "life imprisonment" given by the Assize Court when sentencing him in 1989, in view of the regulations applicable at the time and the notice given to him by the prison authorities on his admission to prison. He argued that the fact that he had not challenged his sentence following conviction could not be interpreted as an acceptance of the Assize Court's interpretation of the term "life imprisonment". He invoked, *inter alia*, Article 3, Article 5 § 4 and Articles 7 and 14 of the Convention in relation to the lawfulness of his continuing detention.

As regards Article 3 of the Convention, the applicant claimed that the conduct of the authorities had been contrary to this provision. In particular, ground seven of his appeal provided as follows:

> "The existence on the date on which the sentence was imposed on the convicted person of the regulation that defined the sentence of life imprisonment as being twenty years, the issuing of the F5 notice, the admission that the applicant would have been released on 2 November 2002 if the aforementioned regulation had been applicable and the sudden annulment of all the above constituted inhuman and degrading treatment.
>
> The Republic cannot behave in this way towards the applicant's life without any consequences for anyone apart from the applicant, who has to live with this uncertainty.
>
> The aforementioned change of twenty years' imprisonment to imprisonment for life following an error by the House of Representatives and/or the Attorney-General of the Republic and/or the President of the Republic constitutes, without any fault on the applicant's part, inhuman and degrading treatment which, on account of its uncertainty, violates Article 3 of the Convention.
>
> The aforementioned change of the imposed twenty years' imprisonment to a death sentence, which will take effect on an unknown date given the fact that there is no possibility of re-examining the matter, constitutes inhuman treatment contrary to Article 3 of the Constitution. Indeed, this becomes even more obvious when one considers that the death penalty has already been abolished in Cyprus."

Concerning Article 5 § 4 of the Convention, the applicant in ground six of his appeal noted that he was not requesting judicial review of his sentence on account of a change in policy concerning the day of his release but the examination of the lawfulness of his detention, given that even the prison authorities had admitted that he should have been released on 2 November 2002. In this connection, he complained of the lack of a mechanism to examine the lawfulness of his detention.

When challenging the Supreme Court's (first instance) interpretation of Article 7 of the Convention, the applicant distinguished his case from that of *Hogben v. the United Kingdom* (no. 11653/85, Commission decision of 3 March 1986, Decisions and Reports (DR) 46, p. 231), in that *Hogben* related to the manner of application of the sentence in view of the change in the policy of the Parole Board, whereas in his case the issue raised was that of a retrospective change of law on the ground of unconstitutionality and the increase of his sentence from twenty years to life. In this connection, he emphasised that in Cyprus there was no parole board, unlike in England.

With regard to Article 14, the applicant in his grounds of appeal stated that he had been subjected to discriminatory treatment in relation to other persons sentenced to life imprisonment who had been released after serving twenty years in prison.

On 20 July 2004 the Supreme Court dismissed the appeal. It stated, *inter alia*:

"The appellant is essentially raising one issue. And his learned counsel has acknowledged that the judgment as to this [issue] will determine the conclusion ... We summarise the appellant's positions as set out in the grounds of appeal and as explained.

He does not invoke the Regulations as an autonomous ground for his release, especially since ... they are not applicable any more. Furthermore, he does not suggest or attempt a review of the Assize Court's judgment, as was wrongly perceived at first instance. We are not going against, as he explained, the Assize Court's judgment but the Republic as a whole. The Regulations were applicable at that time and since the Assize Court had not annulled them for being unconstitutional, we must conclude that it considered them valid. And since the law does not provide a definition of the term 'life imprisonment', this was an element of the regulation of the sentence provided. As Mr Demetriades put it, the overall legal situation at the time of the imposition of the sentence indicated that life imprisonment meant in essence twenty years' imprisonment. In addition, even if there was doubt, this had to be taken to the appellant's benefit. Hence, in view of this fact, there was no reason to lodge an appeal against the Assize Court's judgment, especially since the applicant had been served with the F5 notice.

...

With grounds of appeal 6 and 7 the appellant also invokes Article 3, Article 5 § 4 and Article 13 of the Convention concerning subjection to inhuman or degrading treatment and the right to a remedy before a court. In the discussions, however, it was acknowledged that it was superfluous to extend to these complaints since the applicant admittedly submitted an application for an order of habeas corpus, which of course will be considered within the scope of this court's jurisdiction. The object of this application is the lawfulness of the appellant's detention, and its success comes with his release. We note, however, the submission of Mr Demetriades that it could be considered for interpretative purposes that the change that has occurred to what the appellant reasonably assumed to be valid would have constituted inhuman and degrading treatment.

...

The suggestion of the appellant presumes that a judicial assessment of unconstitutionality, or, more precisely, a finding that the Regulations are *ultra vires* in relation to the law on the basis of which they were issued, brings about legislative change of whatever form. However, as has been decided (see *Georgios Mavrogenis v. the House of Representatives and Others* ((1996) 1 A.A.D. 315, at 341), and *Alekos N. Clerides v. the Republic of Cyprus*, 20 October 2000), judicial assessment necessarily adjudicates retrospectively on the law or regulation in issue and, as the principle of separation of powers dictates, it does not entail a legislative development. It is a fact, however, that this question, both at first instance and before us, has not been touched upon from this point of view so as to raise the issue of Law 62(1)/96.

In any event, the Assize Court imposed a sentence of life imprisonment on the appellant, expressly specifying that this meant imprisonment for the remainder of his life. This was the reason for which it did not examine the question of possible consecutiveness and the appellant's perception that it is inferred that the Assize Court recognised the regulations as valid is wrong. The Assize Court essentially considered that the regulations were not connected with the issue of the sentence envisaged, for it

did not consider that the then existing regulations changed the fact that in accordance with the law, imprisonment for the remainder of the appellant's life was imposed.

Was this approach wrong? Did in reality the law, viewed as a whole, even in the light of the interpretation suggested by the appellant, comparing Article 7 § 1 of the Convention with Article 12 (1) of the Constitution, envisage imprisonment for only twenty years? We would say that the first-instance judgment was not wrong in finding that this situation corresponded to the one in the case of *Hogben*. The principle applied, namely that Article 7 § 1 of the Convention does not concern the enforcement of the sentence, which remains one of life imprisonment, is not in question. The Regulations were made on the basis of and for the purposes of the Prison (Discipline) Law, whereas it is the Criminal Code that determines the sentence, in this case mandatory life imprisonment and no other.

Nevertheless, and as Mr Demetriades also agreed, we are not reviewing the correctness of the judgment of the Assize Court. Such review does not fall within the [court's] jurisdiction in the context of a habeas corpus application.

...

The appellant is being detained on the basis of an Assize Court judgment after being sentenced to life imprisonment, determined as imprisonment for the remainder of his life. Thus, he is being detained on a lawful basis and his application for release was correctly rejected with the final observation that 'the granting of a habeas corpus order in the present case would have been tantamount to reviewing the sentence that had been imposed by the Assize Court, whereas this could have been done in the context of an appeal'."

B. Relevant domestic law and practice

1. Life sentences

Under Cypriot law, the offence of premeditated murder carries a mandatory sentence of life imprisonment.

Section 203(1) of the Criminal Code (Cap. 154) (as amended in 1962 by Law 2/62) provides as follows:

> "Any person who causes the premeditated death of another person by an unlawful act or omission is guilty of the crime of premeditated murder."

Section 203(2) of the Criminal Code (Cap. 154) (as amended in 1983 by Law 86/83) provides as follows:

> "Whosoever shall be convicted of premeditated murder shall be liable to imprisonment for life."

Section 29 of the Criminal Code (as amended by Laws 86/83 and 15(1)/99) provides that, with the exception of premeditated murder and the offence of treason (sections 36 and 37 of the Criminal Code), in cases where a person has been convicted of other serious offences that are punishable by

a sentence of imprisonment for life or for any other period, the court trying the case has the discretion to impose a sentence of imprisonment for a shorter period or one of a pecuniary form instead which does not exceed the amount that court is empowered to impose.

In *Politis v. the Republic of Cyprus* ((1987), 2 C.L.R. 11) the Supreme Court examined the constitutionality of sections 29 and 203 of the Criminal Code (at the time the death penalty was still in force), and held as follows:

> "The first objective of Article 7 (2) [of the Constitution] is to sanction the death penalty for the limited class of grave crimes specified therein. The second, to vest competence in the legislature to fix such measure of punishment as mandatory in exercise of its legislative power... The expression 'a law may provide' in the second part of Article 7 (2) imports discretion leaving it to the legislature to ordain the death penalty for premeditated murder as a matter of legislative policy. They are not bound but may do so if they deem it appropriate. By necessary implication they may ordain any other fixed measure of punishment including, no doubt, a sentence of life imprisonment. ... Obviously the constitutional legislation singled out the crimes listed in 7 (2) for exceptional treatment in view of their gravity and their repercussions on the well being of society. In the case of premeditated murder what marks the gravity of the offence is the element of premeditation that necessarily renders the crime particularly heinous. In agreement with the Assize Court, we rule that sections 29 and 203(2) of the Criminal Code are not unconstitutional and as such make a sentence of life imprisonment obligatory upon conviction for premeditated murder."

2. Provisions concerning the release of prisoners

(a) The Constitution

Article 53 (4) of the Constitution provides as follows:

> "The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a court in the Republic in all other cases."

Following the events of 1963, in particular the withdrawal of Turkish Cypriots from the Government and the consequent occupation of northern Cyprus by Turkish troops, the decision to remit, suspend, or commute any sentence has to be taken by the President of the Republic with the concurrence of the Attorney-General of the Republic.

(b) Prison Discipline Law (Cap. 286)

The relevant sections of the Prison Discipline Law provide as follows:

Section 4 - Regulations for prison discipline

> "The Governor in Council may make Regulations for the proper custody and support of prisoners, for the nature and amount of labour to be performed by them, for the classification of prisoners according to their different sentences, for the

punishment of offences committed by prisoners, and for the maintenance of good order and discipline in prisons. All such Regulations, before coming into force, shall be published in the Gazette."

Section 9 (1) - Remission for good conduct

"Regulations made under section 4 may make provision whereby, in such circumstances as may be prescribed by the Regulations, a person serving a sentence of imprisonment may be granted remission of such part of that sentence as may be so prescribed on the ground of his industry and good conduct; and on the discharge of a person from a prison in pursuance of any such remission as aforesaid his sentence shall expire."

Section 11(1) - Release on licence of persons serving imprisonment for life

"The Governor may at any time if he thinks fit release on licence a person serving a term of imprisonment for life subject to compliance with such conditions, if any, as the Governor may from time to time determine."

(c) The Prison (General) Regulations of 1981 (Regulatory Act 18/81; declared unconstitutional on 9 October 1992)

The Prison (General) Regulations of 1981, made on the basis of section 4 of the Prison Discipline Law (Cap. 286), provided as follows, in so far as relevant:

Regulation 7 - Release of a prisoner

"No convicted person shall be discharged from prison before the expiry of his sentence except as provided by Article 53, paragraph 4, of the Constitution of the Republic of Cyprus."

Regulation 91

"Every prisoner serving a sentence of less than two years may, where the aggregate sentence exceeds one month, be granted remission of one-fifth of the sentence on the ground of good conduct and industry, provided that no remission shall be granted which may result in the prisoner being released before one calendar month has been served."

Regulation 92

"Every prisoner serving a sentence of three years or more but less than six years may granted remission of one-third of the sentence on the ground of good conduct and industry."

Regulation 93

"Every prisoner serving a sentence of six years or more but less than nine years may be granted remission of five-twelfths of the sentence on the ground of good conduct and industry."

Regulation 94

"Every prisoner serving a sentence of nine years or more may be granted remission of one-half of the sentence on the ground of good conduct and industry."

Regulation 96(c)

"Where the imprisonment is for life or where a sentence of death is commuted to imprisonment for life, remission shall be calculated as if the imprisonment is for twenty years."

Regulation 97 – Date of expiry of sentence

"The date of the expiry of the sentence and the earliest possible date of discharge shall be entered in the Personal Record of each prisoner and in the Discharge Book to be kept at the prison, and the Director shall inspect such records and Discharge Book at frequent intervals so as to ensure that the provisions of this Regulation are strictly complied with."

Regulation 98 – Prisoners serving a sentence of ten years or more

"Notwithstanding anything contained in these Regulations, the Director shall, on the expiry of every fourth year of the sentence of every prisoner serving a sentence of ten years or more, submit to the Minister for transmission to the Attorney-General of the Republic the name of the prisoner for consideration of his case, and shall attach thereto a report stating the prisoner's conduct in prison and his physical and mental condition."

Regulation 99 – Prisoners serving a life sentence

"The Director shall submit to the Minister for transmission to the Attorney-General of the Republic the name of every prisoner serving a life sentence who has served ten years of such sentence, or of every prisoner serving a sentence exceeding fifteen years who has served eight years of his sentence, who has attained, or is believed in the absence of positive evidence to have attained, the age of 60, for consideration of his case. The Director shall communicate this rule to every such prisoner. Prisoners must be made distinctly to understand that the submission of their name to the Minister in no way implies that any remission of sentence will be necessarily granted."

(d) The Prison (General) (Amending) Regulations of 1987 (Regulatory Act 76/87, amending the Prison (General) Regulations of 1981; declared unconstitutional and *ultra vires* on 9 October 1992)

Regulation 2 of the 1987 Regulations introduced the following definition of "imprisonment for life":

> "'imprisonment for life' means imprisonment for twenty years."

Regulation 93, governing the remission of the sentence of prisoners serving a sentence of life imprisonment, provided as follows:

> "(i) Every prisoner serving a sentence of imprisonment for life may be granted remission of his sentence on the ground of good conduct and industry, not exceeding in total one-quarter of such sentence.
>
> (ii) The decision on the reduction of the sentence as well as the extent of such remission for each aforesaid prisoner shall not be taken unless the said prisoner has served fifteen years of his sentence."

Regulation 96(c) was struck out.

(e) Domestic case-law and practice

In *Malachtou v. the Attorney-General of Cyprus* ((1981), 1 C.L.R. 543) the Supreme Court, stated, *inter alia,* the following concerning subsidiary legislation:

> "...The power for the enactment of subsidiary legislation must, in the nature of things, emanate strictly from the provisions of the enabling law. Any other approach would constitute an encroachment on the legislative powers of the House of Representatives, the body exclusively entrusted with legislative powers, under our Constitution. Subsidiary legislation enacted without just cause will be declared *ultra vires* ... A body to which power is delegated to legislate must derive authority from the provisions of the enabling enactment, any attempt to by-pass or transgress the limits set thereto will be struck down as *ultra vires*. They cannot infer the existence of any authority to legislate, other than that expressly conferred by law, and must, therefore, confine themselves to the four corners of the enabling enactment. Any relaxation of this approach would certainly undermine the system of separation of powers that pervades our system of law and finds expression in the Constitution."

In *Triftarides v. the Republic of Cyprus* ((1985), judgment of 16 October 1985) the Supreme Court, when examining the manner of the remission of sentence by the President under Article 53 (4) of the Constitution with regard to a prisoner serving a ten-year sentence, stated the following:

> "...Under Article 53 (4) of the Constitution the President of the Republic remitted the sentence passed by the Court and not the sentence that would have been served in the light of regulation 94. This is clear from the wording of Article 53 (4) which in so far as material on this point says that 'The President... remits... any sentence passed by a court in the Republic.....".

In its judgment on 5 February 1988 in the case of *The Republic of Cyprus v. Andreas Costa Aristodemou, alias Yiouroukkis*, the Nicosia Assize Court,

when sentencing the convicted for premeditated murder under the Criminal Code, stated, among other things:

> "On the basis of everything said by Lord Parker [in the case of *R v. Foy* (1962) 2 All E.R. 246], life imprisonment means imprisonment for the remainder of the time for which the applicant is alive. Accordingly, and since a sentence of life imprisonment has been imposed on the accused, no other such sentence can follow. Mr Clerides suggests, however, that the court must issue this order, for he is also basing himself on the Regulations of 1987 and is concerned that, since these Regulations are in force, the accused may possibly be released in fifteen years and thus is not facing the danger of serving another prison sentence of fifteen or twenty years, if the second sentence follows the first one.
>
> Article 12 (1) of the Constitution provides that a court may not impose a longer sentence than that provided for by law at the time of the commission of the offence. The Criminal Code indeed provides that the sentence of life imprisonment is mandatory and the only sentence following conviction for premeditated murder. In our judgment, the sentence 'imprisonment for life' means exactly what is stated by the simple Greek words, that is, imprisonment for the remainder of the biological existence of the convicted person. This interpretation was also given by the Court of Appeal of England in the case of *R v. Foy* (1962) 2 All E.R. 246. As we have already stated, section 203(2) of the Criminal Code is the only provision prescribing the sentence of life imprisonment as mandatory, and this in the light of the provisions of Article 53 (3) of the Constitution. The Regulations of 1987 were drawn up on the basis of the Prison (Discipline) Law (Cap. 286), which still applies on the basis of the provisions of the Constitution even though it was enacted just when Cyprus became an English colony. The provisions of this Law, however, have to be applied in such a way that they comply with the express provisions of the Constitution. We wonder whether these regulations are not unconstitutional and whether the interpretation of the term 'imprisonment for life', which is encountered in the Constitution and the Criminal Code, so as to mean 'twenty years' is arbitrary. We say 'we wonder' since such an issue has not been raised before us and thus we have no right in this procedure to convey an opinion on this. Another observation that can be made, however, is the following. It appears that the drafters of the Regulations, even if they are valid, did not notice the special provision of section 11 of the above Law (Cap. 286), which concerns life prisoners and provides that they may be released on licence by decision of the 'Governor', which may be revoked. The life sentence is specifically provided for in the above Law to last for life, along the lines of the English legal system. This is why Lord Parker stated what we quote above. Another issue that is raised, even for the purposes of academic debate, is to what extent a law or regulation can provide for the remission, suspension or commutation of a convicted person's sentence in view of the express provision of Article 53 (4) of the Constitution which bestows this privilege on the President of the Republic with the concurrence of the Attorney-General.
>
> It has been established by judicial precedent that when the court imposes a sentence, it does not take into account regulations, even if they are applicable, that allow for the remission of the sentence when a convicted person displays good conduct. The Regulations of 1987 were made in order to serve the purposes to which the court does not refer when passing the sentence, which is determined on the basis of the applicable legislation and the Constitution. It is therefore up to the competent authorities, when and if the matter is raised at the appropriate time, to take into account what we have mentioned above in the form of legal observations. We have

already imposed on the accused the sentence that the law envisages, that is, life imprisonment, and we have nothing else to add."

On 16 October 1991, in a letter to the Prison Director, through the Director General of the Ministry of Justice, the Attorney-General at the time stated the following concerning the prisoner Mr Yiouroukkis:

"In reply to your letter dated 26 September 1991 and file no. F162/2/a, I would inform you that the convicted person Andreas Aristodimou Yiouroukkis, to whom your letter refers, was sentenced to life imprisonment by the Nicosia Assize Court on 5 February 1988 in criminal case no. 31175/87 and this was interpreted in the Assize Court's judgment to mean imprisonment for the rest of his biological existence.

This legal approach concerning the nature of life imprisonment was also adopted in a subsequent case, no. 23069/87, by the Limassol Assize Court on 10 March 1989.

In view of the above, the duration of the sentence in the case of a sentence of life imprisonment is not determined and is not reduced in accordance with Regulation 2 and Regulation 93(1) of the Prison (General) Regulations of 1981 and 1987 respectively, but the sentence in question is subject to remission or suspension by the President of the Republic, in accordance with Article 53 (4) of the Constitution, who in exercising his powers may take into account, among other things, the spirit of the above-mentioned Regulation 2 and Regulation 93(1)."

On 2 January 1992, in a letter to the Director General of the Ministry of Justice, the Attorney-General at the time stated the following concerning the prisoner Mr Yiouroukkis:

"In reply to your letter dated 3 December 1991 and file no. Y.D. 12.7.01, concerning the duration of the life imprisonment of the convicted person Andreas Aristodimou Yiouroukkis, I observe the following:

...

In the present case the Nicosia Assize Court, when it imposed the sentence of life imprisonment on the above-mentioned convicted person, interpreted section 203(2) of the Criminal Code, Cap. 154 (as amended, for this purpose, by Law 86/83) and judged that life imprisonment means imprisonment for the rest of the convicted person's biological existence. Consequently, there is a court judgment for the duration of the sentence of the specific convicted person which has not been overruled on appeal and is binding and mandatory for all the authorities of the Republic.

The interpretation of the relevant provision of the Criminal Code given by the Nicosia Assize Court, was followed ..., in a subsequent case, by the Limassol Assize Court and since this interpretation has not been questioned by another Assize Court or overruled by the Supreme Court, it must be regarded as the correct judicial interpretation of the Criminal Code provision in question and must be applied in the future to all situations where an accused is sentenced to life imprisonment, even if reference is not made in the judgment to the fact that such imprisonment means imprisonment for the rest of his biological existence.

...

> No issue of unequal treatment of prisoners who are serving a sentence of life imprisonment in comparison with prisoners who are serving sentences of a shorter term can be raised, because the sentence of life imprisonment, owing to its nature, differs radically from any other sentence of imprisonment and issues of unequal treatment can arise only when comparing similar, and not dissimilar, things.
>
> Furthermore, there is no possibility of applying secondary legislation, such as the Prison (General) Regulations of 1981 and 1987, when this conflicts with primary legislation such as the relevant provision of the Criminal Code. This is why, to the extent that the Regulations in question conflict with the relevant provision of the Criminal Code as it has been interpreted judicially, they cannot be applied.
>
> ...
>
> ... when the President of the Republic, in cooperation with the Attorney-General, examines the possibility of remission of the sentence in accordance with Article 53 (4) of the Constitution, in the case in which the convicted person is serving a sentence of life imprisonment, he will have in mind that the sentence, unless there is a remission, means imprisonment for the remainder of the biological existence of the convicted person and will act accordingly in the light of the circumstances of the case."

On 9 October 1992 the Supreme Court (first instance) in the case of *Hadjisavvas v. the Republic of Cyprus* (1992) ruled that the Prison (General) Regulations were unconstitutional. The accused in that case had also been convicted of premeditated murder and sentenced to life imprisonment. He had submitted a habeas corpus application to the Supreme Court when he was not released on the date that had been given to him as a release date by the prison authorities. The Supreme Court dismissed his application and reaffirmed that the term "life imprisonment" under the Criminal Code meant imprisonment for the remainder of the life of the convicted person. In particular, the court stated as follows:

> "... to the degree and extent that section 4, in conjunction with section 9, of Cap. 286 confers power for the determination of the duration of a sentence of imprisonment on an authority other than a judicial one is contrary to the Constitution and has ceased to be in force following the proclamation of the Republic. Besides, the granting of power to the Governor of Prisons to remit the sentence because of good conduct and industry under the provisions of Regulation 93 is contrary to the principle of the separation of powers, which precludes the involvement of an executive or administrative organ in the determination of the punishment of an offender. The only authority on whom power is conferred by the Constitution to remit, suspend or commute a prison sentence is the President of the Republic, acting with the concurrence of the Attorney-General. The examination of the power to make secondary legislation conferred by sections 4 and 9 of Cap. 286 is not directly required in this case, since neither of the two provisions concerns the serving of a sentence of life imprisonment. The serving of life imprisonment is regulated specifically by the provisions of section 11 of Cap. 286, from which it emerges that life imprisonment means imprisonment for the remainder of the life of the convicted person, subject to the right granted to the President of the Republic to suspend the sentence for such a period of time as may be fixed on the release of the convicted person on licence. Section 11 of Cap. 286 is in harmony with the Constitution and has maintained its force after the proclamation of the Republic

inasmuch as it is consistent with the powers conferred on the President of the Republic by Article 53 (4) of the Constitution."

The court thus concluded that it had not been shown that Mr Hadjisavvas should have been released on the date given or any subsequent date and consequently, the habeas corpus application was rejected.

In 1993, nine life prisoners (eight serving a mandatory life sentence and one a discretionary life sentence) were released on the basis of Article 53 (4) of the Constitution. Their sentences were commuted to twenty years' imprisonment and then remitted so as to allow their immediate release. The procedure followed for the release of these prisoners was the same. The following example concerns the case of one such prisoner.

In a letter dated 28 September 1993 to the President of the Republic the Attorney-General of the Republic stated the following in relation to a life prisoner:

"Dear Mr President,

Anastasis Savva Politis (convict no. 7035 in the Central Prisons) was sentenced by the Nicosia Assize Court to life imprisonment for premeditated murder.

On the basis of the applicable Prison (General) Regulations of 1981 and 1987 it was considered that life imprisonment was equal to imprisonment for twenty years and it was announced to him, the day after he was sentenced, that his sentence would be twenty years' imprisonment from 26 December 1986.

In the meantime his sentence was reduced to eight years' imprisonment on account of a presidential pardon in respect of one-fifth of the sentence (four years) on the occasion of the election of the new President of the Republic in 1988, and on account of the remission of eight years for good conduct and industry, in accordance with the Prison (General) Regulations, and the date of his release was determined as 25 December 1994.

On 5 February 1988 the Nicosia Assize Court, in another case, judged that life imprisonment was for the remainder of the biological existence of the convicted person and hence, on 29 January 1992, I gave the opinion that in such a case the relevant Regulations cannot be applied in a way that would automatically reduce life imprisonment to twenty years' imprisonment.

In the light of all the above, I suggest that this convicted person's sentence should be commuted to twenty years' imprisonment and reduced by four years on the basis of the presidential pardon of 1988 and by such an additional period that he may be immediately released.

The life prisoners Andreas Soteriou Lemonas, Demetris Hadjisavvas and Demetris Miliotis were afforded the same treatment, the first two in April 1993 and the last-mentioned recently.

I take this opportunity to suggest, on humanitarian grounds, that the sentences of all life prisoners whose date of release was determined on the basis of the Prison

(General) Regulations of 1981 and 1987 as falling within the years 1993 and 1994 should be commuted to twenty years' imprisonment and reduced so they may be released immediately and not kept in a state of agony as to whether they will eventually receive the same treatment.

The next date determined, on the basis of the above Regulations, for release of a life prisoner is the year 2000.

The relevant order is enclosed for your signature in the event that you agree with my above suggestion."

On 28 September 1993 the President of the Republic announced the following in relation to a life prisoner:

"Because the convicted person Anastasis Savvas Politis (no. 7036) was sentenced,on 27 January 1987, in criminal case no. 537/87, by the Nicosia Assize Court to life imprisonment for premeditated murder; and

Because the Attorney-General of the Republic, after taking into account the special circumstances of the case, has recommended, based on Article 53 (4) of the Constitution, commutation of the sentence to imprisonment of twenty years and its remission so that he may be released immediately;

For this reason, on the recommendation of the Attorney-General of the Republic, by this Order, and on the basis of Article 53 (4) of the Constitution, the convicted person's sentence is commuted to twenty years' imprisonment and is remitted so that he is released immediately."

On 29 September 1993 an announcement was made concerning the release of six life prisoners. It stated, in so far as relevant:

"The President of the Republic, on the basis of recommendations to this end by the Attorney-General of the Republic, and with the opportunity of the first anniversary of the Independence of the Republic of Cyprus during his presidential term, has decided to remit the sentences, so that they are released immediately, of the following life prisoners, who, if their sentences had been assessed on the basis of twenty years' imprisonment, would have been released in 1993 or 1994:

Ian Michael Davison
Abdel Hakim Saado El Khalifa
Khalet Abdel Kader El Khatib
Saadeldin Mohammad Idress
Achilleas Georgiou Avraam
Anastasis Savva Politis."

(f) The Prison Law of 1996 (Law 62(I)/96), as amended

On 3 May 1996, the Prison Law of 1996 (Law 62(I)/96) was enacted, repealing and replacing the Prison Discipline Law (Cap. 286).

Section 9, governing the release of prisoners, provides as follows:

"(1) No prisoner who is serving a sentence of imprisonment may be discharged from prison until he has served his sentence in accordance with the provisions of this Law except in the case provided for by Article 53 (4) of the Constitution of the Republic or any other law in force.

(2) The discharge of a prisoner shall take place not later than noon on the last day of his sentence.

(3) If the day of discharge is Saturday or Sunday or an official holiday, the release shall take place on the immediately preceding day.

(4) The discharge of a prisoner committed to prison for non-payment of a sum of money shall take place immediately after the prisoner has deposited with the prison authorities the sum or sums in respect of which there are court orders for his detention or if the said orders have been suspended or withdrawn."

Section 12 of the Prison Law of 1996 provides that, with the exception of prisoners serving a life sentence, a sentence can be remitted if the prisoner displays good conduct and industry. It reads as follows:

"(1) In accordance with the provisions of this Law, a person who is serving a prison sentence shall obtain remission of his sentence if he displays good conduct and industry, unless a sentence of life imprisonment has been imposed on him.

(2) The sentence of the prisoner shall be reduced by a reasoned decision of the Director and the remission shall be calculated in accordance with the table in Appendix A, according to the number of previous periods of imprisonment imposed on him. For each month of imprisonment, as set out in the first column of the table, the sentence shall be reduced by the corresponding period set out in the second column, according to the case:

Provided that this reduction is calculated cumulatively in relation to the whole of the prisoner's sentence, applying the reduction set out in the second column for each period of his imprisonment as set out in the first column, within the limits of which the corresponding part of the sentence of the prisoner falls.

(3) In the case where a prisoner is sentenced to serve a sentence of imprisonment after the expiry of another sentence, the aggregate of the two sentences shall be calculated as one sentence for the purposes of calculating the remission of the sentence which the prisoner may obtain on account of good conduct and industry.

(4) In the case where a sentence of imprisonment is partly concurrent with another sentence and at the same time overlaps with this sentence, the longer sentence shall supersede the other.

(5) The decision on the remission of the sentence, as well the extent of such remission, for each prisoner shall be taken only when the prisoner has served the whole part of the sentence for which he cannot obtain further remission of the sentence by virtue of this section."

Section 14 of the Law (as amended by Law 12(I)/97), governing the release of prisoners under conditions, provides as follows:

"(1) Subject to the provisions of the Constitution, the President of the Republic, with the agreement of the Attorney-General of the Republic, may order by decree the conditional release of a prisoner at any time.

(2) A prisoner who is conditionally released by virtue of this section may, until the expiry of his sentence, be under the supervision and inspection of a person specified

in the decree of conditional release and shall conform to whatever other conditions and restrictions are set out in the said decree.

(3) The President of the Republic, with the agreement of the Attorney-General of the Republic, may at any time by a new decree amend or nullify the conditions and restrictions contained in the decree issued by virtue of subsection (1) above.

(4) If before the expiry of the sentence of the prisoner who is released, as referred to above, the President of the Republic, with the agreement of the Attorney-General of the Republic, is satisfied that the said person has failed to comply with any valid condition or restriction set out in the decree, he may by a new decree revoke the convicted person's conditional release and order his return to prison to serve the rest of his sentence.

(5) After the convicted person's return to prison, he shall be entitled to the benefits provided in section 12 of this Law only after one year has elapsed from the date of his return to prison and provided that during this year he has displayed industry and good conduct.

(6) The period of time from the date of the decree for the release of the prisoner on the basis of this section until the date of its revocation shall be included in the period of the sentence served by the prisoner.

(7) A prisoner who does not comply with the decree revoking his release shall be deemed to be a fugitive from lawful detention."

Sections 15 and 16 of the Law contain provisions concerning the prisoner's record and personal file. They read as follows:

Section 15

"For each prisoner who is admitted to prison a general record with numbered pages shall be kept in which the following shall be recorded:

(a) the personal details and characteristics of the prisoner;

(b) details relating to his family status;

(c) details relating to the offence of which he has been convicted, as well as the relevant decision of the court;

(d) the date and time of his admission and the date of his discharge."

Section 16

"(1) For each prisoner a personal file shall be kept which shall contain, *inter alia*, his personal details and characteristics, general information on his place of birth and last place of residence, information about his family status, documents authorising his detention, a copy of the record of proceedings relating to the judgment of the court, police reports and any other documents or information which relate to the prisoner.

(2) The personal file of each prisoner shall also record the date of the expiry of the sentence and the earliest possible date of discharge.

(3) The prisoner shall be notified only of the date of the expiry of the sentence, as imposed by the court.

(4) The Director shall see to ensuring that this rule is strictly complied with."

3. Additional relevant domestic law provisions

Article 7 (2) of the Constitution provides as follows:

"No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy *jure gentium* and capital offences under military law."

Article 12 (3) of the Constitution provides as follows:

"No law shall provide for a punishment which is disproportionate to the gravity of the offence."

COMPLAINTS

1. The applicant complained of a violation of Article 3 of the Convention in that:

(a) the whole or a significant part of the period of his detention for life formed a period of punitive detention that exceeded the reasonable and acceptable standards for the length of a period of punitive detention laid down in the Convention; and,

(b) following the notice given to him by the prison authorities upon his admission to prison, he was under a legitimate expectation that he would be released on the date stated in that notice if he complied with the prison regulations. However, as a result of his continuous detention beyond that date he had been left in a state of distress and uncertainty over his future for a significant amount of time; this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention.

2. The applicant further complained under Article 5 of the Convention that his continuing detention since 2 November 2002 was unlawful. In this connection he averred that his sentence, as imposed on him in 1989, had expired on the above date.

3. The applicant complained of a violation of Article 7 of the Convention. His complaint under this provision was twofold:

(a) when he was sentenced to mandatory life imprisonment on 10 March 1989 by the Limassol Assize Court, under the prison regulations applicable at the time "life imprisonment" had amounted to imprisonment for a period

of twenty years. As a result of the repeal of the relevant Prison Regulations, he was subjected to an unforeseeable prolongation of his term of imprisonment from a definite twenty-year sentence to an indeterminate term for the remainder of his life. Thus, he complained that a heavier penalty had been imposed than that applicable at the time he had committed the offence of which he had been convicted, in breach of his rights under Article 7 of the Convention;

(b) the amendment of the relevant legislative provisions and their retroactive application had resulted in the increase of his sentence from twenty years to an indeterminate term and a change in the conditions of his detention, contrary to Article 7 of the Convention. In that connection, the applicant averred that his case was clearly distinguishable from that of *Hogben v. the United Kingdom* (cited above), whereas the Supreme Court, when examining his habeas corpus application, had erroneously applied that decision to the facts of his case.

4. Finally, the applicant complained that whilst most other inmates serving life sentences had been released, having served their twenty-year sentence, he remained the longest-serving life prisoner. He therefore complained that he had been subjected to discriminatory treatment contrary to Article 14 of the Convention in conjunction with Articles 3, 5 and 7.

THE LAW

1. The applicant complained under Article 3 of the Convention that firstly, the whole or a significant part of the period of his detention for life was a period of punitive detention that went beyond the reasonable and acceptable standards for the length of a period of punitive detention laid down in the Convention. Secondly, under the same provision, the applicant submitted that the unexpected reversal of his legitimate expectations of release and his continuous detention beyond the date which was set for his release by the prison authorities had left him in a state of distress and uncertainty over his future for a significant amount of time, amounting to to inhuman and degrading treatment. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The parties' submissions

(a) The Government

The Government acknowledged that in the light of the record of the proceedings before the Supreme Court of Cyprus, the applicant had, at least in substance, raised his complaints before the domestic courts.

The Government maintained, however, that the imposition of a mandatory life sentence in the present case had not subjected the applicant to inhuman and degrading treatment. Under section 11 of Cap. 286, a life prisoner at the time of the applicant's sentence, whether serving a mandatory life sentence (like the applicant) or a discretionary life sentence, could be released on licence subject to conditions. This meant that the prisoner could live and work outside prison for the remainder of his sentence, subject to supervision, and could be recalled for breaching the terms of the licence. The Government appended to their observations an example of such a licence granted in 1982 to a prisoner who had been serving a mandatory life sentence from 1976. The same situation was applicable under section 14 of the new Prison Law of 1996 (Law 62(I)/96).

The Convention did not prohibit life imprisonment and there was no case-law laying an obligation on States not to impose sentences of imprisonment for life, to make provision for releasing life prisoners, or for splitting the sentence into punitive and non-punitive periods and affording a possibility of release after serving the punitive part. Nor had any standards been set as to what was a reasonable and acceptable length of punitive detention. In this connection, the Government relied on the Commission's decision in *Kotälla v. the Netherlands* (no. 7994/77, Commission decision of 6 May 1978, DR 14, p. 238), arguing that Article 3 of the Convention could not be read as requiring that an individual serving a lawful sentence of imprisonment must have that sentence reconsidered by a national authority, judicial or administrative, with a view to its remission or termination. In addition, a change in parole policy did not fall into a category of treatment which could contravene Article 3. Further, the Court's statements in its case-law under this provision on issues concerning indeterminate terms of life imprisonment related to very young persons.

Furthermore, the Government submitted that, bearing in mind the judgment in which the Limassol Assize Court had sentenced the applicant, it could not be said that he could have reasonably or legitimately expected to be released on good conduct under the regulations. Furthermore, three years afterwards and well before 2 November 2002, the Supreme Court in the case of *Hadjisavvas v. the Republic of Cyprus* had confirmed what had been said by the Limassol Assize Court in his case concerning the meaning of life imprisonment and declared the relevant provisions in the regulations *ultra vires* and unconstitutional. The above judgment confirmed that the

applicant's sentence would remain in force for life and that his detention was subject to release on licence by the President of the Republic under section 11 of Cap. 286, and could not be remitted to twenty years for good conduct under the regulations. Following the above judgment, and in view of the new Prison Law which had entered into force in 1996, there could not be any uncertainty or expectations on the applicant's part as to his release under the regulations. Therefore, the Government averred that the applicant's allegations that his continued detention after 2 November 2002 had left him in a state of uncertainty or distress over his future for a significant time, amounting to inhuman and degrading treatment, were not valid or founded from an objective standpoint.

(b) The applicant

The applicant accepted that the imposition of a mandatory life sentence – defined on 10 March 1989, the date of his conviction, as amounting to twenty years – did not constitute a violation of Article 3 of the Convention. However, in view of the Supreme Court's judgment in the case of *Hadjisavvas v. the Republic of Cyprus*, in which the provision of the Regulations that defined "life imprisonment" as meaning imprisonment for twenty years had been declared *ultra vires*, and of the subsequent repeal of those Regulations in 1996, the imposition of mandatory imprisonment for the rest of one's life without parole constituted a violation of Article 3 of the Convention. Relying on the Court's admissibility decision in the case of *Léger v. France* ((dec.), no. 19324/02, 21 September 2004), the applicant argued that the mandatory nature of the sentence and the absence of parole amounted to inhuman and/or degrading treatment.

The applicant noted that under the legislative scheme currently in force in Cyprus, there was no provision for the granting of parole to prisoners. Thus, the principal purpose of the sentence of imprisonment imposed by the Cypriot courts and subsequently enforced by the relevant authorities was the prisoners' punishment, no provision being made for the protection of their fundamental human rights during the execution of their sentence and their readmission to society. In this context he referred to the report of 26 May 2004 by the Cypriot Ombudsman, who had recommended that the courts, when considering the imposition of a life sentence for murder, should be able to set a minimum tariff period not exceeding twenty to twenty-five years and had suggested the setting-up of a parole board with an advisory role for considering the release of a prisoner serving a life sentence within the set period ("*Ex officio* report on the penitentiary system of Cyprus and the conditions of detention in the central prisons").

Furthermore, the applicant claimed that the President's prerogative under Article 53 of the Cypriot Constitution, which could come into play following the advice of the Attorney-General to that effect, could not be treated as a system of parole. The President's prerogative constituted an

arbitrary decision by the executive which lay beyond the reach of any sort of judicial review and violated the guarantees of a fair trial as enshrined in Article 6 of the Convention. In any event, the applicant was barred from the possibility of being granted this arbitrary type of "parole" since in accordance with section 12(1) of the Prison Law of 1996, prisoners serving a life sentence were excluded from the possibility of obtaining remission of their sentence in the light of their good conduct and industry.

The exclusion of any possibility of readmission into society rendered the applicant's sentence strictly punitive in nature, with no prospects of rehabilitation. Cypriot law imposed mandatory life imprisonment in all cases of murder, depriving the courts of the vital discretion which judges should be allowed, having regard to the rights of the convicted person, in imposing a sentence proportionate to the gravity of the offence committed. In this connection, the applicant referred to Recommendation R (92) 17 of the Committee of Ministers of the Council of Europe to member States concerning consistency in sentencing, adopted by the Ministers' Deputies in Strasbourg, which recommended that "whatever rationales for sentencing are declared, disproportionality between the seriousness of the offence and the sentences should be avoided". He also noted that even under the Rome Statute 1998, genocide was not automatically punished by life imprisonment (Article 7 (1) of the Rome Statute).

The applicant claimed that the framework for protection of the rights of persons serving life imprisonment sentences in the Republic of Cyprus was contrary to the practices in most other member States of the Council of Europe and that there was an obvious need to establish a common policy. In this connection the applicant stated that in both France and Italy it was explicitly recognised that an offender sentenced to life imprisonment had a fundamental right to be considered for release. In addition, the Federal Constitutional Court of Germany recognised that a life sentence that was fully implemented invariably entailed the loss of human dignity and the denial of the controversial right to rehabilitation. A release mechanism had been set up in Germany to ensure that life sentences were not implemented in a way that undermined human dignity by suppressing all hopes of release. This suggested that life imprisonment, if fully implemented, might be an inherently inhuman and degrading form of punishment, particularly because the denial of any expectation for release and rehabilitation was fundamental.

Furthermore, it was a general requirement of international human rights law that a convicted person was not to be deprived of a second opportunity to return to society, following a non-problematic serving of his punishment and sentence and the completion of a rehabilitation procedure.

The applicant stressed that the effects of the nature of his sentence were analogous to those of imprisonment on "death row". Essentially, he had been sentenced to death, the only difference being the time of death. In a death-penalty case the time of death through execution was clearly defined,

whereas in the present case the time of death was not defined but was inevitable.

Finally, the applicant argued that as a result of the notice issued by the prison authorities giving him an estimated date of release, he was under the legitimate expectation that he would be released on the stated date in compliance with prison regulations. However, he had been left in a state of distress, anguish and uncertainty about his future for a significant period of time. As a result, his continued detention, despite the notice given to him by the prison authorities, and the lengthy period spent in prison in a state of uncertainty as regards his future contravened Article 3 of the Convention.

2. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant did not dispute that his original detention following his conviction in 1989 had been justified under Article 5 of the Convention. He contended, however, that the term of his sentence had expired on 2 November 2002 and that his detention after that date had therefore been contrary to that provision, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court:
>
> ..."

1. The parties' submissions

(a) The Government

The Government submitted that the applicant was serving a mandatory sentence of imprisonment for life, which had been imposed on him by a court judgment on 10 March 1989, following his conviction. That sentence had not expired and the applicant continued to be lawfully detained "after" conviction within the meaning of Article 5 § 1 (a) of the Convention.

The Government pointed out that the sentence of life imprisonment for premeditated murder under section 203 of the Criminal Code was mandatory and was imposed as punishment for the gravity of the offence, in contrast to a discretionary life sentence, which was imposed following a

judicial assessment of the offender. Section 29 of the Criminal Code excluded premeditated murder from those offences which carried a sentence of life imprisonment but were punished with imprisonment for a shorter period or with a fine. The court was obliged by law to impose a sentence of life imprisonment for premeditated murder because of the inherent gravity of the offence and the sentence therefore did not depend on factors which might change with the passage of time. The situation concerning the nature of the mandatory life sentence under section 203 was the same as in the case of *Wynne v. the United Kingdom* (judgment of 18 July 1994, Series A no. 294-A).

In the case of *Politis v. the Republic of Cyprus* ((1987), 2 C.L.R. 116) the Supreme Court had found that sections 203 and 29 of the Criminal Code were in conformity with the Constitution and had emphasised that these provisions rendered a sentence of life imprisonment obligatory upon conviction for premeditated murder. The Government, however, distinguished the applicant's case *vis-à-vis* the regulations from that of other prisoners also serving life sentences at the time in that when passing the sentence the court had made it specifically clear that it was imposing imprisonment for the remaining part of the applicant's life. Therefore, on 2 November 2002 the applicant had not finished serving the punishment imposed on him by the court and the sentence imposed continued to provide a lawful basis for his detention.

The Limassol Assize Court had not examined whether the sentences should run concurrently or consecutively for in its view imprisonment for life meant imprisonment for the remaining part of the convicted person's life. The court had relied on the judgment of the Nicosia Assize Court in the case of *The Republic of Cyprus v. Andreas Costa Aristodemou, alias Yiouroukkis*, which had adopted the interpretation of the term "life imprisonment" given by Lord Parker in the case of *R v. Foy* (1962 (2 All E.R. 246)) as meaning imprisonment for life. The Regulations could not qualify the sentence imposed to twenty years' imprisonment despite the fact that the Assize Court had not considered itself competent to examine the question of their validity.

The view that in the applicant's case, and in the case of *The Republic of Cyprus v. Andreas Costa Aristodemou*, *alias Yiouroukkis*, the court had interpreted the meaning of life imprisonment so that its duration could not be remitted under the Regulations had also been expressed by the Attorney-General of the Republic on 16 October 1991 and 2 January 1991, before the adoption of the *Hadjisavvas* judgment, in two opinions to the Director of Prisons and the Director-General of Ministry of Justice concerning the life prisoner Mr Yiouroukkis.

In the light of the above circumstances, the applicant's detention had resulted from, followed and depended on his conviction and had been continued on the basis of the sentence of life imprisonment imposed on him

by the Limassol Assize Court, subject to release on licence under section 14 of the new Prisons Law 1996 that repealed Cap. 286. The provisions of section 14 were analogous to those in section 11 of the repealed law; they permitted the release of prisoners on licence at any time under specific terms, by order of the President of the Republic with the agreement of the Attorney-General. A prisoner released on licence under this provision could remain, until the expiry of his sentence, under the supervision of a person specified in the order of his release. In that connection, the Government lastly noted that the President's power to release on licence under the Prison Law 1996 was distinct from his power under Article 53 (4) of the Constitution.

(b) The applicant

The applicant claimed that when the Assize Court had sentenced him to a mandatory sentence of "life imprisonment", in accordance with the prison regulations applicable at the material time, "life imprisonment" had meant imprisonment for a term of twenty years. This view was shared by the prosecution authorities themselves, for at the hearing of the sentence they had requested the three "life sentences" to run consecutively and not concurrently. It had also been reaffirmed by the prison authorities on the same day, when they had issued the notice to the applicant giving him a release date. However, the authorities now refused to release the applicant. He therefore claimed that he was being unlawfully detained and consequently deprived of his liberty contrary to Article 5 of the Convention.

2. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant stated that as a result of the repeal of the prison regulations applicable at the time of his conviction and sentencing, he had been subjected to an unforeseeable prolongation of his term of imprisonment from a definite twenty-year sentence to an indeterminate term for the remainder of his life. He therefore complained that a heavier penalty had been imposed than that applicable at the time he had committed the offence of which he had been convicted, contrary to Article 7 of the Convention. Furthermore, he complained that the amendment of the relevant legislative provisions and their retroactive application had resulted in the increase of his sentence from twenty years to an indeterminate term,

as well as a change in the conditions of his detention, in violation of Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

1. The parties' submissions

(a) The Government

The Government submitted that Article 7 of the Convention was not applicable in the present case. The Regulations did not prescribe a "penalty" for premeditated murder within the meaning of Article 7 and thus no issue arose under this provision. The sentence for premeditated murder was prescribed by section 203 of the Criminal Code, which was the provision establishing the offence, and not by the Regulations. Imprisonment for life was the "penalty" set by that section for the offence committed by the applicant, and that was the "penalty" imposed on him by the court for committing the offence within the meaning of Article 7.

The Supreme Court in the *Hadjisavvas* judgment, in interpreting "imprisonment for life" for premeditated murder under section 203 as meaning imprisonment for the remaining part of a convicted person's biological life, had not "imposed" a "penalty" following conviction within the meaning of Article 7 and its case-law, and could not have changed retroactively the "penalty" of imprisonment for life imposed on the applicant by the sentencing court. The Government pointed out that the Regulations had had an interpretation part which stated expressly that the definitions were applicable to words and terms used therein. Therefore, what the Regulations had done was merely add a definition of the words "imprisonment for life" for the limited purposes of the Regulations themselves, and not a definition to be applied to any other law or instrument.

The twenty-year period was referred to in the Regulations for the purpose of calculating the remission of the term of imprisonment of life prisoners and not for the purpose of prescribing the penalty for premeditated murder or qualifying the meaning of the term "life imprisonment". The same argument applied by analogy to the repeal of the Regulations and their substitution with a new law and regulations under which remission of portions of sentences being served by life prisoners on grounds of good conduct had not been permitted. The repeal and/or replacement of the

Regulations had not amounted to the imposition of any "penalty" retroactively.

Unlike the Criminal Code, the regulations had not contained substantive provisions but had been issued under sections 4 and 9 of the Prison Discipline Law (Cap. 286) and regulated, *inter alia*, remission for good conduct and industry of periods to be spent in prison by all prisoners serving a sentence of imprisonment imposed by the courts following conviction. Prisoners could earn remission, which was calculated by deducting from the term of their sentence, as passed by the court, a number of specified days per month spent in prison; the longer the sentence, the greater the number of days per month in respect of which a prisoner could earn remission. Under Regulation 93, prisoners serving a life sentence could earn remission of the period to be served, not exceeding one-quarter of the sentence in total. Thus, a life prisoner could earn five years of remission from a period of twenty years' imprisonment. The decision as to whether a prisoner satisfied the requirements of good conduct and industry for remission, and the extent of the remission, was to be taken at administrative level by the Director of Prisons, and in the case of life prisoners, only when the prisoner had served fifteen years in prison. The remission provisions did not afford any prisoner a vested right to be released after serving fifteen years in prison but only a possibility of release. Accordingly, the Regulations covered matters relating to the execution of the sentence of imprisonment, including not only remission but also issues pertaining to prisoners' rights and obligations during detention.

The Government emphasised that remission of the sentence under the Regulations did not mean remission of the sentence imposed by a court since under Regulation 7 no prisoner could be released from prison before completing his sentence except in the circumstances provided for in Article 53 (4) of the Constitution, by which the President of the Republic was granted the exclusive privilege, on the recommendation of the Attorney-General, to remit, suspend or commute any sentence by a court (they cited *Triftarides v. the Republic of Cyprus* (1985), judgment of 16 October 1985).

The Government observed that the entry on the form in the personal file on the applicant referred to his sentence as imprisonment for life without specifying any date of expiry of the sentence, and in another column gave the date on which it was possible to release him following remission of the relevant period under the regulations. The entry was made under Regulation 97, which required the date of expiry of the sentence and the earliest possible date for release to be entered in the personal file of each prisoner. In the applicant's case there was no predetermined date of expiry of the sentence, and no such date had been entered in his personal file. The fact that a release date was recorded under the provisions which at the time had governed the release of prisoners for good conduct did not mean that

the applicant's sentence ought to be read subject to that date, rendering the date a part of the "penalty" imposed on him within the meaning of Article 7 of the Convention.

In the alternative, the Government submitted that if the Court found that Article 7 was applicable in that the interpretation in the *Hadjisavvas* judgment, together with the repeal and replacement of the Regulations, had imposed retroactively on the applicant a "penalty" within the meaning of this provision, inasmuch as this was tantamount to the imposition of a heavier penalty than the one applicable at the time of the commission of the offence, the fact that the penalty of life imprisonment for premeditated murder meant imprisonment for the remaining part of the applicant's life was reasonably foreseeable. In particular, the Government averred that that at the material time both the clear wording of section 203 and also the relevant case-law had made it reasonably foreseeable that the relevant provisions of the Prison Discipline Law (Cap. 286) and the applicable regulations were *ultra vires* and contrary to the Constitution. The Government pointed out that there was a body of case-law at the time to the effect that subsidiary legislation, such as the regulations issued by the Council of Ministers, could be declared *ultra vires* if they did not strictly emanate from the provisions of the enabling law, which in the present case was Cap. 286. In this connection, the Government referred to the judgments in the cases of *Malachtou v. the Attorney-General of Cyprus* ((1981) 1 C.L.R. 543) and *The Republic of Cyprus v. Andreas Costa Aristodemou, alias Yiouroukkis*. These had led to the *Hadjisavvas* judgment in 1992, in which it had been held that sections 4 and 9 of Cap. 286 were unconstitutional for transgressing the judiciary's function of determining the punishment for breaching the criminal law, to the extent that they purported to authorise an authority other than the judiciary to determine a term of imprisonment.

Accordingly, there was sufficient indication that the clear wording of section 203 could not be qualified by the Regulations. The Government considered that the applicant had been able to foresee, to a degree that was reasonable in the circumstances and with the help of legal assistance, the risk that the consequences of premeditated murder would be a sentence of imprisonment for the remaining part of his life. The Government relied on domestic case-law that stated that by virtue of Article 12 (3) of the Constitution, the judiciary was the sole arbiter of the measure of punishment to be taken for breaching provisions of the criminal law.

Lastly, the Government submitted that when the Limassol Assize Court had passed sentence on the applicant, it had interpreted section 203 of the Criminal Code as meaning imprisonment for the remaining part of his life. Nonetheless, the applicant had not lodged an appeal against the sentence to challenge the sentencing court's interpretation. He could not therefore now

maintain that he was unaware that life imprisonment meant imprisonment for the rest of his life.

(b) The applicant

The applicant stated that the Criminal Code did not contain a definition of "life imprisonment" and that the definition was provided in the prison regulations issued under the Prison Discipline Law. In his view, if "life imprisonment" meant imprisonment for the rest of his life it would have been pointless for the prosecution to have argued that consecutive sentencing would have amounted to sixty years. This was confirmed by the notice given by the prison authorities. Relying on this, the applicant had not appealed against his sentence for fear that the Supreme Court might impose consecutive sentences, thus compelling him to serve sixty years rather than twenty.

He claimed that the Government were estopped from denying the interpretation of the term "life imprisonment" as meaning anything other than twenty years. The applicant had had his sentence prolonged to his disadvantage and that had not been foreseeable either at the time of his committing the offence or at the time of his being sentenced. His sentence had been increased from a definite twenty-year term to an indefinite term lasting for the remainder of his life. The twenty-year definition had been used at the time in respect of all of the prisoners who had been sentenced to life imprisonment before the applicant. The applicant pointed out that the Government had admitted in their observations that under the applicable regulations life imprisonment had amounted to twenty years. In this regard he relied on the letters appended to the Government's observations, in which the Attorney-General had informed the President of the date on which other life prisoners were to be released as determined on the basis of the prison regulations.

In view of the above, the applicant averred that it was not a question of execution of the sentence but a question of definition. Given the absence of a definition in the Criminal Code, the definition set out in the regulations made on the basis of the Prison Discipline Law (Cap. 286) applied. In this connection, the applicant argued that his case was clearly distinguishable from that of *Hogben v. the United Kingdom* (cited above) and that, therefore, the Supreme Court, when examining his habeas corpus application, had erroneously applied that decision to the facts of his case.

The applicant considered that the exemption provided for in the second paragraph of Article 7 of the Convention was not applicable in the present case. However, he argued that even if it was considered to be applicable, the retroactive imposition of a heavier penalty had not been foreseeable. On 10 March 1988 the applicant could not have foreseen something that neither the Attorney-General nor the prison authorities could themselves have foreseen.

2. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

4. Lastly, the applicant claimed that whilst most other inmates serving life sentences had been released, having served their twenty-year sentence, he was still in prison. He therefore complained that this constituted discriminatory treatment, contrary to Article 14 of the Convention in conjunction with Articles 3, 5 and 7. Article 14 provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The parties' submissions

(a) The Government

The Government did not dispute that at the time of the Regulations, entries had been made in the personal files of life prisoners, concerning the date on which it was possible at the earliest to release them, and that this date had been calculated as fifteen years from the date on which the sentence had begun to run. At the time of the applicant's detention, there had been eleven life prisoners, including the applicant, one of them serving a discretionary life sentence and the others mandatory life sentences. All of them, apart from the applicant and Mr Yiouroukkis, had been convicted and sentenced prior to the judgment in the case of *The Republic of Cyprus v. Andreas Costa Aristodemou, alias Yiouroukkis*, without any interpretation in the judgments convicting and sentencing them as to the meaning of life imprisonment. Although these prisoners had been told that under the regulations, they would be released in 1993 and 1994, following the interpretation by the Supreme Court of the term "life imprisonment" in the *Hadjisavvas* judgment this had not been possible. Notwithstanding this, in the end they had been released by way of having their sentences commuted by the President of the Republic under Article 53 (4) of the Constitution. Their release was therefore clearly distinguishable from the applicant's case and did not give rise to any issue under Article 14 of the Convention.

(b) The applicant

The applicant stated that while most other life prisoners had been released, he remained the longest-serving life prisoner. Furthermore, he argued that following the amendments to the relevant legislation, pursuant to section 12(1) of the Prison Law of 1996, as a life prisoner he was excluded from the possibility of remission of his sentence on the basis of good conduct and industry.

2. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court by a majority

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President