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

THIRD SECTION

DECISION

This version was rectified on 8 October 2024
under Rule 81 of the Rules of Court.

Application no. 29348/18
Adrian Santhony MARTHA
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 2 July 2024 as a Committee composed of:

Peeter Roosma*, President*,
Jolien Schukking,
Diana Kovatcheva*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 June 2018,

Having regard to the declaration submitted by the respondent Government on 6 December 2023 and 2 February 2024 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Adrian Santhony Martha, is a Dutch national, who was born in 1989 and is detained in Curaçao. He was represented before the Court by Mr J Boksem, a lawyer practising in Leeuwarden.

2. The Government of the Kingdom of the Netherlands ("the Government") were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

3. The applicant was convicted of, *inter alia*, being the co-perpetrator of two murders and of several counts of attempted murder and attempted manslaughter and sentenced to life imprisonment by the Court of First Instance of Curaçao in 2015. On appeal, the Joint Court of Justice (*Gemeenschappelijke Hof van Justitie*) of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba confirmed this judgment and the

applicant's appeal on points of law was rejected by the Supreme Court in 2018.

4. The applicant complained under Article 3 of the Convention about the lack of any genuine prospect of release from his life-imprisonment sentence due to a lack of rehabilitation opportunities.

5. The application was communicated to the Government.

THE LAW

6. The applicant complained about the alleged irreducibility of his life sentence. He relied on Article 3 of the Convention.

7. After the failure of attempts to reach a friendly settlement, by letters of 6 December 2023 and 2 February 2024 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

8. The declaration provided as follows:

> "The Government offer to undertake the following:
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> To provide the applicant, in compliance with the principles set out in the Court's case-law (see, in particular, *Murray v. the Netherlands* [GC], no. 10511/10, § 101-112, 26 April 2016), with such facilities that he is given a realistic opportunity to rehabilitate himself in order to have a hope of release;
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> To ensure that the review of the applicant's life sentence by the Joint Court of Justice of Aruba, Curaçao, St Maarten and of Bonaire, St Eustatius and Saba will be carried out upon the applicant having served twenty years of his sentence, as provided for in article 1:30 of the Curaçao Criminal Code, and that it will be conducted expeditiously;
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> To pay the applicant the global sum of 9,432.90[1] euros (EUR) to cover any and all costs and expenses."

9. By a letter of 2 February 2024, the Government sent an additional amendment to the original unilateral declaration stating:

> "According to the Government this unilateral declaration includes the acknowledgement that by not having been provided at the outset with clear guidance on what he should do to be considered for release and on how the review would be conducted, the applicant found himself, at the time he lodged his application with the Court, in a situation falling short of the requirements of Article 3 of the Convention. The Government sincerely regrets this and as indicated in the letter [of] 6 December 2023 is prepared to reimburse the costs and expenses incurred by the applicant.
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> The Government would like to add that since 2017, the authorities of Curaçao have been working on a guiding policy framework for the review of life sentences, enabling a life prisoner to rehabilitate himself or herself in such a way as to become eligible for

[1] Rectified on 8 October 2024: the text was "10,313.61 euros (EUR)".

> release. These Guidelines (*Richtlijnen Levenslanggestraften*) were published on 21 April 2023.
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> The applicant was sentenced in 2015. Since then there have been several developments in the resocialisation of the applicant. These developments were on education, work experience and socialisation.
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> Further, the Government wishes to draw attention to the Action Plan concerning the judgment of the Court of 26 April 2016 in the case of *Murray v. the Netherlands*. The action plan was submitted to the Committee of Ministers on 22 August 2023. In this Action Plan recent developments with respect to the review of life sentences are described."

10. By a letter of 1 March 2024, the applicant indicated that he was not satisfied with the terms of the unilateral declaration, on the ground that there had already been a violation of Article 3 of the Convention. The applicant wanted to be provided with more specific guarantees than just with the general promise that he would be provided with facilities to rehabilitate himself in compliance with the principles set out in the Court's case-law. A review after twenty years of his sentence did not guarantee anything if the applicant was not provided with real opportunities to rehabilitate himself.

11. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the applications".

12. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

13. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

14. The Court has established clear and extensive case-law concerning complaints relating to life-sentences without prospect of release (see, for example, *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts); *Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016; and *Hutchinson v. the United Kingdom* [GC], no. 57592/08, 17 January 2017).

15. The Court notes the nature of the admissions contained in the Government's declaration, as well as the other information provided by them, including an updated Action Plan concerning the case of

Murray (DH-DD(2023)1047, see above), submitted to the Committee of Ministers on 22 August 2023. From this document it follows that the authorities of Curaçao have established the Guidelines on the enforcement of life sentences and drew up the "Prospects for life sentence prisoners in Curaçao" implementation plan, with a view to enabling a life prisoner to rehabilitate himself or herself in such a way as to become eligible for release. It further follows from this document that in 2021 and 2022 two life prisoners, upon review, were released on parole by the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba after successful completion of their social rehabilitation and reintegration programmes. The Court further notes that the execution of the Grand Chamber judgment in the case of *Murray,* is currently under the supervision of the Committee of Ministers and that necessary general measures are being taken in that context. The Court considers that the Committee of Ministers is better placed and equipped than the Court to monitor the measures that need to be adopted by the respondent State (see, *mutatis mutandis*, *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, § 207, 7 July 2015, with further references; and, for similar approach, *Canword v. the Netherlands* (dec.) [Committee], no. 21464/15, 15 November 2022, and *Lake v. the Netherlands* (dec.) [Committee], no. 2445/17, 15 November 2022).

16. In light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

17. The Court considers that the amount for costs and expenses should be paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

18. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

19. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 5 September 2024.

Olga Chernishova Deputy Registrar	Peeter Roosma President