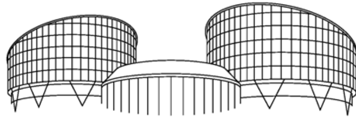

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 137 (2023)
09.05.2023

Violation of the rights of an applicant held in prison for 44 years and lacking any realistic prospect of release

In today's **Chamber** judgment[1] in the case of Horion v. Belgium (application no. 37928/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned an applicant detained since 1979 and sentenced to life imprisonment in 1981 for the murder of five people in connection with a robbery. He complained that his life sentence was irreducible *de facto*.

The Court noted that, since January 2018, the psychiatric experts and the domestic courts had agreed that extending the applicant's detention in prison was no longer appropriate, either in terms of public safety or for the purposes of his rehabilitation and reintegration into society. They therefore recommended that the applicant be admitted to a forensic psychiatric unit as an intermediate stage before his possible release. As a result, the domestic courts refused to approve any other sentence adjustments such as limited detention or electronic surveillance, emphasising that the applicant's admission to a forensic psychiatric unit was an essential step in his reintegration into society. However, according to those same courts, the applicant's admission to such a unit "appear[ed] impossible in practice owing to funding issues", since the units in question received State subsidies only for persons in compulsory confinement and not for convicted persons like the applicant.

Accordingly, the Court considered that the predicament in which the applicant had found himself for several years owing to the practical impossibility of securing a place in a forensic psychiatric unit, although his detention in prison was no longer considered appropriate by the domestic authorities, meant that he currently had no realistic prospect of release, a situation prohibited by Article 3 of the Convention.

Principal facts

The applicant, Freddy André Horion, is a Belgian national who was born in 1947. He has been in detention since June 1979 and is currently being held in Hasselt Prison (Belgium).

In June 1981 the applicant was sentenced to death by the West Flanders Assize Court for the murder of five people in connection with a robbery. In November 1981 his sentence was commuted to life imprisonment with hard labour. The death penalty was abolished in July 1996.

According to the documents in the case file, under the Act of 17 May 2006 the applicant has been eligible for day-release since 1 October 1991, for short-term leave of absence since 30 September1992, for limited detention or electronic surveillance since 3 April 1993, and for conditional release since 30 September 1993.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

From 1993 onwards he made numerous applications for conditional release, limited detention and electronic surveillance, all of which were rejected by the authorities, who considered that the rehabilitation plan was insufficient to prevent further serious offences.

In March 2017 a panel of experts composed of two psychiatrists and one psychologist was appointed by the post-sentencing court to assess the risks posed by the applicant. The panel submitted a report finding that extending the applicant's detention in prison was not appropriate either in terms of public safety or with a view to his rehabilitation and reintegration into society. However, a return to society without any preparation, as proposed by the applicant, entailed a moderate risk of reoffending. The panel therefore proposed an intermediate solution consisting of a stay in a forensic psychiatric unit which would make it possible to mitigate the risks and provide the applicant with an appropriate living environment that would serve as a transition between prison and society. The applicant would be accompanied by staff trained to support him and assist his progress towards reintegration.

The applicant subsequently applied to all the medium-security forensic psychiatric units in the Flemish Community for admission. His applications were refused because the units in question received State subsidies only for persons in compulsory confinement and not for convicted persons. The applicant therefore complained before the European Court that, despite the experts and the domestic courts having found that extending his detention in prison was no longer appropriate, he had no practical possibility of rehabilitation as those same courts refused to release him until he had spent a period of detention in a forensic psychiatric unit. However, he could not be transferred to such an institution owing to his status as a convicted person, which was distinct from that of a person in compulsory confinement.

Complaints, procedure and composition of the Court

The applicant relied on Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The application was lodged with the European Court of Human Rights on 25 August 2020.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Article 3

The Court noted that since January 2018 the psychiatric experts and the post-sentencing court had agreed that extending the applicant's detention in prison was no longer appropriate, either in terms of public safety or for the purposes of his rehabilitation and reintegration into society. They therefore recommended that the applicant be admitted to a forensic psychiatric unit as an intermediate stage before his possible release. As a result, the post-sentencing court refused to approve any other sentence adjustments such as limited detention or electronic surveillance,

emphasising that the applicant's admission to a forensic psychiatric unit was an essential step in his reintegration into society.

The case file showed that all the medium-security forensic psychiatry units in the Flemish Community, when contacted by the applicant and the psychosocial department of Hasselt Prison, had stated that the applicant could not be admitted owing to his status as a "convicted person", that is to say, a person held criminally responsible for the acts he or she had committed, as those units were for "persons in compulsory confinement" only. Thus, the applicant found himself in a predicament: on the one hand, the competent domestic authorities considered that he no longer belonged in prison, at least since January 2018; on the other hand, there appeared to be no practical prospect of his release, in view of the requirement that he be admitted to a forensic psychiatric unit. As matters stood no intermediate solution appeared to be available to the applicant, owing to the particular nature of his situation as a person who had been detained for a lengthy period but was not in compulsory confinement.

The Court did not underestimate the particular nature of the applicant's situation, as emphasised by the Government, given that he had been detained since 1979 and had spent most of his life in prison. Nevertheless, the situation complained of by the applicant had persisted for over five years without any solution being found by the authorities despite the numerous steps taken by the applicant. Moreover, the Government had not indicated any steps which the applicant could or should take in order to resolve his predicament.

In the Court's view, a purely formal possibility of applying for release after a certain period was insufficient to satisfy the requirements of Article 3 of the Convention, which guaranteed an absolute right. Accordingly, it considered that the predicament in which the applicant had found himself for several years owing to the practical impossibility of securing a place in a forensic psychiatric unit, although his detention in prison was no longer considered appropriate by the domestic authorities, meant that he currently had no realistic prospect of release, a situation prohibited by Article 3 of the Convention. **There had therefore been a violation of that provision**.

Just satisfaction (Article 41)

The applicant did not submit any claim for just satisfaction.

The judgment is available only in French.

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