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

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Dutch system for reviewing life sentences meets Convention standards

In today's **Chamber** judgment[1] in the case of F.B. and Others v. the Netherlands (applications nos. 28157/18 and 6 Others) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the applicants' complaints that Dutch legislation and procedures made their life sentences irreducible, both in law and in practice, as life-sentence prisoners have to wait 25 years from the start of police custody or pre-trial detention before they become eligible to take part in any reintegration activities aimed at a return into society. Admission to the reintegration phase is decided by the responsible Minister, assisted by the Life-Sentence Prisoners Advisory Board. After a further three years, the Minister, assisted by the same Board, must take a decision on whether or not to grant pardon. The applicants complained that the Dutch review mechanism did not meet the Convention standards.

Having examined the system of review put in place by the Advisory Board Life-Sentence Prisoners Decree (*Besluit Adviescollege levenslanggestraften*) in 2017, the Court found that the Dutch authorities had set up and implemented a system for the review of life sentences which enabled the applicants to know what they had to do to be considered for release, and under what conditions a review of the sentences would take place. Having also reviewed the applicants' individual circumstances, it found that their life sentences could not be considered as irreducible, either in law or in practice.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are an Azerbaijani national, a Moroccan national and five Dutch nationals who were all born between 1960 and 1990 and are serving sentences of life imprisonment.

After sentencing, all of the applicants lodged appeals on points of law with the Supreme Court, submitting that the imposition of a life sentence was incompatible with Article 3 of the European Convention.

In each case, the Supreme Court's final judgment held that, as a result of the entry into force of the Advisory Board Life-Sentence Prisoners Decree on 1 March 2017, Dutch law now had in place a review mechanism that allowed for the reduction of life sentences in appropriate cases, which meant that the imposition of a life sentence was not in itself incompatible with Article 3 of the Convention. The mechanism had been introduced in response to the Grand Chamber judgments in *Vinter and Others v. the United Kingdom* and *Murray v. the Netherlands*, and the Supreme Court's interlocutory judgment of 5 July 2016 in F.B.'s case in which it had held that the imposition of a life sentence was incompatible with Article 3. The Supreme Court also held that the applicants' life sentences could not

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.

be considered effectively irreducible on account of their individual circumstances. Their appeals were therefore dismissed.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, the applicants complained that Dutch legislation and procedures made their life sentences irreducible, both in law and in practice, and did not meet the Convention standards.

The seven applications were lodged with the European Court of Human Rights between 12 June 2018 and 12 March 2020. In view of their similar subject matter, the Court decided to examine them in a single judgment.

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

Lado **Chanturia** (Georgia), *President*,
Jolien **Schukking** (the Netherlands),
Lorraine **Schembri Orland** (Malta),
Anja **Seibert-Fohr** (Germany),
Anne Louise **Bormann** (Denmark),
Sebastian **Răduleţu** (Romania),
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Section Registrar.*

Decision of the Court

Before examining the applicants' individual situations, the Court first examined the system of review put in place by the Advisory Board Decree in 2017 with subsequent amendments.

In considering the **nature and scope of review**, the Court noted that, under Dutch law, if a life-sentence prisoner was refused access to the reintegration phase or if they were not granted a pardon (both decisions being taken by the Minister, assisted by the Life-Sentence Prisoners Advisory Board), they could request judicial review of the Minister's decisions by a civil court. The Court emphasised that it was for States to determine whether the review was conducted by the executive or the judiciary, and that it had already held in previous cases that an executive review was not in itself contrary to the requirements of Article 3, as long as it was accompanied by sufficient procedural guarantees. As life-sentence prisoners and their lawyers were able to actively participate in the Dutch judicial review proceedings, in which a court had to adopt a reasoned ruling, against which an appeal could subsequently be lodged with a higher court, the Court considered that the review contained sufficient procedural guarantees. The same applied to proceedings regarding interim decisions – for example, as regards leave and the nature of reintegration activities provided for in a detention and reintegration plan – that were open to challenge before the Complaints Commission and the Appeals Board of the Council for the Administration of Criminal Justice and Juvenile Protection.

The Court held that the nature and scope of the Dutch review system complied with the Convention because it involved reasoned decision-making by the executive, combined with the possibility of judicial review. The fact that Dutch civil courts did not have the power to release prisoners did not mean that the State did not meet its obligation to provide life-sentence prisoners with a realistic prospect of release. Moreover, given that the system established by the Advisory Board Decree had only been in place since 2017, it was too early to say, as alleged by the applicants, that the statistical data showed only negligible prospects of release, or that pardon would always be an isolated exception.

In considering the **criteria and conditions for review**, the Court noted that the review criteria laid down in the Advisory Board Decree – namely the risk of offending/reoffending, the behaviour and development of the life-sentence prisoner during detention, the impact on victims and next of kin and the matter of retribution – were publicly accessible, legitimate, objective and sufficiently clear, even if their application in individual cases could not be predicted beforehand with absolute certainty.

The Court also noted that during the first 25 years of their detention, life-sentence prisoners were given rehabilitation opportunities, for instance through work and education. Moreover, since 2020, in order to address any risk of reoffending, and unless the life-sentence prisoner objected, every life-sentence prisoner had to be assessed by a psychiatrist and a psychologist (colloquially known as the "Murray assessment", after the Court's judgment *Murray v. the Netherlands*) within one year of their sentence becoming final and unappealable to determine whether he or she suffered from a specific disorder that increased the risk of reoffending and needed therapy that would reduce this risk and, if so, when this therapy should begin. An assessment was also carried out by the Pieter Baan Centrum (an observation clinic belonging to the Netherlands Institute for Forensic Psychiatry and Psychology) no later than six months before the Advisory Board issued an opinion on the prisoner's admission to the reintegration phase.

The Court considered that the emphasis on retribution, combined with meaningful daytime activities during the first 25 years of detention, followed by reintegration activities for eligible detainees – such as arranging post-release accommodation and income – fell well within the State's leeway and was not in violation of the State's duties ("positive obligations") under Article 3 of the Convention.

In considering the **time frame for review**, the Court reiterated that in its case-law it had indicated that there was clear support for the institution of a dedicated mechanism guaranteeing a review no later than 25 years after the imposition of a life sentence. At the time the applicants lodged their applications, the responsible Minister had to take a review decision *ex officio* after 27 years of detention, counted from the time they were first taken into police custody or pre-trial detention. As from 1 July 2023, this period was increased to 28 years.

Taking into account the years in which the applicants' life sentences were imposed and the point in time when the Minister will take a decision on whether they should be pardoned, the Court noted that the applicants' life sentences will all be reviewed no later than 25 years after their imposition by the relevant appellate criminal court. Accordingly, the Court considered that the time frame for review fell within the State's leeway ("margin of appreciation") and did not exceed any of the thresholds identified in the Court's case-law. The Court therefore held that the applicable time frame was compatible with the requirements of Article 3 of the Convention.

Reviewing **the applicants' complaints about their individual circumstances**, the Court found that, although some of their Murray assessments had been carried out late, their life sentences could not be considered as irreducible, either in law or in practice. The other individual aspects did not lead the Court to come to a different conclusion.

The Court considered that the Dutch authorities had set up a system for the review of life sentences which enabled the applicants to know what they had to do to be considered for release, and under what conditions a review of the sentences would take place. There had accordingly been no violation of Article 3 of the Convention.

The judgment is available only in English.

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