



Review of whole life sentences in the UK is compatible with the European Convention

In today's **Grand Chamber** judgment¹ in the case of [Hutchinson v. the United Kingdom](#) (application no. 57592/08) the European Court of Human Rights held, by 14 votes to 3, that there had been:

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

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

The Court reiterated that the European Convention did not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. However, to be compatible with the Convention there had to be both a prospect of release for the prisoner and a possibility of review of their sentence.

The Court considered that the UK courts had dispelled the lack of clarity in the domestic law on the review of life sentences. The discrepancy identified in a previous ECtHR judgment² between the law and the published official UK policy had notably been resolved by the UK Court of Appeal in a ruling affirming the statutory duty of the Secretary of State for Justice to exercise the power of release for life prisoners in such a way that it was compatible with the European Convention. In addition, the Court of Appeal had brought clarification as regards the scope and grounds of the review by the Secretary of State, the manner in which it should be conducted, as well as the duty of the Secretary of State to release a whole life prisoner where continued detention could no longer be justified. The European Court highlighted the important role of the Human Rights Act, pointing out that any criticism of the domestic system on the review of whole life sentences was countered by the HRA as it required that the power of release be exercised and that the relevant legislation be interpreted and applied in a Convention-compliant way.

The Court therefore concluded that whole life sentences in the United Kingdom could now be regarded as compatible with Article 3 of the European Convention.

Principal facts

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

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

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

2. In the case of [Vinter and Others v. the United Kingdom](#) (application nos. 66069/09, 130/10 and 3896/10).

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Hutchinson alleged that his whole life sentence amounted to inhuman and degrading treatment as he had no hope of release.

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

In its Chamber [judgment](#) of 3 February 2015, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 3 of the Convention. It found that the UK Court of Appeal had explicitly addressed the doubts concerning the Secretary of State for Justice's power to release a whole life prisoner. It held that the Justice Secretary was obliged under national law to release a person detained on a whole life order where "exceptional grounds" for release could be shown to exist, and that this power of release was reviewable by the national courts. Having regard to this clarification, the Chamber concluded that whole life orders were open to review under national law and therefore compatible with Article 3 of the Convention.

On 5 March 2015 Mr Hutchinson requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 1 June 2015 the panel of the Grand Chamber accepted that request.

Third-party comments were received from the European Prison Litigation Network, which had been granted leave to intervene in the written procedure.

A Grand Chamber hearing took place in public in Strasbourg on 21 October 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

András Sajó (Hungary), *President*,
İşıl Karakaş (Turkey),
Josep Casadevall (Andorra),
Luis López Guerra (Spain),
Mirjana Lazarova Trajkovska ("the Former Yugoslav Republic of Macedonia"),
Angelika Nußberger (Germany),
Päivi Hirvelä (Finland),
Ganna Yudkivska (Ukraine),
Paulo Pinto de Albuquerque (Portugal),
Linos-Alexandre Sicilianos (Greece),
Erik Møse (Norway),
Helena Jäderblom (Sweden),
Paul Mahoney (the United Kingdom),
Faris Vehabović (Bosnia and Herzegovina),
Ksenija Turković (Croatia),
Branko Lubarda (Serbia),
Yonko Grozev (Bulgaria), *judges*

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

The Court reiterated that the European Convention did not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. However, to be compatible with the Convention there had to be both a prospect of release for the prisoner and a possibility of review of their sentence.

In a previous judgment of 9 July 2013 (in the case of *Vinter and Others v. the United Kingdom* application nos. 66069/09, 130/10 and 3896/10), the Court found that the domestic law concerning the Secretary of State for Justice's power to release a whole life prisoner in the United Kingdom was unclear. It identified in particular a discrepancy within the domestic system between the terms of the relevant law, namely Section 30 of the Crime (Sentences) Act 1997, and the published official policy as set out in the Lifer Manual. This manual was notably too restrictive, only giving whole life prisoners a partial picture of the conditions under which they might be released. This was in contrast to section 30 which, interpreted by the national courts in a Convention-compliant manner, could be read as obliging the Secretary of State to release a whole life prisoner where it could be shown in "exceptional circumstances" that continued detention was no longer compatible with Article 3. In that case, the Court was therefore not persuaded that the applicants' life sentences could be regarded as providing them with the prospect of release or a possibility of review and were not therefore compatible with Article 3 of the Convention.

The Court considered, however, that the UK Court of Appeal had since brought clarity as to the content of the relevant domestic law. In its ruling in the case of *R. v. McLoughlin* of 18 February 2014 the Court of Appeal responded explicitly to the critique in *Vinter and Others*, affirming the statutory duty of the Secretary of State to exercise the power of release for life prisoners in such a way that it was compatible with the European Convention. As for the published policy, the Lifer Manual could not restrict the duty of the Secretary of State to consider all circumstances relevant to release under section 30; nor could the policy fetter his discretion by taking account only of the matters stipulated in the manual.

The Court then went on to analyse the applicable domestic law as regards the nature and scope of the review of life sentences as well as the criteria, conditions and timeframe for their review.

First, the executive rather than judicial nature of a review was not in itself contrary to the requirements of Article 3, as was clear from a number of previous cases brought before the European Court and having regard to the room for manoeuvre ("margin of appreciation") of States to decide on such matters. Moreover, any criticism of the domestic system – the review of a sentence in England and Wales being entrusted to the Secretary of State – was countered by the effect of the Human Rights Act (HRA). In particular, the Secretary of State was bound by section 6 of the HRA to exercise the power of release in a manner compatible with the European Convention, by having regard to the relevant ECtHR case-law and by providing reasons for each decision. Indeed, the Secretary of State's decisions on possible release were subject to review by the domestic courts, themselves bound by the same duty to act compatibly with Convention rights.

In addition, and crucially, the Court of Appeal specified in the *R. v. McLoughlin* judgment that the "exceptional circumstances" referred to in section 30 could not legally be limited to end-of-life situations as announced in the Lifer Manual, but had to include all exceptional circumstances that were relevant to release on compassionate grounds. It also affirmed that the term "compassionate grounds" was not limited to humanitarian grounds but had a wide meaning, so as to be compatible with Article 3 of the Convention. In that respect too, the European Court pointed out that the role of the HRA was of importance, section 3 of the Act requiring that legislation be interpreted and applied by all public bodies in a Convention-compliant way. The Court was thus satisfied that a review existed which not only could but had to consider whether, in light of significant change in a whole life prisoner and progress towards rehabilitation, continued detention could still be justified on legitimate penological grounds.

Next, the Court did not regard the domestic system as deficient in so far as it concerned the criteria and conditions for review, and in particular whether those serving life sentences could know what they had to do to be considered for release, and under what conditions the review took place. It considered that the section 30 power of release would, again by virtue of the HRA, not only be guided by all the relevant case-law of the ECtHR (as it stands now and as it might be developed in

the future), but the concrete meaning of the terms used in section 30 would continue to be fleshed out in practice.

Lastly, as concerned the time frame for review under section 30 of the 1997 Act, the Secretary of State might order release “at any time”. The fact that the domestic system allows for the process of review to be initiated at any time could be regarded as being in the interest of prisoners, since they are not required to wait for a set number of years for a first or subsequent review. In any case, it was the individual situation of Mr Hutchinson that was the focus of the present judgment, and he had not suggested that he had been prevented or deterred from applying to the Secretary of State at any time to be considered for release.

In this way, the domestic system, based on statute (the Crime (Sentences) Act 1997 and the Human Rights Act), case-law (of the UK courts and the ECtHR) and published official policy (in the Lifer Manual), no longer displayed the discrepancy that the Court had identified in its judgment in *Vinter*.

The Court therefore concluded that whole life sentences in the United Kingdom could now be regarded as reducible, in keeping with Article 3 of the European Convention.

Separate opinions

Judge López Guerra and Judge Pinto de Albuquerque each expressed a dissenting opinion. Judge Sajó expressed a separate opinion. These opinions are annexed to the judgment.

The judgment is available in English and 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.