



## Whole life orders should include the possibility of review but this should not be understood as giving the prospect of imminent release

In today's Grand Chamber judgment in the case of [Vinter and Others v. the United Kingdom](#) (application nos. 66069/09, 130/10 and 3896/10), which is final<sup>1</sup>, the European Court of Human Rights held, by 16 votes to one, that there had been:

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

The case concerned three applicants' complaint that their imprisonment for life amounted to inhuman and degrading treatment as they had no hope of release.

The Court found in particular that, for a life sentence to remain compatible with Article 3, there had to be both a possibility of release and a possibility of review. It noted that there was clear support in European and international law and practice for those principles, with the large majority of Convention Contracting States not actually imposing life sentences at all or, if they did, providing for a review of life sentences after a set period (usually 25 years' imprisonment).

The domestic law concerning the Justice Secretary's power to release a person subject to a whole life order was unclear. In addition, prior to 2003 a review of the need for a whole life order had automatically been carried out by a Minister 25 years into the sentence. This had been eliminated in 2003 and no alternative review mechanism put in place. In these circumstances, the Court was not persuaded that the applicants' whole life sentences were compatible with the European Convention.

In finding a violation in this case, however, the Court did not intend to give the applicants any prospect of imminent release. Whether or not they should be released would depend, for example, on whether there were still legitimate penological grounds for their continued detention and whether they should continue to be detained on grounds of dangerousness. These questions were not in issue in this case and were not the subject of argument before the Court.

The only claim for just satisfaction that had been made was by Mr Vinter and the Court declined to award any damages.

### Principal facts

The applicants, Douglas Gary Vinter, Jeremy Neville Bamber and Peter Howard Moore, are British nationals who were born in 1969, 1961 and 1946 respectively. All three men are currently serving sentences of life imprisonment for murder.

Mr Vinter was convicted of the murder of his wife in February 2008, having already been convicted of murdering a work colleague in 1996. Mr Bamber was convicted of the murders of his adoptive parents, sister and her two young children in August 1985.

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

Mr Moore was convicted of the murders of four men between September and December 1995.

The applicants have been given whole life orders, meaning they cannot be released other than at the discretion of the Justice Secretary, who will only do so on compassionate grounds (for example, in case of terminal illness or serious incapacitation).

Until the entry into force of the Criminal Justice Act 2003, when a life sentence was imposed by a court, a Minister (at the time, the Home Secretary of the day) would decide on the minimum term the prisoner would have to serve (the "tariff"), including whether a whole life tariff should be set. All cases in which a whole life tariff had been set were automatically reviewed by the Home Secretary 25 years into the sentence. The 2003 Act provided that the sentencing judge would fix the tariff or make the whole life order, but removed the possibility for the whole life order to be reviewed after 25 years.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, all three applicants complained that their imprisonment without hope of release amounted to inhuman and degrading treatment.

The applications were lodged with the European Court of Human Rights on 11 December 2009, 17 December 2009 and 6 January 2010, respectively. In its [judgment of 17 January 2012](#), a Chamber of Court held, by four votes to three, that there had been no violation of Article 3 of the Convention as it did not consider that the applicants' sentences amounted to inhuman or degrading treatment. Notably, the majority of the Chamber considered that the applicants had failed to demonstrate that their continued detention served no legitimate penological purpose. The majority also laid emphasis on the fact that the applicants' whole life orders had either been recently imposed by a trial judge (in the case of Mr Vinter) or recently reviewed by the High Court (in the cases of Mr Bamber and Mr Moore).

The case (covering all three joined applications) was [referred](#)<sup>2</sup> to the Grand Chamber at the request of the applicants on 9 July 2012. A Grand Chamber [hearing](#) was held in Strasbourg on 28 November 2012.

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

Dean **Spielmann** (Luxembourg), *President*,  
Josep **Casadevall** (Andorra),  
Guido **Raimondi** (Italy),  
Ineta **Ziemele** (Latvia),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Dragoljub **Popović** (Serbia),  
Luis **López Guerra** (Spain),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Nona **Tsotsoria** (Georgia),  
Ann **Power-Forde** (Ireland),  
Işıl **Karakaş** (Turkey),

<sup>2</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Nebojša **Vučinić** (Montenegro),  
Linos-Alexandre **Sicilianos** (Greece),  
Paul **Lemmens** (Belgium),  
Paul **Mahoney** (the United Kingdom),  
Johannes **Silvis** (the Netherlands),

and also Michael **O'Boyle**, *Deputy Registrar*.

## Decision of the Court

### Article 3 (inhuman and degrading treatment)

The Court considered that, for a life sentence to remain compatible with Article 3, there had to be both a possibility of release and a possibility of review.

It was for the national authorities to decide when such a review should take place. However, the comparative and international law materials before the Court showed clear support for a mechanism guaranteeing a review no later than 25 years after the imposition of a life sentence.

A large majority of the Contracting States of the European Convention either do not impose life sentences at all or, if they do, provide some mechanism, guaranteeing a review of the life sentence after a set period, usually after 25 years' imprisonment. Furthermore, the Rome Statute of the International Criminal Court, to which 121 States (including the vast majority of Council of Europe member States) are parties, provides for review of a life sentence after 25 years, followed by periodic reviews thereafter.

The United Kingdom Government had argued before the Court that the aim of the 2003 Act was to remove the executive from the decision-making process concerning life sentences, and this was the reason for abolishing the 25 year review by the Home Secretary which had existed prior to 2003. However, the Court considered that it would have been more consistent with the legislative aim to provide that the 25-year review would be conducted within a judicial framework, rather than completely eliminated.

The Court also found that the current law concerning the prospect of release of life prisoners in England and Wales was unclear.

Section 30 of the 1997 Act gave the Justice Secretary the power to release any prisoner, including one serving a whole life order. The Court considered that this power was capable of being exercised in a matter which was compatible with Article 3 of the Convention. However, the power had to be contrasted with the relevant Prison Service Order which sets the conditions for release and which provides that release will only be ordered if a prisoner is terminally ill or physically incapacitated.

Given this lack of clarity and the absence of a dedicated review mechanism for whole life orders, the Court was not persuaded that, at the present time, the applicants' life sentences were compatible with Article 3. It therefore found that there had been a violation of Article 3 in respect of each applicant.

The Court emphasised, however, that the finding of a violation in the applicants' cases should not be understood as giving them any prospect of imminent release. Whether or not they should be released would depend, for example, on whether there were still legitimate penological grounds for their continued detention and whether they should continue to be detained on grounds of dangerousness. These questions were not in issue in this case and were not the subject of argument before the Court.

### Article 41 (just satisfaction)

The only claim for just satisfaction was made on by Mr Vinter and the Court held that the finding of a violation constituted in itself just satisfaction for any non-pecuniary damage he had sustained. The Court did, however, award 40,000 euros for his lawyers' costs and expenses, including the costs of the hearing before the Grand Chamber.

### Separate opinion

Judges Ziemele, Power-Forde and Mahoney expressed concurring opinions. Judge Villiger expressed a partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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#### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.