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Meeting: 1475th meeting (September 2023) (DH)

Item reference: Action Plan (30/08/2023)

Communication from the Netherlands concerning the case of MURRAY v. the Netherlands (Application No. 10511/10) - *The appendices in Dutch are available upon request to the Secretariat.*

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Réunion : 1475^e réunion (septembre 2023) (DH)

Référence du point : Plan d'action (30/08/2023)

Communication des Pays-Bas concernant l'affaire MURRAY c. Pays-Bas (requête n° 10511/10) (**anglais uniquement**) - *Les annexes en néerlandais sont disponibles sur demande au Secrétariat.*



Action Plan

**of the Government of the Kingdom of the Netherlands
on the implementation of the judgment of the Court
concerning application no. 10511/10**

MURRAY

V.

the Netherlands

Judgment of 26 April 2016

Final on 26 April 2016

Introduction

1. On 22 February 2010 Mr James Clifton MURRAY ('the applicant') submitted an application to the European Court of Human Rights ('the Court') under article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention').
2. The applicant passed away on 26 November 2014. On 6 December 2014 the applicant's son, Mr Johnny Francis van Heyningen, and the applicant's sister, Ms Altagracia Murray, expressed their wish to pursue the case before the Court.
2. On 26 April 2016 the Court, sitting as a Grand Chamber, found a violation by the Netherlands of Article 3 of the Convention.
3. In addition, the Court held that the finding of a violation in itself constitutes sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicant.
4. Furthermore, the Court held that the Netherlands must, within three months, pay the aforementioned Mr Van Heyningen and Ms Murray €27,500 (twenty-seven thousand five hundred euros) in costs and expenses, plus any tax that may be chargeable to them.
5. On 14 April 2022, the Dutch section of the International Commission of Jurists (*Nederlands Juristen Comite voor de Mensenrechten*; NJCM) and the Humane Enforcement of Life Penalties Forum (*Forum humane tenuitvoerlegging levenslange gevangenisstraf; Forum Levenslang*) submitted a communication under rule 9.2 of the Rules of the Committee of Ministers for the supervision of the enforcement of judgments and of the terms of friendly settlements.
6. With reference to the procedure for supervision by the Committee of Ministers,¹ the Government of the Kingdom of the Netherlands ('the Government') wishes to present an updated action plan, with a view to informing the Secretariat about the envisaged measures and proposed timetable.

Case description

7. The case concerns inhuman and/or degrading treatment on account of the *de facto* irreducibility of the life sentence imposed on the applicant, who suffered from mental illness and was convicted of murder and sentenced to life imprisonment in the Netherlands Antilles in 1980 (violation of Article 3). The Court notably held that 'the lack of any kind of treatment or even of any assessment of treatment needs and possibilities meant that (...) any request by him for a pardon was in practice incapable of leading to the conclusion that he had made such significant progress towards rehabilitation that his continued detention would no longer serve any penological purpose' (§125). Hence there was no need for any further assessment of the pardons system or

¹ As set out in CM/Inf/DH(2010)45 and CM/Inf/DH(2010)37E.

the periodic review mechanism with a view to assessing whether the life sentence was *de jure* reducible.

Just satisfaction

8. In its judgment the Court held that the Government must, within three months, pay the applicant's son Mr Van Heyningen and the applicant's sister Ms Murray €27,500 in costs and expenses, plus any tax that was chargeable to them. On 28 June 2016 the Government paid the amount due. It notified the Execution Department of this by emailing it the payment registration form dated 17 October 2016.

Individual measures

9. On 3 March 2014, i.e. before the date on which the Grand Chamber gave judgment, the applicant was granted a pardon entailing his immediate release due to his deteriorating health. In view of his death on 26 November 2014, the Government concludes that no additional individual measures following the Court's judgment are called for.

The cases R.R.C. (21464/15) and A.H.L. (2445/17)

10. In November 2022, the Court closed the cases R.R.C. (21464/15) and A.H.L. (2445/17). These cases concerned the same issue as *Murray*. The applicants in these cases were detained in Curaçao and St Maarten respectively. They complained under Articles 3 and 13 of the Convention concerning the alleged irreducibility of their life imprisonment sentence in that they were not enabled to make progress towards rehabilitation and had no prospect of release. In both cases, a periodic review of the applicant's life sentence had been finalised while the proceedings were being conducted before the Court. In the case of A.H.L. that review led to the release of the applicant. The Government in both cases made a unilateral declaration with a view to resolving the issues raised. In R.R.C. the unilateral declaration stated:

'The Government acknowledge 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 regret this and are prepared to reimburse the costs and expenses incurred by the applicant to the amount of 9,500 euros (EUR).'

In A.H.L. the unilateral declaration stated:

'The Government acknowledge that by a review of his life sentence not having been initiated in 2015 and 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 regret this and are prepared to reimburse the costs and expenses incurred by the applicant to the amount of 5,500 euros (EUR) '

The Court then struck these parts of the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention. Since the case of A.H.L. concerns the prison system in St Maarten, in paragraph 55 of this Action Plan the Government will also address the conditions of detention for life sentence prisoners and the psychiatric treatment provided to prisoners in that part of the Kingdom.

General measures

General principles

Article 3 of the Convention in relation to life sentences

11. Article 3 of the Convention protects against torture or inhuman or degrading treatment or punishment. The imposition of a life sentence on an adult offender is not in itself prohibited by the Convention.² However, the Court has continuously held that the imposition of an irreducible life sentence on an adult may in fact raise an issue under Article 3 of the Convention.³ To be compatible with Article 3, a life sentence must be reducible both *de jure* and *de facto*.⁴
12. According to the Court, for a life sentence to be *de facto* and *de jure* reducible, there must be both a prospect of release and a possibility of review, which must exist from the imposition of the sentence.⁵ In *Vinter and Others v the United Kingdom* the Court held as follows:

[...] [I]n determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. An analysis of the Court's case-law on the subject discloses that where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3.⁶

² *Kafkaris v. Cyprus* [GC], no. 21906/04, § 97, 12 February 2008; and *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 106, 9 July 2013.

³ *Kafkaris v. Cyprus* [GC], no. 21906/04, § 97, 12 February 2008.

⁴ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 108, 9 July 2013.

⁵ *Murray v. the Netherlands* [GC], no. 10511/10, § 99, 26 April 2016; and *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 110, 9 July 2013.

⁶ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 109, 9 July 2013 including reference to *Kafkaris v. Cyprus* [GC], no. 21906/04, § 98, 12 February 2008.

13. In *Murray* the Court held that respect for human dignity requires prison authorities to strive towards a life sentence prisoner's rehabilitation.⁷ When conducting a review, domestic authorities should therefore consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.⁸ These penological grounds include punishment, deterrence, public protection and rehabilitation.⁹ In this respect, the Court has emphasised that preventing a criminal from reoffending is one of the essential functions of a prison sentence, particularly for those convicted of murder or other serious offences against the person. This is because States have a duty under the Convention to take measures to protect the public from violent crime.¹⁰
14. For a life sentence to be compatible with Article 3 of the Convention, life sentence prisoners are entitled to know from the outset what they must do in order to be considered for release and under what conditions.¹¹ As regards the criteria to be laid down in domestic law, the Court held in *Hutchinson v the United Kingdom*:

The criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty, and also reflect the relevant case-law of the Court. Certainty in this area is not only a general requirement of the rule of law but also underpins the process of rehabilitation which risks being impeded if the procedure of sentence review and the prospects of release are unclear or uncertain. Therefore prisoners who receive a whole life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. This includes when a review of sentence will take place or may be sought.¹²

15. It is well established in the Court's case law that a State's choice of a specific criminal justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision the Court carries out at European level, provided that the system does not contravene the principles set forth in the Convention.¹³
16. As for the nature of the review, the Court has emphasised that it is not its task to prescribe whether it should be judicial or executive, having regard to the margin of appreciation that must be accorded to Contracting States (*Vinter and Others*, cited above, § 120). It is therefore for

⁷ *Murray v. the Netherlands* [GC], no. 10511/10, § 104, 26 April 2016.

⁸ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 119, 9 July 2013.

⁹ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 111, 9 July 2013.

¹⁰ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 108, 9 July 2013.

¹¹ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 122, 9 July 2013.

¹² *Hutchinson v. the United Kingdom* [GC], no. 57592/08, § 44, 17 January 2017, including reference to *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 122, 9 July 2013. See also *Murray v. the Netherlands* [GC], no. 10511/10, § 100, 26 April 2016.

¹³ *Kafkaris v. Cyprus* [GC], no. 21906/04, § 99, 12 February 2008; *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 104, 9 July 2013.

each State to determine whether the review of sentence is conducted by the executive or the judiciary.¹⁴

17. The Court has consistently held 'that comparative and international law materials before it show clear support for the institution of a dedicated mechanism guaranteeing a review no later than twenty-five years after the imposition of a life sentence, with further periodic reviews thereafter.'¹⁵ However, the Court has held that mechanisms which provide for review after thirty years can also be consistent with Article 3 of the Convention.¹⁶
18. Where the national system satisfies the requirements laid down in the Court's case law, this may nonetheless mean that a sentence must be served in its entirety because there are still sufficient penological grounds. As the Court has held: 'A life sentence does not become irreducible by the mere fact that in practice it may be served in full.'¹⁷

Applicable domestic law and policy

Curaçao

Review of life sentences

19. Curaçao has the following applicable law and policy on the review of life sentences.

Article 1:30 of the Criminal Code (*Wetboek van Strafrecht*) of Curaçao

1. Any person sentenced to life imprisonment will be released on parole after he has served at least twenty years of his sentence, if in the Court's opinion further enforcement of a custodial sentence no longer serves any reasonable purpose.
2. The Court will in any event take account in its considerations of the position of any victim of the offence in question or any direct surviving relatives and the risk of reoffending.
3. If the Court decides not to release the person in question it will review the situation again after five years and if necessary every five years thereafter. (...)

Article 43 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) of Curaçao

1. In all cases where the proper administration of justice makes the granting of relief by the court an urgent necessity and the Code itself contains no relevant provision, the defendant or the person whose interests are directly affected may apply for such relief.
2. The Public Prosecutor's Office is likewise authorised to lodge an application for such relief. (...)

¹⁴ *Hutchinson v. the United Kingdom* [GC], no. 57592/08, § 45, 17 January 2017.

¹⁵ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 120, 9 July 2013.

¹⁶ See *Bodein v. France*, no. 40014/10, § 61, 13 November 2014, where the Court held that, since in France time spent in pretrial detention is deducted from the sentence imposed, the French possibility of review after thirty years of imprisonment is compatible with Article 3 of the Convention.

¹⁷ *Vinter and others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 108, 9 July 2013.

Guidelines on the enforcement of life sentences¹⁸

Curaçao is committed to fulfilling its positive obligation to offer persons sentenced to life imprisonment the opportunity for rehabilitation, social rehabilitation (*resocialisatie*), and reintegration into the community (improvement phases). These guidelines describe the ways in which this can be achieved. (...)

4. Work process of the institutions, involvement of the victim(s) and procedural safeguards

The social rehabilitation phase is preceded by a punishment phase in which there is no possibility of modifying, reducing or ending the sentence or of granting release on parole to a life sentence prisoner. The duration of this phase depends on the prisoner in question and is determined in light of the original objectives of the life sentence, but never exceeds 15 years. During this phase efforts are made to rehabilitate the prisoner in terms of personal growth within a context of humane imprisonment. These include meaningful daily activities, education, work in the prison and to a lesser degree, social rehabilitation. (...)

The punishment phase is followed by the social rehabilitation phase. The aim in this phase is to help life sentence prisoners reintegrate into society step by step in a safe and responsible way. If necessary, the conditions of detention can be modified, possibly through transfer to a less high-security wing or from a regime of limited association to one of free association. In this phase the prison can follow a detention programme aimed at social rehabilitation with predetermined attainment targets. Whereas in the punishment phase the emphasis lies on acquiring theoretical experience, the social rehabilitation phase consists largely of practical (work) experience. The life sentence prisoner is personally responsible for the type of work they do in this period. Their conduct determines the opportunities for work or vocational training. The institution specifies the basic principles underlying the programme and associated levels of work available.

When reintegration begins, life sentence prisoners are offered complementary intramural and extramural activities focused on reintegration, including leave. This phase begins no earlier than one year before the review hearing. At the hearing the court decides whether and for how long the life sentence prisoner must remain in the reintegration phase or if they can be granted release on parole and, if so, how long the parole period is to last. The parole conditions may include electronic tagging, a reporting obligation or community service. Prior to transition from one phase to another or if transition is delayed, the life sentence prisoner's views will be heard. ()

5. Progress report by Public Prosecutor's Office and procedural safeguards

(...) In accordance with the instructions of the Attorney General, the process of reporting on the situation of the life sentence prisoner takes place every year, beginning ideally two years before the first review under article 1:30 of the Criminal Code. The prison governor designates a team of officials from the Detention Unit and the Corrections Unit in the prison to draft the required reports. A separate section of the report, drawn up by the probation service, addresses the life history and background of the prisoner and the views of the victims and/or their surviving relatives, as recorded by the probation service.

¹⁸ These guidelines were published on 21 April 2023 in the Government Gazette of Curaçao (<https://gobiernu.cw/nl/landscourant/editie-no-16-jaargang-2023/> (in Dutch)).

It is important to conduct an interim evaluation after two years with the aim of reassessing the situation and determining whether continuing life imprisonment still serves a legitimate penological purpose. In addition, the life sentence prisoner is enabled during their sentence to work on their personal development to facilitate a possible return to society.

6. Review hearing

The review hearing takes place before the Joint Court of Justice of Aruba, Curaçao and St Maarten and of Bonaire, St Eustatius and Saba, which being a politically neutral body provides sufficient safeguards for an objective assessment of the case.

In an advisory opinion, the Attorney General sets the period required for enforcing the decision taken by the Court following the prosecution's closing speech. The Court will assess the State's efforts to provide the life sentence prisoner with opportunities for social rehabilitation and examine whether the enforcement or continuation of the sentence would reasonably serve the objectives of the criminal justice system. In accordance with the legislation, the Court takes the following matters, at the minimum, into account:

- the position of any victim in the case or immediate surviving relatives;
the risk of reoffending.

In advising the Court, the Public Prosecutor's Office and experts must take account of the following:

- a. the impact on victims and surviving relatives and
- b. the need for retribution;
- c. the risk that the convicted person will commit another, similar offence;
- d. the criminal propensity of the convicted person;
- e. the conduct and development of the life sentence prisoner during their imprisonment;
- f. the gravity of the offences found proven;
- g. the character of the life sentence prisoner.

The proper documentation of all reports drawn up regarding life sentence prisoners, whether favourable to them or not, contributes to an assessment of their conduct during the period of detention. For the review hearing and for the progress reports (compiled every five years), the prison, probation service, psychologist, psychiatrist and any other experts must draw up separate reports and submit them to the Public Prosecutor's Office. These reports may be multidisciplinary. In the long run-up to release, the reports compiled by the prison, probation service and behavioural experts must document, as specifically and as in much detail as possible, the extent to which it would be responsible to allow a life sentence prisoner back into the community in stages if necessary and which conditions must first be met (the report must include an analysis of the offence and a risk assessment). The reports must also consider the further criteria set out in the work plan for the review of life sentences.

7. Further procedure and release on parole

The primary task of the Probation Office is to provide the Joint Court of Justice with an objective opinion on the scope for granting a life sentence prisoner release on parole. Before delivering this opinion, the Probation Office is advised by the prison and remand centre, as well as frontline probation officers. In this context, the Probation Office acts as an independent criminal justice advisory body and takes no part in the team responsible for drawing up a multidisciplinary report (see section 6, Review hearing). If the outcome of the review hearing is unfavourable for the life sentence prisoner, the Joint Court of Justice will review their sentence

again after five years. In such cases, the prisoner will be assessed internally every year in line with the follow-up procedure. After four years a complete file is drawn up under the authority of the Public Prosecutor's Office. However, the prison must give life sentence prisoners practical scope to follow a reintegration programme. If reintegration is impossible, this must be stated.

8. Reduction in life sentence

a. Administrative law and criminal law procedure

Article 43 of the Code of Criminal Procedure states that in all cases where the proper administration of justice makes the granting of relief by the court an urgent necessity and the Code itself contains no relevant provision, the defendant or the person whose interests are directly affected may apply for such relief. The Public Prosecutor's Office can make a similar application. The fact that life sentence prisoners can make use of this procedure demonstrates that our legal system offers them sufficient legal protection. On the other hand, the outcome of the procedure cannot be challenged under administrative law.

(...)

9. Legal aid for life sentence prisoners and the right to call expert witnesses for the defence

(...) In line with the reimbursement policy of the Assignment of Counsel in Criminal Cases Committee, Curaçao has a standard fee for legal assistance in review proceedings. This was stated in the annexe to the letter of 17 January 2017 from the Minister of Justice.

No later than six months prior to the review hearing or shortly after the life sentence prisoner is summoned by the Attorney General, the Assignment of Counsel in Criminal Cases Committee will assign counsel to life sentence prisoners who cannot afford to pay for legal assistance, to help them prepare for the hearing and to assist them during the hearing.

()

Conditions of detention

20. Curaçao has the following applicable law and policy on the conditions of detention of prisoners with mental health or psychiatric issues.

Article 1:79 of the Criminal Code of Curaçao

If the defendant has been sentenced to life imprisonment, the measures referred to in articles 1:80 and 1:81 cannot be imposed.

Article 1:80 of the Criminal Code of Curaçao

1. The court may order that a person who, due to the poor development or pathological disturbance of his mental faculties, cannot be held responsible for an offence is to be committed to a psychiatric institution for a period of one year, but only if he represents a danger to himself, to others, or to the general safety of persons or property.

(...)

Article 1:81 of the Criminal Code of Curaçao

1. The court may impose a TBS order on a defendant whose mental faculties were poorly developed or pathologically disturbed at the time of the commission of the offence (...).

Article 1:83 of the Criminal Code of Curaçao

1. Rules must be laid down by or pursuant to national ordinance regarding the care provided in a secure institution and the legal status of persons subject to TBS orders.
 2. The Minister of Justice must ensure that the persons subject to TBS orders who are cared for in a secure institution receive the necessary treatment.
- (...)

21. Amendments to the National Ordinance on Prisons (*Landsverordening beginselen gevangeniswezen*) are under preparation. The Advisory Council has issued an advisory opinion on the bill amending the National Ordinance on Prisons. On 22 June 2023 the amended version of the bill was discussed in the parliament of Curaçao. The new national ordinance is intended to improve conditions of detention for prisoners. More specifically this means improving nutrition, taking part in education and developing moral qualities, participating in organised labour processes, taking anger-management courses, and expanding the possibilities for participating in a penitentiary programme aimed at return to society prior to the date of release.
22. Although the legislation amending the National Ordinance on Prisons has not yet entered into force, the Government wishes to draw attention to article 30d of the bill:

Article 30d

1. The Minister together with the Minister of Health, Environment and Nature, assisted by the Director of Prisons and the governors, is responsible for the provision of suitable medical care to prisoners.
2. One or more doctors and dentists are attached to an institution.

Aruba

Review of life sentences

23. Aruba has the following applicable law and policy on the review of life sentences.

Article 1:30 of the Criminal Code of Aruba

1. Any person sentenced to life imprisonment will be released on parole after he has served at least twenty years of his sentence, if in the Court's opinion further enforcement of a custodial sentence no longer serves any reasonable purpose.
2. The Court will in any event take account in its considerations of the position of any victim of the offence in question or any direct surviving relatives and the risk of reoffending.
3. If the Court decides not to release the person in question it will review the situation again after five years and if necessary every five years thereafter.

Article 43 of the Code of Criminal Procedure of Aruba

1. In all cases where the proper administration of justice makes the granting of relief by the court an urgent necessity and the Code itself contains no relevant provision, the defendant or the person whose interests are directly affected may apply for such relief.
 2. The Public Prosecutor's Office is likewise authorised to lodge an application for such relief.
- (...)

Conditions of detention

24. Aruba has the following applicable law and policy on the conditions of detention of prisoners with mental health or psychiatric issues.

Article 1:79 of the Criminal Code of Aruba

If the defendant has been sentenced to life imprisonment, the measures referred to in articles 1:80 and 1:81 cannot be imposed.

Article 1:80 of the Criminal Code of Aruba

1. The court may order that a person who, due to the poor development or pathological disturbance of his mental faculties, cannot be held responsible for an offence is to be committed to a psychiatric institution for a period of one year, but only if he represents a danger to himself, to others, or to the general safety of persons or property. (...)

Article 1:81 of the Criminal Code of Aruba

1. The court may impose a TBS order on a defendant whose mental faculties were poorly developed or pathologically disturbed at the time of the commission of the offence (...).

Article 1:83 of the Criminal Code of Aruba

1. Rules must be laid down by or pursuant to national ordinance regarding the care provided in a secure institution and the legal status of persons subject to TBS orders.
2. The minister responsible for justice must ensure that the persons subject to TBS orders who are cared for in a secure institution receive the necessary treatment. (...)

Article 38 of the Custodial Institutions National Ordinance (*Landsverordening penitentiaire beginzelen*)

1. Every prisoner has the right to appropriate medical treatment and care at the Country's expense, on the understanding that:
 - a. the doctor at the institution decides on the designation of an attending specialist, on the type and dosage of the medicines to be provided and on the desirability of the prisoner receiving medical treatment and care at a hospital in Aruba (...).

Article 3 of the Prisons Decree (*Landsbesluit gevangeniswezen*)

1. In cases of insanity or of serious or contagious diseases among prisoners, the governor, after a medical statement has been issued, is authorised to have patients transferred to a psychiatric institution or another healthcare institution. (...)

St Maarten

Review of life sentences

25. St Maarten has the following applicable law and policy on the review of life sentences.

Article 1:30 of the Criminal Code of St Maarten

1. Any person sentenced to life imprisonment will be released on parole after he has served at least twenty-five years of his sentence, if in the Court's opinion further enforcement of a custodial sentence no longer serves any reasonable purpose.
2. The Court will in any event take account in its considerations of the position of any victim of the offence in question or any direct surviving relatives and the risk of reoffending. If the Court decides not to release the person in question it will review the situation again after five years and if necessary every five years thereafter.

Article 43 of the Code of Criminal Procedure of St Maarten

1. In all cases where the proper administration of justice makes the granting of relief by the court an urgent necessity and the Code itself contains no relevant provision, the defendant or the person whose interests are directly affected may apply for such relief.
2. The Public Prosecutor's Office is likewise authorised to lodge an application for such relief. ()

Conditions of detention

26. St Maarten has the following applicable law and policy on the conditions of detention of prisoners with mental health or psychiatric issues.

Article 1:79 of the Criminal Code of St Maarten

If the defendant has been sentenced to life imprisonment, the measures referred to in articles 1:80 and 1:81 cannot be imposed.

Article 1:80 of the Criminal Code of St Maarten

1. The court may order that a person who, due to the poor development or pathological disturbance of his mental faculties, cannot be held responsible for an offence, is to be committed to a psychiatric institution for a period of one year, but only if he represents a danger to himself, to others, or to the general safety of people or property. (...)

Article 1:81 of the Criminal Code of St Maarten

1. The court may impose a TBS order on a defendant whose mental faculties were poorly developed or pathologically disturbed at the time of the commission of the offence (...).

Article 1:83 of the Criminal Code of St Maarten

1. Rules must be laid down by or pursuant to national ordinance regarding the care provided in a secure institution and the legal status of persons subject to TBS orders.
2. The Minister of Justice must ensure that the persons subject to TBS orders who are cared for in a secure institution receive the necessary treatment. ()

Measures taken jointly by Curaçao, Aruba and St Maarten

27. In July 2017 the four countries of the Kingdom of the Netherlands (the Netherlands, Curaçao, Aruba and St Maarten) acknowledged the need to achieve appropriate and specialised care for prisoners with psychiatric disorders in the Caribbean part of the Kingdom. In the Judicial Four-Country Consultation (*Justitieel Vierlanden Overleg; JVO*) they agreed to establish an intercountry task force to develop a business case laying out various scenarios for the organisation and provision of the requisite facilities for forensic care in the Caribbean countries of the Kingdom.
28. At the JVO meeting of June 2023 the progress made by the Working Group on Forensic Care, TBS Orders and Placement in a Youth Protection and Custody Institution (*Werkgroep Forensische Zorg, TBS (Terbeschikkingstelling) en PIJ (Plaatsing in een Inrichting voor Jeugdigen)*) in the Caribbean part of the Kingdom was discussed. This is relevant to all the countries that make up the Kingdom of the Netherlands. Although the Government cannot yet share with the Committee of Ministers the outcomes of this meeting, it wishes to emphasise that conditions of detention are receiving ongoing attention in the four countries of the Kingdom of the Netherlands. Curaçao and the Netherlands are taking the lead in this matter.

Measures taken by Curaçao

Review of life sentences

29. Under the review procedure that applies in Curaçao, the Joint Court of Justice of Aruba, Curaçao, St Maarten and of Bonaire, St Eustatius and Saba (*Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, Sint Eustatius en Saba; 'the Joint Court'*) assesses after 20 years of imprisonment whether the convicted person is eligible for release on parole. This review procedure is described in article 1:30 of the Criminal Code of Curaçao, the Guidelines on the enforcement of life sentences and the 'Prospects for life sentence prisoners in Curaçao' implementation plan (Annexe 1). This review procedure takes place at the request of the convicted person (under article 43 of the Code of Criminal Procedure of Curaçao) or on the application of the Public Prosecutor's Office.
30. In May 2021 the Public Prosecutor's Office drew up the 'Prospects for life sentence prisoners in Curaçao' implementation plan. This plan takes into account the phases of detention (retribution, social rehabilitation and reintegration). In accordance with this plan, once the judgment has become final and unappealable, a prospects plan is drawn up together with the convicted person, Sentro di Detenshon i Korekshon Kòrsou (SDKK prison), a psychologist and the probation service. A psychologist and/or psychiatrist conducts an assessment to establish whether the individual has a psychiatric disorder and what the risk is of them reoffending. A treatment plan is also drawn up.

31. While in prison, the convicted person has the opportunity to take part in rehabilitation activities, such as education or other daily activities. For the purposes of their social rehabilitation, the convicted person has regular contact with the probation service and a social worker. In order to track progress, annual evaluation reports are drawn up. If the convicted person has a psychiatric disorder, they receive treatment.
32. After 15 years of imprisonment preparations begin for the review procedure. This means that in addition to the continuation of social rehabilitation activities at SDKK prison, reintegration activities outside SDKK prison are initiated. The convicted person may be eligible for leave, and work will be done on their contact with family. This happens in the last year before the review procedure.
33. After 20 years of imprisonment the Joint Court assesses whether the convicted person is eligible for release on parole. A hearing takes place, at which the convicted person is also heard. The convicted person may be eligible for reimbursement of legal assistance during this procedure. In its assessment of whether the convicted person is eligible for release on parole, the Joint Court takes into account the evaluation reports, which discuss how social rehabilitation activities and reintegration activities have proceeded. The probation service also advises on whether the person should be granted release on parole. Furthermore, the Joint Court takes into account the position of the victim(s) or their relatives. For the review hearing and for the progress reports, the prison, probation service, psychologist, psychiatrist and any other experts must draw up separate reports. These reports may be multidisciplinary. The reports produced by the prison, the probation service and the behavioural experts document as specifically and as in much detail as possible, the extent to which it would be responsible to allow the convicted person back into the community in stages if necessary and which conditions must first be met (the report must include an analysis of the offence and a risk assessment).
34. If, after 20 years of imprisonment, the Joint Court finds that the convicted person is not eligible for release on parole, it reassesses their eligibility in the same manner every five years.
35. In the government's view, article 1:30 of the Criminal Code of Curaçao, read in conjunction with the published Guidelines on the enforcement of life sentences, makes it sufficiently clear to life sentence prisoners what they must do in order to be considered for release and what conditions apply. The conditions laid down therein meet the requirement set by the Court of 'a sufficient degree of clarity and certainty'. The Government understands the remark made by the NJCM and the Humane Enforcement of Life Penalties Forum that 'the position of the relatives of the victim or of the victims themselves' is in part subjective.¹⁹ However, the Government believes it is of great importance to take their position into account

¹⁹ Report by the Dutch section of the International Commission of Jurists (NJCM) and the Humane Enforcement of Life Penalties Forum (Forum humane tenuitvoerlegging levenslange gevangenisstraf; *Forum Levenslang*) of 14 April 2022, page 6.

in the review procedure. As described above, their position is only one of the factors considered by the Joint Court in its assessment. The possibility of participating in various social rehabilitation and reintegration activities, the annual evaluation reports, and the recommendations of the probation service and, if relevant, the practitioners providing treatment, enable a convicted person to show that they should be eligible for release on parole. Whether this is the case is then assessed by an independent court. All this provides sufficient guarantees for an objective assessment of the review.

36. By way of illustration the Government would refer to the Joint Court's judgment of 25 November 2021.²⁰ In this case the Joint Court released on parole a life sentence prisoner convicted in 2001. As part of the review procedure and over the period of a number of years, several progress reports were drawn up about the individual, including by a psychiatrist and a psychologist and by the probation service. It follows from the judgment that the convicted person had participated in several social rehabilitation activities, including working inside the prison and elsewhere, and that he had been on leave. The review procedure ultimately led to his release on parole.

37. The Government would also refer to the Joint Court's judgment of 6 April 2022.²¹ Here, too, the Joint Court released on parole a life sentence prisoner convicted in 2000, following his successful completion of a social rehabilitation and reintegration programme.

38. Finally, the Government would refer to another Joint Court judgment handed down on 25 November 2021.²² The life sentence prisoner in that case is the same individual as in the case R.R.C. referred to in paragraph 10. The review procedure in that case did not lead to the individual's release on parole. It does, however, follow from the judgment that several progress reports about the individual were drawn up and that he was receiving various forms of treatment, including psychological treatment, training to regulate aggression and training to improve social skills.

39. In the Government's view, these judgments show that the review procedure is set up correctly and in some cases actually leads to release on parole.

Conditions of detention

40. There are currently three individuals detained in the Forensic Observation and Counselling Unit (*Forensische Observatie en Begeleidingsafdeling*; FOBA) at SDKK Prison, on whom TBS orders have been imposed. There is no custodial clinic in Curaçao.

41. On 2 November 2020 Curaçao and the Netherlands signed a mutual arrangement for the implementation of the reform package for Curaçao (*Landspakket Curaçao*). Since the

²⁰ ECLI:NL:OGHACMB:2021:404.

²¹ ECLI:NL:OGHACMB:2022:24.

²² ECLI:NL:OGHACMB:2021:405.

signing of this mutual arrangement, the necessary steps have been taken to achieve a broad range of reforms, among them the measures included in the package under theme H 'Strengthening the Rule of Law'. The focus of these measures is on strengthening border control, tackling financial and economic crime and improving detention facilities.

42. Measure H1 states that 'In the interests of stability and public order and safety until further notice no spending cuts will be made that limit the operational implementation capacity of the sectors that are most vital to the rule of law (Police, Customs, special investigation unit, Public Prosecutor's Office, Joint Court of Justice, Coastguard, prisons and security services)'. In order to achieve this, analyses have been drawn up regarding SDKK Prison of external critical roles for 2023 and of internal and external critical roles for the years 2024 to 2026. With regard to both analyses the Council of Ministers (*Raad van Ministers*) has approved the strengthening of SDKK Prison by recruiting security guards, penitentiary custodial institution staff, FOBA staff and a psychologist. This is being done in order to safeguard the organisation's operational implementation capacity for the continued implementation of detentions plans.

43. At present, all detainees in SDKK Prison have full access to treatment by a psychiatrist and a psychologist, who work together to prevent mental illness, and diagnose and treat detainees suffering from any kind of mental illness. These services are currently provided by an external company. It is the intention to fill more of these critical roles, but Curaçao still faces challenges in its public finances which have delayed the process of filling these vacancies.

44. The psychiatrist offers a comprehensive mental health and psychiatric programme to treat psychopathology and impairment. The first step of this programme, as soon as the judgment has become final and unappealable, is to draw up a prospects plan in close cooperation between the client, SDKK Prison, the psychologist and the probation service. A psychologist and/or psychiatrist conducts an assessment to establish whether the individual has a psychiatric disorder and what the risk is of them reoffending. A treatment plan is also drawn up. In order to track progress, annual evaluation reports are drawn up. In addition, a risk assessment is conducted every five years of the prisoner's security level and psychological state.

Measures taken by Aruba

Review of life sentences

45. Aruba has a similar review procedure to Curaçao, with the Joint Court assessing after 20 years of imprisonment whether the convicted person is eligible for release on parole. This review procedure is set out in article 1:30 of the Criminal Code of Aruba. The review procedure takes place at the request of the convicted person (under article 43 of the Code of Criminal Procedure of Aruba) or on the application of the Public Prosecutor's Office.

46. The aim of the review procedure is to ensure that the enforcement of a life sentence does not automatically or for improper reasons lead to the life sentence prisoner being imprisoned without

any hope for the future. In the assessment, the interests of the life sentence prisoner (conduct and development during imprisonment) and of society (criminal propensity) are weighed and the impact on any victim(s) and surviving relative(s) is also taken into account. In the review procedure the court considers all the circumstances. The position of the victims and surviving relatives is taken into account but is not decisive. The Joint Court consults a behavioural expert about the risk of reoffending. Any personal development on the part of the prisoner is reported on by means of psychological examination methods. In this sense the procedure meets the requirement of 'a sufficient degree of clarity and certainty'.

47. As regards the clarity of the requirements for release on parole, the Government would refer to paragraph 35.

Conditions of detention

48. There are currently no prisoners in a TBS facility in Aruba. In the Aruban criminal justice system, a life sentence cannot be imposed in combination with a TBS order. One life sentence prisoner is currently detained in the Correction Institute Aruba ('KIA'). Two other detainees have been sentenced to prison in combination with a TBS order. Both of these detainees still need to serve their prison sentence before they are placed in a TBS facility.
49. On 27 June 2019, Aruba's then Minister of Justice, Security and Integration approved the appointment of two forensic care coordinators: the process manager of the Aruba Community Safety Partnership (*Veiligheidshuis Aruba*) and a policy officer at the Public Prosecutor's Office (*Openbaar Ministerie*) of Aruba. The sole purpose of this was to establish a partnership between the mental health provider in Aruba ('Respaldo') and the Aruban Correctional Facility (*Korrektie Instituut Aruba*; KIA). This goal was achieved in the course of 2020, which meant that the task of the two forensic care coordinators was completed. Upon the appointment of the new Minister of Justice and Social Affairs in 2021, the role of forensic care coordinator was transferred back to the Ministry of Justice and Social Affairs. The two coordinators are no longer in office.
50. In 2016 the Custodial Institutions National Ordinance was amended to take particular account of various aspects of mental healthcare for detainees. This national ordinance has not yet formally entered into force, since the implementation arrangements are still to be approved.
51. The implementation arrangements relate to and regulate matters including: special care for detainees with mental health issues; the facilities required in an institution or wing for the medical treatment of mental health conditions; the availability of a psychiatrist and a nurse for an institution or wing; the procedure for administering compulsory medical treatment (*dwangbehandelingen*); and the minimum requirements for detention plans. It should be noted that detention plans must be guided by the principle that all detainees, including those sentenced to life imprisonment, will be given the chance to rehabilitate. Detainees will be given the prospect of possible release, conditional or otherwise, following rehabilitation.

52. In the Action Plan of 2 March 2021, the Government mentioned the use of a multi-disciplinary form (*MDO-formulier*), which serves as a basis for a detainee's detention plan. These forms are no longer in use. Generally speaking, a detention plan must be drawn up for each detainee in accordance with their needs.
53. Aruba has presented a plan to establish a forensic psychiatric wing at the KIA with the aim of providing specific and qualitative care to detainees with (serious) psychological problems or psychiatric disorders. Through the provision of forensic care, Aruba tries to minimise the risk of reoffending and to guarantee continued psychiatric care. This plan is being further developed in close cooperation between KIA staff members, private mental health provider Respaldo, and the two former forensic care coordinators. The plan sets out the requirements in terms of personnel, changes to the structure of the current psychiatric wing, as well as the building facilities. It will require more personnel and more highly qualified personnel.
54. In 2022, the 'Twinning project' was launched. In this project, KIA staff members are being prepared for changes in the current detention facilities, making them better equipped to provide forensic care to detainees at the KIA.
55. Aruba has the ambition to improve forensic care at the KIA, but is faced with a shortage of resources. Even though KIA personnel are being supported by Respaldo mental health practitioners, there is still a shortage of personnel at the KIA qualified to provide forensic care to detainees. For instance, six additional social workers are needed at the facility. There are no funds available to recruit new personnel, train current personnel and carry out the necessary renovation work at the facility. Due to the shortage of personnel, a permanent forensic care team which the Government considers necessary for successful medical treatment of detainees with mental health issues is not available. In order to improve forensic care at the KIA, highly qualified personnel must be recruited. This matter has the ongoing attention of the Aruban authorities.

St Maarten

56. In light of the Court's considerations in *A H L* in response to a unilateral declaration by the Netherlands regarding the prison system in St Maarten, the Government will also provide an explanation regarding the situation there. The Government would note in this connection that extensive reforms are being made across St Maarten's prison system, as set out in the successive Action Plans in the case of *Corallo*. The information given below should be read in conjunction with the follow-up to *Corallo*.

Review of life sentences

57. St Maarten has a similar review procedure to Curaçao and Aruba, with the Joint Court assessing after 25 years of imprisonment whether the convicted person is eligible for release on parole. This review procedure is set out in article 1:30 of the Criminal Code of St Maarten. The review procedure takes place at the request of the convicted person (under article 43 of the Code of Criminal Procedure of St Maarten) or on the application of the Public Prosecutor's Office.
58. As regards the clarity of the requirements for release on parole, the Government would refer to paragraph 35.
59. By way of illustration the Government would refer to the Joint Court's judgment of 6 April 2022.²³ In this case the Joint Court released on parole a life sentence prisoner convicted in 1985. As part of the review procedure and over the period of a number of years, several progress reports were drawn up about the individual, including by a psychologist. The review procedure ultimately led to his release on parole.

Conditions of detention

60. Regarding psychiatric and mental healthcare in prison, the Government notes that this type of care cannot currently be provided due to a lack of capacity. St Maarten has the ambition to improve psychiatric and mental healthcare in prison, but is faced with a shortage of resources. This matter has the ongoing attention of the St Maarten authorities. It is the intention of the authorities to develop relevant policy in the period ahead and to report on relevant developments.

Conclusion

61. The measures taken so far and those envisaged are aimed at preventing similar violations in the future. The Government of the Kingdom of the Netherlands will submit an updated action plan as soon as more information is available.

The Hague, 22 August 2023



Vincent de Graaf

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²³ ECLI:NL:OGHACMB:2022:23.