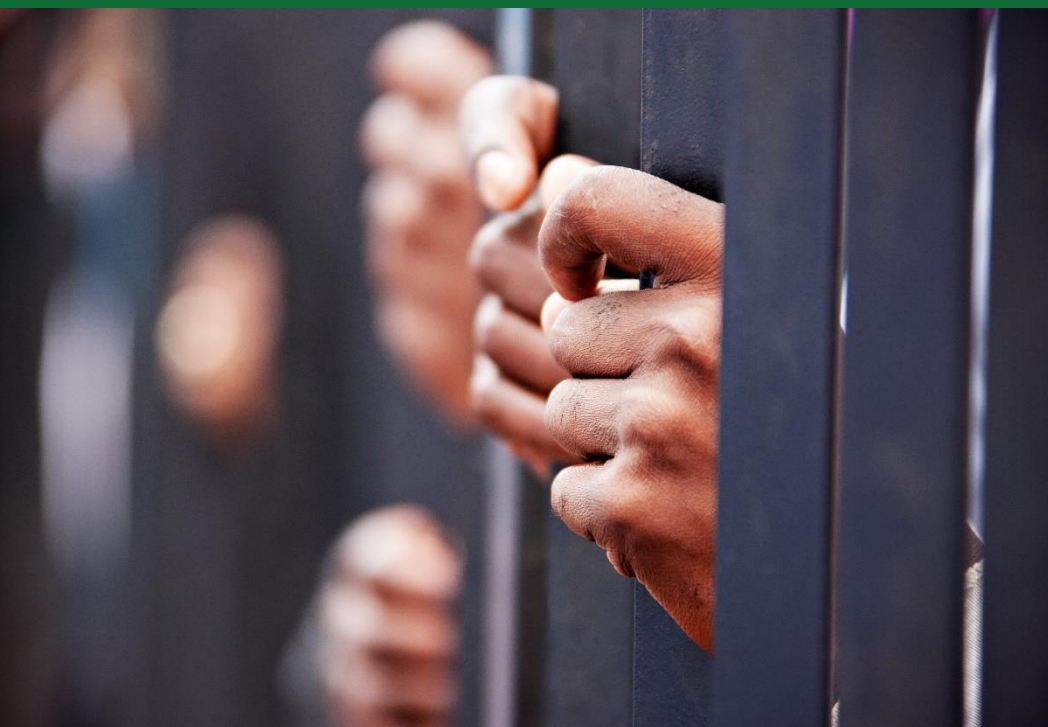


LIFE IMPRISONMENT



DEPARTMENT FOR
THE EXECUTION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

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LIFE IMPRISONMENT

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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The European Court has noted that, although the European Convention on Human Rights does not prohibit the imposition of a life sentence on persons convicted of especially serious crimes, in order for the sentence to be compatible with Article 3 of the Convention, it must be reducible de jure and de facto. This means that there must be both a prospect of release for the prisoner and a possibility of review. The basis of such review must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the prisoner. In this regard, the importance of assessing the progress made by prisoners towards rehabilitation is underlined, since it is here that the emphasis of European penal policy now lies, as reflected in the practice of the contracting States.

Under the Court's case-law, the criteria and conditions laid down in domestic law that pertain to the review must have a sufficient degree of clarity and certainty. Prisoners who receive a full life sentence are entitled to know from the outset what they must do in order to be considered for release and under what conditions. The Court has noted clear support in the relevant comparative and international materials for an initial review no later than twenty-five years after the imposition of sentence, with periodic reviews thereafter.

The present Thematic Factsheet provides examples of general and individual measures reported by States in the context of the execution of the European Court's judgments, focusing on the following specific issues relating to life sentences: review mechanisms; conditions of detention; risk of irreducible life sentences in cases of extradition; the right to respect for family life and correspondence; and legal remedies to challenge length of criminal proceedings and lawfulness of detention.

1. Mechanisms to review life sentences

In October 2022, Article 4 bis of the Prison Administration Act was amended introducing the possibility for full life prisoners who had failed to cooperate with the justice system to be eligible for release on parole after serving 30 years of imprisonment. Thus, the previously irrebuttable presumption that the failure to cooperate with the judicial authorities demonstrated that they were still dangerous to society and therefore ineligible for release on parole, has now been transformed into a rebuttable one. Domestic courts are empowered to perform a comprehensive assessment of the situation of prisoners, including their progress towards rehabilitation. Additionally, courts have to issue a reasoned decision indicating the specific grounds for granting or rejecting the application.

*ITA / Marcello Viola No. 2
(77633/16)*

*Judgment final on
07/10/2019*

[*Action Report
DH-DD\(2023\)91*](#)

Amendments to the Criminal Code, the Penal Code and the Code of Criminal Procedure were adopted in 2019, to establish a clear review mechanism enabling life prisoners to request a review and commutation of their sentence. A prisoner who has served not less than 20 years of their life sentence, has the right to ask a domestic court that their sentence be replaced by a fixed-term custodial sentence of between five and 10 years. During the period of the new fixed-term prison sentence, the prisoner may be eligible for release on parole. The domestic courts must assess the personal situation of the applicants on the basis of clear criteria set out in law and consider whether any changes in the life prisoner's behaviour are significant enough and sufficient progress towards rehabilitation has been made as to mean that continued detention can no longer be justified on legitimate penological grounds. Applicants are provided with adequate procedural safeguards during these proceedings: they have the right to legal assistance or representation, and decisions must be reasoned and be subject to appeal. If unsuccessful, a prisoner may reapply after one year. Also, since September 2015, life prisoners are included in the same rehabilitation and socialisation system as all other prisoners, in preparation for potential release on parole.

*LIT / Matiošaitis and Others
(22662/13)*

*Judgment final on
23/08/2017*

[*Final Resolution
CM/ResDH\(2019\)142*](#)

In February 2014, the Court of Appeal of England and Wales, in a special composition, dispelled the lack of clarity in domestic law concerning possible life prisoners' releases which had been identified by the European Court. It clarified 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 life prisoner where continued detention can no longer be justified on legitimate penological grounds. It made clear that the Secretary of State is under a duty to exercise his power of review in accordance with Article 3 of the Convention and that this duty cannot be restricted by other relevant instructions, even if those instructions identify only exceptional grounds for release.

*UK. / Vinter and Others
(66069/09)*

*Judgment final on
09/07/2013*

[*Final Resolution
CM/ResDH\(2017\)178*](#)

Any decision of the Secretary of State must be reasoned and is subject to judicial review, including on grounds of compatibility with the Convention. As recognised by the Grand Chamber in the later judgment in Hutchinson, domestic law now provides a prisoner with the possibility of release and review as required by Article 3 of the Convention.

In October 2022, Parliament adopted two laws introducing a mechanism for review of life sentences, which entered into force in November 2022. The mechanism introduced allows life prisoners who have served at least 15 years to request the review of their life sentence by a

*UKR / Petukhov No. 2
(41216/13)*

panel of three judges and to have it replaced by a fixed-term sentence ranging between 15 to 20 years. After having served three-quarters of this fixed-term sentence, life prisoners may request conditional release. In addition, prisoners have the possibility to re-apply for the replacement of a life sentence after one year if the initial request has been rejected by a court. The decisions given by the domestic courts have to be reasoned.

*Judgment final on
09/09/2019*

*[Action Report
DH-DD\(2023\)56](#)*

2. Conditions of detention of life prisoners

These cases concern violations of the Convention due to an excessively restrictive custodial regime combined with poor material conditions of detention and the lack of effective remedies. As regards general measures, in January 2017, the authorities adopted an important reform of the penitentiary system. Following this reform, the “special regime” is imposed initially by the court in respect of each person sentenced to life imprisonment, but the prison director must review whether this regime has to be maintained after a year of imprisonment and at one-year intervals thereafter. The director’s decision is open to judicial review.

A life prisoner who is no longer subject to the “special regime” may either be placed outside the high security zone, upon the decision of the prison director, or remain in the high-security zone under a “strict regime”. Prisoners held under the “special regime” may participate in certain common activities, upon decision of the prison director. The prison director’s refusal to accommodate life prisoners in common premises or to include them in common activities are subject to judicial review. In addition, the use of handcuffs regarding life prisoners is exceptional and based on an individual risk assessment.

As regards individual measures, in the Dimitrov and Ribov case, the first applicant was transferred to common premises, sharing a cell with four other inmates and able to take part in common activities. The second applicant had his detention regime changed from “special” to “strict” in 2013. In December 2016, his regime became again “special”, following an individual risk assessment. In December 2017, he was included in a special programme for persons with psychological problems, housed in the high security zone of the Burgas Prison in a separate cell measuring 11 m² and was able to participate in the work programme therein.

In the Jordan Petrov case, the applicant was accommodated in a renovated cell, measuring 6m², including a toilet, clean bed and mattress, in the high-security area of Varna Prison.

In the Manolov case, since 2009, the applicant was accommodated in an individual cell with toilet. He has been placed under a strict regime and can take part in all common activities in his group.

In the Radev case, since 2020, the applicant has been serving his sentence under the strict regime. He has been placed in common premises with the right to participate in group activities. He took part in the “Art Club” at the prison and has organized his own exhibition of tapestries. Additionally, he has participated on a voluntary basis in the distribution of food and the sanitation of the area of the group.

In the Simeonovi case, following the Sofia Court of Appeal's judgement on 29 May 2019, the applicant was released under supervised probation.

BGR / Harakchiev and Tolumov
(15018/11)

Judgment final on
08/10/2014

[*Action Plan*](#)
[*DH-DD\(2021\)698-rev*](#)

BGR / Dimitrov and Ribov
(34846/08)

Judgment final on
17/02/2016

[*Final Resolution*](#)
[*CM/ResDH\(2021\)189*](#)

BGR / Jordan Petrov
(n° 22926/04)

Judgment final on
24/04/2012

[*Final Resolution*](#)
[*CM/ResDH\(2019\)328*](#)

BGR / Manolov
(23810/05)

Judgment final on
04/02/2015

[*Final Resolution*](#)
[*CM/ResDH\(2018\)104*](#)

BGR / Radev
(37994/09)

Judgment final on
17/02/2016

[*Final Resolution*](#)
[*CM/ResDH\(2021\)189*](#)

BGR / Simeonovi
(21980/04)

Judgment final on
12/05/2017

[Final Resolution
CM/ResDH\(2021\)189](#)

In 2009 and 2010, the Code of Criminal Procedure was amended by the Penitentiary Law and its implementing Decree.

These amendments establish a strict legal framework concerning body searches of prisoners, which must comply with the principles of necessity and proportionality. The nature and frequency of the searches must be adapted with regard to the circumstance of detention and the profile of the detainee. Moreover, the decision to conduct searches may be challenged before the administrative Tribunal.

In addition, the amendments enshrine in the Code of Criminal Procedure the freedom of correspondence in prison, which includes “correspondence sent or received by detained persons”, except if the correspondence is deemed to seriously compromise rehabilitation or the security of the prisoners. Additionally, prisoners may lodge an administrative appeal against such a decision to retain correspondence.

**FRA / Frérot
(70204/01)**

*Judgment final on
12/09/2007*

[Final resolution
CM/ResDH\(2012\)81](#)

Following a judgment delivered by the Council of State in July 2003, life prisoners may now lodge an appeal against a solitary confinement measure before an administrative judge which, in such a case, may order the annulment of this measure “considering the seriousness of its impact on detention conditions”.

Further, the provisions of the Code of Criminal Procedure regarding the regime of solitary confinement were amended by two decrees issued by the Prime Minister in 2006 and the Penitentiary Law adopted in 2009.

Decisions regarding administrative solitary confinement, and its eventual prolongation, are now considered “individual administrative acts” which may be challenged before administrative tribunals. Prisoners are granted additional guarantees in the context of these proceedings, including: the possibility to be assisted or represented by a lawyer, to benefit from legal aid if applicable, and to be given access to their file. The tribunal’s decisions must be reasoned and are subject to appeal.

**FRA / Ramirez Sanchez
(59450/00)**

*Judgment final on
04/07/2006*

[Final Resolution
CM/ResDH\(2010\)162](#)

3. Risk of life sentence in case of extradition

The Court considered that, by extraditing the applicant to the United States, Belgium had exposed him to the risk of being sentenced to an irreducible life sentence, in violation of the Convention.

The Belgian authorities have taken all measures that could be expected to avoid or reduce the risk of an irreducible life sentence. These measures include obtaining guarantees from the US prosecuting authorities to try to reach a plea bargain with the applicant and, in case of failure, that the US authorities will not seek such a sentence. The Belgian authorities themselves undertake to submit an amicus curiae brief in the US proceedings at the appropriate time, should a risk of such a sentence nevertheless materialise.

*BEL / Trabelsi
(140/10)*

*Judgment final on
16/02/2015*

[Final Resolution
CM/ResDH\(2018\)460](#)

4. Life prisoners' right to respect for their family life and correspondence

In 2022, the Internal Prison Rules were changed by the Minister of Justice, allowing short term visits to prisoners, without glass partitions, by spouses, parents, grandparents, children and grandchildren, step-parents or foster parents, step-children or foster children, siblings as well as cohabitants if they have children or have cohabited for at least two years.

*EST / Kalda
(35245/19)*

*Judgment final on
01/03/2022*

[Final Resolution
CM/ResDH\(2022\)319](#)

Following the Court's judgment, the policy of assessing prisoner applications for permission to access assisted conception facilities was amended. The policy, which takes the form of a non-exhaustive list of criteria, is issued to all new applicants and/or any other person who wishes to see it.

*UK. / Dickson
(44362/04)*

*Judgment final on
04/12/2007*

[Final Resolution
CM/ResDH\(2011\)176](#)

The Secretary of State has an obligation under the Human Rights Act to respect rights protected by the Convention and thus will apply a proportionality test when taking a decision and balance the individual circumstances of the applicant against the criteria in the policy and the public interest in accordance with the European Court's judgment. Decisions made under the policy may be challenged in judicial review proceedings.

Following the amendments to the Penitentiary Code in 2014-2016, life prisoners may have: (i) short visits (of up to four hours) and (ii) long visits (of up to three days) with close relatives (spouses, parents, children, adoptive parents, adopted children, brothers and sisters, grandfathers, grandmothers, grandchildren).

*UKR / Trosin
(39758/05)*

*Final judgment on
23/05/2012*

[Final Resolution
CM/ResDH\(2020\)297](#)

Life prisoners may have one short visit per month, and one long visit every two or three months depending on the regime of the penitentiary institution where a prisoner is held. Long-term visits may be granted to an unmarried partner with whom the prisoner was living as a family, provided that they have joint minor children. Additionally, in case of a serious disease which threatens the prisoner's life, permission for a visit may be granted to close relatives. In such a case the frequency limits concerning visits do not apply.

5. Legal remedies to challenge length of criminal proceedings and lawfulness of detention of life prisoners

In January 2008, the Federal Court of Justice changed its case-law, allowing mandatory life-sentenced prisoners to file for redress for excessive length of the criminal proceedings leading to their conviction. Accordingly, the judge may grant a reduction of the length of the sentence provided that the sentence is enforced for at least fifteen years.

GER / Kaemena and Thonebohn (45749/06)

Judgment final on
22/04/2009

[*Final Resolution*](#)
[CM/ResDH\(2010\)52](#)

Further to the Court's judgment finding a violation of the Convention due to the impossibility for the Mental Health Review Tribunal to order the release of life prisoners on mental health grounds, the Mental Health Act 1983 was amended in 2003. It may now assess whether life prisoners continue to meet the criteria for detention in a hospital and may make a recommendation for absolute or conditional discharge from hospital. If not released at this point, those individuals will be returned to prison unless the Tribunal has recommended that they remain in hospital for other medical reasons.

UK. / Benjamin and Wilson (28212/95)

Judgment final on
26/12/2002

[*Final Resolution*](#)
[CM/ResDH\(2010\)186](#)

In either case, whether they return to prison or remain in hospital, once life prisoners have served their tariff (i.e. the minimum period required to be served), their detention is subject to review by the Parole Board, as with any other prisoner, and the Parole Board may order their release on life licence. The Secretary of State is not free to depart from the Parole Board's decisions.

In accordance with the Criminal Justice Act 2003, members of the executive (in this case the Home Secretary) are no longer competent to fix the minimum term to be served by mandatory life-sentence prisoners. The length of the minimum term is to be determined by the sentencing court by reference to a new statutory framework set out in the above Act.

UK. / Easterbrook (48015/99)

Final judgment on
12/09/2003

[*Final Resolution*](#)
[CM/ResDH\(2010\)214](#)

In this case, the European Court found, inter alia, a violation of the Convention due to the continued detention of prisoners sentenced to mandatory life imprisonment after the expiry of their tariffs (i.e. the minimum period required to be served) without review of their cases by a body empowered to order their release.

UK. / Stafford (46295/99)

Judgment final on
28/05/2002

[*Final Resolution*](#)
[CM/ResDH\(2011\)179](#)

Since December 2003, the Parole Board has been competent to rule on the release of all mandatory life sentenced prisoners. The Secretary of State is no longer free to depart from its decisions or recommendations. Additionally, since the Human Rights Act, domestic courts may award damages if they find that detention is unlawful (see *Bubbins v. the United Kingdom* n°50196/99, Resolution CM/ResDH(2007)101).

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