



Leaving mentally-ill life prisoner without treatment for decades deprived him of any realistic prospect of release

In today's **Grand Chamber** judgment¹ in the case of **Murray v. the Netherlands** (application no. 10511/10) the European Court of Human Rights held, unanimously, that there had been:

a 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 convicted of murder in 1980, who consecutively served his life sentence on the islands of Curaçao and Aruba (part of the Kingdom of the Netherlands) – until being granted a pardon in 2014 due to his deteriorating health –, about his life sentence without any realistic prospect of release. The applicant, Mr Murray, notably maintained that he was not provided with a special detention regime for prisoners with psychiatric problems. Although a legal mechanism for reviewing life sentences had been introduced shortly after he lodged his application with the Court, he argued that, *de facto*, he had no perspective of being released since he had never been provided with any psychiatric treatment and therefore the risk of his reoffending would continue to be considered too high to be eligible for release.

Mr Murray passed away while the case was pending before the Grand Chamber. Two of his relatives subsequently pursued his case before the Court.

The Court came to the conclusion that Mr Murray's life sentence had not *de facto* been reducible. It observed that although he had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, he had never been provided with any treatment for his mental condition during the time he was imprisoned. The opinions of the domestic court advising against his release showed that there was a close link between the persistence of the risk of his reoffending on the one hand and the lack of treatment on the other. Consequently, at the time he lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to his release.

Principal facts

The applicant, James Clifton Murray, a Dutch national, was born in 1953 and died in November 2014. His son and his sister expressed their wish to pursue the case before the European Court of Human Rights.

In October 1979 Mr Murray was found guilty of the murder of a six-year-old girl on the island of Curaçao (part of the Kingdom of the Netherlands in the southern Caribbean) and initially sentenced to 20 years' imprisonment. On appeal, in March 1980, the Joint Court of Justice of the Netherlands Antilles upheld the conviction and sentenced him to life imprisonment.

The court found it proven that Mr Murray had deliberately killed the girl, who was the niece of his former girlfriend, as revenge for the latter ending their relationship. It referred to a psychiatrist's report drawn up at the request of the public prosecutor, which diagnosed Mr Murray as "retarded, infantile and narcissistic" and recommended that he receive institutional treatment for a lengthy period or that attempts be made in the prison setting to attain a stronger personality structure in order to avoid recidivism. Since no order for placement in a custodial clinic could be imposed in the

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

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Netherlands Antilles (of which Curaçao formed a part at the time) – as the applicable law at the time did not provide for such a measure – and considering that placement in such a clinic in the European part of the kingdom was not feasible, the court found that only a sentence of life imprisonment was suitable in his case to protect society from recidivism. Mr Murray's appeal was dismissed by the Supreme Court in November 1980.

Mr Murray initially served his sentence in a prison in Curaçao, his first 13 years there being marked by incidents, in particular fights, extortion and drug abuse, resulting in periods spent in solitary confinement. In 1999 he was transferred to another prison on the island of Aruba at his own request in order to be closer to his family. During his detention there, he significantly improved his behaviour. Over the years he repeatedly submitted requests for pardons, which were rejected by the Governor of the Netherlands Antilles, relying on the advice by the Joint Court of Justice which, on several occasions, essentially found that Mr Murray continued to pose a risk of recidivism.

Following an amendment of the Curaçao Criminal Code in 2011, which prescribed periodic reviews of sentences of life imprisonment – and which continued to apply to Mr Murray after his transfer to Aruba – his sentence was submitted for such review to the Joint Court of Justice in September 2012. Taking into account a number of psychological reports, which found that he continued to suffer from mental health problems, namely an antisocial personality disorder, the court decided that his imprisonment should continue as it still served a purpose after 33 years.

Having been diagnosed with terminal cancer in 2013, Mr Murray was eventually granted a pardon on 31 March 2014 due to his deteriorating health.

Complaints, procedure and composition of the Court

Mr Murray initially complained, in particular, that his life sentence was irreducible and that there was no separate regime for life prisoners or a special regime for detainees with psychiatric problems in the prisons where he was being held. Following the conclusion of the periodic review of his sentence in 2012 he complained that even if a possibility of conditional release had been created under the law, *de facto* he had no hope of release as he had never been provided with any psychiatric treatment and therefore the risk of recidivism was considered too high for him to be eligible for such release. He relied on Article 3 of the Convention (prohibition of inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 22 February 2010.

In its Chamber judgment of 10 December 2013 the Court held, unanimously, that there had been no violation of Article 3 either in respect of the life sentence, as a legal mechanism for reviewing life sentences had been introduced in Curaçao in November 2011, or in respect of Mr Murray's conditions of detention, as he had not developed his complaints in sufficient detail or provided sufficient information to prove that the conditions in which he was held had been inhuman and degrading. On 14 April 2014 the case was referred to the Grand Chamber at his request. A Grand Chamber hearing took place on 14 January 2015.

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

Guido Raimondi (Italy), *President*,
Dean Spielmann (Luxembourg),
András Sajó (Hungary),
İşıl Karakaş (Turkey),
Angelika Nußberger (Germany),
Khanlar Hajiyev (Azerbaijan),
Nebojša Vučinić (Montenegro),
Ganna Yudkivska (Ukraine),

Julia Laffranque (Estonia),
Paulo Pinto de Albuquerque (Portugal),
Erik Møse (Norway),
André Potocki (France),
Paul Mahoney (the United Kingdom),
Johannes Silvis (the Netherlands),
Valeriu Grițco (the Republic of Moldova),
Faris Vehabović (Bosnia and Herzegovina),
Jon Fridrik Kjølbro (Denmark),

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

Decision of the Court

Article 3

As regards the admissibility of the complaints, the Court dismissed an objection by the Netherlands Government to the effect that Mr Murray had lacked the status of being a victim of the alleged violation of the Convention, as he had eventually been granted a pardon and had been released from prison. The Court underlined that the decision granting him a pardon had not comprised an acknowledgment of the alleged violation of Article 3 and there was moreover no indication that the pardon had been granted as a means of offering redress.

Contrary to the Chamber judgment of 10 December 2013 – in which Mr Murray’s complaints under Article 3 concerning his life sentence and concerning the conditions of his detention had been treated separately – the Grand Chamber of the Court found it appropriate to assess those aspects jointly, noting that in this case they were closely interrelated.

The Court considered that Mr Murray’s detention in a prison rather than in a custodial clinic could not have superseded the need for treatment which had been identified by the psychiatrist who had examined him in the context of the criminal proceedings. Furthermore, the simple fact that the punishment imposed on Mr Murray did not comprise a measure of treatment did not discharge the Government from its obligation in this regard for the entire duration of his imprisonment. The Court underlined that States were under an obligation to provide detainees suffering from health problems – including mental health problems – with appropriate medical care.

Mr Murray’s submission that he had never been provided with any treatment for his mental condition during the time he was imprisoned was supported by reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on visits by that body to the prisons in Curaçao and Aruba, according to which mental health care in those two institutions was insufficient. Statements by a social worker and a psychologist of the prison in Aruba of 2014, according to which there was no mention in Mr Murray’s medical file of his having undergone any psychiatric or psychological treatment supported his submission as well.

The Court observed that the principle of the rehabilitation of prisoners had, at least from 1999 onwards, been explicitly recognised in the applicable national law, which stipulated that a custodial sentence should also serve to prepare detainees for their return to society. While certain measures had been taken in Mr Murray’s case which might be considered conducive to that purpose, namely his transfer to Aruba in order for him to be closer to his family and the possibility to work and benefit from the structured life in prison – and he had significantly improved his behaviour during his detention – the risk of his reoffending had been deemed too high for him to be eligible for a pardon or conditional release. The opinions of the domestic court advising against his release showed that there was a close link between the persistence of that risk on the one hand and the lack of treatment on the other.

The Court underlined that under its case-law States had a large room for manoeuvre (“margin of appreciation”) in determining what measures were required in order to give a life prisoner the possibility of rehabilitating himself or herself. However, although Mr Murray had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, no further assessments had been carried out of the kind of treatment that might be required and could be made available. Consequently, at the time he lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to his release. Therefore his life sentence had not *de facto* been reducible, as required by the Court’s case-law under Article 3. This conclusion was sufficient for the Court to find, *unanimously*, that there had been a violation of Article 3.

Just satisfaction (Article 41)

The Court held, *by a majority (twelve votes to five)*, that in the circumstances of the case the finding of a violation of Article 3 constituted sufficient just satisfaction; accordingly it made no award as regards any non-pecuniary damage. The Court also held, *unanimously*, that the Netherlands were to pay Mr Murray’s son and his sister 27,500 euros (EUR) in respect of costs and expenses.

Separate opinions

Judge Silvis expressed a concurring opinion; Judge Pinto de Albuquerque expressed a partly concurring opinion; Judges Spielmann, Sajó, Karakaş and Pinto de Albuquerque expressed a joint partly dissenting 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.