

# Treatment of life-sentencing prisoners

Lessons from the ECtHR



Prisons should not be like the gates of Hell  
*ECtHR, Ocalan v Turkey, 2014*

# Introduction

- European Court of Human Rights (ECtHR) advocates a shift in arguments away from the exclusively punitive, applicable for lifers
  - Fairness
  - Rehabilitation
  - System of conditional release of lifers





# The role of the Court

- The Court has consider many characteristics of fairness and legality of sentencing under the requirements of the ECHR.
- Violations of Article 3: Degrading or inhuman punishment



# ECHR Article 3

- o Article 3 of the ECHR stating that
- o *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*
- o When conducting its analysis, the Court considered whether **denying the prospect of release is violating Article 3.**





# ECtHR caselaw

- o The Court has entered several judgments, indicating its general approach on sentencing policies.
- o Several important issues can be derived from the caselaw, including the Court's **emerging tendency to require possible rehabilitation of offenders and the prospect of conditional release .**



# Relevant cases

- o Soering v UK
- o Kafkaris v Cyprus
- o Harkins and Edwards v UK
- o Vinter v UK
- o Ocalan v Turkey.
- o Murray v Netherlands,





# Soering v. UK, 1989

- o Extradition case, capital punishment.
- o The principle of fairness
- o *inherent in the whole of the Convention is a search for **a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.***

# Kafkaris v. Cyprus (2008)

- o The Grand Chamber held that a mandatory sentence of life imprisonment **without any prospect of release termed *as irreducible or whole life sentence***, would be contrary to article 3, if there were no possibility to review.



# Harkins and Edwards v. UK ( 2012)

- o Extradition, facing life sentences
- o The Court found that a mandatory life sentence without a possibility of release which was imposed upon someone below the **age of 18 at the time of the offence** might be grossly disproportionate.

# Vinter v UK GK (2013)

- o The Grand Chamber considered the UK's "Whole Life Order" which provided convicted persons no possibility of parole or release irrespective of rehabilitation, good behavior, or other changed circumstances.
- o "*Whole Life Orders*" violated Article 3, not because they were grossly disproportionate, but because of other guiding principles of the Article. 14 It further found that, in order to be compatible with Article 3, the mode of punishment must include both "the prospect of release and a possibility for review."



# Vinter v. UK (2013)

- o *"PUNISHMENT BECOMES GREATER WITH TIME: THE LONGER THE PRISONER LIVES, THE LONGER HIS SENTENCE."*
- o "there is ... clear support in European and international law for the principle that all prisoners, including those serving life sentences, be *offered the possibility of rehabilitation and the prospect of release if that rehabilitation is achieved.*"
- o the domestic authorities to consider whether any changes in the life [and behavior of the] prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to *mean that continued detention could no longer be justified on legitimate penological grounds.*"

# Ocalan v. Turkey (2014)

- o In Ocalan v Turkey, the Court unanimously held that there had been a violation of Article 3 of the ECHR due to *the life sentence without possibility of conditional release*.
- o The applicant suffered over ten years of extremely strict solitary confinement, from February 1999 to November 2009.
- o The Court restated that the requirements of Article 3 would be satisfied if national law affords *a possibility of review of a life sentence with an option of communication, remission or conditional release*.
- o *A life sentence must be "reducible," providing for both a prospect of release and a possibility of review.*



# Ocalan v. Turkey (2014)

- o OPINION OF JUDGE PINTO DE ALBUQUERQUE:
- o *Prisons should not be like the gates of Hell, where the words of Dante come true: Lasciate ogne speranza, voi ch'intrate ("Abandon all hope, ye who enter here"). **The Convention requires an approach to resocialisation and parole based on prisoners' rights, in so far as their rights to resocialisation and parole go hand in hand with the States Parties' obligations to pursue the former and guarantee the latter.***

# Murray v. the Netherlands GC, 2016

- o From the date of the imposition a prospect of release and possibility of review, no later than 25 years after, with periodic review hereafter
- o To consider any changes in the progress towards rehabilitation of such significance that continued detention is no longer justified on legitimated penological grounds
- o The assessment based on rules having sufficient degree of clarity/certainty and based on objective pre-established criteria, with sufficient procedural guarantees.



# Murray v. the Netherlands GC, 2016

- o All prisoners, also lifers should be offered the possibility of rehabilitation.
- o And the prospect of release if rehabilitation is achieved.
- o A demand for *a de facto reductable* punishment.
- o No demands or risk of reoffending does not set aside the state obligations

# Summary of the ECtHR jurisprudence

- o Article 3 must be interpreted as requiring the potential for reducibility of the sentence
- o An emerging trend in the Court's application of the ECHR to broader questions of fairness and rehabilitation in sentencing and penal policy as considered within a human rights context.
- 
- o The Court has used *nullum crimen, nulla poena sine lege*, stressing that any punishment must be crafted to *incentivize socially desirable behavior*.



# Summary of the ECtHR jurisprudence

- o Any punishment that does not provide convicted persons with the prospect of rejoining society after demonstrating the desired behavior to be unacceptably cruel and unusual, but also a failure of society to give the imprisoned person motive to reform.
- o A state's sentencing guidelines must ensure that progress toward rehabilitation is a de facto possibility for convicted persons.

