



Summary

Advisory report Life imprisonment revisited

Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ)

On April 13th 2022, the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles in the Netherlands (hereinafter referred to as the RSJ) has issued an advisory report on life imprisonment. In this report the RSJ proposes replacing the current pardon application procedure for life sentence prisoners with a judicial review.

Prospects for the release of life sentence prisoners

An important starting point in imposing life imprisonment is that life sentence prisoners must also have a prospect of release. In the absence of such a prospect, in the case law of the European Court of Human Rights (hereinafter referred to as the ECHR) lifelong imprisonment would then constitute a violation of article 3 of the European Convention on Human Rights.

This certainly does not mean that the convicted person should actually be released. However, the prospect of release does imply that 1) the implementation of the life sentence must include a reassessment mechanism in which the continuation of the deprivation of liberty is reviewed after a period of time, and 2) that the sentenced person has the opportunity to prepare for a possible release during detention through sufficient opportunities for rehabilitation. In this recommendation, the RSJ mainly focuses on the first aspect, the reassessment of the continuation of the implementation.

Reassessment procedure in the Netherlands

In the Netherlands, the reassessment of the continuation of the deprivation of liberty takes place as part of a pardon application procedure developed for life sentence prisoners. This consists of two steps: after 25 years of imprisonment, the Advisory Board will advise life sentence prisoners about a possible initiation of reintegration activities for the life sentence prisoner. If such activities can be initiated, the minister (on behalf of the Crown) will decide two years later whether to grant a pardon.

A review of this procedure, including the possibility of a judicial review, was announced last year by the then Minister for Legal Protection. In previous recommendations, the RSJ has argued why such a judicial review is preferable. The fact that the RSJ is once again issuing a recommendation on this matter is in line with the reconsideration announced by the Minister.

Conclusion: better safeguards with a judicial review

The ECHR leaves the Member States free to choose the design of the reassessment mechanism, but expresses a preference for judicial review in connection with the necessary procedural safeguards and the importance of an independent assessment. The RSJ also concludes that a judicial review offers better safeguards for the prospect of release than the pardon application procedure. The latter is sensitive to political influences since the Minister makes the decision. The procedural safeguards are also weak because no appeal against a negative decision of the Minister is open except for the civil court, which leads to numerous time-consuming proceedings for the parties involved.

The decision on the continuation or termination of life imprisonment is based on the question as to whether the continuation of the deprivation of liberty still serves criminal justice purposes. The risk of reoffending or the social need for retaliation may have changed over time and the convicted person may have developed positively or negatively during detention. An impartial and independent opinion on the continuation or termination of the deprivation of liberty is the ultimate area of expertise of the criminal court. The RSJ therefore recommends the introduction of a judicial review for the reassessment of life imprisonment.

Recommendations

The RSJ recommends developing a reassessment mechanism based on judicial review for life imprisonment.

This requires a legislative amendment in which many different components will need to be elaborated. One example of this is the determination of the moment when the reassessment by the court takes place. The RSJ will submit possible starting points with regard to some of these elaboration aspects, with the offer to provide further recommendations on the basis of a current draft legislative proposal.

The advisory report (in Dutch) can be consulted on the RSJ [website](#).

