



Summary

Advice on the format of life sentences up until the moment of reassessment

Council for the Administration of Criminal Justice and Protection of Juveniles (Raad voor Strafrechtstoepassing en Jeugdbescherming)

At the request of the Minister for Legal Protection the Advisory Division of the Council for the Administration of Criminal Justice and Protection of Juveniles (hereinafter: the RSJ) issued advice on 23 June 2023 regarding how a life sentence should be implemented until the moment of reassessment. In response to four specific questions, the RSJ formulated several recommendations relating to the detention of life sentence prisoners and the procedures which precede the reassessment.

Background to the reassessment of life sentences

The reassessment of a life sentence is related to the basic principle that life sentence prisoners should also have some prospect of release, as follows from case law of the European Court of Human Rights and the Supreme Court. That does not mean, incidentally, that life sentence prisoners have any guarantee that they will be released (conditionally) at any given point in time. This can only be the case if further unconditional enforcement of the life sentence no longer serves any reasonable purpose under criminal law.

Currently, the required prospect of release is provided for in a procedure whereby the Minister - on behalf of the Crown - decides, after 27 years of detention, that the life sentence prisoner is eligible for an official pardon. In 2022, the RSJ recommended that this decision should be taken by the courts. In the meantime, the Minister has announced that a change in the law is being prepared which provides for a reassessment procedure, whereby the court decides on the conditional release of life sentence prisoners.

The RSJ understands that a life sentence is only imposed for very serious crimes that have a major impact on victims and their relatives. That is why each decision will have to strike a balance between the interests of victims and their relatives and those of the life sentence prisoner. It is essential that there are proper safeguards in place for all the parties involved.

Interpretation of detention and procedures prior to the reassessment

Prior to the reassessment, the life sentence prisoner can be admitted to the so-called reintegration phase during which he can specifically prepare for the reassessment. One of

the questions submitted for advice concerns the interpretation of the detention prior to that reintegration phase. The other three questions relate to various aspects of the reintegration phase, namely its duration, the decision to admit someone to this phase and the relevant criteria. When issuing its advice, the RSJ dealt with each of these questions individually.

Interpretation of the detention prior to the reintegration phase

In order to prevent life sentence prisoners from becoming excessively alienated from life outside the prison and society by the time they reach the moment of possible admission to the reintegration phase, a broader interpretation of resocialisation is necessary in the form of meaningful activities. When doing so, account must be taken of the phases which the life sentence prisoner is experiencing, such as accepting the judgment, ageing and health-related developments. That is a question of customisation which requires proper monitoring of the detainee's behaviour and development and of the security risks. That is why the RSJ recommends that life sentence prisoners are extensively assessed every five years by independent behavioural experts.

Extension of the reintegration phase

Reintegration following a long period of detention is a long-term process. This requires sufficient time to enable the detainee to get used to gradually increasing freedom in a controlled and step-by-step manner. That is why the RSJ recommends starting the reintegration phase at least four years, but preferably five years, before the reassessment starts. This longer period is also important when it comes to compiling a properly-substantiated recommendation for reassessment, based on sufficient information about the behaviour of the life sentence prisoner and the risks.

Courts to decide on admission to the reintegration phase

Admission to the reintegration phase is a decision which can have considerable impact on the life sentence prisoner and the victims and relatives. After all, they face the prospect of the detainee possibly being given more freedoms. Currently the Minister decides about admission to that reintegration phase, based on a well-founded recommendation by the Life Sentence Prisoners Advisory Board (Adviescollege levenslanggestraften). The RSJ recommends that the courts take this decision, while taking account of the independent recommendation of the Life Sentence Prisoners Advisory Board. The court has pre-eminently the necessary expertise to weigh up all the interests and does so from an independent position. However, the Minister remains responsible for the implementation of the reintegration and the decisions taken in that context.

Criteria for admission to the reintegration phase

The Life Sentence Prisoners Advisory Board advises prior to each decision regarding admission to the reintegration phase. One of the criteria used in this regard concerns 'the impact on the victims and relatives and, in that context, the issue of retribution'. With a view to being able to weigh up the issues more accurately, the RSJ recommends splitting this criterion into two separate criteria, namely: 'retribution' and 'the interests of victims and relatives'. In the opinion of the RSJ, there is no need to change the other



criteria of the risk of reoffending, criminal propensity and the behaviour and development of the life sentence prisoner.

You can consult the recommendation on the RSJ website

