

2024

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Aykhan Dadashov

American University Washington College of Law, [ad9087a@american.edu](mailto:ad9087a@american.edu)

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### Recommended Citation

Dadashov, Aykhan (2024) "Is Life Imprisonment Without Parole Still Degrading Treatment Under the ECHR?," *Human Rights Brief*. Vol. 27: Iss. 2, Article 7.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol27/iss2/7>

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# IS LIFE IMPRISONMENT WITHOUT PAROLE STILL DEGRADING TREATMENT UNDER THE ECHR?

by Aykhan Dadashov\*

After the European Court of Human Rights (“ECtHR”) decided *Hutchinson v. The United Kingdom*<sup>1</sup> in 2017, debates about ECtHR’s position on life sentences without the possibility of parole arose. Some scholars deem the decision a departure from the ECtHR’s principles in *Vinter and Others v. The United Kingdom*<sup>2</sup>, which held that non-reducible life sentence are a violation of Article 3 of the European Convention on Human Rights (“the Convention”).<sup>3</sup> The United Kingdom has the authority to issue life sentences, as either a minimum term of imprisonment, which sets a minimum number of years a prisoner must serve before becoming eligible for parole, or a “whole life order,” which is life sentence without any chance of parole. Whole life orders only receive parole in “exceptional circumstances”, such as a terminal illness or severe incapacitation. The Secretary of State can review the whole life order after a prisoner serves twenty-five years in prison and decide to impose life sentence without parole if incarceration is still justified.<sup>4</sup>

In *Vinter* the applicants were sentenced to a whole life order. The applicants claimed before the ECtHR that their sentences were not reducible because

no person sentenced to a whole life order had ever been released.<sup>5</sup> The ECtHR noted that life imprisonment is not necessarily inhuman or degrading treatment but the absence of the prospect of release and possibility of review might amount to an Article 3 violation.<sup>6</sup> Recent practice of most European states gives prisoners a chance of rehabilitation through periodic review.<sup>7</sup> Most states require that life prisoners can clearly understand the requirements to be considered for release and when a review of sentence can be sought.<sup>8</sup> However, the United Kingdom fails to provide a review mechanism for whole life orders. Although some domestic courts allowed “exceptional circumstances,” to be eligible for release through the Prisoner Service Order, where the Secretary of State decides on future fate of life prisoners, still existed.<sup>9</sup> Such double standards in different legal sources of domestic law create ambiguity on whether the Secretary of State will decide by going beyond exhaustive terms of the Prisoners Service Order. Inconsistency in laws related to prospect of release and lack of review mechanisms for life prisoners led the ECtHR to conclude that whole life orders were not reducible and, therefore, there was a violation of Article 3.<sup>10</sup>

Following the *Vinter* decision, the ECtHR asked, in *Hutchinson*, whether the domestic legislation in the United Kingdom regarding the prospect of release and possibility of review for life prisoners have been clarified with the post-*Vinter* decision in the *R v. McLoughlin* case.<sup>11</sup> The court held that the Secretary of State, not being limited with exhaustive list for release envisaged in the Prisoner Service Order, has to evaluate the progress made by a life prisoner by considering all material circumstances and relevant ECtHR case law.<sup>12</sup> If a life prisoner is not satisfied with the Secretary of State’s decision, they can demand judicial review.<sup>13</sup> Extension of circumstances for release enables life prisoners to know what they should do to be eligible to release. Also, the Crime (Sentences) Act of 1997 entitles the Secretary of State to order release at any time.<sup>14</sup> It gives life prisoners a right to trigger a review of his im-

\*Aykhan Dadashov is an LL.M. student at American University Washington College of Law. He holds an LL.B. *magna cum laude* from ADA University School of Law in Azerbaijan.

1 *Hutchinson v. the United Kingdom*, No. 57592/08 (Jan. 17, 2017), <https://hudoc.echr.coe.int/?i=001-170347>.

2 *Vinter and Others v. the United Kingdom*, No. 66069/09, 130/10 and 3896/10 (July 9, 2013), <https://hudoc.echr.coe.int/?i=001-122664>.

3 Eur. Consult. Ass., *European Convention of Human Rights, European Convention of Human Rights*, (1950).

4 *Vinter*, *supra* note 2, at ¶ 13.

5 *Id.* at ¶ 97.

6 *Id.* at ¶ 108.

7 *Id.* at ¶ 114.

8 *Id.* at ¶ 106-118.

9 *Id.* at ¶ 126.

10 *Id.* at ¶ 125-131.

11 *R v. McLoughlin* (2014) EWCA Crim 188.

12 *Hutchinson*, *supra* note 1, at ¶ 19.

13 *Id.* at ¶ 52-53.

14 Crime (Sentences) Act 1997.

prisonment without waiting for a defined period. This possibility demonstrates that life prisoners' incarceration can be subject to review periodically. For the broad interpretation in *McLoughlin*, the ECtHR concluded in *Hutchinson* that whole life orders in the United Kingdom are reducible and therefore, do not violate Article 3.<sup>15</sup>

Although the ECtHR came to different conclusions in *Hutchinson* and *Vinter*, the ECtHR still considers life imprisonment without parole inhuman or degrading treatment or punishment. Irreducible life imprisonment is still incompatible with Article 3. The ECtHR held differently in *Hutchinson* because the United Kingdom broadened the domestic review mechanism with *McLoughlin* and gave life prisoners certainty for possibility of release and periodic review, main requirements for life imprisonment to be deemed reducible.<sup>16</sup> If nothing changed in the domestic law after *Vinter*, the ECtHR would have come to the same conclusion as it had in *Vinter*.

<sup>15</sup> *Id.* at ¶ 39-41; ¶ 54-72.

<sup>16</sup> *R v. McLoughlin* (2014) EWCA Crim 188.