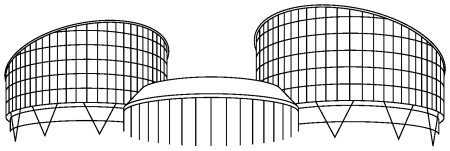

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LÁSZLÓ MAGYAR v. HUNGARY

(Application no. 73593/10)

JUDGMENT

STRASBOURG

20 May 2014

FINAL

13/10/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of László Magyar v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Helen Keller,
Paul Lemmens,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 15 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 73593/10) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr László Magyar ("the applicant"), on 9 December 2010.

2. The applicant, who had been granted legal aid, was represented by Mr D. Karsai, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant complained under Article 3 of the Convention about his life sentence with no parole eligibility and that the conditions of his detention were degrading.

Moreover, relying on Article 6 § 1 of the Convention, he complained about the length of his trial and the perceived lack of impartiality of the Regional Court which convicted him.

4. On 18 October 2011 the application was communicated to the Government.

5. On 7 February 2012 the President of the Section granted the Hungarian Helsinki Committee leave, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, to intervene as a third party in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966. Currently, he is detained at Szeged Prison.

7. It appears that on an unspecified date in 2002 criminal proceedings were initiated against the applicant and his accomplices.

8. As the investigation against the applicant and nine other defendants proceeded, the applicant was interrogated on numerous occasions as a suspect in connection with various violent crimes committed in many different villages. The investigation resulted in a case file of 25 large boxes. According to the material collected, the applicant and his co-defendants had committed a series of burglaries against lonely elderly people in various parts of the country. They had tied up the victims and beaten them or threatened them until they disclosed where their valuables were hidden and then left them tied up alone in their houses. Some of the victims had died soon after the assaults.

9. The bill of indictment submitted on 26 June 2003 was 48 pages long, concerned ten defendants, and proposed the hearing of 72 witnesses and two forensic medical experts. The applicant was indicted on 3 counts of homicide, 19 counts of robbery, 19 counts of infringement of personal liberty, 4 counts of assault causing grievous bodily harm, 7 counts of trespass and 3 counts of theft or attempted theft.

10. After 34 hearings held from 4 February 2004 onwards, on 12 May 2005 the Jász-Nagykun-Szolnok County Regional Court convicted the applicant of murder, robbery and several other offences, in a 135-page-long judgment. The applicant was, as a multiple recidivist, sentenced to life imprisonment without eligibility for parole, that is, whole life sentence (*tényleges életfogytiglan*).

11. On appeal, the Debrecen Court of Appeal held a preparatory meeting on 21 November 2005 and a hearing on 21 January 2006. It quashed the first-instance judgment on 25 January 2006 and remitted the case to the Regional Court.

12. In the resumed proceedings before the Regional Court, an amended bill of indictment was preferred on 31 August 2006 and 27 hearings were held between 25 October 2006 and 19 November 2008. Several forensic medical and graphology experts were appointed in order to verify the defence of a co-defendant to the effect that he could not have taken part in the commission of one of the crimes he was charged with since he had undergone an operation on his knee – under a false name – and was not able to walk. Although this issue was irrelevant for the applicant, it appeared to be crucial for the determination of the charges against his co-defendant.

13. On 19 November 2008 the Regional Court again convicted the applicant. The applicant submitted that the judge hearing his case this time used to be the trainee of the judge who had tried his case in the first proceedings before the Regional Court.

14. The Regional Court's judgment was 161 pages long and covered 33 cases of crimes committed by the ten defendants. The applicant, as well as the above-mentioned co-defendant, was again sentenced to life imprisonment without eligibility for parole.

15. On appeal, the Debrecen Court of Appeal held hearings on 29 June, 28 September, and 14 and 16 December 2009. In its judgment of 16 December 2009 the Court of Appeal re-characterised the offences of which the applicant had been convicted but upheld his sentence of life imprisonment without eligibility for parole. In order to reflect differences between the attitude of the applicant during the trial and that of the above-mentioned co-defendant (who contributed to the establishment of the facts and expressed remorse) and to make their punishments respectively proportionate, the co-defendant's sentence was mitigated: he was no longer excluded from eligibility for parole.

16. On 28 September 2010 the Supreme Court upheld this sentence.

17. The applicant submitted that his cell at Szeged Prison, the dimensions of which are five by two metres, accommodates another inmate and the toilet is adjacent to his bed and table.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. Section 40 (1) of Act no. IV of 1978 on the Criminal Code (as in force at the material time and until 30 June 2013 when it was replaced by Act no. C of 2012 on the Criminal Code) provided as follows:

> "Imprisonment shall last for life or a definite time."

19. Section 47/A of the Act no. IV of 1978 on the Criminal Code, as in force since 1 March 1999, provided as follows:

> "(1) If a life sentence is imposed, the court shall define in the judgment the earliest date of the release on parole or it shall exclude eligibility for parole.
>
> (2) If eligibility for parole is not excluded, its date shall be defined at no earlier than 20 years. If the life sentence is imposed for an offence punishable without any limitation period, the above-mentioned date shall be defined at no earlier than 30 years."

20. Article 9 of the Fundamental Law (as in force since 1 January 2012) provides as follows:

> "(4) The President of the Republic shall
>
> ...
>
> g) exercise the right to grant individual pardon.

...

(5) Any measure and decision of the President of the Republic under paragraph (4) shall be subject to the countersignature of a government member. An Act may provide that a decision within the statutory competence of the President of the Republic shall not be subject to a countersignature."

21. Act no. XIX of 1998 on the Code of Criminal Procedure provides as relevant:

Section 597

"(1) Motions for pardon ... in respect of suppressing or reducing sanctions not yet executed ... shall be submitted – *ex officio* or on request – to the President of the Republic – by the Minister in charge of justice.

...

(3) [Such a r]equest may be introduced by the defendant, his/her lawyer or ... relative. ...

(4) A [pardon] request ... concerning a sanction not yet executed must be introduced with the first-instance trial court.

(5) In the course of the pardon procedure, the court shall obtain ... such personal particulars of the defendant as necessary for the decision on pardon."

Section 598

"(1) The court ... shall forward the case documents and the request to the Minister in charge of justice. ...

(3) The Minister in charge of justice shall forward the request to the President of the Republic even if s/he does not endorse it."

22. As regards the practice of the presidential pardon, it is to be noted that, since the introduction, in 1999, of the possibility to exclude eligibility for parole, there has been no decision to grant clemency to any prisoner serving a whole life term.

III. RELEVANT EUROPEAN, INTERNATIONAL AND COMPARATIVE LAW

23. The relevant texts of the Council of Europe, the European Union and other international legal texts on the imposition and review of sentences of life imprisonment, including the obligations of Council of Europe member States when extraditing individuals to States where they may face such sentences, are set out in *Kafkaris v. Cyprus* ([GC], no. 21906/04, §§ 68-76, ECHR 2008), and *Vinter and Others v. the United Kingdom* ([GC], nos. 66069/09, 130/10 and 3896/10, §§ 60-75, 9 July 2013).

24. The relevant Council of Europe and international instruments on the objectives of a prison sentence, notably as regards the importance to be attached to rehabilitation, are outlined in *Dickson v. the United Kingdom*

([GC], no. 44362/04, §§ 28-36, ECHR 2007-V) and summarised in *Vinter* (cited above, §§ 76-81).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that his whole life sentence was incompatible with Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

26. The Government contested that argument.

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The applicant

28. The applicant argued that his whole life term was neither *de iure* nor *de facto* reducible and thus violated Article 3 of the Convention.

29. He pointed out that, unlike in the case of *Kafkaris* (cited above), the clemency decision of the President of the Republic had to be counter-signed by the Minister of Justice. Such clemency was therefore a purely discretional political decision not governed by any provision of law concerning its merits.

30. He added that the decision on clemency completely lacked foreseeability and that the whole procedure was completely impenetrable as neither the President nor the Minister was obliged to give reasons for the decision. He disagreed with the findings of *Törköly v. Hungary* (no. 4413/06, 5 April 2011; otherwise considered by the applicant distinguishable from the present case as it concerned life imprisonment with the possibility of conditional release), according to which nothing indicated that requests for pardon were not duly or individually considered. In his

opinion, due and individual consideration had not been proven by the Government.

31. The applicant was of the view that the same test should apply to a request for pardon as applied by the Court in Article 13 cases, which provides that a remedy, in order to be compatible with the Convention, shall be available in theory and practice, capable of providing redress in respect of the applicant's complaint and offer a reasonable prospect of success.

32. Given the purely discretionary, political and unforeseeable nature of the presidential pardon, it could not be classified as "law" for the purposes of the protection of a core Convention right. He argued that although the Court in *Kafkaris* had accepted in theory that a "non-judicial" legal way might satisfy the requirements of Article 3, it had never been established in the Convention case-law that any clearly non-legal way could be compatible with that provision. Presidential clemency, being undoubtedly of a non-legal nature and completely unforeseeable, could not be classified as a *de iure* existing possibility of release.

33. As regards *de facto* reducibility the applicant submitted that the practice of presidential pardon consisted in the fact that nobody who had been sentenced to life imprisonment without eligibility for parole had so far been granted clemency. Therefore, in his view, the existence of *de facto* reducibility could not be established in view of the actual practice which simply showed no hope for release.

34. The applicant stressed that the suffering from the fact that one would never be released had started on the very first day of the imprisonment. The right to a hope of release must exist from the very beginning of a sentence and was not a right "to be acquired" depending on the time already served.

b. The Government

35. The Government submitted that the applicant's life sentence was reducible both *de iure* and *de facto*; he had not been deprived of all hope of being released from prison one day. They argued that his sentence was therefore compatible with Article 3 of the Convention.

36. As regards *de iure* reducibility, the Government referred to the Court's admissibility decision in *Törköly* (cited above) in which the Court was satisfied, taking into account among other factors the institution of presidential clemency (see paragraphs 20 and 21 above), that the possibility of eventual release existed in the domestic law.

37. While admitting that there had been no decision to date to grant clemency to any prisoner serving a whole life term, the Government argued that this fact did not suffice to prove that this kind of penalty is irreducible *de facto*. In their view, no practice of presidential pardon could be expected to have emerged, having regard to the short time since this measure had been in force. Moreover, the Government observed that no standard of "real hope" had been set by the Court's case-law, according to which only a hope,

but not the certainty, of obtaining release was required. They argued that the uncertainty of ever obtaining a release on pardon could not be equated with the certainty of never obtaining a pardon, and only the latter certainty would justify the conclusion that the prisoner had no prospect of release. They referred to *Kafkaris* (cited above), arguing that it was the question as to whether a life prisoner can be said to have any prospect of release that had to be ascertained in determining whether a life sentence could be regarded as irreducible.

38. They also stressed that the Court had already established in *Törköly* that convicts in Hungary were free to introduce a request for pardon at any time after their conviction and as many times as they wish. Each of those requests was duly and individually considered, taking into account a great variety of factors which were likely to affect the decision. In determining whether the applicant's life sentence was reducible, it was not the level of probability of the favourable outcome of the pardon proceedings but rather the availability of such proceedings (being always necessarily of a discretionary nature) that was decisive: in particular, whether there was any authority having the power to reduce the applicant's life sentence when penological grounds no longer justify his detention and whether he could apply to the authority for a decision. They submitted that these conditions were met in the present case and therefore the applicant's life sentence was reducible.

39. The Government were also of the view that the issue of reducibility had been found to be irrelevant in *Vinter* (cited above), due to a newly established condition concerning the justification of the continued imprisonment on legitimate penological grounds. In this regard, they submitted that the applicant had so far served less than ten years of his sentence, which was much less than the statutory minimum period to be served of a life sentence before becoming eligible for parole. Offences such as those committed by the applicant, if they did not attract a life sentence, would normally entail a substantial sentence of imprisonment, perhaps of several decades, in any legal system. Therefore, any defendant who was convicted of such an offence must expect to serve a significant number of years in prison before he could realistically have any hope of release. Accordingly, in the Government's opinion, the irreducibility of a life sentence imposed after due consideration of all relevant mitigating and aggravating factors, as in the present case, would raise an issue under Article 3 of the Convention only when it is shown that the applicant's continued imprisonment can no longer be justified on any legitimate penological grounds (such as punishment, deterrence, public protection or rehabilitation), which was not the case in the applicant's situation.

40. In conclusion, the Government were of the opinion that the applicant in the present case did not have less hope of release than the applicants in the cases of *Kafkaris* (cited above), *Iorgov v. Bulgaria (no. 2)*,

no. 36295/02, 2 September 2010, *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, *Vinter* (cited above) and *Törköly* (cited above). They stressed that the possibility of granting presidential pardon made the applicant's life sentence *de iure* and *de facto* reducible and that there was no reason to conclude that the applicant's continued imprisonment could no longer be justified on any legitimate penological grounds.

c. The third party

41. The Hungarian Helsinki Committee expressed the opinion that the possibility of a presidential pardon did not mean that an actual life sentence in Hungary might be characterised as reducible in terms of the case-law of the Convention. They submitted that due to the discretionary nature of the pardon decision, the lack of reasoning of negative decisions, the lack of guidelines as to the aspects to be taken into account by decision-makers and the lack of publicly available, detailed data on decisions granting pardon, the possibility of parole remained entirely theoretical and did not mean a real hope or prospect for release in terms of the Court's case-law. In this regard, they disputed the conclusion of the *Törköly* case which suggested that requests for pardon were duly and individually considered. In their view, even though a defendant was free to introduce a request for pardon at any time after his conviction, the presidential pardon could not be considered a concrete and realistically attainable chance to regain freedom.

42. The third party cited statistical data and data on media coverage showing that pardon was in fact granted to a very limited number of detainees in Hungary. In addition, they pointed out that the President's pardon was only valid if countersigned by the respective Minister – which was not always the case, especially with politically sensitive issues.

43. With reference to Article 34 of the Convention, they submitted that the burden of proof about *de facto* reducibility of life sentences rested on the respondent State which, however, had failed to provide the necessary data.

44. In order to provide a comparative perspective, they referred to a decision of the Federal Constitutional Court of Germany (45 BVerfGE 187 (1977)) which stated that "the principle of the rule of law revealed that a humane execution of lifetime imprisonment can only be assured if the convict has a concrete and principally attainable possibility to regain freedom at a later point in time" and arrived at the conclusion that granting the possibility of a clemency is not sufficient in itself.

45. They also referred to recommendations Rec(2003)22, § 4.a and Rec(2003)23, § 2 of the Council of Europe's Committee of Ministers in the sense that they were in favour of conditional release and resettlement in society of all sentenced prisoners, including those sentenced to life.

2. The Court's assessment

a. General principles

46. It is well-established in the Court's case-law that a State's choice of a specific criminal justice system, including sentence review and release arrangements, is in principle outside the scope of the supervision the Court carries out at the European level, provided that the system does not contravene the principles set forth in the Convention (see *Kafkaris*, cited above, § 99). Contracting States must be allowed a margin of appreciation in deciding on the appropriate length of prison sentences for particular crimes. As the Court has stated, it is not its role to decide what is the appropriate term of detention applicable to a particular offence or to pronounce on the appropriate length of detention or other sentence which should be served by a person after conviction by a competent court (see *T. v. the United Kingdom* [GC], no. 24724/94, § 117, 16 December 1999; *V. v. the United Kingdom* [GC], no. 24888/94, § 118, ECHR 1999-IX; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI and Vinter, cited above, § 105).

47. For the same reasons, Contracting States must also remain free to impose life sentences on adult offenders for especially serious crimes such as murder: the imposition of such a sentence on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention (see *Kafkaris*, cited above, § 97). This is particularly so when such a sentence is not mandatory but is imposed by an independent judge after he or she has considered all of the mitigating and aggravating factors which are present in any given case (see Vinter, cited above, § 106).

48. However, as the Court also found in *Kafkaris*, the imposition of an irreducible life sentence on an adult may raise an issue under Article 3 (ibid.). There are two particular but related aspects of this principle that the Court considers necessary to reaffirm and to emphasise.

49. First, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under Article 3 if a life sentence is *de iure* and *de facto* reducible (see *Kafkaris*, cited above, § 98). In this respect, the Court would emphasise that no Article 3 issue could arise if, for instance, a life prisoner had the right under domestic law to be considered for release but this was refused on the ground that he or she continued to pose a danger to society. This is because States have a duty under the Convention to take measures for the protection of the public from violent crime and the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public (see, mutatis mutandis, T. v. the United Kingdom, § 97; and V. v. the United Kingdom, § 98, both cited above). Indeed, preventing a criminal from re-offending is one of the "essential functions" of a prison

sentence (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 72, ECHR 2002‑VIII; *Maiorano and Others v. Italy*, no. 28634/06, § 108, 15 December 2009; and, mutatis mutandis, *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 45, 17 January 2012). This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may already have served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous (see, for instance, *Maiorano and Others*, cited above).

50. Second, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought, for the reasons outlined in *Vinter* (cited above, §§ 110-118), to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy Article 3 (see *Kafkaris*, cited above, § 98). Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds (see *Vinter*, cited above, § 119).

51. However, the Court would reiterate that, having regard to the margin of appreciation which must be accorded to Contracting States in matters of criminal justice and sentencing (see paragraph 46 above), it is not its task to prescribe the form (executive or judicial) which that review should take. For the same reason, it is not for the Court to determine when that review should take place.

52. It follows from this conclusion that, where domestic law does not provide for the possibility of such a review, a whole life sentence will not measure up to the standards of Article 3 of the Convention.

53. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release.

A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration (see *Vinter*, cited above, § 122).

b. Application of those principles to the present case

54. It remains to be considered whether, in the light of the foregoing observations, the applicant's whole life order meets the requirements of Article 3 of the Convention.

55. At the outset, the present case is substantially different from *Törköly* (cited above), in that the applicant's eligibility for release on parole from his life sentence was not excluded in that case. In *Törköly*, it was in great part that distant but real possibility for release which lead the Court to consider that the applicant had not been deprived of all hope of being released from prison one day and, accordingly, to declare the complaint manifestly ill-founded for want of any appearance of a violation of Article 3 of the Convention.

56. It is true that in *Törköly* the Court also took into account that the applicant might be granted presidential clemency. However, in the present case where the applicant's eligibility for release on parole was excluded, a stricter scrutiny of the regulation and practice of presidential clemency is required.

57. Domestic legislation does not oblige the authorities or the President of the Republic to assess, whenever a prisoner requests pardon, whether his or her continued imprisonment is justified on legitimate penological grounds. Although the authorities have a general duty to collect information about the prisoner and enclose it with the pardon request (see section 597(5) of the Code of Criminal Procedure, cited in paragraph 21 above), the law does not provide for any specific guidance as to what kind of criteria or conditions are to be taken into account in the gathering and organisation of such personal particulars and in the assessment of the request. Neither the Minister of Justice nor the President of the Republic is bound to give reasons for the decisions concerning such requests.

58. Therefore, the Court is not persuaded that the institution of presidential clemency, taken alone (without being complemented by the eligibility for release on parole) and as its regulation presently stands, would allow any prisoner to know what he or she must do to be considered for release and under what conditions. In the Court's view, the regulation does not guarantee a proper consideration of the changes and the progress towards rehabilitation made by the prisoner, however significant they might

be (see paragraphs 50 and 53 above). The Court is therefore not persuaded that, at the present time, the applicant's life sentence can be regarded as reducible for the purposes of Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention.

59. In reaching this conclusion the Court would note that, in the course of the present proceedings, the applicant has not argued that, in his individual case, there are no longer any legitimate penological grounds for his continued detention. The finding of a violation under Article 3 cannot therefore be understood as giving him the prospect of imminent release.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicant further complained that the length of his trial had been incompatible with the "reasonable time" requirement of Article 6 § 1 which, in its relevant part, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ..."

61. The Government contested that argument, arguing in essence that the case had been quite complex, which had justified the duration of the procedure.

62. The period to be taken into consideration began in 2002 and ended on 28 September 2010 (see paragraphs 7 and 16 above). It thus lasted approximately eight years for three levels of jurisdiction, including a remittal from the Court of Appeal to the Regional Court (see paragraph 11 above).

A. Admissibility

63. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

64. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

65. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present

application (see *Borisenko v. Ukraine*, no. 25725/02, § 63, 12 January 2012; and *Pélissier and Sassi*, cited above, § 67).

66. In particular, the Court considers that the Government's arguments aiming to justify the impugned length are not convincing. While it is true that the case was of a certain complexity (see paragraphs 8-10, 12 and 14 above), the Court is of the view that the overall length was unacceptable, especially with regard to the fact that, in the resumed proceedings, the case was pending before the Regional Court alone for a period of almost two years and ten months (25 January 2006 to 19 November 2008, see paragraphs 11–13 above). In these circumstances, the Court finds that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Relying on Articles 3 and 6 § 1 of the Convention respectively, the applicant further complained about the conditions of his detention and the alleged bias of the Regional Court due to the fact that the judge in the resumed proceedings used to be the trainee of the judge who had heard his case in the first proceedings.

68. In the present case, the Court is satisfied that there is nothing in the case file disclosing any appearance that the living and sanitary conditions of the applicant amounted to inhuman or degrading treatment or that the courts lacked impartiality on account of the remote connection between the two judges referred to. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

69. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

70. Given these provisions, it follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned any sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects thereof (see

Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). With a view, however, to helping the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, ECHR 2009; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 255, 17 January 2012).

71. The present case discloses a systemic problem which may give rise to similar applications. The nature of the violation found under Article 3 of the Convention suggests that for the proper execution of the present judgment the respondent State would be required to put in place a reform, preferably by means of legislation, of the system of review of whole life sentences. The mechanism of such a review should guarantee the examination in every particular case of whether continued detention is justified on legitimate penological grounds and should enable whole life prisoners to foresee, with some degree of precision, what they must do to be considered for release and under what conditions.

72. The Contracting States enjoy a wide margin of appreciation in deciding on the appropriate length of prison sentences for particular crimes. The mere fact that a life sentence may eventually be served in full, does not make it contrary to Article 3 of the Convention. Accordingly, review of whole life sentences must not necessarily lead to the release of the prisoner in question.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

74. The applicant claimed altogether 65,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government contested this claim.

76. In respect of the applicant's complaint under Article 3, the Court considers that its finding of a violation constitutes sufficient just satisfaction and accordingly makes no award under this head. For the violation found under Article 6 § 1, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant also claimed EUR 6,350 for the costs and expenses incurred before the Court. This sum corresponds to 25 hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT.

78. The Government contested this claim.

79. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 for the proceedings before the Court, less EUR 850 which the applicant received through the Council of Europe's legal aid scheme, that is, EUR 4,150.

C. Default interest

80. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning the applicant's whole life sentence and the length of the criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention;

3. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*, unanimously, that the finding of a violation constitutes sufficient just satisfaction in respect of the violation of Article 3 of the Convention;

5. *Holds*, by six votes to one, that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage sustained on account of the

violation of Article 6 § 1, to be converted into Hungarian forints at the rate applicable at the date of settlement;

6. *Holds*, unanimously, that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,150 (four thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Hungarian forints at the rate applicable at the date of settlement;

7. *Holds*, unanimously, that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Guido Raimondi
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Lemmens is annexed to this judgment.

G.R.A.
S.H.N.

PARTIALLY DISSENTING OPINION OF JUDGE LEMMENS

1. I voted with my colleagues that there has been a violation of Articles 3 and 6 § 1 of the Convention. I also fully agreed that the finding of a violation constitutes sufficient just satisfaction in respect of the violation of Article 3 of the Convention.

2. I voted against the majority in its award of non-pecuniary damages on account of the violation of Article 6 § 1. The applicant has been convicted of many serious offences, including three homicides, robberies, infringements of personal liberty and assaults causing grievous bodily harm. In these circumstances, I do not consider it appropriate to make an award for non-pecuniary damage. In my view, the Court's finding constitutes sufficient just satisfaction for the violation of the reasonable-time requirement, too.