[Petukhov v. Ukraine (no.2)](http://www.prisonlitigation.org/?email_id=116&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTkxNzAz&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank) (no. 41216/13)

The applicant had been sentenced to life imprisonment. He complained, inter alia, that he had not been provided with adequate medical assistance in detention and that his life sentence was *de jure* and *de facto* irreducible.

*Complaint under Article 3*

(a)  Medical care in detention – The applicant had suffered an irreversible deterioration in his health. During the period under consideration he had suffered a recurrence of his pulmonary tuberculosis and further medical treatment had been found to be devoid of any prospect of success.

It had not been disputed that the applicant had been regularly examined by various doctors and subjected to various screening and laboratory tests. It could not therefore be said that the respondent State had left him unattended. However, the question remained as to whether the State’s response to the applicant’s disease had proved to be an effective one. The domestic authorities had acknowledged, on several occasions, that there had been a shortage of anti-tuberculosis medication in the prison. The authorities’ inability to assure a regular, uninterrupted supply of essential anti-tuberculosis drugs to patients was a key factor in the failure of tuberculosis treatment.

The Court had previously noted evidence of poor medical assistance and protection against tuberculosis in Ukrainian detention facilities. Ukraine was among the countries reporting the highest rate of failure in tuberculosis treatment. Drug-resistant tuberculosis had continued to spread and the reasons for that included continued shortages of first-line drugs and lack of access to second-line full treatment schemes, especially in prison settings. Further, there was an absence of any legal framework for ensuring palliative care in prisons and no particular medical arrangements had been made for the applicant in that regard.

Conclusion: violation (unanimously).

(b)  Irreducible life sentence – Life prisoners in Ukraine could expect to regain their liberty in two cases: firstly, if they had a serious illness preventing their further imprisonment, or, secondly, if they were granted presidential clemency.

The commutation of life imprisonment because of terminal illness, which meant that a prisoner was allowed to die at home or in a hospice rather than behind prison walls, could not be considered as a “prospect of release”, as the notion was understood by the Court. Accordingly, the regulation and practice of presidential clemency, being the only possibility for mitigating life sentences in Ukraine, called for stricter scrutiny.

The Clemency Procedure Regulations provided guidance as to the criteria and conditions for review of a life sentence and could be construed as referring to legitimate penological grounds for the continuing incarceration of prisoners. It was noteworthy, however, that those considerations were applicable in the context of a broader restriction. Namely, that “persons convicted for serious or particularly serious crimes, or having two or more criminal records in respect of the commission of premeditated crimes ... may be granted clemency in exceptional cases and subject to extraordinary circumstances”. All life prisoners clearly fell within that category. It was not known what was meant by “exceptional cases” or “extraordinary circumstances”. Prisoners who had received a whole-life sentence did not therefore know from the outset what they might have to do in order to be considered for release and under what conditions.

There was a lack of sufficient clarity and certainty in the applicable criteria and conditions for a life-sentence review under the presidential clemency procedure. The procedure did not require reasons to be given in decisions regarding requests for clemency and no activity reports had been published detailing the examination of requests for clemency. The absence of an obligation to give reasons was further aggravated by the lack of any judicial review of those decisions. In such circumstances, the exercise by life prisoners of their right to a review of their life sentence by way of presidential clemency could not be regarded as being surrounded by sufficient procedural guarantees.

European penal policy placed emphasis on the rehabilitative aim of imprisonment. Though States were not responsible for achieving the rehabilitation of life prisoners, they nevertheless had a duty to make it possible for such prisoners to rehabilitate themselves. The obligation to offer a possibility of rehabilitation was to be seen as an obligation of means, not one of result. However, it entailed a positive obligation to secure prison regimes for life prisoners which were compatible with the aim of rehabilitation and enabled such prisoners to make progress towards their rehabilitation. Life prisoners in Ukraine were segregated from other prisoners and spent up to twenty-three hours per day in their cells, which were usually double or triple occupancy, with little in terms of organised activities and association. The existing regime for life prisoners in Ukraine was incompatible with the aim of rehabilitation.

Conclusion: violation (unanimously).

*Application of Article 46*

The applicant’s case, in so far as it concerned the irreducibility of a life sentence, disclosed a systemic problem calling for the implementation of measures of a general character. There were already over sixty similar applications pending before the Court and many more could follow.

Contracting States enjoyed a wide margin of appreciation in deciding on the appropriate length of prison sentences for particular crimes. The mere fact that a life sentence might eventually be served in full did not make it contrary to Article 3. Accordingly, review of whole-life sentences did not necessarily need to lead to the release of the prisoner in question. For the proper execution of the judgment, the respondent State would need to put in place a reform of the system of review of whole-life sentences. The mechanism of such a review had to guarantee the examination in each case of whether continued detention was justified on legitimate penological grounds and had to enable whole-life prisoners to foresee, with some degree of precision, what they had to do to be considered for release and under what conditions, in accordance with the standards developed in the Court’s case-law.

*© Council of Europe/European Court of Human Rights*