

When all hope is gone

If a whole life sentence has no prospect of release then does this ultimately amount to inhuman treatment of those receiving the sentence, asks David Rhodes

WHAT IS THE meaning of ‘whole life’ imprisonment without any hope of redemption? In the case of *Regina v Bieber* [2008] EWCA Crim 1601, the Court of Appeal considered whether the ‘whole life’ sentence was compatible with Art.3 of the European Convention on Human Rights, the prohibition of inhuman and degrading treatment.

Shot through the head

On Boxing Day 2003, Bieber was stopped driving a stolen BMW. He was arrested and put into a police car. As he was being handcuffed, he produced a concealed firearm and shot PC Broadhurst in the chest and then shot two other officers in the back as they fled the scene. PC Broadhurst lay on the ground unable to do anything to prevent Bieber’s escape. Nevertheless, Bieber stood over him and callously shot him through the head. He was duly convicted of murder, attempted murder and firearms offences.

Schedule 21 of the Criminal Justice Act 2003 suggests a tariff starting point of 30 years for the murder of a police officer in the course of his duty, murder using a firearm and multiple murders.

The sentencing judge took that as a starting point but said that the second shot at the disabled and vulnerable PC Broadhurst was so aggravating and grave that a whole life sentence was required.

On appeal, in light of the recent Strasbourg case of *Kafkaris v Cyprus* (App No. 21906/04, 12 February 2008), Bieber argued that an irreducible whole life sentence, without any prospect of release or reconsideration of the facts of the case, regardless of any rehabilitation of the offender, amounted to inhuman and degrading treatment contrary to Art. 3 ECHR.

Lord Phillips CJ, giving the judgment of the court, reviewed the domestic and European jurisprudence. In *ex parte Hindley* [1998] QB 751, Lord Bingham CJ said English law has always regarded a whole life tariff as lawful. However, in that case, which predated the 2003 Act, emphasis was placed on the fact that the home secretary had a policy of periodically reviewing life sentences, even whole life tariffs. So there was a possibility of hope.



The appellant cited European jurisprudence. As long ago as 1977, the German Federal Constitutional Court had observed that long periods of imprisonment can turn people into spiritual and physical wrecks. Life imprisonment was only compatible with the basic law because there was the possibility of release on parole. The Constitutional Court observed: “The core of human dignity is struck if the convicted criminal has to give up any hope of regaining freedom no matter how his personality develops”.

By way of analogy, the appellant cited the 2002 European Framework Document, which governs the European Arrest Warrant system in which member states agreed that extradition on a EAW might be conditional upon the requesting state having a system of review of penalties “at the latest after 20 years, for the application of . . . clemency”.

So there the member states had agreed that however heinous the crime, an offender should not be denied the prospect of release.

In *Kafkaris v Cyprus*, the Strasbourg Court held that a whole life sentence did not violate Art. 3, but only because the Cyprus government contended that it was not an ‘irreducible’ sentence, because there was provision for the president, with the attorney-general, to order the release of the prisoner.

Judge Bratza said: “I consider that the time has come when the court should clearly affirm that the imposition of an irreducible life sentence . . . is in principle inconsistent with Art.3. What amounts to ‘irreducible’ . . . has been variously described as a sentence . . . with no ‘possibility’ or ‘hope’ or ‘prospect’ of release . . . A life sentence is not irreducible

merely because the possibility of release is limited nor because, in practice, the sentence may be served in full.”

However, five dissenting judges concluded that Art.3 had been violated because they could not accept that under the provisions in Cyprus the applicant had a ‘real and tangible prospect of release’. They said, “once it is accepted that the legitimate requirement of sentencing entails reintegration, questions may be asked as to whether a term that jeopardises that aim is not in itself capable of constituting inhuman and degrading treatment.”

In Bieber’s case, Lord Phillips concluded with strained logic. He said that although the Art.3 issue will arise where a mandatory and irreducible whole life tariff is imposed regardless of the particular circumstances of the crime, it did not follow from the majority of the Grand Chamber judgment in *Kafkaris* that an irreducible life sentence would necessarily violate Art.3 where the judge had deliberately said that only a whole life tariff would meet the legitimate aims of punishment and deterrence. That said, he recognised that the tide of Strasbourg meant that this position may well change. He said that it was not the sentence itself which violated Art.3 so much as the continued detention once those sentencing aims had been met. Accordingly, that was the time to raise a complaint.

Moreover, there still remained a possibility of release for whole life prisoners under s.30 Crime (Sentences) Act 1997, which permits the secretary of state to order release where there are exceptional circumstances on “compassionate grounds”, such as terminal illness. Yet Lord Phillips carefully avoided the issue that such a power was in the hands of the executive rather than the judiciary.

No hope of reform and redemption

This is a powerful judgment, but its conclusion is troubling. If the whole life prisoner’s only realistic prospect of release is when he is terminally ill, what then is left of the hope of reform and redemption? If that is the only hope, then it is no hope at all. And once hope is gone, is that not then inhuman?

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