

## Questions and answers on the Bodein v. France judgment

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### 1. Who is the applicant in this case?

The applicant is Pierre Bodein, a French national who was born in 1947 and is currently serving a sentence of life imprisonment – the heaviest sentence available in France – in Moulins Prison (France) for three murders, including two committed against minors under the age of 15, preceded or accompanied by rape. This sentence was imposed with final effect on 20 January 2010, after the dismissal of his appeal on points of law.

### 2. What are the main issues in this case?

This case raises two questions:

#### *1. Statement of reasons for Assize Court judgments:*

In his application Mr Bodein complains that no reasons were provided for the Assize Court judgment sentencing him to life imprisonment.

In several cases against France of 10 January 2013<sup>1</sup>, the Court reiterated that the Convention did not require jurors to give reasons for their decision and that Article 6 (right to a fair trial) of the Convention did not preclude a defendant from being tried by a lay jury even where reasons were not given for the verdict. Article 6 does, nevertheless, require defendants to be provided with sufficient safeguards to prevent arbitrariness and enable them to understand why they have been found guilty. In order to determine whether this happened in Mr Bodein's case, the Court followed the same approach as in the aforementioned cases and took into consideration the safeguards provided to defendants under French criminal procedure (which it considered sufficient), and also, in each case during the trial before the Assize Court of Appeal, the combined impact of the indictment and the questions to the jury. Having completed this assessment, the Court considered that Mr Bodein had had sufficient information and safeguards against arbitrariness and that the procedure used had been such as to enable him to understand why he had been found guilty.

#### *2. Review of a life sentence:*

In its *Vinter and Others v. the United Kingdom* judgment<sup>2</sup>, the Court reiterated that States were free to impose life sentences on adult offenders for especially serious crimes such as murder. However, if a life sentence was to remain compatible with Article 3 (prohibition of inhuman or degrading treatment) of the Convention it had to be reducible, or in other words there had to be a prospect of the prisoner's release and the possibility of a review of the sentence.

It is for the national authorities to decide when such a review must take place. Nevertheless, a clear trend is emerging in comparative and international law in favour of a mechanism guaranteeing a review of life sentences at the latest 25 years after their imposition.

In *Vinter*, the Court found a violation of Article 3 owing to the uncertainty of the law (in particular as regards deadlines and conditions) concerning the prospects of release for life prisoners and the lack of a mechanism for special review of whole life sentences.

<sup>1</sup> See *Agnelet v. France*, (no. 61198/08, 10 January 2013), *Oulahcene v. France* (no. 44446/10, 10 January 2013), *Voica v. France* (no. 60995/09, 10 January 2013), *Legillon v. France* (no. 53406/10, 10 January 2013) and *Fraumens v. France* (no. 30010/10, 10 January 2013).

<sup>2</sup> See *Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10 (GC), 9 July 2013.

### 3. What does the judgment say? Why a finding of no violation in respect of the sentence imposed on Mr Bodein?

Mr Bodein was sentenced to life imprisonment without any possibility of sentence adjustment.

The Court reiterates (see *Vinter* judgment) that even prisoners serving life sentences for the most serious crimes must be able to obtain a review of sentence. It notes that French law provides for judicial review of the life prisoner's situation geared to determining his or her dangerousness and taking into account how he or she has changed while serving his sentence. Article 720-4 of the Code of Criminal Procedure provides for judicial review of a life prisoner's situation and possible sentence adjustment after 30 years' incarceration (under Article 720-4 of the Code of Criminal Procedure). In order to conduct this review, the post-sentencing judge appoints a panel of three medical experts to produce an opinion on the prisoner's dangerousness. On the basis of this opinion, a Court of Cassation judicial board then has to decide whether or not to continue implementing the special decision by the Assize Court not to grant any kind of sentence adjustment. In the event of a favourable decision the life prisoner is again entitled to apply for such adjustment.

The Court considers that such a review leaves no uncertainty as to the existence of a "prospect of release" from the time of imposition of the sentence, in conformity with the requirements of Article 3 of the Convention.

In Mr Bodein's case, such a review will be available 26 years after the final judgment imposing his sentence, that is to say in 2034 (the deprivation of liberty undergone since the detention order of 1 July 2004 is taken as the starting point for the life tariff). The Court therefore held that Mr Bodein's life sentence may be considered reducible.

### 4. Does that mean that Mr Bodein will be released?

In 2034, at the age of 87, Mr Bodein will be able to apply to the post-sentencing judge to lift of the special decision of the Assize Court not to grant him any sentence adjustment measure, in accordance with the procedure laid down in Article 720-4 of the Code of Criminal Procedure.

If the judges of the Court of Cassation decide to terminate this special decision, Mr Bodein will be eligible for sentence adjustment measures, including release on parole.

Mr Bodein also has the possibility of applying to the President of the Republic for a pardon and requesting a stay of sentence on medical grounds, although the Court does not consider these as effective review mechanisms such as to ensure the reducibility of a life sentence.

### 5. Are life sentences contrary to the Convention?

No Convention provision prohibits, in itself, the sentencing of an adult criminal to life imprisonment. Nor does Article 3 prohibit life sentences from being able, in practice, to be served in full.

On the other hand, in order to be compatible with Article 3, such a sentence must not be irreducible. In assessing this requirement, the Court must ascertain whether the life prisoner has a "prospect of release" and whether domestic law provides a "possibility of review" of the sentence with a view to commuting, suspending or terminating it or releasing the prisoner. He or she must be apprised of all the terms and conditions of such a review at the outset of his or her sentence.

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