

**Appendix no. II**

to the second Submission by NJCM, Forum Levenslang, and NHC, under rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements regarding the execution of the judgment of the European Court of Human Rights in the case of *Murray v the Netherlands* (Application no. 10511/10), dated 23<sup>rd</sup> September 2019

**LIST OF COURT PROCEEDINGS**

concerning three detainees sentenced to life imprisonment, who are serving the longest prison sentence in the Netherlands. The list includes proceedings as regards their life sentences' compatibility with Article 3, particularly in the light of the requirement to offer rehabilitation and a review mechanism for a possible reduction of the life sentence.

**CONTENTS**

Abbreviations: ..... 2

1) Y., detained since April 1983, ..... 3

2) C., detained since October 1987 ..... 5

3) S., detained since December 1992 ..... 7

**Abbreviations:**

- ACL = Adviescollege Levenslanggestraften (Advisory Board Life prisoners, in operation since March 2017), gives advise to the Minister about the possible reintegration activities of a life prisoner after he has been detained for 25 years.
- HR = Hoge Raad (Supreme Court of the Netherlands)
- RSJ = Beroepscommissie van Raad voor de Strafrechtstoepassing en Jeugdbescherming (Appellate Committee in the Council for the Administration of Criminal Justice and Protection of Juveniles), the highest competent judge in penitentiary matters, such as 'leave'.

**1) Y., detained since April 1983.**

**Y. was transferred to a Forensic Psychiatric Centre or FPC (formerly called 'TBS clinic') in 2001 according to the reintegration pardoning policy applicable at the time. Since November 2016 he has been granted 'transmural leave'.**

1. President of the RSJ 6<sup>th</sup> September 2007 (suspension proceedings)  
Y. claims suspension of the decision to withdraw his (accompanied) leave and reauthorisation of his leave. His claim is inadmissible, this type of proceeding not offering that possibility.
2. District Court of The Hague, 2<sup>nd</sup> October 2007, (summary injunction judge)  
[ECLI:NL:RBSGR:2007:BB4626](#)  
Y. claims a prohibition to the State to retransfer him to a penitentiary facility. The Court declares his claim inadmissible and refers him to the RSJ.
3. RSJ 31<sup>st</sup> March 2008, [07/2372/TR](#)  
The withdrawal of the authorisation to accompanied leave, dated 24<sup>th</sup> August 2007, is 'unreasonable and unfair'.
4. RSJ 12<sup>th</sup> July 2010, [09/3625/TR](#)  
The withdrawal of the authorisation to accompanied leave is 'unreasonable and unfair'.
5. Court of Appeal The Hague 23<sup>th</sup> November 2010, [ECLI:NL:GHSGR:2010:BO5022](#)  
The Court of Appeal annuls the sentence of the Court of The Hague of 2<sup>nd</sup> October 2007 (point 2) and orders the Dutch State to cooperate with the leave procedure. The Court of Appeal, inter alia, holds that the Dutch State unjustly failed to consider Y.'s interests and expectations raised.
6. District Court of The Hague, 9<sup>th</sup> September 2011, (summary injunction judge)  
[ECLI:NL:RBSGR:2011:BS1096](#)  
The State Secretary's view that Y., being a life prisoner, is not eligible for unaccompanied leave, 'because the ground for this type of leave, i.e. resocialisation, is non-existent' is unjust. Neither is his view that the claimant's interests are sufficiently served by accompanied leave, is a justified reason to deny unaccompanied leave. However, Y.'s interests as to unaccompanied leave do not (after 28 years now) outweigh the victims' and survivors' interests and the social unrest that would be caused by unaccompanied leave.
7. Supreme Court (HR), 14<sup>th</sup> October 2011, [ECLI:NL:HR:2011:BR3058](#)  
The Court of Appeal's ruling that the interests of the defendant and the expectations raised have not been considered is 'by no means incomprehensible'.
8. Court of Appeal The Hague, 13<sup>th</sup> December 2011, [ECLI:NL:GHSGR:2011:BU7546](#)  
The State was not allowed to refuse unaccompanied leave solely because of a change in policy towards the execution of life sentences. The request could however be refused with a view to the victims, for whom the scheme of victim support has started - regretfully - only after 2009.
9. Court of Appeal The Hague, 19<sup>th</sup> March 2014 (as advising court in the pardoning procedure).  
The Court of Appeal wishes to be better informed within six months. 'Given the uncertainty the claimant has been living with since a long time', the Court considers a period of six months appropriate.
10. District Court of The Hague, 28<sup>th</sup> April 2014 (summary injunction judge),  
[ECLI:NL:RBDHA:2014:5216](#)

- The Dutch State is ordered to decide upon the request for unaccompanied leave within two weeks, imposing a penalty (in case of non-compliance) upon the State for 'slack behaviour'.
11. District Court of The Hague, 10<sup>th</sup> July 2014 (summary injunction judge),  
[ECLI:NL:RBDHA:2014:8409](#)  
The State is ordered to cooperate with unaccompanied leave. In fact, the State Secretary lets his decision 'totally depend' on feelings of victims and survivors, 'who thus are made de facto responsible for his decision. Such an influential role does not agree with the (...) role of the victim as participant in a criminal trial'.
  12. Court of Appeal The Hague, 28<sup>th</sup> October 2014 (as advising court in the pardoning procedure).  
The Court advises to reject the request for pardon because the continued execution of the sentence still serves penological purposes and considering the expert reports' advice that 'a few more years' will be necessary to achieve a possible 'complete reintegration' in society.
  13. District Court of The Hague, 20<sup>th</sup> January 2015 (summary injunction judge),  
[ECLI:NL:RBDHA:2015:499](#)  
Based on the ECtHR Vinter judgment, the State has an obligation to disclose under which circumstances and on what conditions pardon will be granted. Under this obligation, a consultancy between the parties and the clinic, allowing the clinic to tune any further treatment of the claimant to his future perspectives, would be appropriate. However, at this stage of the pardoning procedure consultancy is out of the question, the claim is rejected.
  14. District Court of The Hague, 7<sup>th</sup> May 2015 (summary injunction judge),  
[ECLI:NL:RBDHA:2015:5534](#)  
The State is ordered to consult Y., his lawyer and the clinic as to the conditional final goal of Y.'s resocialisation programme. From earlier agreements with Y. it follows that the role of the State within the scope of a possible request for pardon is an active one. The state may not withdraw from that active role by just referring to changes in its organisation.
  15. District Court of The Hague, 29<sup>th</sup> October 2015 (summary injunction judge),  
[ECLI:NL:RBDHA:2015:12379](#)  
Being premature, the claim for consultancy is rejected. The Court however points out to the State that after a successful completion of a resocialisation programme it has to cooperate with a request for pardon in a constructive way (par. 4.6).
  16. Court of Appeal The Hague, 6<sup>th</sup> September 2018 (as advising court in the pardoning procedure).  
The Court of Appeal advises the King unanimously to allow Y's request for pardon.
  17. District Court of The Hague, 21<sup>st</sup> December 2018 (summary injunction judge),  
[ECLI:NL:RBDHA:2018:15292](#)  
The State is ordered to present a pardoning proposal to the Crown (King plus Minister(s)) within two months.
  18. District Court of The Hague, 17<sup>th</sup> April 2019 (summary injunction judge),  
[ECLI:NL:RBDHA:2019:3769](#)  
The State is ordered to revoke the rejection of Y's request for pardon.
  19. Court of Appeal The Hague, 6<sup>th</sup> May 2019, [ECLI:NL:GHDHA:2019:1167](#)  
The Court of Appeal annuls the sentence of the Court of 17<sup>th</sup> April 2019. Instead, the State is ordered to decide upon Y's new request for pardon within four months.
  20. District Court of The Hague, 24<sup>th</sup> June 2019 (summary injunction judge),  
[ECLI:NL:RBDHA:2019:6270](#)  
Taken into account the long-term uncertainty about the outcome of the pardon procedure Y.'s claim for a meeting with the parties concerned is understandable, but the judge cannot

command the Government to hold a session about this issue with Y. and the TBS clinic (where Y. is being treated for the past 18 years).

## 2) C., detained since October 1987

1. Court of Appeal The Hague, 18<sup>th</sup> October 2013 (as advising Court in the pardoning procedure).  
The Court informs the King that contrary to ECtHR case law – by no fault of C. – no activities whatsoever, focused on his possible resocialisation, have taken place. The Court advises to defer the decision on the request for pardon one year, after which the Court wishes to be informed about the progress made.
2. District Court of The Hague, 18<sup>th</sup> September 2014 (summary injunction judge), [ECLI:NL:RBDHA:2014:11541](#)  
The State is ordered to offer resocialisation activities, to be considered when evaluating a new request for pardon (contrary to Court of Appeal's advice the former pardon request has been rejected).
3. RSJ, 18<sup>th</sup> December 2014, [14/3242/GV](#) (interim decision)  
The RSJ wishes to be informed further of the progress made due to resocialisation activities ordered by the Court on 18<sup>th</sup> September 2014.
4. Dutch Ombudsman, 29<sup>th</sup> December 2014 ([report number 2014/222](#))  
The State Secretary when evaluating C.'s request for pardon has insufficiently respected C.'s human rights not considering any information as to C.'s resocialisation and given the very long duration (over two years) of the evaluation process.  
'The Ombudsman has the impression that the lack of transparency and diligence is a result of the unwillingness of the State Secretary to effectively comply to the human rights check required by the ECtHR in the Vinter sentence. In the two cases of life prisoners who filed a request for (preparation to their) pardon after having served 25 years or more, the position of the State Secretary seems to be that pardoning must be prevented no matter what. One of the means seems to be to delay procedures. If the State Secretary truly means to use the pardoning procedures for the check on compatibility with article 3 of the ECHR of the execution of life sentences, he may be expected to conduct the procedures with diligence and transparency.'
5. RSJ, 19<sup>th</sup> May 2015, [14/3242/GV](#) (final decision)  
In order to fully use the possibility to resocialise, the opportunity to go outside the prison walls – accompanied or not – has to be offered. This complies to European case law and is also important for a careful preparation of pardoning procedures.
6. RSJ, 22<sup>nd</sup> September 2015, [15/2291/GV](#)  
The RSJ holds the denial to increase the number of two leaves of each 8 hours yearly, a priori neither unreasonable or unfair, nor contrary to the ECHR. The RSJ understands that in presence of a 'dynamic process' detention plans may be 'adjusted ad interim'.
7. Court of Appeal The Hague, 27<sup>th</sup> June 2016 (as advising court in the pardoning procedure).  
Firstly, more progress with unaccompanied leave has to be made before an evaluation can be made as to the question whether any penological purpose is still served by continuing the execution.
8. RSJ, 29<sup>th</sup> June 2016, [16/1416/GV](#). The RSJ holds the denial to allow an extra leave neither unreasonable or unfair. The complainant has not provided any particular reasons.

9. RSJ, 27<sup>th</sup> March 2017, [16/3691/GV](#)  
The State Secretary does not provide clarity on the concrete criteria to be met by the claimant in order to be eligible for unaccompanied leave. The State Secretary is ordered to take a new decision within four weeks.
10. District Court of The Hague, 14<sup>th</sup> April 2017 (summary injunction judge), [ECLI:NL:RBDHA:2017:3801](#)  
The State is ordered to clarify which concrete requisites or conditions have to be met by the claimant in order to be eligible for pardon.
11. District Court of The Hague, 30<sup>th</sup> June 2017 (summary injunction judge), [ECLI:NL:RBDHA:2017:7179](#)  
Claim to extend leave is declared inadmissible, this type of proceeding not offering that possibility.
12. RSJ, 16<sup>th</sup> August 2017, [17/1390/GV](#)  
It is irrefutable that the State Secretary again – contrary to a previous ruling of the RSJ – failed to take a decision on unaccompanied leave. That decision now has even been delayed further. Unaccompanied leave has to take place within a month and the nature and frequency of those leaves have to be included in the detention plan.
13. Court of Appeal The Hague, 27<sup>th</sup> February 2018, [ECLI:NL:GHDHA:2018:320](#)  
The Court of Appeal upholds the Court sentence dated 14<sup>th</sup> April 2017.
14. Court of Appeal The Hague, 1<sup>st</sup> October 2018 (as advising court in the pardoning procedure)  
The Court of Appeal gives a negative advice, not having received sufficient information, in particular updated information from the Custodial Institutions Agency (DJI,) and the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP).
15. RSJ 7<sup>th</sup> February 2019, [R.-18/795/GV](#)  
Denial of a request for longer leave is not unreasonable or unfair. The RSJ understands C.'s wish to increase the number of hours of leave (from ten to twelve) but that would be contrary to the decision of the State Secretary of 28<sup>th</sup> August 2017.
16. RSJ 7 februari 2019, [R.-18/881/GV](#)  
The same as no 15.
17. RSJ, 2<sup>nd</sup> April 2019, [R-18/2473/GV](#)  
Denial of a request for more leaves is not unreasonable or unfair, C. not having substantiated in his request 'in which way the increase of leaves contributes to his resocialisation and reintegration, in preparation of his (possible) return to society'. It has not been shown either that C. requested (providing reasons) an adjustment of his detention plan.
18. RSJ, 16<sup>th</sup> April 2019, [R-19/2770/GV](#)  
Denial of a request for longer leave is not unreasonable or unfair. The RSJ understands C's wish, however he did not sufficiently substantiate how such extension of leave contributes to his resocialisation and reintegration. Reasons justifying an extension of the duration of the unaccompanied leaves have not been established. It has not been shown either that C. requested (providing reasons) an adjustment of his detention plan.
19. RSJ 16 april 2019, [R-19/2598/GV](#),  
The same as 18
20. RSJ 9 mei 2019, [R-19/2929/GV](#),  
The same as 17
21. Court of The Hague, 17 July 2019, [ECLI:NL:RBDHA:2019:7172](#) (summary injunction judge),  
C. claims the State be ordered to provide the advising court with all necessary information to enable the judge to deliver its advice to the King (see point 14). Rejected, since all information had been provided recently (appeal has been lodged).

### 3) S., detained since December 1992

1. RSJ, 12<sup>th</sup> November 2015, [15/2527/GA](#)  
S.' appeal against the denial of participation in resocialisation activities (i.e. contact with Probation Services) is declared well-founded.
2. District Court of The Hague, 10<sup>th</sup> August 2016 (summary injunction judge),  
[ECLI:NL:RBDHA:2016:9397](#)  
The State is ordered to allow S. to take part in reintegration activities.
3. RSJ, 31<sup>st</sup> August 2016, [16/1660/GV, interim decision \(I\)](#)  
For a careful preparation of a request for pardon of life prisoners, participation in resocialisation activities, including leaves, is important. The decision is stayed.
4. Court of Appeal The Hague, 11<sup>th</sup> October 2016 (summary injunction judge),  
[ECLI:NL:GHDHA:2016:2971](#)  
The Court upholds the sentence of the District Court of The Hague of 10<sup>th</sup> August 2016.
5. RSJ, 19<sup>th</sup> December 2016, [16/1660/GV, interim decision \(II\)](#)  
The State Secretary still provides insufficient information to the RSJ.
6. RSJ, 12<sup>th</sup> April 2017, [16/1660/GV, \(final decision\)](#)  
Denial of incidental leave to S. is no longer reasonable. The State Secretary is ordered to grant the first leave within three months.
7. District Court of The Hague, 26<sup>th</sup> July 2017  
S.' claims as to his appeal against the denial of leave are inadmissible and refers to the RSJ.
8. RSJ, 30<sup>th</sup> August 2017, [RSJ 17/2698/GV](#)  
The denial of S.' request for special leave to attend his daughter's birthday is not unreasonable or unfair.
9. RSJ, 12<sup>th</sup> March 2018, [RSJ 18/0237/GV](#)  
S.' appeal against the denial of leave is declared well-founded. The State is ordered to grant two incidental leaves.

- 1) ACL (Advisory Board Life prisoners) 14<sup>th</sup> March 2018  
The ACL advises, considering positive developments and a minor risk of recidivism, to expand reintegration activities and leaves.
- 2) ACL, 27<sup>th</sup> June 2018  
In absence of contraindications, the ACL advises a leave every four weeks and also downscaling of the supervision of leaves in order to monitor the development of S.

10. RSJ, 30<sup>th</sup> August 2018, [R-760](#)  
In his decision, the Minister insufficiently considered S.' interest to be granted leave. The Minister is ordered to take a new decision within four weeks.

- 3) ACL, 19<sup>th</sup> October 2018  
The ACL advises to allow leaves to S. within the scope of his treatment as soon as possible.

11. RSJ, 29<sup>th</sup> October 2018, [R-930](#)

It is undesirable that the claimant during the period in which his appeal concerning his transfer to a clinic is still pending, is not granted any leave. This ruling is in line with ACL's advice. Denying a request for leave because it will be on a Sunday – in order to be able to meet applicants partner - is not reasonable and fair.

12. RSJ, 9<sup>th</sup> January 2019, [R-18/1758/GV](#)

The RSJ emphasises again the importance of granting leave to the claimant within the scope of his reintegration, allowing a correct evaluation of his request for pardon. This denial of incidental leave is, again, unreasonable. This ruling is in line with several advices given by ACL in the meantime. A new decision has to be made within two weeks.

4) ACL, 22<sup>th</sup> February 2019

The ACL emphasizes once more the great importance of frequent leaves, as soon as possible.

13. RSJ, 15<sup>th</sup> April 2019, [R-18/2295/GV](#)

S.' interest of leave in this stage has to prevail over the interests of victims and survivors, who wish that S. remains locked up.

14. Court of The Hague, 14<sup>th</sup> June 2019 (summary injunction judge), [ECLI:NL:RBDHA:2019:6073](#)

S. claims the observance of the advisory rulings of the RSJ and the ACL on grants of leaves and downscaling of leave supervision, his claim is however declared inadmissible, this type of proceeding not offering that possibility.

5) ACL 27<sup>th</sup> June 2019

Advice to the Minister is again to expand the leaves. The ACL advices also to change the law so that leaves overnight are permitted (see our Recommendation 6). Awaiting for the decision of the Minister.