Appendix no. III

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 23rd September 2019

3. COMMENTS TO THE DUTCH POLICY CHANGE IN DETAIL

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3.1 LACK OF RE-INTEGRATION ACTIVITIES AND TREATMENT DURING THE FIRST 25 YEARS

Differently from the past, the regulations now establish that no reintegration takes place as long as the life prisoner has not been admitted to the reintegration phase, i.e. after 25 years at the very earliest. Being questionable in itself,[1] this provision has an extra negative effect to those who in view of their reintegration need a long and intensive treatment. Below we separately discuss in 3.1.1. the population of life prisoners, in 3.1.2 the treatment offer and in 3.1.3. the absence of a monitoring procedure.

3.1.1 Population of life prisoners

From case law studies conducted by experts, it becomes clear that among the present approx. 42 prisoners serving an irrevocable life sentence in the European part of the Kingdom of the Netherlands, at least eighteen suffered a mental disorder at the time they committed their crime.[2] In at least six cases the judge established that the offender could therefore only be partially held accountable for the crime.

In case of 'limited accountability', in principle the court (besides the infliction of a prison sentence) can order placement in a treatment clinic under the TBS measure. This measure is applied for the protection of society and has no predetermined duration. Those under this measure in principle are cured and treated in a special TBS clinic (today also called: Forensic Psychiatric Centre, FPC). These clinics may be considered closed forensic psychiatric hospitals with very high security level. During his stay in the clinic, the detainee is offered treatment in view of his resocialisation and return to free society. This means that a TBS clinic hospitalisation, upon successful treatment, may result in a gradual, supervised return to society. This way to reintegrate life prisoners with a mental illness has been applied since World War II until approx. 2004, after which the policy for all lifers changed to: 'life means life'[3] (changed recently in the current system).

In the above mentioned six cases the judge did not opt for the TBS measure. That does not exclude the possibility that during the execution of the penalty, placement in a TBS clinic – in view of the disorder and the treatment needed – offers a (better, in reality the only) opportunity to resocialise and reintegrate in comparison with a stay in a penitentiary facility, as also was discussed at the oral hearing of the *Murray* case. When asked why Murray had not been transferred to a TBS clinic in the Netherlands to receive adequate treatment, in absence of such a clinic in Curaçao, the Government

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[1] See the critical remarks on a similar threshold (of 26 years) made by the Italian Constitutional Court, in ECHR 13th June 2019, Viola v. Italy (2), no. 77633/16, para 43. The Court considered this threshold 'contraires aux principes constitutionnels de proportionnalité et d'individualisation de la peine'.

[2] See W.F. van Hattum, 'Plaatsing van levenslanggestraften in het gevangeniswezen. Het huidige beleid in het licht van *Murray* v Nederland' (Placement of life prisoners in the prison system. The present policy in the light of *Murray* v Netherlands*), Nederlands Juristenblad* (Dutch Law Review) 2017, 41, 24th November 2017, p. 3000-3006, and ECLI:NL:GHARL:2018:2456 and ECLI:NL:GHARL:2018:2457.

[3] W.F. van Hattum, 'In de daad een mens. De pardon procedure levenslanggestraften: departementaal beleid en magistratelijk toezicht, vroeger en nu' (In the act a human being. The Pardon procedure for life prisoners: departmental policy and court supervision, past and present), *Delikt en Delinkwent* 2009/24, p. 325-352.

answered that 'limited intelligence' and 'the insufficient ability to express himself' prevented Mr. Murray's placement in a custodial clinic in the Netherlands.[4]

The same applies if during detention a mental disorder appears, requiring long term treatment. The Dutch Penal Code allows placement in a TBS clinic of convicts, 'in case of poor development or morbid mental disorder', under certain conditions. [5] In the past – when the pardon policy for life prisoners was still focused on their return to society if possible, given their reduced dangerousness – in particular for the treatment and resocialisation of life prisoners, this legal possibility has been used relatively often,[6] with success. Reoffending never occurred. Formally it is still possible to use this provision for lifers who need, *and* are willing to accept, intensive treatment, but actually the policy to use this possibility has been abandoned. In 2015 a lifer's request to be placed in a TBS clinic was denied, inter alia on the ground that his request 'essentially is based on his wish to resocialise'.[7]

The letter of 11th September 2017 makes this clear. It states that transfer to a TBS clinic (FPC) will only be discussed 'as last and ultimate possibility' and only in case of 'detention unfitness' or if 'the psychiatric care available in the prison system is inefficient for a specific mental disorder'. According to this letter, in principle, placement in a Penitentiary Psychiatric Centre (PPC) will be considered in case treatment is not possible within the penitentiary institution. These centres, established in 2009, in principle, according to the letter, can provide the necessary treatment in all cases.

The basic principle of minimising admission to TBS clinics and in fact allowing transfers only to one of the PPC's however, in the eyes of NGOs, is far too restricted. A PPC is not a TBS clinic and a stay in a PPC – in reality a penitentiary with extra care staff – does not focus on long term treatment. Admission and treatment in a PPC can only offer a temporary solution of an acute health problem. In 2016 the Minister described the policy as follows: 'At the moment the person concerned is mentally sufficiently stable and the care facilities in the (regular) units of the penitentiary are adequate, retransfer to the (regular) detention environment will take place' . So to the Minister not 'treatment' but 'care' is the leading criterion. Also, for this reason at the time several authoritative bodies advising the Government have criticised the replacement of TBS clinics (FPC's) by PPC's.[8]

Thus, PPC's as to treatment climate, duration and level of necessary care are not the appropriate detention place for those who for their reintegration depend on long term psychiatric treatment and care. This also clearly results from case histories. Life prisoners suffering a disorder are regularly

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[4] Oral hearings on 14th January 2015, questions of the Judge Pinto de Albuquerque and judge Vučinić from 1:11:40 hr on, the answers of the Government and the concurring opinion judge Pinto de Albuquerque, no. 12. Also see the discussion in para 94 and para 97 of the judgment.

[5] Art. 13 Sr.

[6] See H.J.C. van Marle, 'Een gedragskundige visie op resocialisatie bij levenslanggestraften', in *Levenslang. Bijdragen aan en naar aanleiding van het symposium Levenslang, 6 april 2018 te Groningen* (A behavioural vision on resocialisation of life prisoners. Contribution to and in connection with the symposium Life penalty, held on 6th April 2018 in Groningen), Paris: Zutphen 2019, p. 71-81, in particular p. 73 et seq. and p. 77.

[7] RSJ 15/0800/TR, 12th August 2015.

[8] See the advice of the State Council dated 21th June 2010, Stcrt. 2010, 12240 and the advices referred to therein of the RSJ, NVvR (Nederlandse Vereniging voor Rechtspraak, Dutch Association for the Judiciary) and GGZ Nederland (Dutch mental health care organisation).

transferred from one PPC to the other, which does not lead to real treatment of their disorder.[9] Indeed, in the PPC's prisoners might not even receive any treatment 'for the sake of their peace'. As to the treatment situation in the PPC visited in 2016, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) reported in 2017 that patients had to remain alone in their cell 17 to 22 hours per day and concluded that the PPC regime does not, within miles, come close to the standards of a psychiatric hospital.

> 'The CPT recommends that the Dutch authorities review the regime and lock-up times at Scheveningen and Zwolle PPC, as well as, where applicable, in other PPC's in the country, with a view to re-establishing the previous regime in which patients could spend up to 12 hours a day out of their rooms, engaged in purposeful activities and interaction with staff and/or other patients, and that the PPC's thus provide a truly therapeutic regime to the patients. (paragraph 90).'[10]

The reaction of the Government was as follows:

> 'The Government does not endorse the CPT's recommendation in this regard. PPC's provide a daily programme of activities spanning 73.5 hours per week, which is well over the national standard as laid down in the Custodial Institutions Act. This is in line with the therapeutic nature of PPC's. At the same time, the current programme also does justice to the element of detention: the patients have been given custodial sentences by a court of law. Furthermore, there is a need to incorporate opportunities for patients to rest, which is particularly important for the PPCs' target group. The Government believes that the current programme strikes the right balance between these different dimensions.'[11]

From the Governments' answer it becomes clear it has no intention to change the policy concerned. The policy change for life prisoners of September 2017 discussed above does not change the present situation. Since a life penalty in the first 25 years is dominated by 'retribution and punishment',[12] the same rules for prisoners with a temporary penalty apply to life prisoners as regards placement and care in a PPC. No treatment focused on reintegration will be offered to them there, not even in cases in which this would be appropriate in view of a disorder. In a recent case the request to be transferred to a TBS clinic was rejected, inter alia on the ground that the underlying purpose of the person concerned was understood as 'resocialisation'.[13] It is obvious that this policy change is at odds with the *Murray* judgment.

3.1.2 Treatment offer

In connection with the above, we also point out the limited meaning the Government allocates to the positive obligation to make an offer for treatment. The letter of 11th September 2017 limits such obligation in three ways. Firstly, the Government only believes in an obligation 'to examine if there is a morbid mental disorder and/or poor development of mental capacity *related to the crime*'. This

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[9] See W.F. van Hattum, 'Plaatsing van levenslanggestraften in het gevangeniswezen. Het huidige beleid in het licht van Murray v Nederland' (Placement of life prisoners in the prison system. The present policy in view of *Murray* v Netherlands), *Nederlands Juristenblad* 2017, 41, 24th November 2017, p. 3000-3006.

[10] CPT 19 Jan 2017, CPT/Inf (2017) 1, p. 6 and no. 90.

[11] Response of the Government, 21th September 2017, CPT/Inf (2017) 29, p. 35.

[12] Letter dated 11th September 2017, p. 2.

[13] See RSJ 17/0548/TR, 25th July 2017.

ignores situations in which new disorders come to light during detention. These may raise doubts regarding the risk of committing new crimes when released. If such disorders remain untreated because it cannot be established that they are related to the crime for which they were convicted, this may become an obstacle to obtaining admission to reintegration activities. Secondly, the condition that psychiatric treatment is offered only when the disorder keeps 'the risk of reoffending high', is too strict. As a consequence, many life prisoners whose risk of reoffending is any less than 'high', are denied treatment. It is then impossible for these prisoners, denied treatment because it is deemed unnecessary, even to be considered for early release since in order to be eligible for pardon, the risk of reoffending has to be 'low without reservations'.[14] However, without treatment, the risk of reoffending can never be reduced to the level of 'low without reservations'. Such a Kafka-like situation is illustrated in the case of S., a life prisoner who does not suffer from a mental disorder. The State denied pardon after he had been detained for almost 27 years, holding that he first will have to undergo an 'intensive therapy' prior to his possible (conditional) release because the risks (for society) were not reduced. This will extend his detention as long as the therapy lasts[15] and excludes *a priori* a positive evaluation of the ex officio request for pardon. Thirdly, the treatment, according to the Government, has to be offered only 'if treatment is possible'. No explanation is given on how the possibility to treat is examined, by whom, or how long assessments remain valid and how the continuity of treatment, once started, is guaranteed. Thus, the Government takes such wide liberties that it can abstain from treatment in most cases where treatment in fact would appear to be necessary.

Furthermore the Government, as appears from the letter, understands from the *Murray* judgment that in principle it is sufficient to examine as to morbid mental disorders and/or a poor development of mental capacity 'at least once' during detention. The Government wishes to comply with this requirement ordering such examination within a year from the date of irrevocability of the penalty (outpatient or within a clinic).[16] Regular follow-up examinations are not mentioned. However, a second examination is provided, to be carried out six months before the Advisory Board Life prisoners has to evaluate if the convict is eligible for reintegration activities. In this constellation it is not imaginary that more than 20 years elapse before a follow-up examination takes place.

To illustrate the above, we refer to a case in which necessary treatment – against the advice of the mental healthcare practitioner – has been interrupted and the life prisoner concerned has been retransferred from one PPC to another PPC where he had stayed seven years before, while no indication or clarification has been provided to him as to the direction of his treatment programme. The request of this life prisoner to be placed in a TBS clinic pursuant to Article 13 Penal Code has been rejected, inter alia on the ground that adequate psychiatric care 'is or can be' offered during detention (*Italics* added).[17]

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[14] State v Y, Court The Hague 6th May 2019, Urgent Appeal Summons by the State of 23rd April 2019, n. 3.25.

[15] Court The Hague, 14th June 2019, ECLI:NL:RBDHA:2019:6073, p. 4.7. For the other procedures of S. see Appendix II.

[16] Furthermore, it is not clear at this moment how the arrears will cleared. Consultation with the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP) is planned, according to the letter of 11th September 2017, p. 3.

[17] RSJ 17/0548/TR, 25th July 2017. In the appeal of another detainee against the same sudden interruption of treatment the direction was reprimanded, RSJ 16/3213/GA, 1st February 2017.

3.1.3 Monitoring procedure (Volgprocedure)

Since its creation in 2008, Forum Levenslang has consistently stressed the need for a monitoring procedure, such as existed before 2000. This procedure consists of a regular assessment of the physical and mental development of prisoners. The procedure was used in the past and its re-implementation was promised in 2009 but eventually was set aside as 'unnecessary' in 2011.[18]

A monitoring procedure is an indispensable instrument for a reliable and complete dossier on the prisoner's health and an indispensable tool for the preparation of his resocialization or re-integration in society. A file on the development of the sentenced person, is also indispensable to assess the treatment in detention and the options for psychiatric treatment. This tool is a reliable source of information to consider, in the long run, whether (conditional) release is an option for the prisoner concerned.

For lack of response by the Government to these arguments, Forum Levenslang initially wrote a proposal in 2012, which it adapted in 2017 as the 'Volgprocedure' (**Appendix IV**). The Monitoring procedure proposed by the Forum Levenslang recommends to carry out an examination every five years, in three areas: 1. offered and used living conditions, 2. mental and physical development and 3. orientation of lifers towards free society. In December 2018 this version was handed over to the Dutch ministry (Head of the Custodial Institutions Agency DJI). Members of parliament, the NHRI, the Ombudsman and CPT and SPT (UN subcommittee on the Prevention of Torture) have received a copy as well. Until now the ministry is not willing to implement such a tool.

3.2 THE REINTEGRATION POSSIBILITIES OFFERED

The Minister decides on the admission to the reintegration phase. One of the criteria he applies is: 'the impact on survivors and victims and retribution, in relation with that impact'. From the Ministerial decisions as regards admission to the reintegration phase of the above mentioned life prisoner S. (now having served almost 27 years) and from the way he deals with the request for pardon of Y. (serving since 1983), it appears that the interpretation of this criterion depends on the personal feelings of the Minister, since he wrote to life prisoner S. that *he*, the Minister, gives 'much more weight than the Advisory Board' to the interests of victims and survivors and therefore does not allow the recommended leaves.[19] In his rejection of Y's request for pardon (where the advising court had advised the Crown to allow it) the Minister states that *he*, the Minister, deems the situation of victims and survivors still deplorable to an extent 'he finds harrowing and that he judges inappropriate to pardon Y'.[20] Answering questions in the House of Representatives on 21st March 2019, the Minister said that in the advices of the Advisory board not only attention has to be paid to the question which possibilities exist to be able to offer reintegration activities to a life prisoner but also to 'the justice to be done to society in general and to the victims and survivors in particular'. The Minister added that if the Advisory Board only delivers positive advises, it is 'not fit' for its work. In his opinion 'life should mean life'.[21] Apart from this point of view, opposite to the view of the ECtHR, this highly personal interpretation of

[18] Appendix Parliamentary Papers, 2011–2012, no. 832, answers to questions 9, 10 and 15.

[19] RSJ 9th January 2019, R-18/1758/GV.

[20] Decision of the Minister rejecting the request for pardon (after having served more than 36 years), included in Court The Hague, 17th April 2019, ECLI:NL:RBDHA:2019:3769, para. 2.15.

[21] *Appendix Parliamentary Papers II*, 2018-2019, 1992 answers to question 9.

the criterion 'the impact on survivors and victims and the retribution, in relation with that impact', does not comply with the objective standard as regards the review required by the ECtHR in the *Murray* judgment (§ 100).

In line with the view that 'life should mean life', barriers are raised when life prisoners try to obtain leave. Once admitted to the reintegration phase, according to the new regulation, they have to apply in person for every single leave, giving reasons why the leave is appropriate to their reintegration. Thus, conditions are set that not every convict, e.g. those suffering from an (intellectual) disability, is capable to meet. Besides, this condition imposes on convicts an impossible obligation, i.e. to look into the agenda of the authorities. In 2018 S.' request for leave was denied 'because he planned it on a Sunday'.[22] The day was chosen because on a Sunday only he would be able to meet his partner. In 2019 S. was denied leave , because the day he chose was the day after King's day and 'there was objection against that day from a point of view of security'. C. had problems to be granted leave because the planned activities, bicycling nearby the penitentiary institution where he is being detained, were 'not stressful enough' and in case of another request for leave the planned place to visit was judged 'too busy'.

Currently, the limited frequency and duration of leaves as well as the long period of decision-making as to the requests, form the highest obstacle to the evaluation of the prospect of a possible release for life prisoners C. and S. (no other life prisoners have reached the phase of day-leaves[23] see the relative court procedures in **Appendix II)**. The Minister allows leaves so sparsely that, in C.'s example, detained for almost 32 years, no faster extension of leaves took place than from two 8-hour leaves per year to twelve 10-hour leaves per year over a period of *four years*. All leaves have been considered 'successful' by the authorities but until today that has not given reason to extend the leaves or to offer a prospect for release, although in his case the risk to reoffend has been assessed as 'low'. The Minister, moreover, offers no clarity as to what conditions C. still needs to meet. The limited number of leaves however repeatedly gives cause to the advisory Court in the pardon procedure to give negative advice on the request for pardon. Most recently (1st October 2018) this court argued that it had not received sufficient information, in particular updated information from the Custodial Institutions Agency (DJI) and the Netherlands Institute for Forensic Psychiatry and Psychology (NIFP) to be able to answer the question whether continued detention can no longer be justified on legitimate penological grounds (Appendix II, C, no. 13).

In case of the above-mentioned S., leave is denied in view of the feelings of survivors and victims. In three years, only five short (accompanied) leaves were granted, notwithstanding the fact that these leaves worked out successfully. In the above mentioned recent summary injunction proceedings the State invoked that also in another case (C's) two 8-hour leaves per year initially represented a 'reasonable' leave frequency.[24] These examples indicate that the Minister has no interest in facilitating reintegration, but aims to prevent a life prisoner from returning to society as long as possible. This is in fact the aim his predecessor announced when launching the new policy.[25] It is to be expected that

[22] *S. v State*, Pleading of the State, hearing 4th June 2019, Court The Hague 14th June 2019 (Appendix II, S. no. 14).

[23] Life prisoner Y., who is serving his sentence since 1983, is allowed to stay permanently outside the TBS clinic in which he was placed in 2001, under the 'old' lifers policy. These three men are the 'longest' lifers in the European part of the Kingdom. No other lifers are yet allowed to the reintegration phase.

[24] *S. v State*, Court The Hague 14th June 2019, ECLI:NL:RBDHA:2019:6073, Appendix II, S. no. 14).

[25] State Secretary Dijkhoff, 3rd June 2016, on Nieuwsuur (TV).

this policy of withholding the opportunities to re-integrate will be applied to all other life prisoners, also, or in particular, to those suffering serious mental disorders and those depending on long term therapy and on gradual extension of their leaves, to the extent appropriate for reasons of therapeutic nature.

Finally, also the maximum duration of leave for reintegration interferes with offering a realistic chance of release. The present regulation only allows reintegration activities for a maximum number of hours per day of leave, staying overnight outside the institution being excluded. Yet, in order to correctly assess the risk of reoffending, behavioral experts who advise on the policy for liberties consider more extensive leave possibilities 'essential'.[26] As long as a convict has not experienced more extensive leaves, these experts will undoubtedly make reservations as to that risk. At the same time the Minister, as explained above, in order to grant a pardon request, requires that the assessed risk of reoffending 'is low without reservations'. In other words, the mechanism adopted by the Minister creates the paradoxical situation that, on the one hand, leaves are *conditio sine qua non* to assess the development and dangerousness of the prisoner, while, on the other hand, these leaves are being denied or kept as few as possible: a Catch 22.

3.3. THE PARDON PROCEDURE

In the European part of the Kingdom the pardon procedure is the only procedure with a possible outcome of (conditional) release for a life prisoner and thus embodies the so-called review mechanism. In this procedure, the Minister advises the Crown (= King and Minister(s)). The Crown adheres to the advice of the Minister. To come to his advice the Minister, on his turn, receives advice not only from the judge who initially imposed the penalty, but also from the Prosecution and from the Advisory Board Life prisoners. If necessary, he also seeks advice from the Probation and Aftercare Service, the Victim Support Netherlands and other organisations, if necessary. This means that (conditional) release cannot be realised any sooner than after 27 years imprisonment, *to which term the duration of the pardon procedure is accumulated*. It is problematic that the procedure does not provide time limits.[27] By experience, we know that a pardon procedure can take many years. When questioned about this in 2019, the Minister answered that he had no intention to modify the law in this respect.[28]

Furthermore, the procedure is unclear, to the extent that in December 2014 the National ombudsman wrote that

> 'the National ombudsman cannot get away from the impression that the lack of transparency and diligence in this procedure stems from unwillingness of the State Secretary to truly implement the human rights check required by the ECtHR in the Vinter sentence. (…) In all those procedures the attitude of the State Secretary seems to be that pardoning has to be

[26] See R.J.P. Rijnders, 'De effecten van opsluiting zonder perspectief' (The effects of imprisonment without prospect), in *Levenslang. Bijdragen aan en naar aanleiding van het symposium Levenslang 6 april 2018 Groningen (*Life. Contributions to and in connection with the symposium Life penalty, held on 6th April 2018 in Groningen*)*, Paris: Zutphen 2019, p. 65-69.

[27] By the way, the ex officio pardon procedure will also be started if the life prisoner has not been admitted to the reintegration phase, but obviously such procedures do not stand a chance. The same goes for procedures started by life prisoners themselves.

[28] *Appendix to the Parliamentary Papers II*, 2018-2019, 1992, answers to questions 4, 5 and 6.

> prevented no matter what. One of the means to achieve this seems to be the delay of procedures as in this case.'[29]

It may be expected that the new mechanism implemented in 2017 will lead to improvements as to the handling of requests for pardon of life prisoners because now – unlike in the past – the newly established Advisory Board already acquires as much information as possible in order to be able to check the four above mentioned criteria (see p. 2), as well as information regarding the convict and the victims and survivors. However, as the cases of Y. and C. show, this is not a guarantee that the pardon procedure will end in a (conditional) release within a reasonable period of time, not even when 36 or 32 years are already served and the risk of recidivism is assessed to be low.

Meanwhile Y. and C. are not covered at all by the new mechanism. The new policy of 2017 offers no improvement to them. Both are forced to call on the courts on an ongoing basis, in order to oblige the State to cooperate with their reintegration. NGOs submit that this situation results in an unwarranted mental (and financial) burden to these convicts. This on top of the fact that for these prisoners the pardon procedure was seriously impaired in 2004 due to the replacement of the 'reintegration policy' by the 'life means life'-policy.
In the case of Y., who is serving his penalty since 1983, of which the last 18 years in a TBS clinic (and who is also the last convict to whom the old pardon and transfer policy has been applied), *twenty* (urgent) proceedings against the State were filed over the past twelve years in order to achieve retention of his prospect of release, as it had been presented to him under the old policy (**Appendix II**). In spite of his successful treatment and the fact that he has been considered 'no more dangerous' since several years now, so far these proceedings have not led to a modification of his penalty by the Crown.
C., detained since 1987, had to call on the Court *21 times, since 2014*, in order to retain the prospect to which he, pursuant to the ECtHR's case law (**Appendix II**) is entitled during the pardon procedure. In spite of several cases won, a reoffending risk assessed as 'low' and a judgment by the court in 2013 that resocialisation had not been initiated sufficiently *by no fault of his* – still no concrete prospect of (conditional) release whatsoever has been offered to him.

Under the new review mechanism another problem occurs. In that procedure, due to the Minister's policy, the period between the first advice of the Advisory Board and the start of the pardon procedure is too short to process a genuine review of the development of the prisoner. That nullifies the chance of a positive decision of the request for pardon, e.g. for S., who between December 2015 and now had to start already *fourteen procedures* in order to be admitted to regular leaves (**Appendix II**). This since the pardon procedure only leads to a positive decision if and after the person concerned has been admitted to the reintegration phase and has been granted liberties to such an extent that the judge – based on the expert reports – can establish that there is no more risk of reoffending. Yet the chances that the reoffending risk will be considered 'low without reservations', as required by the State, are inexistent in view of the remote possibility to practice leaves. Thus, the chances that the procedure leads to (conditional) release within a reasonable time (after 27 years) are nil.[30] In this way this regulation deprives life prisoners of a realistic prospect of release. All the above goes in particular for life prisoners suffering a mental disorder.

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[29] *Report National Ombudsman*, 29th December 2014, no. 222. See more of this Report in Appendix II.
[30] See *C. v State*, Court The Hague, 27th February 2018, ECLI:NL:GHDHA:2018:320.

3.3.1 Deficits Pardon Procedure

In the review mechanism implemented in 2017, the Government abstained from re-introducing a monitoring procedure as applied until 2000, and included too little incentives to stimulate the directions of penitentiary institutions to regularly investigate 1. living conditions offered, 2. mental and physical development and 3. orientation of lifers towards free society. Thus, a fair evaluation of the *development* of the person concerned is not sufficiently guaranteed and a structural tool to assess the treatment in detention and the options for psychiatric treatment is lacking. Furthermore, the possibility to be transferred to a TBS clinic (FPC) is *de facto* precluded, since the treatment of patients with a mental disorder who, in order to obtain a prospect of release, depend on long term treatment, has been transferred to the PPC's.

Finally, the chance of release after having passed the ex officio pardon procedure is nil, because

- the chance of being pardoned has been made subject to progress with unaccompanied leaves;
- the evaluation of requests to grant leaves is subject to the personal opinion of the Minister of what he deems to be acceptable for victims and survivors;
- once reintegration is permitted, leaves are granted sparsely and depend on decisions of the Minister that are not predictable;
- leaves for more than ten hours a day are not allowed so that experts are hindered in their evaluation of the risk of reoffending;
- the State requires a risk of reoffending that is 'low without reservation now and in the future'.