

Appendix no. IV

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

**“The Monitoring Procedure during Life Imprisonment in The Netherlands”
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The Monitoring Procedure during life imprisonment in The Netherlands

The Forum Levenslang and life imprisonment in The Netherlands

Since 2008¹ the Forum humane execution of life penalties – Forum Levenslang – advocates for a humane execution of life sentences and for a possibility of rehabilitation² towards a responsible conditional release. The present government opts for an extremely limited rehabilitation possibility and for a pardoning procedure that still offers very little prospect of release. During the first 25 years of their detention in principle lifers do not receive special attention and only after this period of time they are assessed by an Advisory Board.³ The execution criteria, to satisfy a humane execution and to obtain a conditional release, are unclear.

Differently from the government, the Forum Levenslang opts for a responsible long-term preparation of lifers for their return into free society. At the same time their plan contributes to a humane execution of life sentences. In the Forum's view, in principle lifers should be eligible for a first review regarding their conditional release after a detention period of twenty years.⁴ Their preparation towards release should start right from the beginning of their imprisonment – as goes for all detainees – in order to guarantee the best possible result, both for society and detainee. The instrument to enable such preparation is the so-called Monitoring procedure.

The history of the Monitoring procedure

The Forum Levenslang points out that a previous Monitoring procedure for long-term prisoners operated successfully from 1957.⁵ At the homologation of the Convention on the Rights of the Child in 1994, the Dutch Minister of Justice referred to the Monitoring procedure in force at that time, stating that this procedure provided the prospect lifers needed.⁶ This Monitoring procedure was repealed on October 1st 2000, due to the desire to decentralise penitentiary services.⁷ This suited the trend to pass on all medical and mental assistance for detainees from the Penitentiary Selection Centre (PSC) to therapists in penitentiaries, now working under the Psycho-Medical Consultation (PMO) structure.

In 2012 the Forum Levenslang wrote a memorandum to further discuss the desired care, treatment and prospects for lifers in a (new) Monitoring procedure. That memorandum gave insight into the situation at that time.⁸ The present memorandum is an updated and expanded version of the 2012 memorandum with, among other things, a check list drawn up by physicians and behaviourists, members of the Forum.

Research on living conditions for lifers

Commissioned by the Scientific Research and Documentation Centre (WODC) of the Ministry of Security and Justice, an international literature study on living conditions in correctional facilities, published in 2016, was conducted by specialists in the field of penology at the Utrecht and Groningen universities.⁹ In this study, a number of factors and determinants, of influence on living conditions, are described. Factors are: self-administration, contacts with staff and co-detainees, contacts with the outside world, e.g. relationships with family members, safety, meaningful daily activities as well as physical wellbeing. Determinants are: building situation, professionalism and composition of staff and composition of prison population. The study offers insight in the significance of living conditions in correctional facilities and their significance for a positive development of detainees and their successful return to free society. It also offers tools to measure living conditions. Also for lifers – perhaps especially for lifers – this study provides invaluable advices.

Among other things, this is evidenced by an inventory made by the Custodial Institutions Agency (DJI) in 2010, the aim of which was to investigate the feasibility of special divisions for the stay of long-term and lifelong prisoners.¹⁰ This inventory provides an overview of the incarceration perception of long-term and lifelong prisoners and the needs they would like to see fulfilled during their detention.

Furthermore, a recent pilot study among long-term and lifelong prisoners¹¹ provided results worthy of consideration regarding the incarceration perception of these detainees, as to themes such as insecurity, lack of prospects, lack of meaning in life, impact on mental health and living conditions.

All results provide guidelines for the desired living conditions for long-term and lifelong prisoners that contribute to the prevention of detention damage and (thus) to a fair chance, of positive evaluations in the Monitoring procedure and also of a successful review to prepare for conditional release.

The objectives of the Monitoring procedure

The objectives of the Monitoring procedure may be deduced from a sentence of the European Court of Human Rights in the case *Vinter vs. UK* in 2013.¹² In that sentence the Court explained that a life sentence only satisfies the requirement of humanity, if during the execution of the penalty at a certain moment there is an evaluation to establish ‘*if any changes in the life prisoner are so significant and such progress towards rehabilitation has been made that continued detention can no longer be justified*’, the so-called Vinter review. The Monitoring procedure provides the conditions for such review. The Vinter ruling has been expanded in 2016 – in *Murray vs. The Netherlands* – with further requirements to the detention programmes to offer to lifers.¹³ The new Monitoring procedure also aims to comply with this case law.

The Monitoring procedure has to contribute to a humane execution of life sentences and is to be included in the detention programme of each individual lifer. The procedure aims to offer a realistic possibility of conditional release to each individual lifer applying objective, pre-established criteria. Based on these criteria, periodical evaluations of the personal development of the convict are to take place in order to establish the necessity of continuance of the execution of the penalty inflicted.

Furthermore the Monitoring procedure has to provide sufficient procedural guarantees.

The Monitoring procedure thus serves the following purposes:

1. a humane execution of the penalty of life imprisonment, and
2. a prospect of a well-prepared (conditional) release after a minimum detention period of twenty years, taking into account free society's interests.

In order to fulfil both objectives, upon a first examination – the baseline measurement – carried out immediately after a life sentence has become final, further examinations of the conditions of stay during detention and of the progress of lifers towards their rehabilitation have to take place every five years:

1. offered and used living conditions,
2. mental and physical development and
3. orientation lifers towards free society.

To 1. Living conditions

Living conditions provide the substratum for the desired personal development of detainees. They have to contribute to a humane execution of life imprisonment sentences and offer a best possible meaning to the existence of lifers. Laws and regulations applying to all detainees have to consider the particularities of life imprisonment penalties and have to be interpreted more flexibly where possible. Apart from labour, also opportunities to expand knowledge and capabilities as well as for creative development have to be offered. Detainees have to be treated in a humane way and promises are to be kept. Staff members should be equipped with special tools to use in their contacts with lifers. Social contacts with short-term detainees as well as with long-term detainees have to be stimulated, as well as contacts with persons from the outside world. Last but not least a building situation providing, both literally and figuratively, the necessary physical space and prospect of a horizon in order to prepare themselves for their conditional release.

Ad 2. The mental and physical development

In favour of their mental and physical development demonstrable attention has to be given to the necessary psychological and psychiatric assistance, offering room to lifers to come to terms with their crime. Mental and physical (detention) damage have to be prevented as much as possible offering a realistic chance of conditional release, based on objective pre-established criteria.

Ad 3. The orientation towards free society

An orientation towards free society as normal as possible offers the best chances for an acceptable and possible return to that free society. This implies that the lifer self-manages his daily life as much as possible. That also asks for an increased space, including a larger cell with more domestic facilities, an individual (free) daily schedule and freedom of movement as to self-purchasing, self-cooking, useful professional labour as well as self-development opportunities through self-education and professional training at their personal level. All this will contribute to a standard-setting process of behaviour and life structure and thus to an acceptable and useful return to society with a favourable recidivism prognosis.

It goes without saying that concrete possibilities to expand liberties for a gradual reintegration into free society will have to be evaluated at individual level.

The procedure

Immediately after a final conviction to life imprisonment a baseline measurement of living conditions and the physical and mental state at that moment will have to be carried out. That measurement may also consist of behavioural reports drawn up for the criminal case. If at the baseline measurement a psychiatric illness or disorder appears, adequate treatment has to be provided in a Psychiatric Penitentiary Centre (PPC) or Tbs-clinic. After this baseline measurement new examinations will have to take place every five years, using the following questions as toolset.

Questions to be answered at the periodic evaluation of the development of a lifer

1. The execution of the detention programme:
 - a. Has the detention programme been drawn up in accordance with the applicable procedure?
 - b. Has the lifer consented to the detention programme?
 - c. If not, why not and what efforts are made by the Custodial Institutions Agency (Dienst Justitiële Inrichtingen - DJI) and the lifer in order to accomplish an agreement on the detention programme?
 - d. What efforts are made by the institution in order to make the detention programme a success?
 - e. What efforts are made by the lifer to make the detention programme a success?
 - f. What objectives of the detention programme have been met?
 - g. What conditions are set to be eligible for (conditional) release in due time?
 - h. What are the results of the carried out part of the detention programme?
 - i. Which objectives of the detention programme have not (yet) been met?
 - j. Which actions of the detention programme are to be taken?
 - k. What living conditions occur in the institution(s) where the lifer stayed/stays?¹⁴
 - l. What efforts have been made by the institution(s) in order to minimise detention damage?¹⁵
2. What are the physical and mental developments the lifer went through?
 - a. Did the baseline measurement at initial imprisonment give rise to provide medical or mental assistance?
 - b. Did the lifer himself ask for medical and mental assistance? If not, why not? If yes, what kind of help did he ask?
 - c. How do experts such as judicial physician, psychologist and psychiatrist judge the physical and mental state of the lifer, also taking into account his cultural background? Has the lifer, to the opinion of these experts, suffered detention damage and in the affirmative, what kind of damages and how did they show?
3. What are the results of the lifer's orientation to (free) society?
 - a. To what activities in- and outside the institution and with what results the lifer has been offered the opportunity to rehabilitate and consequently prepare himself towards conditional release?¹⁶
 - b. What activities and relative results the lifer has undertaken by himself to rehabilitate and consequently prepare himself towards conditional release?
 - c. With whom and with what results the lifer kept his contacts inside the institution and in free society?

- d. What future plans the lifer has set and what preparations did he make in the meantime?
To what extent these future plans are considered to offer prospects?
4. How and with what results the answers to the above questions have been communicated to the lifer?
5. What efforts have to be made both by the lifer and the Ministry of Security and Justice in order to allow, at a certain time, a justified conditional release?

Procedural guarantees

1. All investigations have to be initiated, in due time and without special request, by the Custodial Institutions Agency (DJI) in consultation with the Public Prosecution Service.
2. Questions relating to detention programme have to be answered by the Security and Justice Inspection (VenJ).
3. The questions relating to physical and mental development, as well as to the orientation to (free) society have to be answered by experts of the Dutch Institute for Forensic Psychiatry and Psychology (NIFP), if needed after observation in the Pieter Baan Centre.
4. For the purpose of the investigation the following data have to be made available to the examiners without restraint:
 1. complete penitentiary files, including detention programmes,
 2. complete judicial medical files,
 3. complete, unabbreviated reports of all previous psychological, psychiatric and medical examinations,
 4. complete, unabbreviated Psycho-Medical Consultation (PMO) reports in which the lifer has been discussed.
5. To answer the questions, also an environmental investigation is carried out.
6. The investigation results will be communicated to the lifer, his/her family members and the Public Prosecution Service.¹⁷

Notes:

¹ www.forumlevenslang.nl/.

² Two other concepts are being used instead of ‘rehabilitation’, i.e. resocialisation (as larger concept) and reintegration (particularly focused on the five living areas and the supervision by the Social Rehabilitation Services (Reclassering). The meaning of these three concepts largely depends on the discipline by which they are used. Furthermore the three concepts have overlapping meanings, which causes confusion. In a legal sense the opinion of the European Court for Human Rights is important, as expressed in the Murray vs. Netherlands sentence (Application no. 10511/10, 26th April 2016), Nr. 102 - 112 and the Partly Concurring Opinion of Judge Pinto de Albuquerque in that sentence. The ECtHR by rehabilitation means: ‘*the reintegration into society of a convicted person*’ (Van Dale dictionary: ‘*let the convict participate again in social life*’). The Appeal Court in The Hague (11th October 2016 , [ECLI:NL:GHDHA:2016:2971](#)) also opted for the concept ‘rehabilitation’ as used by the ECtHR. We will follow the European Court and the Appeal Court in The Hague using the concept ‘rehabilitation’. It includes ‘all efforts made both by the State and the lifer in order to enable a successful return to free society’.

³ *Government Gazette* (Staatscourant) 2016, 65365: Decision Advisory Board Lifers of 25th November 2016, article 4(3). About the Advisory Board also see www.forumlevenslang.nl/nieuws. The explanatory note of this decision stipulates:

Until the first advice lifers will be offered regular rehabilitation activities. Structure and regularity are provided and the detainees' personal responsibilities are claimed. In the period prior to the first advice by the Advisory Committee, any leave is excluded and no interventions aimed at an actual concrete return to society are offered. After the first advice by the Advisory Board, in case of a positive advice also reintegration activities may be offered and leave may be granted. In case the Minister accepts the positive advice of the Advisory Board, the Custodial Institutions Agency (DJI) apart from the detention programme draws up a reintegration plan. In the period in which also reintegration activities are offered, a greater appeal is made as to self-administration and self-development of lifers and it is expected they show initiative. This is important because it is inevitable that institutionalisation will manifest itself, to a greater or lesser extent, in long-term detainees. Therefore it is necessary that lifers, when allowed to start a reintegration process, are gradually granted more liberties in order to properly monitor their developments. Furthermore detainees during this process will receive support, among others, for five components: a valid ID, housing immediately after release, income from work or (temporary) benefits in order to support themselves after release as to the first necessities of life and if no labour is available some sort of daily activities, insight in debt problems and assuring (continuity of) health care and health insurance. All this will grant lifers the opportunity to work towards rehabilitation right from the start of their detention.

⁴ The Forum Levenslang advises, well-motivated, this minimum detention period of 20 years, (www.forumlevenslang.nl/publication/wetsvoorstel/).

⁵ 'Volgprocedure langgestraften' (Monitoring procedure long-term convicts), included in the 'Bijlage bij de Circulaire van 7 juni 1978, nr. 133/378 aan de directeurs en hoofden van de penitentiaire inrichtingen en diensten' (Enclosure to the Circular letter dated 7th June 1978, Nr. 133/378 to directors and managers of correctional institutions and services), *Penitentiaire Informatie* (Penitentiary Information) 1980/6, p. 186 (the so-called 'Regulation Samkalden'). This regulation had been operative from 1957, but was put into writing only in 1978.

⁶ *Parliamentary Papers I (Kamerstukken I)* 1994-1995, 22a, p. 1, 2.

⁷ *Regeling Selectie plaatsing en overplaatsing (Regulation Selection, placement and transfer)*, 15th August 2000, Nr. 5042803/00/DJI, *Government Gazette* (Staatscourant) 2000, Nr. 176. On this topic L. van de Sande: '[De tenuitvoerlegging van de levenslange gevangenisstraf: een paradoxale taak. Een beschouwing vanuit de praktijk van het Nederlandse gevangeniswezen](#)' (The execution of life penalties: a paradoxical task. A discussion from practice in the Dutch Penitentiary System), *Ontmoetingen* 13 (2007).

⁸ www.forumlevenslang.nl/publication/monitoring_procedure/ > monitoring procedure.pdf.

⁹ M. M. Boone, M. Althoff and F. Koenraadt with the cooperation of I.Timp: [Het leefklimaat in justitiële inrichtingen](#) (Living conditions in correctional institutions), Den Haag – 2016.

¹⁰ Ministry of Security & Justice, Custodial Institutions Agency: *Levenslanggestrafte gedetineerden. Hoe beleven levenslanggestraften hun detentie en wat zijn hun opvattingen over aparte afdelingen voor levenslanggestraften (Detainees with a life penalty. How do lifers perceive their detention and what are their views on separate wards for lifers)*, Den Haag – June 2010, offered to The Forum Levenslang by letter dated 3rd June 2016.

¹¹ M.C.A. Liem, Y.A.J.M. van Kuijck and B.C.M. Raes: 'Detentiebeleving van (levens)langgestraften. Een empirische pilotstudie' (Detention perception of long-term and lifelong detainees. An empiric pilot study), *Delikt en Delinkwent* 2016/2, number 01 (January 2016), p. 10-29.

¹² ECtHR (GK) 9th July 2013, appl. no. 66069/09, 130/10, 3896/10 (Vinter e.a./VK), *NJ* 2016/135, commented by Keijzer, *NJ* 2016/136, par. 119.

¹³ ECtHR (GK) 26th April 2016, appl.no. 10511/10 (Murray/The Netherlands), par. 101– 112.

¹⁴ When answering this question the regime(s), the approach of the lifers by staff and of staff by lifers as well as the building situation(s) and the impact as to eventual detention damage have to be considered.

¹⁵ Detention damage is such a (serious) deterioration of physical and mental well-being, as well as cause of changes in behaviour and perception, that functioning in a social environment in a normal way is impeded or made impossible or seriously limited.

¹⁶ A good guide is the extensive brochure '[Goed voorbereid weer vrij](#)' (*Free again well-prepared*) by DJI.

¹⁷ For written reports the rules for consultation and correction rights apply, not those for lock-up rights. Reports are handed over to the person concerned, his attorney, the Public Prosecution Service as well as to the (Appeal) Court that inflicted the penalty.

It is the legislator's prerogative to decide in what way the surviving family members of the victim and/or the victims will be informed about the development of the convicted lifer.