



Rights Enshrined

Whole Life Sentences: Vinter and Others

Simon:

One of the important aspects of the case was that the prisoners weren't arguing for releasing any of the individual cases. What they were arguing for was a system that allowed their sentences to be reviewed so that, if it was felt that release was appropriate, that could be allowed and sentence could be altered.

Narrator:

Simon Creighton is a lawyer with Bhatt Murphy solicitors in London. He represented Gary Vinter, one of a small number of British prisoners serving a whole life sentence. A change in the law in 2003 removed the rights of such prisoners to have their detention reviewed at some point in the future.

Vinter and two others argued that this breached their human rights under Article 3 of the Convention, which prohibits degrading or inhuman treatment or punishment.

Simon:

The arguments that we were making were that the failure to have a built-in system of review into these sentences deprived the prisoner of any hope right at the outset of the sentence. And it was that deprivation of any hope and the removal of any rehabilitation from the sentence that constituted a breach of the Convention.

The English courts had decided that the imposition of a whole life sentence was lawful, even if there was no prospect of release, on the basis that there was a residual power to allow compassionate release if the prisoner's health deteriorated in the future. And the argument we had to put to the court was that the power was so limited it did effectively deprive the prisoner of all hope of release.

The judgement, when it was given, was that there had been a breach of Article 3, that the power of compassionate release in English law was far too narrow and was effectively applied when somebody was terminally ill, to allow them to die outside of prison. And the court gave a very strong indication that a 25-year review should be automatic in a sentence that was capable of looking at all aspects of the sentence, including the prisoner's remorse, how they've reformed and whether there was still justification for the sentence to stand.

On a penological level I think it's very important that there is recognition that all sentences have to have some hope built in; that you can't turn sentences into wholly punitive ones because that undermines the modern democratic settlement about what prison sentences mean. And as soon as you accept that prison sentences can be wholly punitive, you're only one step away from going back to things like corporal or capital punishment.

The judgement received an extremely negative reaction and it was portrayed very much in the black and white terms of the European Court telling the English courts and the English Parliament what to do, very confrontationally, rather than looking at the nuances of the judgement which were saying English law used to provide for something; it no longer does. And we think that the old system was the right system.

So after the European Court decision was made, two other prisoners who were serving whole life made an appeal against their sentence and that was then heard by the Court of Appeal. And the Court of Appeal said that the European Court had got it wrong and that the power of compassion, at least in their view, was strong enough and wide enough to save the sentence from being unlawful.

The difficulty is that European Court judgements are not directly enforceable in English law, and the view that had previously been taken by the House of Lords and the Supreme Court was that Strasbourg was the ultimate authority on Human Rights issues, and they should defer to their judgements. This decision seems to have rather upset that settlement and there's been a lot of noises from the senior judiciary that we should no longer be deferring to Strasbourg on those decisions.

The only sanction if a country refuses to implement a judgement is effectively a diplomatic sanction with people expressing their disapproval. And ultimately, it could lead to a position where Britain has to withdraw from the Convention.