**Enforcement and execution of custodial sentences**

By Sonja Meijer

**1. Introduction**

I would first like to thank the conference organizers for inviting me to speak here today. I am honoured to have such an expert audience. I am Sonja Meijer. I teach at the VU University of Amsterdam and also work as a deputy judge at the criminal law section of the Amsterdam District Court. My research mainly focuses on sanctions law or the imposition and execution of criminal law sanctions, and also on the law of criminal procedure.

The organizers have asked me to speak today about the enforcement and execution of custodial sentences in the Netherlands. Although I am certainly not intending to compare how Romania and the Netherlands currently regulate the execution of criminal custodial sentences, we may well find some remarkable similarities between the legislation in our two countries. Please feel free to ask questions during or after my contribution.

I have structured my contribution as follows. After this introduction, I will briefly outline the history of custodial sentences in the Netherlands. In order to be able to comment on the execution of custodial sanctions, I will first discuss which custodial sanctions courts in the Netherlands can currently impose. I will then discuss the execution of custodial sentences and the question of which principles are involved in this process. In the Netherlands, we also refer to the imposition and execution of custodial sentences as the ‘external legal position’. This external legal position concerns how individuals may be deprived of their liberty – by a court sentence, for example – and how that incarceration may be terminated – by a conditional release, for example. The ‘internal legal position’, which I will address next, is just as important. This concerns the legal position of inmates while they are inside a custodial institution – for example, their rights to visits, to correspondence, and to medical care. After that I will briefly discuss some recent developments in the execution of criminal law sanctions. I will conclude by considering a subject that has been the topic of several of my publications, and that is the subject of life imprisonment.

**2. History of custodial sentences in the Netherlands**

The Dutch Criminal Code dates back to 1886. At the time this Code took effect, the custodial sentence was the dominant form of sentence. The Criminal Code was drawn up under the influence of what is known as the ‘Classic Direction’. In other words, retaliation for guilt (‘an eye for an eye, a tooth for a tooth’) was the justification for punishment. Another way of thinking about punishment – the ‘Modern Direction’ – developed towards the end of the 19th century. This movement saw punishment as a method in which retaliation was not the only central issue. The punishment also had to serve other objectives, including:

* special prevention: i.e. preventing the offender from committing offences in the future;
* general prevention: i.e. preventing other possible offenders from committing offences in the future. The sentence imposed essentially serves as an example or warning to others;
* conflict resolution: i.e. remedy for the victim. This can be achieved through compensation, but also, for instance, through mediation between the offender and the victim;
* protection of society.

The Dutch sanctions system was substantially revised under the influence of the Modern Direction. In 1905, for example, a separate sanctions system for juveniles was introduced. Another important development was the introduction of the criminal law measure in addition to the criminal law sentence. In 1928, for example, the Laws on Psychopaths (*Psychopatenwetten*) introduced the measure of Placement Under A Hospital Order, to which I will return later.

This distinction between sentences on the one hand and criminal law measures on the other is also known as the ‘two-track system’. There are a number of relevant differences between sentences and measures. These include:

Sentences:

* One characteristic of sentences is that they are imposed *based* on the offence. They should, therefore, be proportional to the offender’s culpability and the gravity of the offence. The basis is, therefore, ‘proportional retaliation’, or retaliation based on the degree of culpability for the unlawful conduct. This requirement for proportional retaliation means that retaliation is permitted for *no more* than the sentenced individual’s culpability. The famous adage ‘an eye for an eye and a tooth for a tooth’ implies that the punishment inflicted should correspond both in degree and kind: one eye only for an eye, and one tooth only for a tooth.
* Another characteristic of sentences is that retaliation takes place by intentionally inflicting suffering; in other words, by depriving someone of their liberty. Sentencing therefore involves retaliation, or deliberately and intentionally inflicting suffering.

Measures:

* Unlike sentences, measures are not imposed *based on* the offence, but *because of* an offence. Their objective is improvement, for example restoration to the *status quo ante* in the case of a confiscation order, or prevention of danger, as in the case of the Placement Under A Hospital Order measure. This also justifies the contents and duration of the measure.
* Unlike sentences, which are limited by the culpability of the sentenced individual, measures are not restricted in time. Measures can continue for as long as needed to achieve the objective pursued. A sentenced individual, for example, who has committed a crime as a result of a psychological disorder may be detained under a hospital order for as long as this is necessary to protect society.
* Although a measure is not a sentence (and, therefore, not meant as retaliation, or involving intentionally inflicting suffering), it may be experienced as such by the individual involved. The inflicting of suffering is not an objective of the measure. It does not make much difference, however, whether a financial penalty is imposed or whether the sentenced individual is ordered to pay compensation to the victim: either way, those committing the offence will feel it in their wallets.

The latter is also the reason why the two-track system has been criticised, and some people are in favour of abandoning this system altogether as, in the case of some sanctions, it is currently difficult to make any distinction at all.

The current Dutch Criminal Code bears characteristics of both the Classic and the Modern Direction. The doctrine currently prevailing is that of the ‘unified theory’, in which punishment is primarily seen as retaliation for the offence committed, but other objectives may also be served within the framework of that retaliation.

**3. Custodial sentences in contemporary criminal law**

Traditionally, deprivation of liberty has been the most important form of punishment. The Dutch history of custodial sentences dates back to 1596, when the first ‘house of correction’ was set up in Amsterdam. In these houses of correction, deprivation of liberty was a means rather than an objective: the period spent in the house of correction was a useful part of the process of disciplining the sentenced individual. Men were forced to grind Brazilian wood into powder, which was used in the paint industry. The idea was that criminals would not only be punished by the sentence, but that punishment would also improve their ethical conduct.

The current Dutch Criminal Code allows several forms of custodial sentence. A custodial sentence is a criminal penalty that is imposed by the court and involves the sentenced individual being deprived of his liberty. This can be achieved either by incarceration or by placement in a secure therapeutic or rehabilitation institution, where the individual can be treated for a psychological disorder or drug addiction, for instance.

All forms of deprivation of liberty are subject to rules. For each form of sanction, the law determines who is authorized to deprive an individual of his liberty, what conditions apply and how long the sanction can last. Article 5 of the European Convention on Human Rights provides the overarching minimum standard: no-one shall be deprived of his liberty without a procedure prescribed by law.

The Dutch Criminal Code provides for two custodial sentences: imprisonment and detention.

Imprisonment can only be imposed for crimes and is either temporary or for life. Temporary imprisonment is for a minimum of one day and a maximum of 30 years. The Netherlands also allows life imprisonment, which, in principle, has an unlimited duration and is, therefore, truly for the rest of a person’s life. I will return to life imprisonment later.

After the period of imposed imprisonment has ended, the sentenced individual has to be released. In many cases, however, a sentenced individual is granted a conditional release at an earlier date. A conditional release means that individuals sentenced to imprisonment may, under certain conditions, return to society after serving part of their sentence. The general condition is that an individual who is conditionally released must not commit another offence during a certain period of time. This is referred to as the ‘probation period’. Other conditions relating to the sentenced individual’s conduct may also be set, such as having to report to the Probation and Aftercare Service.

The date on which a conditional release is granted depends on the term of imprisonment. In the case of imprisonment for two years or more, a conditional release is granted after an individual has served two-thirds of the sentence. Different arrangements apply in the case of imprisonment for between one and two years. Individuals sentenced to a term of imprisonment of less than one year cannot be released conditionally, but may have part of their sentence suspended by the court.

The basic principle is that sentenced individuals are eligible for a conditional release. However, a conditional release may be postponed or disallowed on certain grounds. If the sentenced individual has been released conditionally but violates the conditions imposed, the court can revoke the conditional release at the public prosecutor’s request. The sentenced individual then has to serve the remainder of his sentence. If the conditionally released individual breaches the general condition by committing another offence, he can also be prosecuted for that new offence.

In addition to imprisonment, there is the possibility of detention. The difference between imprisonment and detention is that detention can only be imposed for minor offences and not for crimes. Detention cannot be for longer than one year, or, if there are aggravating circumstances, one year and four months.

The Dutch Criminal Code also contains three other detention measures:

1. Placement in a psychiatric hospital;
2. Placement under a hospital order;
3. Placement in an institution for habitual offenders.

Re 1. The court can order placement in a psychiatric hospital if the offender committed an offence (a crime or a minor offence) for which he cannot be held responsible, if the offender has a psychological disorder and if he poses a danger to himself, to others or to the general safety of people or property. Placement in a psychiatric hospital is, in principle, for one year. After that year, the court can extend the placement for periods of one year at a time.

Re 2. Placement under a hospital order is different from placement in a psychiatric hospital in a number of ways. The conditions for placement under a hospital order are that the offender has a psychological disorder and poses a danger to others or to the general safety of people or property. This measure cannot be imposed if the offender only poses a danger to himself. An important difference is that placement under a hospital order can also be imposed if the offender can only be held partly criminally responsible. Placement under a hospital order can also only be imposed if the offence committed was a crime attracting a prison term of four years or more. Placement under a hospital order cannot therefore be imposed for minor offences. The threshold, however, is not very high as even a shoplifter can be placed under a hospital order. This is because theft carries a prison term of up to four years.

There are two forms of hospital orders. Firstly, the conditional hospital order, which is only executed if the sentenced individual does not comply with certain conditions. This type of order can be imposed if the offender does not pose a direct danger to his environment, but does need treatment. The conditions may include a requirement for the sentenced individual to undergo inpatient treatment of his disorder or specialised outpatient treatment. Sentenced individuals usually see a conditional hospital order as less severe.

Secondly, there is the hospital order with compulsory treatment. Under such an order, the individual is committed to a secure institution and treated for his disorder. In principle, courts impose a hospital order with compulsory treatment for two years, and this period can be extended for periods of one or two years at a time. The maximum duration is four years, unless the order is imposed for a crime in which someone’s physical integrity was violated. In that case, the order can be imposed for an unlimited period of time and, therefore, conceivably for life. This latter aspect is the reason why, in 2012, the European Court of Human Rights ruled against the Netherlands in *Van der Velden v. Netherlands* (31 July 2012, no. 21203/10). The European Court ruled that because it was not always clear from the judgement whether the offence had violated someone’s physical integrity, decisions to extend the order may in some cases be unlawful. A hospital order with compulsory treatment ends if it is no longer extended, or if it is conditionally terminated.

Re 3. Offenders causing a nuisance by regularly committing crimes can be placed in an institution for habitual offenders. This measure was initially aimed at repeat offenders with addiction problems, but being addicted is now no longer a requirement. The measure is specifically meant to protect society and was introduced because, until then, offenders committing petty crimes, such as burglaries and shoplifting, could only be given short custodial sentences of up to a few weeks. This was because, as I stated earlier, the length of the sentence is limited by the degree of culpability. Under this measure, for the protection of society, habitual offenders can be placed in a secure, or non-secure, institution for up to two years, during which time they can be treated for their addictions.

1. **Execution principles**

The basic principles and objectives of the execution of custodial sentences are not laid down exhaustively in law. Instead, they have to be deduced from international norms such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and European Prison Rules. One example is the prohibition on torture and degrading treatment. This is not explicitly laid down in Dutch law, but can be deduced from Article 3 of the European Convention on Human Rights.

There are two Acts that are of major importance for the execution of custodial sentences: the Custodial Institutions Framework Act (*Penitentiaire Beginselenwet*), which contains rules for executing custodial sentences, and the Hospital Orders Framework Act (*Beginselenwet Verpleging Terbeschikkingstelling*), which contains rules for executing detention measures. These two framework Acts were introduced shortly after the Second World War. Politicians who had been imprisoned during the war firmly believed that the Dutch prison system needed reforming and to be made more humane. They believed that inmates were entitled to be treated with dignity for the simple reason that they are humans, just like you and me. The basic principle in these Acts is, therefore, that inmates have rights and obligations and are legal citizens like any other citizen. Their rights can be violated only if these violations are expressly legitimized by legislation. The fact that inmates have a special relationship to the government does not in itself legitimize denying them certain rights.

I will now briefly mention some objectives and basic principles that are explicitly regulated in these Acts.

1. Firstly, the resocialization principle. According to this principle, custodial sentence should as far as possible be executed in a way that will help the sentenced individual to return to society. The legislator felt it necessary to include in the wording of the Act that this should be done without losing the penal character of the custodial sentence. Initially, resocialization was taken to mean moral improvement, but this proved to be too ambitious and it gradually evolved into seeking to minimize the harm that incarceration, by its very nature, can cause. The meaning of resocialization gradually shifted, therefore, towards the second principle.

2. And that is the principle of minimal restrictions. According to this principle, inmates can only be subjected to those restrictions that are necessary to achieve the objective of depriving them of liberty or that are in the interests of order or safety in the institution.

3. A third principle is the principle of expeditiousness. A custodial sentence must be executed as soon as possible after being imposed. This principle may seem self-evident, but it is not always adhered to in practice. As a result of a sudden increase in the numbers of drug smugglers sentenced, the Netherlands had a serious shortage of prison cells for some years. This meant that sentences could not always be executed promptly, or in full. A question directly relating to this is when, or from what time, a custodial sentence can be executed. This is currently the moment the judgement imposing the custodial sentence becomes final. Until then, sentenced individuals can be held in pre-trial detention.

**5. Division of responsibilities with respect to the execution**

To provide some insight into the execution of custodial sentences I would like to briefly outline the various parties that are involved. The Minister of Security and Justice is responsible for executing custodial sentences. For the past few years, the Netherlands has no longer had a Minister of Justice, but instead, and as the only country in the world, a Minister of *Security* and Justice. This is characteristic of Dutch criminal law today. In addition, the Public Prosecution Service plays a specific role in the execution of custodial sentences as far as access to the court is concerned. This is because it is responsible for submitting applications to the court in the context of executing custodial sentences. Special officials at the ministry are responsible for placing and transferring inmates in the various penitentiaries, and each penitentiary is headed by a governor who reports directly to the Minister of Security and Justice.

**6. Internal legal position of inmates**

Inmates’ *internal* legal position can be distinguished from their external legal position. The *external* legal position relates to legislation on the ways in which individuals may be deprived of their liberty and how that incarceration may be terminated, while the internal legal position relates to the legal position of inmates while they are being held in the institution.

Execution of imprisonment is regulated in the Custodial Institutions Framework Act, and execution of detention measures in the Hospital Orders Framework Act. As these Acts are similar in many ways, I will deal only with the execution of imprisonment.

According to the Custodial Institutions Framework Act, execution of imprisonment means placing sentenced individuals in a penitentiary institution or enrolling them on a penitentiary programme.

As far as the placement of inmates is concerned, the Act makes a distinction on the basis of gender and on the degree of security required. Firstly, men and women are housed separately. Adults and juveniles are also housed separately, but I will not go into the legislation applying to juvenile detention on this occasion. Secondly, the Act differentiates according to degree of security. It distinguishes five levels of security, from ‘relaxed’ to extra secure. A characteristic feature of ‘relaxed’ penitentiaries is that inmates are allowed leave every weekend and take up employment with private employers outside the institution. The most secure institution is the ‘extra secure’ institution, which includes a terrorist wing, where individuals suspected of or sentenced for terrorist crimes, or inmates considered very likely to try to escape, can be detained.

Each penitentiary has a particular regime. In other words, a system of rights and obligations for inmates. There are three different regimes; these are distinguished by the degree of isolation imposed. The most common regime is that of the ‘restricted community’ (*beperkte gemeenschap*), where the basic principle is that inmates stay in their cells, but are given the opportunity to take part in group activities, too. Under the restricted community regime, inmates are offered between 18 and 63 hours of activities [a week?]. These can include work, education, sport, receiving visitors, practising religion and recreational activities. The latter usually means no more than being able to watch TV in the communal area. The regime has to include at least one hour of physical exercise outside each day.

The Custodial Institutions Framework Act also includes several substantive and procedural rights for inmates. Examples of the substantive rights include the right to receive mail, the right to receive visitors, the right to medical care, and the right to work and participate in other activities.

The procedural rights relate to placements and transfers, the order measures that a governor is allowed to impose, when an inmate can be granted leave, the powers governing examinations of inmates (such as body searches or urine tests), the use of force or restriction of an individual’s liberty, and disciplinary action against inmates, such as being excluded from work or held in solitary confinement.

One important element of inmates’ internal legal position is their right to complain. Inmates can file a complaint about a decision made by or on behalf of the governor if it affects them. The term ‘decision’ also includes any failure or refusal to take a decision. The complaint can be filed with a complaints committee. Every penitentiary has an independent supervisory committee (*Commissie van Toezicht*). These supervisory committees are established by law and are made up of citizens from various backgrounds. The supervisory committee must at least include a judge, a doctor, a lawyer and a social work professional. Its task is to supervise the execution of custodial sentences, to deal with complaints filed by inmates, and to advise the Minister of Security and Justice, either on request or at its own initiative. The complaints committee, which comprises three members of the supervisory committee, meets monthly to handle inmates’ complaints. The complaints committee can declare the complaint to be valid and reverse all or part of the governor’s decision, declare the complaint to be unfounded, or declare itself unable to consider the complaint.

In addition, a ‘visiting officer’ (*maandcommissaris*) is appointed on a monthly rotating basis to visit inmates personally, to inspect their cells and, if necessary, to mediate between an inmate and the prison governor.

Both the inmate and the governor can appeal against the complaints committee’s decision. They do this through the appeals committee of the Council for the Administration of Criminal Justice (*Raad voor de Strafrechtstoepassing*), which is an independent body consisting of people from various backgrounds, such as the judiciary, psychiatrists or criminal law academics.

The following is a very concrete example of the importance of regulating inmates’ legal position. On 6 May 2002, nine days before the general election, the Dutch politician Pim Fortuyn was murdered. The assassin, Volkert van der G., was apprehended shortly afterwards and later sentenced to 18 years’ imprisonment. Whether this sentence was long enough is debatable. The fact is that the court sentenced him to 18 years’ imprisonment. This means that in May 2014, after serving two-thirds of his sentence, he will be eligible for a conditional release. Before and in preparation for his release, Van der G. filed a request for leave. The prison governor refused this request, claiming it would cause too much commotion in society if Van der G. were allowed leave. Van der G. filed an objection against this decision with the complaints committee, but his objection was declared unfounded. He then appealed to the appeals committee, which decided in his favour. The State Secretary of Security and Justice was subsequently ordered to reassess the request, with due regard for the appeals committee’s decision. But the State Secretary, too, refused to grant leave. Van der G. ultimately also appealed against this decision. On this second occasion the appeals committee found in his favour and ordered the State Secretary to grant him leave.

There are several aspects to this case. First of all, the State Secretary’s interference in an individual case, which I believe to be highly undesirable. In my view, politicians should never intervene in individual cases so as to avoid unwanted political interference. Secondly, this case illustrates the importance of inmates’ right to complain and that it is also important for them to be able during their detention to submit decisions affecting them to an independent authority.

**7. Some recent developments**

Execution of custodial sentences is an area that has seen quite some developments in the past year. I will now discuss some of these recent developments.

I. Immediate execution

As I said earlier, one important principle is that criminal law sanctions are executed as soon as feasible. The basic principle in the Dutch Criminal Code is currently that a sentence should be executed as soon as a court-imposed criminal sentence becomes final. In other words, when an appeal or cassation is no longer possible.

However, the Minister recently submitted a legislative proposal to enable immediate execution of custodial sentences of two years or more, or of one year or more if victims were involved. This proposal means that sentences may be executed as soon as they are imposed, even if the accused appeals. Please note that I am not referring to pre-trial detention here, where deprivation of liberty is also possible, but to an ‘advance’ sentence for an accused whose culpability in terms of criminal law has not yet been established. A debate is currently ongoing in the Netherlands on how this immediate execution of sentences relates to the presumption of innocence.

The year 2013 was also a year in which spending cuts for the prison system were announced. The prison system has to reduce its spending by around €340 million by 2018. Although these spending cuts have attracted considerable criticism, they look likely to go ahead. The plan is to save money in the following ways:

II. Intensifying the use of multi-person cells

The basic principle in the Netherlands is one person per cell. Since 2004, however, it has been possible to place two inmates in a cell (originally intended for one person). Inmates may also be housed in specially adapted multi-person cells suitable for four, six or eight people. Ultimately it is intended to house 50% of all inmates in multi-person cells.

III. Introduction of a less generous regime for detainees and people in preventive detention, and cuts in evening and weekend programmes

Since September 2013, detainees and people in preventive detention (in other words, people whose culpability for an offence has not yet been established) have been offered a limited daily activity programme for 28 hours a week. They have no opportunities for work during the first eight weeks. This spending cut has resulted in inmates having to spend more hours in their cell than before.

IV. Abandonment of detention phases and introduction of electronic tagging

This puts an end to all freedoms, including the general leave that is designed to help inmates gradually reintegrate into society. From now on, leave will be granted only occasionally, for instance to attend a funeral or childbirth.

Leave will be replaced by a system of electronic tagging, which will mean sentenced individuals can serve the remainder of their prison term at home. This should be possible after they have served half of their sentence. The sentenced person will have to wear an ankle tag so that he can be monitored and checked.

The introduction of electronic tagging can in itself be seen as a positive development. It may help to resocialize the person by allowing him to serve the sentence in familiar surroundings. This will avoid disrupting family relationships, and the person can keep his job and, therefore, also his home. The European Court ruled in *Guzzardi v. Italy* that, depending on the circumstances of the case, restrictions on liberty can also be considered as deprivation of liberty. A major disadvantage of this proposed spending cut, however, is that the responsibility for deciding to have the prison sentence served by electronic tagging will lie with the executive branch, and not with the judiciary. That means that a court that believes that a sentenced individual should spend some time in prison and so has to decide between a partly conditional prison sentence or a completely unconditional prison sentence may not achieve what it set out to.

V. Closure of prisons and construction of two ‘super prisons’

A number of small prisons are going to be closed and two new ‘super prisons’ will be built in their place. This could mean inmates being sent to a prison further away from their home, and so people visiting them will need to travel further.

VI. Pay-to-stay

The most recent development is a legislative proposal to make inmates pay for part of the costs of their detention. The proposed charge is €16 a day for up to two years. This amount could be collected during their detention. Many countries, including the United Kingdom, Germany and some US states, have a pay-to-stay scheme, but these schemes have attracted considerable criticism. Inmates have little or no income while they are incarcerated. Their social security benefits are discontinued, and they only earn €0.76 an hour if they work, and that is for a maximum of 20 hours a week. They often also need these earnings to pay for the costs of renting a television. The result, therefore, is that many inmates accrue debts while they are incarcerated, and this makes it even more difficult for them to successfully reintegrate into society afterwards. Questions can also be raised about the proportionality of the proposal.

**8. Life imprisonment**

The most severe sentence in the Netherlands is life imprisonment. As I said earlier, the Dutch Criminal Code distinguishes between temporary imprisonment of up to 30 years and life imprisonment. Life imprisonment in the Netherlands is, in principle, truly for life. It has been in place since 1870 and was originally introduced to replace the death penalty. Life imprisonment can only be imposed for the most serious crimes, such as murder.

Although life imprisonment is not imposed often, the number of occasions on which it has been imposed has risen in recent years. Until 2000, courts rarely imposed sentences of life imprisonment, but since then it has been imposed on over 20 occasions. Presently, 32 [about 30] people are serving whole life sentences, and the longest term that has so far been served is 33 years.

Life imprisonment does not mean a prisoner will never be released. By law, a prisoner sentenced to life imprisonment can be released if he is given a pardon. A pardon may be granted “if the execution of the sentence in fairness no longer serves the purpose pursued by the criminal justice proceedings”.

The Dutch Crown is the competent authority to decide on the pardon. The term ‘Crown’ is used to refer to the government, which is the King and his ministers. In practice, it is the Minister of Security and Justice who takes the decision, but the court and the Public Prosecution Service may be asked for advice.

As a result of recent European Court of Human Rights case law, life imprisonment is now subject to debate in the Netherlands. The question is whether current Dutch legislation is in accordance with the requirements of the European Convention on Human Rights, and specifically Article 3, which prohibits torture and degrading treatment. I will briefly summarise this debate.

Although life imprisonment in the Netherlands in principle means a whole life sentence, a prisoner sentenced to life imprisonment, as I said earlier, may be eligible for a pardon. Until 1986, the policy in the Netherlands was to allow prisoners sentenced to life imprisonment to be pardoned after an average of only seventeen years. This policy ended in 1987, when the Pardons Act (*Gratiewet*) was introduced. Under this Act, a pardon can be granted if the execution of the sentence in fairness no longer serves any purpose. Since this Act was introduced, however, not a single prisoner sentenced to life imprisonment has been pardoned. The only exception so far was a terminally ill prisoner who died two weeks after being pardoned. It is very much open to doubt whether the current Dutch legislation on life imprisonment meets the requirements of the European Convention on Human Rights.

On 9 July 2013, in *Vinter and others v. United Kingdom* (appl. nos. 66069/09, 130/10, 3896/10), the European Court condemned the UK legislation on life imprisonment. Although this ruling primarily has consequences for the United Kingdom, it may also have consequences for other member states.

In this ruling, the European Court confirmed its previous case law by stating that, for life imprisonment to be in accordance with Article 3 of the European Convention on Human Rights, there must be a possibility both *de jure* and *de facto* for life-sentenced prisoners to be released. The European Court stated in *Kafkaris v. Cyprus* (ECRM 12 February 2008, appl. no. 21906/04) that imposing an irreducible whole life sentence “may raise an issue under Article 3”. A prisoner sentenced to life imprisonment must have a “prospect of release”. This “prospect of release” should exist from the moment the whole life sentence is imposed. A prisoner sentenced to life imprisonment must know “at the outset of his sentence what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought”. “Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard.”

The European Court emphasized that it did not consider it necessary to prescribe how national law should implement such a review. Both a judicial procedure and an administrative procedure – like the pardon procedure in the Netherlands – would be acceptable.

The question is whether the manner in which the pardon procedure in the Netherlands is given shape is in accordance with the European Convention on Human Rights. This is because it is doubtful whether prisoners sentenced to life imprisonment have a “prospect of release” and any ancillary possibility of review. This is because the basic principle in the policy implementing the Pardon Act is that a whole life sentence truly is for the rest of a person’s life. The policy is not aimed at returning the person to society, and so it may be questioned how this policy relates to the principle of resocialization. It is also not clear what such prisoners must do to be eligible for a pardon and when they may submit a request for a pardon. Another problem in the pardon procedure is that the power of decision lies with the Minister of Security and Justice, which makes the granting of pardons to such prisoners politically sensitive.

I therefore conclude that the European Court’s ruling in *Vinter* creates a need to modify Dutch legislation, as well as to implement a review mechanism so as to bring Dutch legislation on life imprisonment into line with the requirements of Article 3. As I see it, the best way to achieve this would be to allow prisoners sentenced to life imprisonment to be eligible for a conditional release after a certain number of years, and to make the courts responsible for taking those decisions.

**8. Closing words**

This concludes my outline of how custodial sentences in the Netherlands are executed. Do any of you have any questions?