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L'ergastolo senza prospettiva di rilascio viola l'art. 3 della Convenzione EDU
(CEDU, sez. V, sent. 18 novembre 2021, ric. n. 22356/20 e altri)

Nel caso in esame la Corte EDU ha esaminato una serie di ricorsi avanzati da alcuni cittadini contro il governo ucraino, con i quali si lamentava la violazione dell'art. 3 della Convenzione per effetto della previsione dell'ergastolo senza alcuna prospettiva di rilascio. Tale pena lederebbe, infatti, la testé menzionata disposizione convenzionale, la quale, come noto, proibisce la tortura e il trattamento o pena disumana o degradante e oltre a costituire "un principio fondamentale delle società democratiche" esso vale a garantire il rispetto della dignità umana, imponendo il fine della riabilitazione del condannato.

Nella decisione *de qua* i giudici di Strasburgo, sulla base della pregressa giurisprudenza, hanno ribadito che la Convenzione non vieta la pena dell'ergastolo a coloro che sono condannati per reati particolarmente gravi, come ad esempio l'omicidio. Tuttavia, per essere compatibile con l'articolo 3, la sentenza deve essere riducibile *de jure* e *de facto* nel senso cioè che deve esistere sia una prospettiva di rilascio per il detenuto sia una possibilità di revisione della condanna. La revisione, in particolare, deve basarsi sulla valutazione dei motivi che giustifichino la continuazione dell'incarcerazione. L'equilibrio tra tali motivi non è necessariamente statico ma può mutare nel corso della detenzione stessa; cosicché la valutazione originaria potrebbe modificarsi dopo un lungo periodo di reclusione. In questa direzione, nella decisione viene sottolineata e ribadita l'importanza della funzione riabilitativa della pena, assolutamente in linea con le scelte della politica penale europea, con la prassi degli Stati contraenti e con le norme adottate dal Consiglio d'Europa. Sicché non avendo riscontrato alcun fatto o argomento in grado di persuaderla, la Corte EDU ha ritenuto l'ergastolo senza prospettiva di rilascio in contrasto con l'articolo 3 della Convenzione e che, in definitiva, tale sistema è incompatibile con l'obiettivo della riabilitazione.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF XXX v. UKRAINE

(Applications nos. 22356/20 and 7 others – see appended list)

JUDGMENT
STRASBOURG
18 November 2021

This judgment is final but it may be subject to editorial revision.

In the case of XXX v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:
Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*
Having deliberated in private on 21 October 2021,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in applications against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table
2. The Ukrainian Government ("the Government") were given notice of the applications.

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.
4. The applicants complained of the life sentence with no prospect of release.

THE LAW

I. JOINDER OF THE APPLICATIONS
5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.
II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
6. The applicants complained of the life sentence with no prospect of release. They relied, expressly or in substance, on Article 3 of the Convention, which reads as follows:
Article 3
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
7. The Court reiterates that the Convention does not prohibit the imposition of a life sentence on those convicted of especially serious crimes, such as murder. Yet to be compatible with Article 3 such a sentence must be reducible *de jure* and *de facto*, meaning that there must be both a prospect of release for the prisoner and a possibility of review. The basis of such review must extend to assessing whether there are legitimate penological grounds for the continuing incarceration of the

prisoner. These grounds include punishment, deterrence, public protection and rehabilitation. The balance between them is not necessarily static and may shift in the course of a sentence, so that the primary justification for detention at the outset may not be so after a lengthy period of service of sentence. The importance of the ground of rehabilitation is underlined, since it is here that the emphasis of European penal policy now lies, as reflected in the practice of the Contracting States, in the relevant standards adopted by the Council of Europe, and in the relevant international materials (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, §§ 59-81, ECHR 2013 (extracts)).

8. In the leading case of *Petukhov v. Ukraine (no. 2)*, no. 41216/13, 12 March 2019, the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. They are therefore admissible and disclose a breach of Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

10. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

11. Regard being had to the documents in its possession and to its case-law (see, in particular, *Petukhov (no. 2)* cited above, § 201*)*, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 3 of the Convention concerning the life sentence with no prospect of release;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction.

Done in English, and notified in writing on 18 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar
Lətif Hüseynov President