[scanned coat of arms of the Kingdom of Norway]

THE SUPREME COURT OF NORWAY

On 10 March 2011 the Supreme Court of Norway handed down a judgement in

HR-2011-00516-A, (case no. 2011/231), civil action, appeal against a judgement,

A (Counsel John Christian Elden)

versus

The State of Norway represented by the Ministry of Justice(Office of the Attorney General

(represented by Counsel Ingrid Skog Hauge)

V O T I N G :

(1) Judge **Tønder:** The case concerns the validity of a decision to deny release on probation[1]. The question is whether it is in breach of Article 97 of the Norwegian Constitution and Article 7 of the European Convention on Human Rights (ECHR) to apply new and stricter rules concerning release on probation than those applying at the time of the action and/or judgement.

(2) A was on 6 December 2000 sentenced by a judgement of the Frostating Court of Appeal – criminal division – to 21 years of imprisonment and 10 years of preventive supervision, where the most serious count concerned premeditated poisoning leading to death of his former girlfriend and two prior cases of actual bodily harm against her by means of poison. The criminal offences took place in the period June 1998 to between Christmas and New Year of the same year. The aggrieved party died in February 1999.

(3) By a Supreme Court ruling of 17 March 2005, the authorisation for preventive supervision was not converted into preventive detention, and has thus lapsed. The Supreme Court found that the fundamental condition, to the effect that a determinate sentence is not sufficient to protect society, was not met, since a sentence of 21 years imprisonment was passed; cf. Rt.[2] 2005 page 284.

(4) In November 2009, A applied to the Norwegian Correctional Services at Ila Prison for release on probation after serving 12 years of the penalty, which was 17 February 2011.

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[1] The word used in the English version of the Prison Act is 'parole'.
[2] Rt = *Rettstidene:* Publication containing Supreme Court judgements

(5) The fact that the application concerned release on probation after serving 12 years has to do with the fact that Section 35 first paragraph second sentence of the Norwegian Act no. 7 of 12 December 1958 relating to the Prison Authority (the Prison Act), which applied at the time of the criminal offences and the sentencing, provided a special rule concerning the opportunity for release on probation after 12 years for inmates who were sentenced to imprisonment for more than 18 years. The general rule for other inmates was that they could be released on parole after serving two thirds of their sentence; cf. Section 35, first paragraph, first sentence. The rule of release on probation after 12 years for inmates who were sentenced to imprisonment for more than 18 years was not maintained when the Prison Act was replaced by Act of 21 of 18 May 2001 relating to the Execution of Sentences etc (the Execution of Sentences Act), which entered into force on 1 March 2002. Pursuant to Section 42, first paragraph of the Execution of Sentences Act, the general rule that release on probation can take place after two thirds of a sentence has been served also applies to inmates sentenced to more than 18 years of imprisonment.

(6) A's application was denied. He appealed to the Norwegian Correctional Services Region North-East, but his appeal was not allowed. After this, A filed a writ against the state to test the validity of the decision. The writ was treated as a new application by Ullersmo Prison, to which A had been moved, and was again denied. He appealed to the Norwegian Correctional Services Region North-East, but his appeal against this decision was also denied by a decision of 15 December 2010. In the appeal decision, the application was considered according to the Execution of Sentences Act, Section 42 third paragraph concerning the opportunity for release on probation after serving half of the prison sentence (early release on probation) The conditions pursuant to this provision are stricter than the conditions pursuant to the first paragraph concerning release on probation after serving two thirds of a sentence and the conditions applying pursuant to Section 35 of the Prison Act concerning release on probation after 12 years for inmates who had been sentenced to more than 18 years of imprisonment. The Norwegian Correctional Services Region North-East did not find grounds for considering the application according to the earlier rule concerning release on probation after 12 years, as required by A. The case concerns the validity of this decision.

(7) On 22 December 2010, the Oslo District Court passed judgement with the following conclusion of judgement:

> **" 1. The court finds for the State represented by the Ministry of Justice.**
>
> **2. The State represented by the Ministry of Justice is awarded legal costs in the amount of 27 600 – twentyseventhousandsixhundred kroner."**

(8) The District Court concluded that it was not in violation of either Article 97 of the Constitution or Article 7 of the ECHR to consider the application according to the rules applying today and not according to the conditions applying pursuant to the previous Act.

(9) A has appealed the judgement of the District Court and at the same time applied for permission to appeal directly to the Supreme Court; cf. Section 30-2 of the Norwegian Dispute Act. On 11 February 2011 the Supreme Court Appeals Selection Committee reached the following decision:

> **"Appeal directly to the Supreme Court allowed. The appeal may be submitted."**

(10) The position of the case brought before the Supreme Court is essentially the same as it was before the District Court.

(11) The appellant, *A*, has essentially argued:

(12) A has a right to have his application for release on probation considered on the basis that applied when he started serving the sentence, i.e. he has a right to be considered for release after 12 years in accordance with the general rule in Section 35, first paragraph, second sentence of the Prison Act. If the application is considered according to the rules on early release on probation in Section 42 third paragraph of the Execution of Sentences Act, the application is considered according to far stricter

conditions; see the requirement of "special reasons".

(13) At the time of the offence and judgement, release on probation was granted almost automatically after two thirds of the sentence had been served; cf. Odelsting Proposition no. 5 (2000-2001) page 160 and Rt. 2004 page 927 paragraph 42. In the same manner, persons who were sentenced to more than 18 years' imprisonment were as a clear general rule granted release on probation after 12 years. Nothing has been found to suggest that according to the earlier rules A would not have been released after 12 years.

(14) It follows from the prohibition on retroactive effect in Article 97 of the Norwegian Constitution that a change in conditions for serving a sentence can only take place "within reasonable limits"; see Rt. 1948 page 130. The change that has taken place in A's conditions of imprisonment as a result of the 12-year rule in the Prison Act not being maintained in the Execution of Sentences Act means a further deprivation of liberty of at least two years, which is beyond "reasonable limits". In this connection, it is of significance that in the sentencing, the courts also take account of the rules on release on probation; cf. Rt. 2008, p. 1686 and Rt. 2008 page 1692.

(15) The considerations underlying Article 97 of the Constitution also indicate that the application should have been considered according to the 12-year rule; cf. Rt. 2009 p. 1412 paragraphs 25 and 38.

(16) The change in the rule on release on probation has created a lack of clarity as to which penalty was set by the judgement in real terms. This is in breach of the requirement of predictability in Article 7 of the ECHR. A has referred in this connection to the judgement of the Grand Chamber of the European Court of Human Rights on 12 February 2008 in the case Kafkaris versus Cyprus.

(17) A has submitted the following statement of claim:

> **"1. Correctional Services Region North-East's decision of 15 December 2010 is ruled invalid.**
>
> **2. A is awarded legal costs for the Oslo District Court."**

(18) The respondent, *the State represented by the Ministry of Justice and Police* has essentially argued:

(19) The Court of Appeal's judgement is correct. In A's case, application of Section 42 of the Execution of Sentences Act is not in breach of the prohibition on retroactive effect in Article 97 of the Norwegian Constitution or Article 7 of the ECHR.

(20) A was sentenced to prison for 21 years. The Execution of Sentences Act does not change this, but provides rules for execution within the framework of the sentence that was passed. Section 35 of the Prison Act laid down no right to release on probation after 12 years from the start of serving the sentence. The practice of the 12-year rule in Section 35 of the Prison Act was criticised and made stricter in 1999 already. The fact that the general rule at the time of the offence and judgement was release on probation after 12 years provided no protected right against a later change in practice or legislative amendments. The lapse of the 12-year rule thus represents neither heavier penalties associated with earlier offences nor prejudice of an established legal position. Release on probation after 12 years was a good that A could achieve on the basis of a concrete assessment, but not a right for which he could obtain a judgement.

(21) Without prejudice to Article 97 of the Constitution, the legislator can "within reasonable limits" issue new rules concerning the execution of sentence. In our case, it is not a matter of "new rules concerning execution" – there have been no changes in the prison conditions or the contents of the sentence in other respects. The practical consequence of the change in the law for A is that the assessment of whether release on probation

shall be granted is to take place after 14 years of serving the sentence instead of after 12 years. This is well within the original prison sentence of 21 years. The changes in the release on probation rules are not under any circumstances beyond reasonable limits. Because of the long authorisation for preventive supervision, A could not have had any actual expectation of release on probation after 12 years regardless.

(22) There is clear practice on the part of the European Court of Human Rights that new rules concerning the execution of sentence fall outside Article 7 of the ECHR, and that extended serving of a sentence as a result of a change in the rules for release on probation is not regarded as a breach of the provision. Nor is there any breach of the requirement of predictability. Because release on probation is based on a discretionary assessment, one must be prepared at all times for a change in practice.

(23) The State represented by the Ministry of Justice and Police has submitted the following statement of claim:

> **"The appeal to be dismissed".**

(24) *I have concluded* that the appeal will not succeed.

(25) At the time when A committed the criminal offences and at the time of judgement, the general rule on release on probation adhered to Section 35, first paragraph of the Prison Act. The provision had the following wording:

> **"An inmate who has been sentenced to imprisonment can be released on parole when he has served two-thirds of his term of punishment, including any time spent remanded in custody, but not less than 2 months. An inmate who has been sentenced to imprisonment for more than 18 years may be released on parole when he has been in prison for at least 12 years."**

(26) As stated, there was a general rule concerning the opportunity for release on probation after serving two thirds of the sentence (the two-thirds rule). For those serving a particularly long term of imprisonment, i.e. between 18 and 21 years, release on probation could take place after 12 years, which meant that they could be released earlier than after serving two thirds of the sentence (the 12-year rule).

(27) Whether release on probation took place depended on a discretionary appraisal; cf. the word "may". The only legal restriction followed from Section 35 fourth paragraph, which read:

> **"Release on parole is not granted if it is inadvisable under the circumstances or if the inmate's behaviour during deprivation of liberty tells against it."**

(28) From 1 March 2002, the rules for release on probation follow from Section 42 of the Execution of Sentences Act. The two-thirds rule is maintained here in the first paragraph, first sentence of the provision, which reads:

> **"The Correctional Services may release a convicted person on probation when the said person has served two-thirds of the sentence, and not less than 60 days, including any time spent remanded in custody."**

(29) In the same way as in Section 35, fourth paragraph of the Prison Act, the fifth paragraph of Section 42 includes the following restriction on exercise of discretion:

> **"The Correctional Services shall not decide to release a convicted person on probation if on an overall assessment the circumstances make such a release inadvisable. The Correctional Services shall attach particular weight to the convicted person's conduct while serving the sentence, and to whether there is reason to assume that the convicted person will commit new criminal offences during the probation period."**

(30) The third paragraph has a provision concerning early release on probation after serving half the prison sentence. A similar provision was included in Section 36 of the Prison Act. Section 42, third paragraph reads:

> **"If half the sentence of imprisonment and not less than 60 days in prison has been served, including any period spent remanded in custody, the Correctional Services may release a convicted person on probation if there are special reasons for doing so."**

(31) Thus, according to the Execution of Sentences Act, there is no longer any special rule concerning release on probation after 12 years for convicted persons who have been sentenced to more than 18 years of imprisonment. The general rule also for these persons is that release on probation may take place after two thirds of the sentence has been served. Thus, for a person who has been sentenced to 21 years of imprisonment, release on probation could take place after 14 years of the sentence has been served. No rules were issued in the Act's commencement provision to indicate that the repeal of the 12-year rule shall not apply to those who at the time of entry into force were serving a prison sentence of more than 18 years.

(32) If release on probation is to take place earlier, this must be considered on the basis of Section 42, third paragraph concerning early release on probation. There must be "special reasons" for release to be able take place pursuant to this provision. Thus the opportunity for early release is definitely more restricted than pursuant to the general rule in the first paragraph and what applied to release on probation pursuant to the 12-year rule in Section 35 of the Prison Act.

(33) As stated initially, A's application was considered pursuant to Section 42, third paragraph of the Execution of Sentences Act. Correctional Services Region North-East did not find that there were "special reasons" that spoke in favour of early release. Alternatively, an application was made for release on probation pursuant to Section 35, first paragraph, second sentence of the Prison Act, which the Correction Services found no reason to consider since the Prison Act has been repealed. A has submitted that by considering the application according to the criteria in Section 42 third paragraph of the Execution of Sentences Act, the Correctional Services have applied stricter criteria for release on probation than those applying when the criminal offences took place, and also at the time of judgement, and that this is in violation of Article 97 of the Constitution and Article 7 of the ECHR.

(34) I shall consider first whether the Correctional Services' decision of 15 December 2010 is invalid as being in violation of Article 97 of the Constitution.

(35) Article 97 of the Constitution states that no Act "must be given retroactive effect". In the legal practice of recent years, the contents of the provision have been undergoing development. It is usual to distinguish between new legislation that links penalties directly to previous actions or events ("actual retroactive effect"), and new legislation that affects existing legal statuses ("apparent retroactive effect"). A summary of the legal status is given in a plenary judgement in Rt. 2010 page 143 (the shipping company taxation judgement), section 153, where the justice delivering the leading judgement states:

> **"In my view, some main points can be set up on the basis of legal practice. The question of whether a law that links the effects of earlier actions or intervenes in established legal positions is in violation of Article 97 of the Constitution depends on how strong the element of retroactive effect is. If the law directly connects burdensome legal effects to older events, the law is as a general rule in violation of the Constitution. If, on the other hand, the act issues rules for how an established legal position is to be exercised in the future, the general rule is the opposite. There are transitional forms between these extremes. In our case, we are dealing with such a transitional form."**

(36) It is usual to say that the prohibition of retroactive effect in the area of criminal law is absolute, which was most recently expressed in Rt. 2010 page 1445 (the war criminal judgement), paragraphs 87–88. This means that an action that was not a criminal offence when it was committed cannot be penalised as a result of new legislation, nor can stricter sentencing frameworks or stricter minimum penalty rules be applied than those in force at the time of the offence; cf. Rt. 2009 page 1412 paragraph 24.

(37) New rules concerning execution of sentence concern neither the defining as criminal of an act that was not previously so nor a change in the sentencing framework, but how the sentence is to be executed. Even though these are rules in the sphere of criminal law, they fall outside the scope of the absolute prohibition of retroactive effect in Article 97 of the Constitution. However, it has been established in legal practice that Article 97 of the Constitution also affects what the new Execution of Sentences Act can contain. This was first established in Rt. 1948 page 130, which concerned the application of new rules for execution of sentence pursuant to the Act relating to Legal Procedure in Treason Cases. The Supreme Court stated here that new rules could be applied "within reasonable limits" even if other execution of sentence rules applied at the time of the offence in the case in question. But the Supreme Court made reservations for the case that "the Treason Act supplemented by such rules is detrimental to the convicted person's position to the extent that it can be maintained that the nature of the penalty has been changed. The interpretation of the judgement in Rt. 2004 page 306 paragraph 25 is that "the legislators may without prejudice to Article 97 of the Constitution 'within reasonable limits' not merely issue new rules concerning execution of sentence to acts that were committed before the new rules were adopted, but also to sentences that have been passed". This interpretation of the law was most recently sustained in paragraph 94 of the war criminal judgement.

(38) A case where a change with respect to the content of the execution of sentence was regarded as unconstitutional is discussed in Rt. 1964 page 1418. The Court of Appeal had found that serving a prison sentence in Norway for a Danish judgement of light detention represented a sharpening of the penalty, and that an Act relating to execution of Nordic criminal judgements, which was adopted later than the Danish judgement, was in violation of Article 97 of the Constitution on this point. The Supreme Court's Appeals Committee agreed with the Appeals' Court's interpretation of the law.

(39) The assessment of whether it will be "within reasonable limits" to allow new rules on execution of sentence to be applied to convicted persons who are serving a sentence, refers to any changes in the contents of the serving of the sentence. As the Supreme Court pointed out in Rt. 1948 page 130, the question will be whether the change is so detrimental to the convicted persons' position that the "nature of the penalty" can be said to be different. If the change in the execution has an effect such that it changes the nature of the penalty so that the penalty becomes more burdensome, we are bordering on the absolute prohibition of retroactive laws in the sphere of criminal law. In such cases the courts may easily conclude that Article 97 of the Constitution has been violated.

(40) Rules concerning release on probation concern the enforcement of a penalty. However, release on probation must be regarded as a separate legal institution in criminal policy. The sentence is not changed, but the question is whether the convicted person should be spared from serving the whole term.

(41) In order for Article 97 of the Constitution to restrict the opportunity for change the conditions for release on probation with effect for persons who have been convicted, the new rules must affect an established legal position to a disproportionate extent. The question will then be whether A has had expectations of release on probation after serving 12 years which are protected against later legislative changes to his detriment.

(42) What may speak in favour of such protection of expectations is that we are in the sphere of criminal law. A's grounds for arguing that the repeal of the 12-year rule represents a violation of the Constitution are then also that according to him there is a close connection between the length of the sentence and the rule concerning release on probation - implicit in the length of the sentence is an assumption of release on probation pursuant to the legislation that applied at the time that judgement was passed. A change in the rule regarding release on probation that is to his detriment is in reality, it is argued, an increase in the sentence from 12 to 14 years. Such an increase in the sentence based on later legislation is in violation of Article 97 of the Constitution.

(43) The wording of Section 35, first paragraph second sentence of the Prison Act provides no basis for expectations of release on probation after serving 12 years. As I have already pointed out, it says that an inmate "may" be released on parole when he has been in prison for 12 years. In other words, the provision assumes that discretion will be exercised before a decision is reached on release on probation.

(44) As a basis for the expectation of release on probation after serving 12 years, A has argued that practice at the time of the offence – and also at the time of the judgement – was such that he would normally have had a right to release provided that his behaviour during his deprivation of liberty did not count against it. Reference is made to the draft Execution of Sentences Act, Proposition no. 5 to the Odelsting (2000-2001), page 160, where current practice according to Section 35, first paragraph, second sentence of the Prison Act is described as follows:

> **"Inmates who have been sentenced to imprisonment for more than 18 years may pursuant to Section 35 be released on parole after being in prison for at least 12 years. In practice, special circumstances that make release inadvisable are required for these convicted persons not to be released after 12 years. ... This is consistent with an opinion of 25 April 1969 from the Nordic Criminal Law Committee in which the committee indicated that the question of release should be considered not later than after 10-12 years. It was agreed that deprivation of liberty in general should not be longer, unless it was necessary because of the dangerous nature of the inmate."**

(45) A has also referred to Rt. 2004 page 927. The judgement concerned the question of whether a criminal case should be dismissed as in contravention of Protocol 7 Article 4 no. 1 of the ECHR – the prohibition of double jeopardy. Pursuant to Section 42, fifth paragraph of the Execution of Sentences Act, the defendant had been refused release on probation from serving of a previous sentence with reference to an indictment for new criminal offences. In this connection, the Supreme Court provided an account of the general features of the Norwegian release on probation system, pursuant to both the Prison Act and the Execution of Sentences Act. The Prison Act states in Section 42:

> **"Pursuant to the Prison Act of 1958, Section 35, first, cf. fourth paragraph, an inmate could be released on parole after enduring two-thirds of the penalty unless "circumstances make release inadvisable, or the inmate's behaviour during deprivation of liberty tells against it". In practice, virtually all [inmates] are released on parole after serving two thirds of their sentence unless the sentence was for a period of less than 74 days or a new sentence of a certain length could be expected to be pronounced before the expiry of full time; cf. Storting Report (White Paper) no. 27 (1997-1998) page 41."**

(46) However, I cannot see that the practice described implies that when judgement was pronounced A acquired a position that gave him a legal right to release on probation on serving 12 years of his sentence provided that the conditions in Section 35, fourth paragraph of the Prison Act were fulfilled. The Act did not prevent the Correctional Services from changing their practice, so that the possibility of release on probation was made stricter, also for those who were serving a sentence. Such a change in practice had indeed already been introduced under the Prison Act through the Ministry of Justice's circular of 6 September 1999. The circular refers initially to the fact that it is pointed out in Storting Report no. 27 (1997-1998)

that it is inadvisable for prisoners to be released on probation almost automatically after serving two thirds of their sentence. It states further:

> **"The general rule shall continue to be release on probation after 2/3 of the time, but the release shall form an integral part of the execution. This means that a concrete, individual evaluation shall be made in each case of whether release on probation should be granted, and what conditions shall apply during the probation period. This also means that preparation for release will be an important part of the prison work."**

(47) Since the circular was of relatively recent date when the Execution of Sentences Act replaced the Prison Act, it is difficult to say what the practical consequences of the new guidelines would have been. It is also unclear whether the change in practice applied to inmates who had been sentenced to more than 18 years of imprisonment. However, the point is that existing practice, as I have described it by means of the aforementioned quotes, did not prevent a change of practice that could have the effect that opportunity for release on probation was restricted. And in my opinion, Article 97 of the Constitution did not preclude the possibility of this practice being further restricted, such that release on probation after serving two-thirds could no longer be described as the general rule.

(48) That previous practice did not give any legal claim to release on probation after serving two-thirds of the sentence is also found in Rt. 2004 page 927. Paragraph 48 of this judgement states:

> **"The system established by the Execution of Sentences Act clearly does not provide the convicted person with any legal claim to release on probation. The fact that in practice it is no longer automatic for the prisoner to be released on probation, either, is confirmed by the statistical material that has been submitted in the case. This shows that the number of denials of release on probation after two-thirds of the sentence had been served was between 20 and 24 per cent in the years 2001-2003, and that there is considerable variation between prison regions and between the individual prisons within a region."**

(49) In my view, the conclusion would have to be the same for release on probation according to the 12-year rule in Section 35, first paragraph, second sentence of the Prison Act.

(50) A has also referred to two cases where the Supreme Court has taken account of the rules concerning release on probation in connection with sentencing; cf. Rt. 2008 page 1686 and Rt. 2008 page 1692. In both judgements, expected release on probation according to the two-third rule was taken into account when setting the conditional part of the sentence, so that there would not be question of returning a person to prison to resume serving a sentence. The rules concerning release on probation were taken account of in a very special context here, and this cannot be regarded as an expression of a general assumption of release on probation in connection with sentencing. In a judgement of 26 January 2011 (HR-2011-183-A) the Supreme Court stated in paragraph 19 that "in determining whether a penalty is to be regarded as served in its entirety through remand in custody, emphasis may not be placed on the possibility of release on probation".

(51) The reason that the legislator believed it was correct to repeal the 12-year rule was that it was found to offend the general sense of justice "when criminals who are sentenced to the most stringent penalty under the law in reality do not get a longer period in prison than convicted persons who are sentenced to 18 years of imprisonment"; cf. Proposition no. 5 to the Odelsting (2000-2001), page 164. All those who are serving sentences must be prepared for an adjustment of this kind for reasons of criminal policy.

(52) The conclusion must accordingly be that neither at the time of committing the criminal offences nor at the time of judgement could A have a justified expectation of release on probation after serving 12 years that is protected against subsequent legislation. He can apply for early release on probation, but according to stricter rules. He must accept this. The administration was

free to make the rules stricter with effect also for those who were already serving a sentence. It must be clear, however, that a similar change in the release on probation rules can also take place through the legislation, also for those who received their sentence before the legislative amendment.

(53) By referring to the judgement of the Grand Chamber in Rt. 2009 page 1412, A has also argued that the considerations underlying Article 97 of the Constitution – the interests of predictability, security and rule of law for citizens – must dictate that his application for release on probation should have been evaluated according to the 12-year rule; cf. paragraphs 25 and 38 of the judgement. I have difficulty in following A's reasoning here. Rt. 2009 page 1412 concerns the question of what weight with respect to legal sources statements in the preparatory works concerning penalty level should have for the passing of sentences for criminal offences committed before the adoption of the Act. The Supreme Court concluded that the considerations underlying the prohibition of retroactive effect in Article 97 of the Constitution and Article 7 of the ECHR indicate that weight cannot be attached to the preparatory works in such a connection. In our case, the Storting has issued an act which there is question of disregarding as being in violation of the Constitution. In such case it must be Article 97 of the Constitution, as it is to be understood in the light of developments in legal practice, that must be decisive for the constitutionality, and not application of the considerations upon which the constitutional provision rests.

(54) I will now look at A's other main argument, that the repeal of the 12-year rule violates the predictability requirement in Article 7 of the ECHR.

(55) I will first mention that the Court of Human Rights has established in several judgements that Article 7 is not applicable to new and stricter provisions concerning release on probation, even if the new rules have been applied to persons who were sentenced prior to the adoption; cf. Jon Fridrik Kjølbro, *Den Europæiske Menneskerettighedskonvention – for praktikere* [the European Human Rights Convention - for practitioners], 3rd edition, page 577.

(56) A has referred to the fact that in a Grand Chamber judgement of 12 February 2008, in the case Kafkaris versus Cyprus, the European Court of Human Rights found that the provision concerning a life sentence, to which the appellant had been sentenced, was not defined clearly enough in the law, and therefore did not satisfy the requirement in Article 7 of the ECHR concerning predictability. When the criminal offence took place, the practice was to interpret a life sentence as 20 years of imprisonment. After the time of the offence, but before judgement was passed, the court concluded that a life sentence was prison for the rest of one's life, and not just 20 years. The European Court of Human Rights found that the penal provision had an unclear content at the time of the act, and stated in paragraph 150:

> **"The Court considers, therefore, that there is no element of retrospective imposition of a heavier penalty involved in the present case but rather a question of "quality of law". In particular, the Court finds that at the time the applicant committed the offence, the relevant Cypriot law taken as a whole was not formulated with sufficient precision as to enable the applicant to discern, even with appropriate advice, to a degree that was reasonable in the circumstances, the scope of the penalty of life imprisonment and the manner of its execution. Accordingly, there has been a violation of Article 7 of the Convention in this respect."**

(57) In our case, there was no lack of clarity as to the sentencing framework for what A was convicted for. And no requirement can be derived from Article 7 of the ECHR that a country that has release on probation shall have clearly defined conditions for when release on probation shall be granted. As I have already pointed out, provisions concerning execution are not regarded as penalties pursuant to Article 7. Therefore, this argument cannot succeed either.

(58) The State has won the case, but because of the nature of the case as a matter of public importance, has not claimed legal costs.

(59) I vote for the following

JUDGEMENT :

The appeal is dismissed.

(60) Acting Justice **Akerlie:** I agree in the essentials and in the outcome with the justice delivering the leading judgement.

(61) Justice **Noer:** Likewise.

(62) Justice **Øie:** Likewise.

(63) Justice **Skoghøy**: Likewise.

(64) After the voting, the Supreme Court handed down the following

J U D G E M E N T :

The appeal is dismissed.

True transcript certified: