



JUDICIARY OF  
ENGLAND AND WALES

**R (on the application of QUAYE) v SECRETARY OF STATE FOR JUSTICE**

[2025] EWCA Civ 226

11 March 2025

**SUMMARY**

1. The Court of Appeal (Dame Victoria Sharp, President, Lord Justice Lewis, and Mr Justice Cobb) has allowed an appeal by the Secretary of State for Justice against a decision of the Divisional Court. That Court had found that arrangements governing reviews of the minimum term to be served in detention by offenders who committed a murder when they were children were incompatible with rights derived from the Convention for the Protection of Human Rights and Fundamental Freedoms as given effect to in domestic law by the Human Rights Act 1998.
2. In May 2014, Mr Quaye, and a friend, went uninvited to a party in Norfolk. There, they stabbed and killed an innocent victim. Mr Quaye was aged 17 years and 9 months at the time. His co-accused was 15 years old. They were tried by a jury and convicted of murder in November 2014 at which time Mr Quaye was aged 18 and his co-accused was still 15 years old. They were both sentenced in January 2015. The trial judge ordered that they be detained at Her Majesty's pleasure but each had to serve a minimum term of 15 years in detention before they were eligible to apply to the Parole Board for release on licence.
3. The Secretary of State had a power to reduce the minimum term fixed by the judge as an act of clemency if the offender made exceptional progress in detention. In 2022, Parliament enacted the Police, Crime, Sentencing and Courts Act 2022 which inserted section 27A and 27B into the Crime (Sentences) Act 1997. Those provisions now govern applications for a review of the minimum term. Only those who were aged under 18 at the time when they were sentenced would be able to apply for a review of the minimum term. Those who were aged 18 or over when sentenced could not apply for a review.
4. Mr Quaye applied for judicial review of those statutory provisions, contending that they were not compatible with the Human Rights Act 1998 and Articles 5, 7 and 14 (read with Article 5) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 5 guarantees the right to liberty. Article 7 prohibits the imposition of

more severe penalties than existed at the time the offence was committed. Article 14 prohibits discrimination in the exercise of a Convention right. The Divisional Court found that the statutory provisions were incompatible with Article 5 as they gave rise to a risk of detention continuing after the time when a minimum term might have been reduced. It did not find it necessary to determine if the statutory provisions were incompatible with Article 7. It found that the provisions were incompatible with Article 14, read with Article 5, as they differentiated between those who were under 18 and those who were 18 and over at the time of sentence and the provisions were not objectively justifiable.

5. Court of Appeal allowed an appeal by the Secretary of State and held that the statutory provisions governing application for a reduction in a minimum term were compatible with the Convention. In relation to Article 5, a child who committed murder was to be detained at His Majesty's pleasure. The court had to fix the minimum term that the offender should serve before being eligible to apply to the Parole Board for release on licence. The minimum term was fixed in accordance with the relevant statutory provisions governing sentencing, relevant case law and guidelines issued by the Sentencing Council. Detention during the period of the minimum term was not arbitrary or unlawful. The fact that an offender could not apply for a review of the minimum term fixed by the court did not make the detention arbitrary or unlawful. In relation to Article 7, provisions concerning early release, such as those relating to applications for a reduction of the minimum term to be served, did not amount to the imposition of a penalty. They concerned the execution or enforcement of the penalty and so fell outside the scope of Article 7 and were not prohibited.
6. The statutory provisions did not give rise to unlawful discrimination contrary to Article 14, read with Article 5, of the Convention. The legislation sought to pursue a legitimate aim. It aimed to reduce the distress to the families of victims of murder caused by the existence of reviews. It did that by providing that those aged 18 and over when beginning their sentence would not be able to apply for a review. Those who were still children, that is, those aged between 10 and 17, when they began their sentence could apply for a review and the High Court would have regard, in particular, to whether the offender's progress had been exceptional or whether continued detention was likely to give rise to a serious risk to their welfare or continued rehabilitation which could not be significantly eliminated or reduced. The difference in treatment provided for by the legislation was proportionate. It was based on age (not a matter such as gender or ethnicity which, in principle, calls for weightier reasons by way of justification). Parliament had considered and decided that offenders aged 18 and over when sentenced should not have the opportunity to apply for a review; those under 18 when sentenced could. That was a legislative choice, balancing the competing interests of victims' families and of offenders. The Court should respect that considered, legislative choice. In all the circumstances, the legislation did not give rise to any unlawful discrimination.

**This summary is issued to assist understanding of the Court’s decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document.**