

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT  
KORBELY v. HUNGARY**

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment<sup>1</sup> in the case of *Korbely v. Hungary* (application no. 9174/02).

The Court held:

- by eleven votes to six, that there had been **a violation of Article 7** (no punishment without law) of the European Convention on Human Rights; and,
- by twelve votes to five, that it was not necessary to examine separately the applicant's complaint under Article 6 § 1 (right to a fair trial) of the Convention concerning the alleged unfairness of the proceedings.

The applicant made no claim under Article 41 (just satisfaction) of the Convention. (The judgment is available in English and French.)

**1. Principal facts**

The case concerned an application brought by a Hungarian national, János Korbely, who was born in 1929 and lives in Szentendre (Hungary). The applicant is a retired military officer who was serving a sentence in Budapest Prison when the application was lodged.

In 1994 the Budapest Military Public Prosecutor's Office indicted the applicant for his participation in the quelling of a riot in Tata during the 1956 revolution. He was charged with having commanded, as captain, a 15-strong squad in an assignment, on 26 October 1956, to regain control of the Tata Police Department building, which had been taken over by insurgents, and with having shot, and ordered his men to shoot, at civilians. Several people died or were injured in the incident.

On 29 May 1995 the Military Bench of the Budapest Regional Court discontinued the criminal proceedings against the applicant, holding that the offences with which he was charged constituted homicide and incitement to homicide, rather than crimes against humanity, and that such offences, even if proven, were statute-barred. The prosecution appealed against that decision, which was quashed by the Supreme Court's appeal bench.

On 7 May 1998 the Military Bench of the Budapest Regional Court, after examining the case afresh, discontinued the criminal proceedings in a decision that was upheld by the Supreme Court's appeal bench on 5 November 1998. Those decisions were quashed following a review.

---

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

The applicant was eventually convicted of multiple homicide constituting a crime against humanity and was sentenced to five years' imprisonment. The judges relied on Article 3(1) of the Geneva Convention of 1949. Mr Korbely began serving his sentence on 24 March 2003 and on 31 May 2005 he was conditionally released.

## 2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 20 January 2002. On 3 May 2007 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, under Article 30<sup>1</sup> of the Convention.

A hearing took place in public in the Human Rights Building, Strasbourg, on 4 July 2007.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,  
Christos **Rozakis** (Greek),  
Nicolas **Bratza** (British),  
Peer **Lorenzen** (Danish),  
Françoise **Tulkens** (Belgian),  
Loukis **Loucaides** (Cypriot),  
Ireneu **Cabral Barreto** (Portuguese)  
Karel **Jungwiert** (Czech),  
Volodymyr **Butkevych** (Ukrainian),  
András **Baka** (Hungarian),  
Vladimiro **Zagrebelky** (Italian),  
Antonella **Mularoni** (San Marinese),  
Elisabet **Fura-Sandström** (Swedish),  
Renate **Jaeger** (German),  
Sverre Erik **Jebens** (Norwegian),  
Dragoljub **Popović** (Serbian),  
Mark **Villiger** (Swiss)<sup>2</sup>, *judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

## 3. Summary of the judgment<sup>3</sup>

### Complaints

Relying in particular on Article 7 (no punishment without law), the applicant submitted that he had been convicted in respect of an act which had not constituted a criminal offence at the time it was committed.

---

<sup>1</sup> Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

<sup>2</sup> Judge elected in respect of Liechtenstein.

<sup>3</sup> This summary by the Registry does not bind the Court.

## **Decision of the Court**

### Article 7

Observing that the applicant's act, at the time it was committed, had constituted an offence defined with sufficient accessibility, the Court examined whether it had been foreseeable that the act in respect of which he had been convicted would be classified as a crime against humanity. It noted that in finding the applicant guilty, the Hungarian courts had essentially relied on common Article 3 of the Geneva Conventions, which – in the view of the Hungarian Constitutional Court – characterised the conduct referred to in that provision as “crimes against humanity”.

The Court noted that murder within the meaning of common Article 3 could have provided a basis for a conviction for crimes against humanity committed in 1956. However, other elements also needed to be present for that classification to apply. Such additional requirements derived not from common Article 3 but from the international-law elements inherent in the notion of crime against humanity at that time. The Court observed that the domestic courts had not determined whether the killing had met the additional criteria without which it could not be characterised as a crime against humanity. It thus concluded that it was open to question whether the constituent elements of a crime against humanity had been satisfied in the applicant's case.

In convicting the applicant, the Hungarian courts had found that Tamás Kaszás, who was killed in the incident in question, had been a non-combatant for the purposes of common Article 3, the protection of which extended notably to “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms”.

Tamás Kaszás had been the leader of an armed group of insurgents who, after committing other violent acts, had taken control of the police building and seized the police officers' weapons. He had therefore taken an active part in the hostilities. The Court found it to be crucial that, according to the Hungarian courts' findings, Tamás Kaszás had been secretly carrying a handgun, a fact which he had not revealed when confronted with the applicant. Once it had become known that he was armed, he had not clearly signalled his intention to surrender. Instead, he had embarked on an animated quarrel with the applicant, and had then drawn his gun with unknown intentions. It was precisely in the course of that act that he had been shot. In the light of the commonly accepted international-law standards applicable at the time, the Court was not satisfied that Tamás Kaszás could be said to have laid down his arms within the meaning of common Article 3. Lastly, the Court did not accept the Government's argument that the applicant's conviction had not been primarily based on his reaction to Tamás Kaszás's drawing his handgun, but on his having shot, and ordered others to shoot, at a group of civilians.

The Court therefore considered that Tamás Kaszás had not fallen within any of the categories of non-combatants protected by common Article 3. Consequently, that provision could not reasonably have formed a basis for a conviction for crimes against humanity in the applicant's case in the light of the relevant international-law standards at the time. The Court concluded that there had been a violation of Article 7.

### Article 6

In the light of its finding of a violation of Article 7, the Court did not consider it necessary to examine the applicant's complaint that the proceedings in his case had been unfair.

Judges Lorenzen, Tulkens, Zagrebelsky, Fura-Sandström and Popović expressed a joint dissenting opinion and Judge Loucaides a dissenting opinion. The opinions are annexed to the judgment.

\*\*\*

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

**Press contacts**

**Adrien Raif-Meyer** (telephone: 00 33 (0)3 88 41 33 37)

**Tracey Turner-Tretz** (telephone: 00 33 (0)3 88 41 35 30)

**Sania Ivedi** (telephone: 00 33 (0)3 90 21 59 45)

*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*