



## New legislation in Hungary for reviewing whole life sentences is not compatible with the European Convention

In today's **Chamber judgment**<sup>1</sup> in the case of **T.P. and A.T. v. Hungary** (application nos. 37871/14 and 73986/14) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.**

The case concerned new legislation introduced in Hungary in 2015 for reviewing whole life sentences. The legislation was introduced in order to comply with an ECtHR judgment of 2014 in which the Court found that the system for reviewing whole life sentences in Hungary should be reformed. The applicants in this case alleged that despite the new legislation, which introduced an automatic review of whole life sentences – via a mandatory pardon procedure – after 40 years, their sentences remained inhuman and degrading as they had no hope of release.

The Court found in particular that making a prisoner wait 40 years before he or she could expect for the first time to be considered for clemency was too long and that, in any case, there was a lack of sufficient safeguards in the remainder of the procedure provided by the new legislation. The Court was not therefore persuaded that, at the present time, the applicants' life sentences could be regarded as providing them with the prospect of release or a possibility of review and that the legislation was not therefore compatible with Article 3 of the Convention.

### Principal facts

The applicants, Mr T.P and Mr A.T., are Hungarian nationals who were born in 1981 and 1985 respectively and are currently serving prison terms in Sátoraljaújhely (Hungary).

Mr T.P. was convicted in November 2006 of murder committed with special cruelty and use of firearms. Mr A.T. was convicted in May 2010 of double murder and use of firearms. Both applicants were sentenced to life imprisonment with no possibility of parole. These judgments were upheld on appeal. Both their petitions for review before the Supreme Court as well as their requests for pardon were subsequently dismissed.

### Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that, even though new legislation had been introduced in Hungary in 2015, providing for automatic review of whole life sentences after 40 years, their sentences remained inhuman and degrading as they had no hope of release.

The application was lodged with the European Court of Human Rights on 28 October 2014.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. de Gaetano (Malta), *President*,  
András Sajó (Hungary),  
Nona Tsotsoria (Georgia),  
Paulo Pinto de Albuquerque (Portugal),  
Egidijus Kūris (Lithuania),  
Gabriele Kucsko-Stadlmayer (Austria),  
Marko Bošnjak (Slovenia),

and also Marialena Tsirli, *Section Registrar*.

## Decision of the Court

The Court recalled that in May 2014, in the case of [László Magyar v. Hungary](#) (no. 73593/10), it had found a violation of Article 3 of the Convention because presidential clemency – at the time the only possibility of release for a prisoner sentenced to life without parole – did not allow life prisoners to know what they had to do to be considered for release and under what conditions. Nor did the law guarantee a proper consideration of the changes in life prisoners and their progress towards rehabilitation. In order to comply with the findings in that case, the State enacted new legislation, introducing an automatic review of life sentences – a mandatory pardon procedure – after a convict has served 40 years of his or her sentence.

The Court concluded, however, that making a prisoner wait 40 years before he or she could expect for the first time to be considered for clemency was too long. Indeed, such a period was significantly longer than the maximum recommended time frame – 25 years – for review of life sentences as established in a previous Court judgment [Vinter and Others v. the UK](#) (application nos. 66069/09, 130/10 and 3896/10) on the basis of a consensus in comparative and international law. Such a protracted waiting period also fell outside any acceptable room for manoeuvre (“margin of appreciation”) enjoyed by States to decide on matters in the area of criminal justice and sentencing.

Moreover, the Court expressed a number of concerns relating to the remainder of the procedure provided by the new legislation. First, while the new legislation set out objective, pre-established criteria to be taken into account by the Clemency Board when deciding whether or not to recommend a life prisoner for pardon, those criteria did not apply to the President of Hungary, who had the last say as to possible pardon in every individual case. In other words, the new legislation did not oblige the President to assess whether continued imprisonment was justified. Second, the new legislation failed to set a time-frame in which the President had to decide on the clemency application or to oblige him to give reasons for the decision, even if it was different from the recommendation by the Clemency Board.

The Court was therefore not persuaded that, at the present time, the applicants’ life sentences could be regarded as providing them with the prospect of release or a possibility of review. There had accordingly been a violation of Article 3 of the Convention.

### [Article 41 \(just satisfaction\)](#)

The Court held, by six votes to one, that the finding of a violation constituted in itself just satisfaction for any non-pecuniary damage suffered by the applicants; and that Hungary was to pay 1,500 euros in costs and expenses.

## Separate opinion

Judge Kūris expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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**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.