Kúria

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The Kúria, at the public hearing held on 13th October 2016 in Budapest, delivered the following
o r d e r :

The Kúria confirms on the grounds of Section 1 of Act CXXX of 2000 that judgment No. TB.NB.003/1958-18 delivered by the People's Court Panel of the Supreme Court of the Hungarian People's Republic in respect of Imre Nagy, Dr. Ferenc Donáth, Miklós Gimes, Zoltán Tildy, Pál Maléter, Sándor Kopácsi, Dr. Ferenc Jánosi and Miklós Vásárhelyi, as well as judgment No. Tb.Nb.003/1958/12 delivered by the People's Court Panel of the Supreme Court of the Hungarian People's Republic in respect of Dr. József Szilágyi are
n u l l a n d v o i d .

The costs of criminal proceedings, HUF 28,575 (twenty-eight thousand five hundred and seventy-five forint), incurred in the procedure shall be paid by the State.

No judicial remedy shall lie against this order.

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S t a t e m e n t o f r e a s o n s

I.

[1] The General Prosecutor requested confirmation of the nullity of judgment No. TB.NB.003/1958-18 delivered by the People's Court Panel of the Supreme Court of the Hungarian People's Republic in respect of Imre Nagy, Dr. Ferenc Donáth, Miklós Gimes, Zoltán Tildy, Pál Maléter, Sándor Kopácsi, Dr. Ferenc Jánosi and Miklós Vásárhelyi, as well as of judgment No. Tb.Nb.003/1958/12 delivered by the People's Court Panel of the Supreme Court of the Hungarian People's Republic in respect of Dr. József Szilágyi [BF.1204/2016.].

[2] According to his reasoning, the grounds for nullity are included in Section 1 of Act CXXX of 2000, as amended by Act LVI of 2016 on the declaration of nullity of the convictions resulting from the reckoning after the 1956 revolution and fight for freedom.

[3] He refers to the fact that the Presidency Panel of the Supreme Court, in its decision No. Eln.Tan.B.törv.660/1989/6 delivered on 6th July 1989 – on an appeal in the interest of the law lodged by the Prosecutor General – reviewed the two judgments of the people's court panel and acquitted the condemned persons of all charges.

[4] The decision of the Presidency Panel of the Supreme Court declared that all convictions had been unlawful, as the persons subject to the proceedings had not committed any crime with the alleged acts; furthermore, he revealed that the procedure of the people's court had involved several breaches of procedural law.

[5] In the same time the Prosecutor General explained that, by ruling on the appeal in the interest of the law, the Supreme Court did not take any position on the rules governing the composition and functioning of the people's court panels, including solutions that had been quite alien to our legal system.

[6] The Supreme Court brought justice to the persons - convicted unlawfully in the absence of criminal offences - in such a way that it inevitably legitimised the people's court panel as a lawful court, and through reviewing the judgments of the People's Court Panel of the Supreme Court on appeal in the interest of the law, it treated these judgments as real judicial decisions.

[7] Concerning the proceedings of the people's court panels that were established from 6th April 1957 on, Act CXXX of 2000 opined that these procedures had been incompatible with the rule of law and with the constitutional principles of the administration of justice and therefore could not be considered legitimate. To remedy these, the judicial review instruments available in judicial proceedings are not appropriate.

[8] According to the motion, in the proceedings conducted on the grounds of legal provisions establishing the possibility of retaliation, the only remedy may be the fourth act on nullity, namely Act CXXX of 2000.

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[9] This Act declared in Section 1 that all convictions delivered in summary trials, accelerated procedures and before the people's court panels are null and void, if the alleged acts had identified with the objectives and ideas of the revolution and the fight for freedom.

[10] The conditions set out in the Act on nullity are fully met in respect of all persons concerned.

[11] According to the Prosecutor General, through ruling nullity as requested, it could be revealed that the procedures conducted – for the purposes of reckoning – against Imre Nagy and others, involved such fundamental deficiencies and intentional breaches of law that they cannot be repaired by a judicial conviction as such.

[12] The procedure on the grounds of an appeal in the interest of the law brought justice to the innocent persons convicted in a legal sense, but moral and political justice could not take place.

II.

[13] The convictions referred to by the General Prosecutor are the following.

[14] The judgments of the People's Court Panel of the Supreme Court of the Hungarian People's Republic given on 15th June 1958 and became final on the same day, under No. TB.NB.003/1958-18, found Imre Nagy, Dr. Ferenc Donáth, Miklós Gimes, Zoltán Tildy, Pál Maléter, Sándor Kopácsi, Dr. Ferenc Jánosi, Miklós Vásárhelyi, and given on 22nd April 1958 and became final on the same day, under No. TB.Nb.003/1958/12, found dr. József Szilágyi guilty of the following offences

Imre Nagy, Dr. Ferenc Donáth, Miklós Gimes, Sándor Kopácsi and Dr. József Szilágyi were found guilty of committing the felony of leading the organisation aiming to overturn the people's democratic state order under Point 1 (1) of the BHÖ (Official Compilation of Substantive Criminal Law Legislation);

Zoltán Tildy was found guilty of committing the felony of promoting the movement aiming to overturn the people's democratic state order under Point 1 (2) of the BHÖ;

Pál Maléter was found guilty of committing the felony of an act aiming to overturn the people's democratic state order under Point 1 (1) of the BHÖ;

Dr. Ferenc Jánosi and Miklós Vásárhelyi were found guilty of committing the felony of participating actively in the organisation aiming to overturn the people's democratic state order under Point 1 (2) of the BHÖ.

[15] Furthermore

Imre Nagy was found guilty of committing the felony of high treason under Point 35 (1) of the

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BHÖ;

Pál Maléter and Sándor Kopácsi were found guilty of the felony of riot committed as a leader under Section 29 and classified under Section 30 (2) of the KtBtk (Military Criminal Code).

[16] Therefore Imre Nagy, Miklós Gimes, Pál Maléter and Dr. József Szilágyi were sentenced to death, as the principal penalty, and to confiscation of all property, as an additional penalty,

Moreover, Pál Maléter was sentenced to losing all military honours and decorations, as an additional penalty;

Dr. Ferenc Donáth was sentenced to 12 years of imprisonment, as the principal penalty, and to 10 years prohibition from exercising the rights listed in the Criminal Code and to confiscation of all property as an additional penalty;

Zoltán Tildy was sentenced to 6 years of imprisonment, as the principal penalty, and to 6 years prohibition from exercising the rights listed in the Criminal Code and to confiscation of all property as an additional penalty;

Sándor Kopácsi was sentenced to imprisonment for life, as the principal penalty, and to losing his offices, to 10 years prohibition from exercising the rights listed in the Criminal Code, to losing all military honours and decorations and to confiscation of all property as an additional penalty;

Dr. Ferenc Jánosi was sentenced to 8 years of imprisonment, as the principal penalty, and to 10 years prohibition from exercising the rights listed in the Criminal Code and to confiscation of all property as an additional penalty;

Miklós Vásárhelyi was sentenced to 5 years of imprisonment, as the principal penalty, and to 5 years prohibition from exercising the rights listed in the Criminal Code and to partial confiscation of property in the value of HUF 1.000.

[17] Imre Nagy, Miklós Gimes and Pál Maléter were executed on 16th June 1958, and dr. József Szilágyi was executed on 24th April 1958.

[18] Since their release, Zoltán Tildy (on 3rd August 1961), Dr. Ferenc Jánosi (on 2nd September 1968), Dr. Ferenc Donáth (on 15th July 1986), Sándor Kopácsi (on 2nd March 2001) and Miklós Vásárhelyi (on 31st July 2001) have died.

[19] The Prosecutor General referred to Act CXXX of 2000 on the declaration of nullity of the convictions resulting from the reckoning after the 1956 revolution and fight for freedom.

III.

[20] The Kúria, as requested by the Prosecutor General, held a public hearing according to Section 2 (2)(c) of Act CXXX of 2000.

[21] At the public hearing, the Prosecutor maintained his motion and spoke in compliance

with its content.

[22] Both the defence counsel for Imre Nagy, Pál Maléter and Dr. József Szilágyi, and the defence counsel for Dr. Ferenc Donáth, Miklós Gimes, Zoltán Tildy, Sándor Kopácsi, Dr. Ferenc Jánosi and Miklós Vásárhelyi considered the motion for issuing the confirmation of nullity founded.

IV.

[23] The motion of the Prosecutor General for issuing the confirmation of nullity – in relation to both judgments and with regard to all persons concerned – is founded.

[24] According to Section 1 of Act CXXX of 2000 that entered into force on 4th January 2001:

[25] ‘All convictions based on acts in connection with the revolution or combat activity - identified with the objectives and ideas of the revolution and the fight for freedom - made in summary trials established by Legislative Decree No. 28 of 1956 and by Legislative Decree No. 32 of 1956, in accelerated procedures established by Legislative Decree No. 4 of 1957, and in procedures before the people’s court panels established by Legislative Decree No. 25 of 1957 and No. 34 of 1957, shall be considered null and void.’

[26] Section 2 (1) of Act CXXX of 2000 was amended by Section 1 (1) of Act LVI of 2016, with effect from 16th June 2016 with the following wording:

[27] ‘The conviction is null and void according to the law, the Kúria is competent to confirm the nullity.’

[28] According to the explanatory note to Act CXXX of 2000, the reason for nullity is that the legislative acts listed in the Act ‘created an environment where the conditions for an impartial and unbiased administration of justice were not met. In the case of applying »special« procedural provisions, the situation of a person whose actions had been evaluated in connection with the revolution was desperate.’ Those procedural rules served retaliation and, according to the value judgment expressed – similarly to the previous three acts on nullity – by the legislator, they did not comply with the rule of law; therefore all judgments delivered on those grounds are null and void.

[29] The legal environment mentioned by the fourth Act on nullity resulted in setting all real procedural guarantees aside, applying procedural rules differing from the general rules, and in reality putting the person subject to these proceedings in a hopeless and vulnerable position, if his acts were ruled upon by relating them to the revolution.

[30] Establishing special procedural rules and diverting the criminal procedure into serving political goals had been decided by a political body, the Administrative Committee of the Provisional Central Committee of the MSZMP (Hungarian Socialist Workers Party) at its meeting on 2nd April 1957. According to this decision:

[31] ‘The Administrative Committee finds it necessary to remove, more earnestly and rapidly, all remnants of the counter-revolution. Comrades Münnich and Biszku shall

be charged with the task to enforce criminal prosecutions with the help of the regulations on the people's court and its existing institutions, without informing the press and the public.'

[32] In compliance with the party's decision, the Presidential Council of the People's Republic (hereinafter: Presidential Council) adopted Legislative Decree No. 25 of 1957, on the grounds of which the people's court panel of the Supreme Court had been established. The Panel consisted of five members. It ruled on all cases where the prosecutor filed its indictment to the people's court panel.

[33] It could rule on first instance or as a review forum, but could decide upon appeals in the interest of the law as well. It was entitled to initiate retrials.

[34] If it ruled as a review forum, it was not bound by the prohibition of aggravation; it could deliver a more severe sentence than the judgment of the first instance, even if the defence counsel lodged an appeal for the benefit of the accused.

[35] The appeal in the interest of the law made it possible to deliver a new judgment even where there was a final and binding judgment.

[36] The Presidential Council adopted Legislative Decree No. 34 of 1957, which established the county people's court panels and the Budapest people's court panel (members: the president of the panel and two people's judges).

[37] People's courts applied the rules of accelerated procedures in their proceedings. The courts were entitled to impose death sentence, imprisonment for life, imprisonment between 5 and 15 years (mitigation of the punishment was excluded, Legislative Decree No. 34 of 1957).

[38] Clemency petitions were also excluded, and steps were taken for the immediate execution, if the people's court panel of the Supreme Court had not proposed clemency – unanimously or by majority vote – for the person sentenced to death.

[39] These solutions resulted in a harsher criminal procedure than ever, actually in a summary administration of justice created at the supreme court level.

[40] According to the text, in relation to these provisions, of the university notes on Hungarian State Law that appeared at the end of 1956:

[41] 'In the event of a death sentence, the documents of the case shall be transmitted through the Supreme Court and the Minister for Justice, after hearing the General Prosecutor, to the Presidential Council in all cases. Until the Presidential Council decides upon clemency, the death sentence shall not be carried out.'

[42] Pursuant to Section 20 (1) (k) of Act XX of 1949, the exercise of the power to pardon was conferred on the Presidential Council.

[43] The UNO admonished Hungary several times that, in spite of a relative consolidation, many years after Hungary was still experiencing exceptional circumstances and administration of justice. As a result of this, Legislative Decree No. 7 of 1961 repealed

all provisions concerning the people's court panels, with effect from 16th April 1961.

[44] The special procedural rules that were laid down in order to comply with the requirements set out in the party's decision not only overwrote and ignored national law, but infringed international law as well.

[45] The Geneva Conventions for the Protection of Victims of War of 12th August 1949, had been ratified by the Hungarian State and were published on 26th November 1954 through Legislative Decree No. 32 of 1954, and entered in force on 3rd February 1955.

[46] According to Art. 2 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if such an occupation meets with no armed resistance.

[47] Art. 4 stipulates: 'Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in the event of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals'.

[48] According to Art. 6: 'The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the Convention shall cease on the general close of military operations. In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations.'

[49] The Supreme Court stated in its Decision No. 1999/82: 'From 23rd October 1956 on, the armed conflict was not of an international nature, until the armed forces of the dictatorship turned against civilians, and until the military force of the Soviet Union invaded the country on 4th November, which rendered the conflict an international conflict.'

[50] 'As a result of the military victory of the Soviet troops, the fighting had ceased by 15th November 1956; thereafter, all military operations ceased.' [EBH 1999/83.]

[51] However the Soviet troops stayed in Hungary as occupying forces, and carried out police and administrative functions.

[52] Thus, on 4th November 1956, an armed conflict arose between Hungary and the Soviet Union in respect to Art. 2 of the Fourth Geneva Convention. After 15th November, Budapest remained an occupied territory, therefore Art. 6 of the Convention remained applicable for a further period of one year. That means that the population of Budapest was in the hands of the occupying Soviet military power, therefore these persons were protected by the Convention.

[53] This protection applied - as long as the occupation actually lasted - necessarily against security forces cooperating and enforcing joint action with the Soviet forces.

[54] With regard to this, Art. 75 of the Fourth Geneva Convention is relevant, according to which:

[55] “In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve. No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.’

[56] The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

[57] Beyond doubt, the death sentence delivered in the case of Dr. József Szilágyi on 22nd April 1958 was carried out on 24th April 1958, and in the case of Imre Nagy, Miklós Gimes and Pál Maléter the death sentences delivered on 15th June 1958 were carried out on 16th June 1958.

[58] Thus, the right of petition for pardon was not guaranteed in the case of death sentences, nor was the 6 months period respected, in spite of the fact that no such circumstances existed that could have justified such a reduction.

[59] Art. 6 of the Geneva Convention provides that the Convention shall apply from the outset of any conflict or occupation mentioned in Article 2. In the territory of Parties to the conflict, the application of the Convention shall cease on the general close of military operations. In the case of occupied territory, the application of the Convention shall cease one year after the general close of military operations; but the occupying power is obliged to comply with Art. 75 (among others) during the period of occupation, which Article enshrines the right of petition for pardon and establishes the rule of the 6 months period.

[60] There is no doubt that Imre Nagy and his companions were sentenced to death and executed by a “Hungarian court”, but the whole criminal procedure against them was conducted by the new regime changing the government with a foreign power, which regime still lacked international recognition, and its existence was only guaranteed by the presence and force of the occupying power. This is evidenced by several UN General Assembly resolutions relating to the situation in Hungary, and which called upon the Union of Soviet Socialist Republics and the Hungarian authorities to desist forthwith from all attacks on the people of Hungary, and to respect the freedom and political independence, as well as the human rights, of the Hungarian people and fundamental freedoms.

[61] Concerning the judgment of 15th June 1958 in the case of Imre Nagy and his companions, at issue in the motion of the General Prosecutor, the UN Special (5th) Committee in Point 27 of its special report No. A/3849 states that the occupying power

and the Hungarian government had full responsibility:

[62] ‘While the arrest of General Maleter and the abduction of Mr. Nagy and his companions were undertaken by Soviet personnel, nevertheless, the Hungarian Government, in announcing the subsequent trials and executions, has accepted full responsibility.

[63] These secret trials and executions evidence continued disregard for the resolutions of the General Assembly and for human rights, as defined in the Universal Declaration of Human Rights and the Charter of the United Nations.’

[64] According to Point 5 of the Resolution No. 1312 (XIII.) adopted by the General Assembly during its 13th Session on Plenary Meeting no. 787. On the Situation in Hungary, the General Assembly ‘denounces the execution of Mr. Imre Nagy, of General Pál Maléter and other Hungarian patriots’,

and according to Point 6:

‘condemns the continued defiance of the resolutions of the General Assembly.’ [The Revolution and the Hungarian Question in the United Nations, 1956-1963.; UN Association of Hungary, 2006. P. 132–133.]

[65] Similar condemnation is expressed in Resolution No. 1454 (XIV.) adopted during the 14th Session, which ‘deplores’ the continued disregard by both parties mentioned of the General Assembly resolutions dealing with the situation in Hungary. [The Revolution and the Hungarian Question in the United Nations, 1956-1963.; UN Association of Hungary, 2006. P. 134.]

[66] The condemnation of the executions is proof of the breach of international law.

[67] Hence, the legal environment mentioned by the fourth Act on nullity is nothing but a procedural system tailor-made for the needs of retaliation, which did not guarantee the administration of justice, as a task of the courts, but rather the perpetration of premeditated murders under the guise of a judicial procedure. This procedure, which - excluding the public, the possibility of judicial remedy, the petition for clemency, and actual guarantees - serves the purpose of fulfilling the political interests expressed in the party’s decisions, cannot be called an administration of justice. Imre Nagy and his three companions sentenced to death had no chance to pursue the truth or to defend themselves against charges containing several legal absurdities (overturning the people’s democratic state order, treason). Their fate was sealed and, under the pretense of a criminal procedure, such a theatrical play was performed that no public attended.

[68] Sentences delivered under such circumstances are therefore not a result of the administration of justice, and they are not even suitable to be remedied or rectified by the administration of justice.

[69] The aim of the forth Act on nullity, as stated in its reasoning, is ‘moral, legal and political atonement for these sentences’.

[70] The fact that the procedures had been conducted according to the laws adopted

expressly for these political goals, and that the proceedings had been terminated formally with a final decision, does not render the false judgment correct. Since (with the words of Prof. Tibor Király) ‘It is contrary to the legislative intention expressed in criminal law and criminal procedural law – also called the intention of law – to deliver sentences and render them final and binding, which establish the responsibility of innocent people. Compared to that, all other grounds for nullity (e.g. the court was not established legally, no assistance of a defence counsel, etc.) are secondary; ultimately, it causes nullity because it is assumed that the infringement of principles and guarantees jeopardises the truth.’ [Tibor Király: Convictions on the edge of law, Közgazdasági és Jogi Könyvkiadó, Budapest, 1972. p. 219]

[71] The judgments at issue in the motion of the General Prosecutor were based on absurd positions, according to which the State’s action – capable of overthrowing the power exercised by Imre Nagy himself, elected and later confirmed in his status as Prime Minister by the Presidential Council of the People’s Republic and by all his companions – was lawful; on the other hand, they stated the conceptual absurdity that the legitimate Prime Minister should be liable for treason committed by urging the withdrawal of foreign troops, protesting against their invasion, thus standing up for sovereignty.

[72] The evaluation in the judgment violating historical facts was actually based on Decision of 5th December 1956 of the Provisional Central Committee of the MSZMP, which already made Imre Nagy and his government liable for ‘the counter-revolution’, and for accepting claims, such as political independence, denunciation of the Warsaw Convention, requesting UN intervention, call for resistance against Soviet troops and allowing a multi-party system. [Protocols of the provisional management body (‘IKB’) of the MSZMP, Volume I, 11th November 1956 – 14th January 1957, Intera Rt. 1993. pp 237–246]

[73] Actually the death sentence was to be delivered for the political actions of a legitimate government.

[74] The study of Dr. Ferenc Vida, President of the Panel, made in February 1957, was in accordance with the Decision of the MSZMP IKB, saying:

[75] ‘Felonies against the national security of the State (Point 1 to 34 of the BHÖ) harm: protection of the Hungarian People’s Republic, of the state power in compliance with the fundamental principles of our Constitution, of the dictatorship of the proletariat – with all its achievements and faults how it had historically developed in our country.’

[76] ‘The felony described in Point 1 of the BHÖ is an action in order to overthrow the People’s Republic and the dictatorship of the proletariat.’

[77] ‘A fundamental feature of judging political actions is that, in applying the material criminal law provisions, one has to take a stand in the political sense as well.’

[78] ‘A legitimate desire from our part is that our judicial work shall be characterised by purity and integrity. This shall be demonstrated primarily in that way that, concerning

the criminal offences of the counter-revolution, their legal qualification should address the political substance head-on. This can be the only base for an objective and strict administration of justice, so that we fulfil our obligations in a reckoning with the counter-revolution.' [Dr. Ferenc Vida: Aspects of applying substantive criminal law provisions to counter-revolutionary actions, Magyar Jog, February-March 1957/1-2, P. 11–14]

[79] This strict judgment promised by the president of the Panel in the law journal Magyar Jog, and the intention to participate in the reckoning was promoted by Position No. 216 of the Criminal Chamber of the Supreme Court published in June 1957, according to which:

[80] 'The definition of the criminal offences described in Point 1 of the BHÖ does not contain that the objective of the act committed is to overthrow the state power of people's democracy.'

[81] 'However, this felony may be committed without concrete political intentions. The circumstance of whether the intention of the perpetrator was to overthrow the state power or not can only be taken into account when sentencing.' [Judicial Decisions 1957/5., P. 149]

[82] The concept of the enemy defined by the party headquarters, and on these grounds placing the dictatorship of the proletariat under protection by criminalising offences against the State, together with finding that there is no need for intention to commit these offences, constituted the frame of interpretation for the state defence under which criminal law was applicable to the alleged conducts. This interpretation is dogmatically incorrect, it is not professional, but based rather on ideology, it is arbitrary and extensive, thus unacceptable as an interpretation of law.

[83] It cannot be forgotten that the Act VII of 1946 did not understand under the people's democratic state regime a dictatorship of the proletariat, but rather a representative democracy based on a multi-party system. The people's democratic state regime described in the Act of 1946 could have not been identified as a dictatorship of the proletariat pursuant to the Constitution applicable in 1958. Since the Constitution of 1949 contained such normative regulations only after the amendments of 1976, according to which the party of the working class is 'the leading force of society'.

[84] The concept of the enemy defined by the party headquarters, the tailor-made interpretation of law, and the ambition of the judiciary to participate in the reckoning instead of administering justice led to delivering sentences that could not have resulted from a legal and authentic judicial proceedings.

[85] Then again, an appeal in the interest of the law is insufficient to remedy the show trials, for the following reasons.

[86] It should first be stated that the subject-matter of the present procedure of the Kúria is not the decision delivered on appeal in the interest of the law, but issuing the declaration of nullity of the judgments, null and void by law. That can be stated as a

fact that the decision made in 1989 on appeal in the interest of the law does not preclude the declaration of nullity. The indisputable merit of the acquittal decision made on appeal in the interest of the law is that it eliminated the procedural grounds for identifying the persons concerned in the case as the accused.

[87] The explanatory notes of 1982 on the criminal procedure explain the following concerning the appeal in the interest of the law:

[88] ‘An appeal in the interest of the law is not an extraordinary appeal, but a specific measure for reviewing final and binding judgments. The right to lodge an appeal in the interest of the law is of a discretionary nature. The aim of the appeal in the interest of the law is not only to remedy a specific legal injury, but to guarantee the coherent socialist legitimacy.’ [Explanatory notes to the criminal procedure II, Kjk. Budapest, 1982., P. 902]

[89] A statement concerning the requirement of socialist legitimacy is also included in the acquittal decision of the Eln. Tan. B. törv. No. 660/1989, when stating:

[90] ‘The National Assembly, the Government and the MSZMP, as well as Hungarian public opinion, has a totally different view of the occurrences of 1956 and of the historical role of Imre Nagy and his companions, compared to some months ago. Their political and moral rehabilitation has already taken place.’

[91] The criminal procedural provisions on the appeal in the interest of the law were annulled by the Constitutional Court in its Decision No. 9/1992. (I.30.) as unconstitutional.

[92] The acquittal decision achieved the most that could be done at that time under the applicable criminal procedural regulations, since the innocent people were acquitted of all charges. However, using the cautious words ‘the events of 1956’ instead of revolution and fight for freedom; moreover, the reference to the change in the MSZMP’s opinion, indicates the presence of such obstacles, on the grounds of which the motion of the Prosecutor General for confirmation of nullity is grounded and justified.

[93] The conviction from the part of the people’s court gave a legal form to the prosecution of the members of the Imre Nagy government; however, in reality it served to execute the Prime Minister, General Maléter, Miklós Gimes and Dr. József Szilágyi and to punish the others severely. The appeal in the interest of the law, as well as the repeal and acquittal decision of the Presidency Panel of the Supreme Court regarded the original judgment as a judicial production, since the judgment contained a legal error, which could be remedied through a new procedure.

[94] Hence, it was regarded as a defective product, which can be repaired through replacement.

[95] The appeal in the interest of the law conducted a legal review that examined whether the facts underlying criminal liability were well founded, the legal classification was lawful, and the procedural provisions were respected. With these measures, it could

only explore that in the given case ‘the guarantees for the enforcement of constitutional principles were lacking. The grounds for this shall not be found in the false scientific opinion of the time, but rather in the fact that the theory had tried to justify the distortions of the practice at that time.’ This reasoning, applying the legal consequences, thus referred to deficiencies and distortions, but did not state the substance, namely that this procedure had been a show trial, a means of reckoning, which determined the fate of the accused beforehand, leaving no chance for them, and so it had been nothing else but taking the life of some and depriving others of freedom by referring to regulations adopted for political and state security reasons.

[96] The targeted objective was to create legislation suitable for staging a judicial procedure, to impose real but irreparable punishments, and to enforce them while excluding the public, in violation of international law; these are all methods and consequences outside the law, which had evoked the well grounded condemnation from the UN General Assembly. This decision has nothing to do with the administration of justice and therefore it cannot be entirely remedied through judicial instruments.

[97] Just as the purpose of a medical intervention was not to provide a cure, when a person regarded by the dictatorial power as dangerous had to undergo surgery instead of an internal medicine treatment in order to be able to eliminate him through surgery, the prosecution of a person without there being an offence in order to execute him for political reasons is not an administration of justice but deliberate murder. Nullity by law is capable of readjusting that, because it provides that the events which started with the entrapment and arrest of General Maléter, then the abduction of Imre Nagy, and ended in their execution, is contrary to the administration of justice and therefore rejected by the judiciary, as it is alien to them and untenable; their conviction shall therefore be considered as if it never happened.

[98] A ‘iudicium non existens’ judgment is no judgment.

[99] The confirmation also means an authentic statement from the Kúria saying that the judgments of the people’s court panel of the Supreme Court delivered under No. B.NB.003/1958-18 in the case of Imre Nagy and his companions, and under No. Tb.Nb.003/1958/12 in the case of Dr. József Szilágyi, shall be considered null and void pursuant to Section 1 of Act CXXX of 2000, as they have been adopted in the procedures conducted in compliance with the legislation specified in the Act.

[100] Confirmation is thus a judicial act, in which the Act on nullity, without specifying the actual decisions, is applied by the Kúria – on request by the entitled person – in cases, identified by their case-number and date of deliberation, in other words: the specific case is subjected to the abstract regulation on account of the procedures in compliance with the regulations listed in the Act.

[101] Act LVI of 2016 amending Act CXXX of 2000 made it possible for the Prosecutor General to initiate the proceedings of the Kúria in order to issue the confirmation of nullity.

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[102] The Kúria, in advance of the 60th anniversary of the 1956 revolution and fight for freedom, pays homage to those executed and the other victims of the repression. It considers its duty to free and purify itself finally from the burden on the judiciary, arising from the procedures at issue in the confirmation of nullity.

[103] With the present and all future confirmations, the Kúria pays and stresses respect to posterity, which faces the past and makes self-examination, towards the heroes, and sends the message to the future judiciary to serve and not let go of the administration of justice at all times. In its proceedings, just to apply the law and to look for justice. In its vocation, it shall not be misled by politics, by ideas drifting apart from law, or by fashions promising success and prominence, and it shall not forget its place within Europe and which nation it serves.

[104] The Kúria therefore confirmed in the procedure pursuant to Section 2 (1) and (2) of Act CXXX of 2000, that the judgment No. TB.NB.003/1958-18 in respect of Imre Nagy, Dr. Ferenc Donáth, Miklós Gimes, Zoltán Tildy, Pál Maléter, Sándor Kopácsi, Dr. Ferenc Jánosi and Miklós Vásárhelyi, and judgment No. Tb.Nb.003/1958/12 delivered by the People's Court Panel of the Supreme Court of the Hungarian People's Republic in respect of Dr. József Szilágyi are null and void according to Section 1 of Act CXXX of 2000.

[105] It ruled on the costs of criminal proceedings according to Section 2 (2)(g) of Act CXXX of 2000. According to Section 3 (4) of the Code of Criminal Procedure, no judicial remedy shall lie against this order.

Budapest, 13th October 2016

Dr. István Kónya (signed), President of the Chamber, Dr. Zoltán Márki (signed), Judge Rapporteur, Dr. Zoltán Varga (signed), Judge

In witness whereof:

dr. Hajnalka Nagyné Tóth

Law clerk