

EUROPEAN COURT OF HUMAN RIGHTS

503

12.7.2007

Press release issued by the Registrar

CHAMBER JUDGMENT JORGIC v. GERMANY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Jorgic v. Germany* (application no. 74613/01).

The Court held unanimously that there had been:

- **no violation of Article 6 § 1** (right to a fair trial) of the European Convention on Human Rights;
- **no violation of Article 5 § 1** (right to liberty and security) of the Convention concerning Mr Jorgic's complaint about the German courts' lack of jurisdiction to try him on charges of genocide; and,
- **no violation of Article 7** (no punishment without law).

(The judgment is available only in English.)

1. Principal facts

The applicant, Nicola Jorgic, is a national of Bosnia and Herzegovina, of Serb origin, who was born in 1946 in Doboj (Bosnia). He legally resided in Germany from 1969 to 1992. At the time of lodging his application, he was serving a sentence of life imprisonment in Bochum (Germany).

In 1992 Mr Jorgic returned to his place of birth, Doboj. In December 1995 he was arrested on his return to Germany and placed in pre-trial detention on the ground that he was strongly suspected of having committed acts of genocide during the ethnic cleansing which took place in the Doboj region between May and September 1992.

Mr Jorgic was accused of setting up a paramilitary group which had participated in the arrest, detention, assault, ill-treatment and killing of Muslim men from three villages in Bosnia in the beginning of May and June 1992. In June 1992, he had also shot 22 inhabitants of another village, including women, the elderly and disabled. Subsequently, Mr Jorgic with his paramilitary group had chased some 40 men from their village and had ordered them to be ill-treated and six of them to be shot. A seventh injured person had died from being burnt along

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

with the corpses of those six people. In September 1992 he had killed a prisoner with a wooden truncheon in order to demonstrate a new method of ill-treatment and killing.

In a judgment of 26 September 1997, Düsseldorf Court of Appeal, relying on Article 220a of the Criminal Code, convicted the applicant of those accusations. He was found guilty, in particular, of acting with intent to commit 11 counts of genocide, murder of 22 people and dangerous assault and deprivation of liberty. Stating that his guilt was of a particular gravity, the court sentenced him to life imprisonment.

The court stated that it had jurisdiction over the case pursuant to Article 6 no. 1 of the Criminal Code. There was a legitimate link for criminal prosecution in Germany, as this was in accordance with Germany's military and humanitarian missions in Bosnia and Herzegovina and the applicant had resided in Germany for more than 20 years and had been arrested there. Furthermore, agreeing with the findings of an expert in public international law, the court found that the German courts were not debarred under public international law from trying the case. In particular, neither Article VI of the Convention on the Prevention and Suppression of the Crime of Genocide (Genocide Convention) (1948), nor Article 9 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY Statute) (1993) excluded the jurisdiction of German courts over acts of genocide committed outside Germany by a foreigner against foreigners.

The court also found that the applicant had acted with intent to commit genocide within the meaning of Article 220a of the Criminal Code. Referring to the views expressed by several legal writers, it stated that the “destruction of a group” within the meaning of Article 220a of the Criminal Code meant destruction of the group as a social unit in its distinctiveness and particularity and its feeling of belonging together ; a biological-physical destruction was not necessary. It concluded that the applicant had therefore acted with intent to destroy the group of Muslims in the North of Bosnia, or at least in the Doboj region.

Ultimately, following further proceedings before the domestic courts, the judgment of Düsseldorf Court of Appeal of 26 September 1997 remained final regarding the applicant's conviction for genocide and on eight counts of murder, including the court's finding that his guilt was of a particular gravity.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 May 2001.

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

Peer **Lorenzen** (Danish), **President**,
Snejana **Botoucharova** (Bulgarian),
Volodymyr **Butkevych** (Ukrainian),
Margarita **Tsatsa-Nikolovska** (citizen of “the former Yugoslav Republic of Macedonia”),
Rait **Maruste** (Estonian),
Javier **Borrego Borrego** (Spanish),
Renate **Jaeger** (German), **judges**,

and also Claudia **Westerdiek**, **Section Registrar**.

3. Summary of the judgment¹

Complaints

Relying in particular on Article 5 § 1 (a) (right to liberty and security) and Article 6 § 1 (right to a fair trial), Mr Jorgic alleged that the German courts had not had jurisdiction to convict him. Moreover, he complained that his conviction for genocide was in breach of Article 7 § 1 (no punishment without law) in particular because the national courts' wide interpretation of that crime had no basis in German or public international law.

Decision of the Court

Article 5 § 1 (a) and Article 6 § 1

The Court observed that the German courts' interpretation of Article VI of the Genocide Convention in the light of Article I of that Convention and their establishment of jurisdiction to try the applicant on charges of genocide was widely confirmed by the statutory provisions and case-law of numerous other Contracting States to the European Convention on Human Rights and by the Statute and case-law of the ICTY. Furthermore, Article 9 § 1 of the ICTY Statute confirmed the German courts' view, providing for concurrent jurisdiction of the ICTY and national courts, without any restriction to domestic courts of particular countries.

The Court further noted that the German courts' interpretation of the applicable provisions and rules of public international law was not arbitrary. They therefore had reasonable grounds for establishing their jurisdiction to try the applicant on charges of genocide. It followed that the applicant was heard by a tribunal established by law within the meaning of Article 6 § 1 of the Convention.

The Court therefore concluded that the applicant was lawfully detained after conviction "by a competent court" within the meaning of Article 5 § 1 (a) of the Convention.

Article 7

The Court considered that, while many authorities had favoured a narrow interpretation of the crime of genocide, there had already been several authorities which had interpreted the offence of genocide in a wider way, in common with the German courts. In those circumstances it found that the applicant, if need be with the assistance of a lawyer, could reasonably have foreseen that he risked being charged with and convicted of genocide for the acts he had committed. In that context the Court also noted that the applicant was found guilty of acts of a considerable severity and duration.

Those requirements having been met, it was for the German courts to decide which interpretation of the crime of genocide under domestic law they wished to adopt. Accordingly, the applicant's conviction for genocide was not in breach of Article 7 § 1 of the Convention.

¹ This summary by the Registry does not bind the Court.

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

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

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

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.