SECOND SECTION

CASE OF CSÜLLÖG v. HUNGARY

(Application no. 30042/08)

JUDGMENT

STRASBOURG

7 June 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Csüllög v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 17 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30042/08) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Zsigmond Csüllög ("the applicant"), on 9 June 2008.

2. The applicant was represented by Mr G. Győző, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that the conditions of his detention amounted to inhuman and degrading treatment and that he had no effective remedy at his disposal to challenge the same. He relied on Articles 3 and 13 of the Convention.

4. On 25 August 2009 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Budapest.

6. The applicant was arrested on 7 February 2005. In 2006 he was convicted of conspiracy to murder and sentenced to five years' imprisonment in a strict-regime prison. Following the delivery of a non-final judgment, on 24 April 2006 he was transferred to Sopronkőhida Strict and Medium Regime Prison, where he was placed in a special security cell. On 28 April 2006 the applicant's defence counsel filed a request for transfer with the Ministry of Justice. On 27 June 2006 the Head of the Penitentiary Administration Unit of the Detention Affairs

Department of the National Headquarters of the Penitentiary Service ("the Penitentiary Administration") authorised the applicant's transfer to Vác Strict and Medium Regime Prison.

7. Upon a subsequent decision of the Committee for Ordering Special Detention ("the "Committee"), on 17 August 2006 the applicant was transferred to Sátoraljaújhely Strict and Medium Regime Prison in order to be placed in a special security department. In this context the Government submitted that the prison authorities had been informed that his escape had been under preparation; that under Section 30(3) of Act no. CVII of 1995 on the Penitentiary Service this kind of information relating to the security of detention could not be communicated to the detainee; that, besides, further criminal proceedings were being conducted against him; and that these elements had warranted his placement in an appropriate, closed institution and his separation, as far as possible, from his accomplices. The applicant's placement in a special security department was also supported by information received from the National Bureau of Investigation, classified as a State secret. The information which served as the basis for the decision has never been revealed to the applicant. None of the applicant's accomplices were placed in a special security department.

8. Between 17 August 2006 and 23 September 2008 the applicant was detained as a "Grade 4 security" inmate in Sátoraljaújhely prison's special security department ("KBK"), apart from the period between 15 February and 27 March 2007, which he spent in similar circumstances in Budapest Prison. His classification as a "Grade 4 security" inmate and his placement in the "KBK" department were reviewed and prolonged at regular intervals, but without any reasoning. His complaints about the conditions of detention to the National Commander of Penitentiaries, the Borsod-Abaúj-Zemplén County Public Prosecutor's Office and the Attorney General's Office were to no avail. Upon the applicant's enquiry, on 25 June 2007 the County Public Prosecutor's Office stated that "decisions concerning placement in KBK departments falls within the jurisdiction of the National Headquarters of the Penitentiary Service, therefore the County Public Prosecutor's Office is not entitled to take measures in this regard." The Public Prosecutor's Office found that all the measures taken by the prison authorities had a proper legal basis.

9. The rules pertaining to the conditions prevailing in the KBK departments are outlined in the chapter on Relevant domestic law (see paragraphs 13 to 16 below). The applicant submitted that there was only artificial light in his cell, the ventilation was insufficient, the toilet had neither a seat nor a cover, and he had to endure full cavity searches on a daily basis. Moreover, the range of objects he was allowed to possess in his cell was very restricted: no watch, pen, comb, plastic cutlery, teabag or stationery was allowed, and he could have only a limited number of books or newspapers.

10. Subsequently, the applicant was transferred to Budapest Prison. His detention continued under the "Grade 4 security" regime, although he was no longer placed in a KBK department. He was accommodated in a special security cell located in the basement level of the institution.

11. Having served his sentence, the applicant was released on 10 February 2009.

II. RELEVANT DOMESTIC LAW

12. Act no. CVII of 1995 on the Penitentiary Service

Section 30

"(2) Inmates shall have the right to access, with the exceptions specified in subsection (3), all the data related to them and to request the rectification of any incorrect data and the deletion of unlawfully kept data. Such requests of the inmates shall be complied with.

(3) Data relating to the security of detention and originating from an action which the detainee must tolerate under the law shall not be communicated to the inmate. On release, such data shall be communicated to the inmate upon request, unless they contain service or State secrets."

13. Decree No. 6/1996 (VII.12.) of the Minister of Justice on the Rules Governing the Enforcement of Imprisonment and Pre-trial Detention

Section 6

"(1) Unless provided otherwise under the law, matters relating to an inmate's detention shall be decided on – upon request or *ex officio* – by the head of the designated unit of the penitentiary institution in which the inmate is residing for the purpose of serving the punishment or measure imposed on him. In matters relating to his detention, the inmate may, without indicating the subject matter of his request ..., request the head of the unit or the governor of the penitentiary to hear him in person, or submit a written request.

(2) Inmates may file a complaint to the governor against a ruling, measure, decision or omission occurring in the context of subsection (1). Where the decision has been taken by the governor ..., the complaint shall be examined by the national governor.

(3) Where, in cases specified under the law, the inmate's case was decided on ... by the national commander, the complaint shall be examined by the Minister ..."

Section 42

"(1) Inmates shall be classified by the Reception and Employment Committee ... as belonging to the 'Grade 1, 2, 3 or 4 security groups' on the basis of the increasing threat level which their detentions pose.

(2) When assigning inmates into a security group, the following elements shall be taken into consideration:

a) the offence committed (its nature and circumstances), the duration of the imprisonment and the prison regime imposed, the portion of the sentence not yet served, and the date of parole,

b) the inmate's personality, previous record, health and physical state and contacts,

c) – if other criminal proceedings have been instituted against the detainee – the nature and circumstances of the act giving rise to those proceedings,

d) the characteristics of the penitentiary institution and the security aspects of the inmate's occupation.

(3) On the basis of the elements specified in subsection (2): ...

d) Inmates who are expected with good reason to commit an act severely violating the order of the penitentiary, to escape, or to endanger their own life or limb or that of others, or who have already committed such acts and whose safe detention may only be guaranteed by close guarding or – exceptionally – by strict surveillance shall be classified as "Grade 4 security" prisoners.

(4) If the facts or data necessary for the security group classification are incomplete, inmates shall be classified as 'Grade 3 security' prisoners until the missing facts or data are obtained."

Section 43

"(1) ... 'Grade 4 security' classification is to be reviewed by the reception committee every three months.

(2) If a change occurs in the circumstances underlying the inmate's classification, the reception committee ... shall modify it, irrespective of the time-limit[s] specified in section (1)."

Section 44

"(1) Classification into security groups shall not affect statutory inmate rights; the manner and order of exercising those rights under the various security regimes shall be regulated in the prison rules.

(2) The reasons underlying the classification of an inmate into a certain security group shall only be communicated to him if such communication does not endanger the security of detention."

Placement in a special safety cell or department

Section 47

"(1) An inmate classified as 'Grade 4 security' prisoner may be placed in a special security cell or department.

(2) An inmate may also be placed in a special security cell or department if the protection of his life or limb cannot be secured otherwise.

(3) An inmate placed in a special security cell or department shall:

a) be under constant surveillance,

b) move around on the premises of the institution only with permission and under supervision, and his cell shall be kept locked,

c) work only inside the special safety department or at a place designated by the governor,

d) not participate in inmates' associations,

e) participate in educational, sport and spare-time group activities only inside the special security department or with the governor's permission; he, however, may practice self-education,

f) not wear his own clothes – except for inmates placed in a special security cell or department pursuant to subsection (2),

g) possess only a limited range of personal objects.

(4) The implementing rules concerning inmates placed in special security cells or departments shall be laid down in the prison rules.

(5) Placement in a special security cell shall be ordered by the reception committee for a period of maximum three months which can be prolonged twice, each time for a period of maximum three months. Placement in a special security cell for a period exceeding these periods shall be ordered by a committee designated by the national commander... The justification for continued placement shall be reviewed by the committee every six months.

(6) Placement in a special security department shall be ordered by the committee for a period of maximum six months. This period can be prolonged if reasons for such placement continue to exist. The justification for placement in a special security department shall be reviewed by the committee every six months.

(7) Placement in a special security cell or department shall immediately be terminated when the underlying reasons cease to exist.

(8) For the purposes of this Decree:

a) 'special security cell' means specially built and equipped premises operating under special rules where inmates specified under subsections (1) and (2) shall be placed alone. The cells of the penitentiary institutions operating as special security cells shall be designated by the national governor...

b) 'special security department' means a purpose-built, segregated part of the penitentiary institution designated by the national governor, which consists of special security cells and adjoining premises, where inmates specified under subsections (1) and (2) can be placed irrespective of the prison regime imposed on them."

14. Law-Decree no. 11 of 1979 on the Enforcement of Punishments and Measures

Section 36

"(1) Inmates shall have the right: ...

g) to submit a statement of public interest, a complaint, a request or a legal declaration to the penitentiary institution, or to another organ independent of the penitentiary service;"

15. Instruction No. 1-1/51/2003. OP of the National Commander of Penitentiaries

The rules governing the conditions prevailing in "KBK" departments can be summarised as follows. Inmates under the "KBK" regime receive their visitors in special security rooms and have their meals on their own. They can exercise their right to periods in the open-air one person at a time in a special area; they may not participate in cultural or sport events together with other inmates; they may only watch television, listen to the radio, read, practise sport or observe their religion alone in their cells. Before and after every removal from the cell, the inmate must be body-searched and stripped if necessary. Such inmates shall undergo medical examinations, shave and wash themselves in their cells.

16. Instruction No. 41/2005. OP of the Commander of Sátoraljaújhely Prison

Inmates under the "KBK" regime may be removed from the "KBK" department only if handcuffed and if it is ensured that they will not encounter other inmates. For medical examinations, such inmates must be handcuffed. At any given time, a maximum of two such inmates can benefit simultaneously from open-air periods or sports; however, they must not see or have contact with each other.

III. RELEVANT INTERNATIONAL DOCUMENTS

17. Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to Member States on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

Security

"51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

a. the risk that they would present to the community if they were to escape;

b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment."

Safety

"52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

52.3 Every possible effort shall be made to allow all prisoners to take a full part in daily activities in safety.

52.4 It shall be possible for prisoners to contact staff at all times, including during the night.

52.5 National health and safety laws shall be observed in prisons."

Special high security or safety measures

"53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70."

Requests and complaints

"70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority."

18. The Commentary to the draft Rule 70 of the above Recommendation reads as follows:

"This Rule does not attempt to prescribe an exclusive model of a complaints procedure but sets out the basic requirements such procedures should comply with lest they be considered to represent effective remedies in terms of art. 13 of the ECHR (see: *Van der Ven v. The Netherlands* (appl. nr. 50901/99 – 04/02/2003)). What is important is that the complaint procedure ends with a final binding decision taken by an independent authority. The member states are free to designate the independent authority that has the power to handle complaints. This can be an ombudsman or a judge (enforcement magistrate or executing or supervisory judge), supervising prosecutor, court, or a Public Defender (*CPT/Inf (2002) 14 – Visit to Georgia in 2001*)."

19. Extracts from the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") from 5 to 16 December 1999

"94. In every country there will be a number of so-called "dangerous" prisoners (a notion which covers a variety of types of person) in respect of whom special conditions of custody are required. This group of prisoners will (or at least should, if the classification system is operating satisfactorily) represent a very small proportion of the overall prison population. However, it is a group that is of particular concern to the CPT, in view of the fact that the need to take exceptional measures concerning such prisoners brings with it a greater risk of inhuman treatment than is the case with the average prisoner.

95. The dangers involved in this area are well described in the following extract from the Explanatory Memorandum to the Recommendation (No. R(82)17) on the custody and treatment of dangerous prisoners adopted by the Committee of Ministers of the Council of Europe on 24 September 1982: "43. Human dignity is to be respected notwithstanding criminality or dangerousness and if human persons have to be imprisoned in circumstances of greater severity than the conventional, every effort should be made, subject to the requirements of safe custody, good order and security and the requirements of community well-being, to ensure that living environment and conditions offset the deleterious effects – decreased mental efficiency, depression, anxiety, aggressiveness, neurosis, negative values, altered biorhythms – of the severer custodial situation. In the most serious instances prisoners regress to a merely vegetative life. Generally the impairment may be reversible but if imprisonment, especially in maximum security, is prolonged, perception of time and space and self can be permanently and seriously impaired – 'annihilation of personality'."

96. ... The status of Grade 4 prisoners is reviewed every six months. However, it would appear that the reasons underlying the decision for placement/prolongation of a Grade 4 measure are not disclosed to the prisoner concerned.

97. It is axiomatic that a prisoner should not be held in a special security regime any longer than the risk which he presents makes necessary. This calls for regular reviews of the placement decision. Further, prisoners should as far as possible be kept fully informed of the reasons for their placement and, if necessary, its renewal; this will inter alia enable them to make effective use of avenues for challenging that measure.

98. Consequently, the CPT recommends that:

– a prisoner who is placed in a Grade 4 regime by the judicial or prison authorities or whose placement in such a regime is renewed be informed in writing of the reasons for that measure (it being understood that the reasons given could exclude information which security requirements reasonably justify withholding from the prisoner);

– a prisoner in respect of whom such a measure is envisaged be given an opportunity to express his views on the matter;

– the placement of a prisoner in such a regime should be as short as possible and reviewed at least every three months.

100. Firstly, the delegation observed at Budapest Remand Prison that means of restraint (such as handcuffs and/or anklecuffs) were routinely applied to Grade 4 prisoners. ... The practice of routinely handcuffing and/or anklecuffing prisoners when outside their cell is highly questionable, all the more so when it is applied over a prolonged period of time in a secure environment. ...

101. Secondly, some Grade 4 prisoners were kept for some considerable time in isolation and had particular difficulties to receive visits and have access to a telephone, allegedly for security reasons."

20. Extracts from the Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 30 March to 8 April 2005

"64. ... The CPT calls upon the Hungarian authorities to take steps to implement its previous recommendations concerning the provision to prisoners placed in a Grade 4 regime of written information on the reasons for the

measure as well as the opportunity to express their views on the matter. It is equally important to provide such prisoners with written information on the possibilities to contest the decision. More generally, the Committee recommends that the Hungarian authorities review and refine the system of classifying prisoners as Grade 4 with a view to ensuring that this grade is only applied – and retained – *vis-à-vis* prisoners who genuinely require to be accorded such a status."

"66. ... The CPT must reiterate its view that there can be no justification for routinely handcuffing prisoners outside their cells, all the more so when this measure is applied in an already secure environment. The application of restraints while the prisoner is inside a secure exercise yard is clearly an unacceptable practice. As regards the handcuffing of prisoners during medical consultations, in the CPT's view, such a practice infringes upon the dignity of the prisoners concerned and prohibits the development of a proper doctor-patient relationship (and is possibly detrimental to the establishment of an objective medical finding). The CPT calls upon the Hungarian authorities to review without further delay their current policy with regard to the application of means of restraint to prisoners placed under a special security regime (Grade 4 prisoners)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

21. The applicant complained that the conditions of detention under the "KBK" regime – to which he was subjected for about two years – amounted to inhuman and degrading treatment on account of the almost total isolation and absence of human contacts as well as the ubiquitous application of means of restraint. He relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

22. The Government contested that argument.

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

24. The applicant submitted that the physical conditions of detention in the "KBK" regime result, in their interaction, in inhuman and degrading treatment, in particular in view of the fact that he served his sentence in complete social isolation in a cell which he was entitled to leave daily only for an hour to stay in the open air and a few times a week to exercise. He was always handcuffed when outside his cell, including during medical examinations. He had difficulties in receiving visitors, since he was placed in a prison situated far from his family's place of residence. He was entitled to one or two visits per month and physical contact were not allowed.

25. The Government argued that the treatment complained of had not attained the minimum level of severity required for it to fall within the scope of Article 3. In their submissions, 'Grade 4 security' regime applied to prisoners having committed the most serious offences. The personal circumstances of the inmate might, in themselves, not justify the lowering of the

security level, since escape or endangering the order of enforcement of punishments included not only acts committed by an inmate alone, but also ones committed with external help, or by making use of criminal connections, easier under a more lenient custody.

26. As regards the applicant's visitors, between 15 August 2006 and 9 November 2007 he had benefited from altogether thirteen visits while in institutions located near the visitors' places of residence. In February, May and October 2007 the applicant had received visitors two times each month, which had exceeded his legal entitlement. He had had at his disposal a television, and books from the library had been available to him. Moreover, he could rely on the services of the prison chaplain, which he had availed himself of on one occasion.

2. The Court's assessment

a. General principles

27. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

28. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, ibid., § 74).

29. The Court has consistently stressed that, for Article 3 to come into play, the suffering involved must in any event go beyond that inevitable element of suffering connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with this provision the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], cited above, §§ 92-94).

30. The prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among others, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). As stated by the CPT, however, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities (see *Iorgov v. Bulgaria*, no. 40653/98, § 83, 11 March 2004.)

31. The Court has established the circumstances in which the solitary confinement of even a dangerous prisoner will constitute inhuman or degrading treatment. It has thus observed that complete sensory isolation, coupled with total social isolation, can destroy the personality and

constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 120 to 124, ECHR 2006-IX, and the authorities cited therein). In order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by. Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules adopted by the Committee of Ministers on 11 January 2006. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement (*Ramirez Sanchez v. France*, op. cit., § 139).

b. Application of those principles to the present case

32. The Court considers that the conditions of the applicant's detention may be contrasted with those which it examined in the case of *Rohde v. Denmark* (no. 69332/01, § 97, 21 July 2005). In that case, the applicant was held in solitary confinement for eleven and a half months. He was excluded from activities with other prisoners but had access to television and newspapers, had language lessons, was able to meet the prison chaplain and received a visit once a week from his lawyer and some members of his family. In that case, the Court found no violation of Article 3 of the Convention.

33. In the present case, the number of contacts granted to the applicant was lower than that in *Rohde*, although he was entitled to visits and indeed received some. He had no access to cultural activities and was kept handcuffed every time when outside his cell. Moreover, he served almost the entirety of his prison time in the "KBK" regime, entailing very harsh conditions including only artificial light in his cell, insufficient ventilation, a toilet without a seat or a cover as well as full cavity searches on a daily basis (see paragraphs 9 and 13 to 16 above). However, books, television and the services of the chaplain were available to him. Considering all these elements, the Court concludes that the applicant cannot be considered to have been in complete sensory isolation and that his isolation was partial and relative.

34. In the Court's view, solitary confinement is appropriate only as an exceptional and temporary measure, given its likely negative effects on the inmate's personality. However, several of the restrictive measures applied to the applicant – such as the prohibition on possessing a watch or teabags or the restriction on the number of books kept in the cell (see paragraph 9 above) – cannot reasonably be related to the purported objective of the isolation, namely to frustrate attempted escape.

35. Furthermore, the objective conditions of detention are only one of the elements to be considered in the determination of inhuman and degrading treatment. The Court notes that there were no security reasons for constantly handcuffing the applicant every time he was outside his cell.

36. Contrary to the above-cited case of *Ramirez Sanchez*, in the instant application nothing indicated that the applicant would incite disorder in the prison. Nor does the Court find any element in the case file suggesting that the dangerousness of the applicant – although he was

convicted of conspiracy to murder – can be compared to that of mafia prisoners (compare and contrast *Messina v. Italy (no. 2)* (dec.), no. 25498/94, ECHR 1999–V). Moreover, there is no evidence that the measure was applied on the basis of the applicant's personal characteristics representing a security risk to other prisoners, the prison staff or himself.

37. The Court further notes that no substantive reasons were given by the authorities when the solitary confinement was applied or extended. In the absence of reasoning, the impugned restriction must have been perceived as arbitrary. Arbitrary restrictive measures applied to vulnerable individuals like prisoners inevitably contribute to the feeling of subordination, total dependence, powerlessness and, consequently, humiliation. The authorities did not apply any measures to counter the negative effects of protracted solitary confinement on the applicant's physical and mental condition. In the Court's view, open air stays or sport opportunities, of limited availability, cannot under the present circumstances be considered as capable of remedying those negative effects, especially since all the movements of the applicant entailed handcuffing in an otherwise secure environment.

38. In sum, the Court considers that the cumulative effects of the stringent custodial regime to which the applicant was subjected for an extended period of time and the material conditions in which he was detained must have caused him suffering which exceeded the unavoidable level inherent in detention. The Court thus concludes that the minimum level of severity required for Article 3 to come into play being attained, the applicant has been subjected to inhuman and degrading treatment. There has, accordingly, been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

39. The applicant also complained under Article 13 read in conjunction with Article 3 of the Convention that no effective remedies were available to him to challenge his situation. Article 13 of the Convention provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

40. The Government contested that argument.

A. Admissibility

41. Having found a violation of Article 3 of the Convention (see paragraph 38 above), the Court is satisfied that the applicant has an "arguable claim" for the purposes of Article 13 (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61). It notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

42. The applicant submitted that he had been subjected to the "KBK" regime without any particular reasoning and, moreover, that the reasons for his classification as a "Grade 4 security" inmate – a precondition for the application of the "KBK" regime – had not been communicated to him. Nor had the security risks entailed by such communication been established by the authorities. He argued that, unaware of the reasons underlying the measure complained of, he had not been in a position effectively to challenge it.

43. The Government submitted that the applicant had made use of his general right of complaint under section 36(1) g) of Law-Decree no. 11 of 1979 (see paragraph 14 above) which entitled him to request the review of the reasons for his security classification by a body independent of the penitentiary service and authorised to take action. The Borsod-Abaúj-Zemplén County Public Prosecutor's Office had held that the conditions of the applicant's detention had not violated his rights under Article 3 of the Convention and provided detailed reasoning.

44. According to the Government, there had been a serious security interest in keeping undisclosed the information which had served as the basis for the applicant's classification, namely the interest to protect the source of information. When classifying an inmate for security purposes, all circumstances had to be taken into consideration. The applicant had committed serious, violent crimes and due to the criminal connections he had established in the course of the commission of those crimes, it could not be excluded that his escape from prison would be facilitated from outside.

45. Lastly, the Government recalled the findings of the European Commission of Human Rights in the case of *Sárközy v. Hungary* (Report of the Commission, 6 March 1997, §§ 122-124) according to which the prosecution service was an independent organisation authorised to supervise detentions, and the complaint procedure before the public prosecutor's office could be regarded as one meeting the requirements of Article 13.

2. The Court's assessment

46. The Court considers that, in the evaluation of the effectiveness of a remedy for the purposes of Article 13 of the Convention, the requirements of Article 6 may be relevant. As a rule, the fundamental criterion of fairness, including the equality of arms, is a constituent element of an effective remedy. A remedy cannot be considered effective unless the minimum conditions enabling an applicant to challenge a decision that restricts his or her rights under the Convention are provided. Moreover, the national authority that provides the remedy in question must be independent and capable of providing redress.

47. Subject to compliance with the requirements of the Convention, the Contracting States are afforded – as the Court has held on many previous occasions – some discretion as to the manner in which they provide the relief required by Article 13 and conform to their Convention obligation under that provision (see mutatis mutandis *Kudła v. Poland* [GC], no. 30210/96, § 154, ECHR 2000-XI).

48. The Court is satisfied that the prosecution service may be regarded as an independent organisation (see also the Commentary to the draft Rule 70 of the European Prison Rules, paragraph 18 above). However, it is not persuaded that its powers go beyond the control of the legality of decisions taken by the prison authorities based on undisclosed secret information. In these circumstances, it cannot exercise a substantive review that is required

for an effective remedy to be provided by a competent national authority to comply with Article 13. Without proper information as to the reasons for the security classification, neither the prosecution service nor the prisoners are in a position respectively to review or challenge the decisions of the prison authorities. The Court would add that the provision of the information in question does not necessitate the full disclosure of the sources thereof.

49. The Court notes that the Public Prosecutor's Office admitted the limits of its decision (see paragraph 8 above). It is therefore not convinced that the Public Prosecutor's Office, independent as it may be, has the power to provide adequate remedy.

50. Since the applicant, deprived of information crucial in the circumstances, did not benefit from the equality of arms in challenging the prison authorities' decision amounting to a violation of Article 3 (see paragraph 38 above), and in view of the prosecution authorities' lack of genuine power to overturn that decision, the Court concludes that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

52. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government contested this claim.

54. The Court considers that the applicant must have sustained some non-pecuniary damage on account of the conditions of his detention and awards him the full sum claimed.

B. Costs and expenses

55. The applicant also claimed EUR 2,640 for the costs and expenses incurred before the Court. This sum corresponds to the fee of his lawyer, who spent, as per the time-sheet submitted, 27.5 hours of legal work charged at an hourly fee of EUR 96. An additional EUR 40 is claimed to cover clerical costs.

56. The Government contested this claim.

57. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed, i.e. EUR 2,680.

C. Default interest

58. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,680 (two thousand six hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Françoise Tulkens
Registrar President

CSÜLLÖG v. HUNGARY JUDGMENT