SECOND SECTION

# CASE OF ENGEL v. HUNGARY

*(Application no. 46857/06)*

JUDGMENT

STRASBOURG

20 May 2010

**FINAL**

*20/08/2010*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of **Engel** v. Hungary,

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 29 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 46857/06) 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 Zoltán Péter **Engel** ("the applicant"), on 21 September 2006.

2. The applicant was represented by Mr A. Kádár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that the conditions of his incarceration, aggravated by his unjustified classification as a 'Grade 4' security-level prisoner, amounted to degrading treatment or a breach of his right to respect for private life. He relied on Articles 3 and 8, read alone or in conjunction with Articles 13 and 14 of the Convention.

4. On 9 January 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lived in Szeged.

6. On 13 May 2003 the applicant was caught in the act of committing armed robbery. In the ensuing exchange of shots, he killed a police officer and wounded another. He was also injured in his spine, as a consequence of which he became paralysed in both his legs from the waist down. Ever since, he has also been suffering from incontinence. He is now 100% disabled, only capable of moving in a wheelchair; moreover, he has to use diapers.

7. The applicant was sentenced to life imprisonment. Between 25 February 2005 and 15 December 2006 he was detained in Szeged Prison.

8. The applicant described the conditions in Szeged Prison as follows: Since he was unable to fulfil the obligations incumbent on healthy inmates, he needed to sleep in his clothes in an undone bed and use his jacket as a blanket in order to avoid being sanctioned for violating the daily routine of making the bed on time. With no assistance from staff, he could wash or relieve himself only if his cellmates helped him do so. He was not provided with a proper bath chair; instead, he was given a wooden toilet-seat which – unfit for the purposes of bathing – rotted away fast and on one occasion, broke under him. Because of harassment from fellow inmates on account of his disability and incontinence, he did not participate in the daily open-air stays. Classified as a 'Grade 4' security-level prisoner, he was transported with his hands handcuffed to his belt at all times. While being transported in this posture in a van without a safety belt, he could keep himself in his wheelchair only by supporting his body by leaning his head against the door of the transport cabin. As a consequence, he regularly suffered swellings on his head. When entering or exiting the transport van, staff dragged him by his belt, sometimes on the floor causing him bruises; an incident of this kind took place on 12 June 2006. On other occasions, his wheelchair – with the applicant, weighing 110 kilograms, sitting in it – was rolled down the van's steps.

9. The applicant's complaint about the above conditions to the Csongrád County Chief Public Prosecutor's Office was to no avail.

10. According to the prison's medical service, the applicant suffered *inter alia* from high blood pressure, overweight, paraplegia and a neurogenic bladder. His transfer to a specialised penitentiary was recommended but not taken up by the prison administration. Upon the applicant's complaint, the National Prison Administration investigated his situation. Its findings included the following:

“The applicant's cell is located on the ground floor ..., next to the medical consultancy room. It is suitable for accommodating four inmates, but only two or three inmates, including the applicant, are actually placed in it. The furniture is refurbished and adjusted to the applicant's health needs: the table is elevated, the beds are single rather than bunk beds, the wardrobe and the mirror are placed at a height reachable by the applicant, entrance obstacles have been removed and a handrail has been fitted next to the toilet. A cellmate has voluntarily undertaken the task of keeping the cell tidy and helping the applicant perform his everyday duties. The applicant has never been reproached for a violation of the prison cell order.

A hot water shower (bath) has been provided to the applicant on a daily basis. A hand shower and a bath chair are available to him. ... A cellmate has voluntarily undertaken to help the applicant wash himself. ...

... In order to prevent harassment by fellow inmates, the applicant has been granted the opportunity to have daily open-air stays in a [protected] courtyard ... The applicant, however, does not wish to make use of this possibility.

Upon the applicant's complaints ... on 30 May 2006 the warden ordered the transport van [in question] to be equipped with a safety belt and informed the applicant thereof ... as well as of the fact that, in the light of medical opinion, his transportation in an ambulance car ... was not justified. According to the findings of the investigation, the applicant suffered light scratches

and bruises [while in transport] in December 2004 and June 2006. Therefore the prison management instructed staff to proceed with special care in respect of the applicant. According to the opinion of the competent health organ, the applicant's transport did not require the participation of medical staff.

On 21 April 2006 the applicant requested to be transferred to Nagyfa Prison. His request was dismissed by the ... National Prison Administration on 9 June 2006 on the ground that he was serving his sentence in a penitentiary institution whose strictness was commensurate with the offence he had committed and with the regime imposed on him; where his nursing and medical supervision was resolved and where physical obstacles had been removed in order to ensure his free movement in a wheelchair. The applicant filed a complaint against the decision. The complaint was dismissed by the National Commander on 26 July 2006 and his transfer was not authorised. According to the reasoning of the decision, '[the applicant did] not require permanent nursing or medical supervision. At his present place of detention, alterations had been made in the building, as required by his disability. Medical treatment, as appropriate in his present state, can be provided for him at his present place of detention, where the circumstances have been adjusted to his needs ...'"

11. The applicant submitted that the transport van was not equipped with a safety belt until the end of August 2006. Concerning open-air stays, he explained that the surface of the courtyard in question was uneven and therefore unsuitable for a wheelchair.

12. Given that other criminal proceedings were pending against him, the applicant had to be regularly transported to Budapest to stand trial. In a complaint dated 5 September 2006 and addressed to the head of the Transportation Department of Budapest Prison, the applicant submitted that on Monday, 4 September 2006 he had been placed in an admission cell in which he had had to spend five hours with no access to water and without any possibility to change his diapers. He also submitted that during the transport he had been placed in a one-person box of the van where he had suffered bruises: in a road curve, he had fallen out of his wheelchair and had been travelling on the floor of the van, handcuffed to his belt, with his arms under his body. He furthermore submitted that the following day, when he had requested a medical check-up, the nurse had informed him that no medical examination was available until the next weekly consultation to be held on the following Monday.

13. In the course of the ensuing investigation, on 18 September 2006 a medical report was drawn up but no external sign of injury was detected. In the absence of evidence, on 3 October 2006 the warden of Budapest Prison dismissed the applicant's complaint.

14. Upon the applicant's criminal complaint, an investigation was opened by the Szeged Military Public Prosecutor's Office against unknown persons for abuse of administrative authority, but was discontinued on 12 December 2006 by the Szeged Military Public Prosecutor's Office for want of evidence.

15. In a letter dated 27 October 2006 and addressed to the National Commander, the applicant complained about injuries allegedly suffered during his transport and the malfunction of his wheelchair. The ensuing investigation did not support the applicant's allegations about the injuries, but his wheelchair was subsequently repaired.

16. On 15 December 2006 the applicant was transferred to Sopronkőhida Prison where he was placed in a single cell specially designed for disabled inmates. On 18 December 2006 he was examined by a forensic medical expert. In his opinion the expert stated:

"... [In respect of standing up] the inmate ... partly or wholly exaggerates his pains... [He is] 100% disabled ... [but is] nevertheless, not totally unable to care for himself. His compulsive eating, together with his reluctance to accept painkillers ..., is a serious psychological obstacle to enhancing his mobility. At the same time ... the very existence of pain cannot be proven beyond doubt. From a forensic medical point of view, it can be established that ... the inmate has received all the medical, nursing and caring help he needs."

## II. RELEVANT DOMESTIC LAW

17. Decree No. 6/1996 (VII.12.) of the Minister of Justice on the Rules of the Execution of Imprisonment and Pre-trial Detention provides as follows:

Section 42(3)d

"Such inmates shall be classified as 'Grade 4 security' prisoners as are expected with good reason to commit an act severely violating the order of the penitentiary, to escape or to endanger his/her own life or limb or that of others, or as have already committed such acts, and whose safe detention may only be guaranteed by guarding or – exceptionally – by surveillance."

## III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

18. The CPT's Report to the Hungarian Government after its visit to Hungary from 5 to 16 December 1999 provides, insofar as relevant, as follows:

"96. Under the prisoner grading system operated in Hungary, remand or sentenced prisoners who are considered as dangerous are placed in Grade 4 (Decree No. 6/1996 (VII.12.) of the Minister of Justice). Allocation is made either by the prosecutor, the court or the reception committee of the establishment. The CPT was informed that courts and prosecutors tend to attribute this grade to prisoners accused or convicted of serious crimes (especially persons involved in organised crime activities) and the prison reception committees, to persons with a previous record of ill discipline (including those prone to escape or those who have attempted suicide) or with a military background.

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."

19. The CPT's Report to the Hungarian Government after its visit to Hungary from 30 March to 8 April 2005 provides, insofar as relevant, as follows:

"64. Concerning the legal safeguards applicable to prisoners placed in Grade 4, their status is now reviewed every three months (at the time of the 1999 visit, the frequency of reviews was every six months); the CPT welcomes this change. However, the other long-standing recommendations of the CPT – concerning the provision to the inmates concerned of written information on the reasons for the measure and offering them an opportunity to express their views on the matter – had not been implemented.

Many Grade 4 prisoners interviewed by the delegation complained that they had not been informed of the reasons for the measure, had had no involvement in the review procedure and had received no information on the possibilities to contest it. Further, it was generally felt that the periodic review of the Grade 4 status was a pure formality. The examination of relevant documentation and interviews with inmates led the delegation to conclude that the determining factors in retaining the Grade 4 status were historical ones, like the violent nature of the crime committed (often many years before), rather than an assessment of the inmate's current dangerousness or propensity to act again in an unacceptable way. ..."

"184. During the 2005 visit, close attention was given to the situation of prisoners placed under a special security regime. The CPT has welcomed the fact that the status of prisoners classified as *Grade 4* is now reviewed every three months; at the same time, it has called upon the Hungarian authorities to implement its previous recommendations concerning the provision to such prisoners of written information on the reasons for the measure as well as the opportunity to express their views on the matter. More generally, the Committee has recommended that the system of classifying prisoners as Grade 4 be reviewed and refined, 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.

The policy as regards the application of means of restraint to Grade 4 prisoners - already strongly criticised in the past by the CPT - remains unsatisfactory; the Committee has called upon the Hungarian authorities to review that policy without further delay. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained that the conditions of his incarceration and transport amounted to inhuman and degrading treatment or represented a breach of his right to respect for private life. He submitted that his classification as a 'Grade 4' security-level prisoner, impossible to challenge before the domestic authorities, was absurd in view of his health condition and constituted one of the reasons for the inhuman character of his imprisonment. He relied on Articles 3 and 8 read alone or in conjunction with Articles 13 and 14 of the Convention.

21. The Court considers that the applicant's complaints fall to be examined solely under Article 3 of the Convention, which provides 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 the application 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

24. The Government submitted at the outset that, in view of the six-month rule contained in Article 35 § 1 of the Convention, the period in respect of which the conditions of the applicant's detention should be examined had started only on 21 March 2006 (i.e. six months before the date on which the application had been introduced) and ended on 15 December 2006, when he had been transferred to a purpose-built unit at Sopronkőhida Prison. In respect of the latter measure, they emphasised that this institution had been equipped to accommodate disabled inmates. As regards the period spent in Szeged Prison, the Government were of the view that the conditions and incidents complained of had not attained the minimum level of severity required for Article 3 to come into play, especially in view of the speedy measures taken by the authorities to remedy them. Nor had they constituted a breach of the applicant's rights enshrined under Article 8 of the Convention, the curtailment of his privacy being a necessary consequence of the strict-regime prison sentence imposed on him.

25. The applicant argued that the measures, omissions and incidents complained of amounted to inhuman and degrading treatment prohibited by Article 3 of the Convention, and this in respect of the whole period he had spent in Szeged Prison. The matter complained of constituted a continuous violation of his Convention rights; therefore, the Government's reference to the six-month rule was a misconception. In particular, the fact that he had been at the mercy of his cellmates for a prolonged period of time in terms of satisfying his basic needs, such as relieving himself, bathing or getting dressed/undressed, was unacceptable. Likewise, the practice of transporting him in a van without a seatbelt to hold his wheelchair in place, together with the rough methods of getting him in and out of the vehicle was inhuman. This situation was aggravated by his classification as a 'Grade 4' security-level prisoner – impossible to challenge before the prison authorities and completely unjustified in the face of his paraplegia – as a consequence of which he had been kept handcuffed during transport and thereby prevented from securing his position whilst the vehicle was in motion.

26. The Court reiterates that 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 of severity is 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. In considering whether treatment is “degrading” within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III).

27. In this case the applicant, paraplegic, was left at the mercy of his cellmates in receiving assistance to relieve himself, bathe and get dressed or undressed (cf. *Vincent v. France*, no. 6253/03, §§ 94-103, 24 October 2006). This situation prevailed during his entire time in Szeged Prison between 25 February 2005 and 15 December 2006. For the Court, it is

immaterial in this connection whether or not the cellmates in question were volunteers (cf. *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004). It further endorses the applicant's position that the circumstances complained of constituted a continuous situation (cf. *P.M. v. Hungary*, no. 23636/94, Commission's report of 9 September 1998, unpublished) which must be examined in its entirety.

28. Moreover, the Court notes that the applicant's submissions about the deplorable conditions of his transport were not refuted by the Government in regard to the period preceding the equipment of the van in question with a safety belt, which apparently took place only at the end of August 2006. The Court finds particularly regretful the practice of dragging the applicant on the floor to and from the transport van and that of leaving his wheelchair unsecured in a moving vehicle, as happened on 12 June 2006. In the latter respect, it would observe that the classification of the applicant as a 'Grade 4' security-level prisoner and the resultant handcuffing added to the hardships he had to suffer on account of this method of transport. The Court notes in this connection the observations of the CPT regarding the situation of 'Grade 4' security-level prisoners in Hungary (see paragraphs 17-18 above).

29. Lastly, the Court observes the non-pursuit, for want of evidence, of the applicant's complaint about the incident of 4 September 2006 (see paragraphs 12 and 13 above). It considers that the delayed access of the applicant, a paraplegic prisoner, to a medical examination after an alleged incident of this nature is incompatible with the authorities' obligation under Article 3 to carry out an adequate investigation into allegations of ill-treatment (see *Kmetty v. Hungary*, no. 57967/00, § 38, 16 December 2003).

30. The foregoing considerations are sufficient to enable the Court to conclude that, while detained in Szeged Prison, the applicant was subjected to degrading treatment. Notwithstanding the laudable efforts of the Government to improve his situation by transferring him, on 15 December 2006, to a purpose-built institution, these came too late to palliate the violation of Article 3 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government contested this claim.

34. The Court awards the full amount requested.

### B. Costs and expenses

35. The applicant also claimed EUR 3,800 for the costs and expenses incurred before the Court. This amount corresponds to 31 hours of legal work billable by his lawyer, according to the time-sheet submitted, charged at an hourly rate of EUR 120, plus EUR 80 of clerical costs.

36. The Government contested this claim.

37. 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.

C. Default interest

38. 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*

(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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,800 (three thousand eight hundred 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Françoise Tulkens
Registrar President