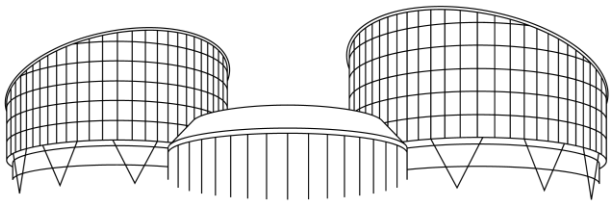

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KRIVOŠEJS v. LATVIA

(Application no. 45517/04)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Krivošejs v. Latvia,

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 45517/04) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a permanently resident "non-citizen" of the Republic of Latvia, Mr Viktors Krivošejs ("the applicant"), on 22 October 2004.

2. The applicant, who had been granted legal aid, was represented by Ms J. Averinska, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that he had not received adequate medical assistance in prison and that he had not been released from prison despite his medical condition.

4. On 3 May 2007 the Court 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 1974 and is currently serving a sentence in Jelgava Prison.

6. On 3 November 1987, at the age of thirteen, he was examined in a neuropsychiatry centre and diagnosed with conduct disorder that had

resulted from early central nervous system damage. He was registered with a psychiatrist, but did not pay any visits to the psychiatrist.

7. On 21 February 1991 at the age of seventeen, he was again examined in a neuropsychiatry centre with the same diagnosis. It was recommended that he undergo an inpatient medical examination, but he failed to arrange such an examination.

A. The applicant's conviction and imprisonment

1. First set of criminal proceedings

8. On 11 December 1997 the applicant was arrested.

9. Following hearings from 6 to 23 September 1999, on the latter date the Zemgale Regional Court (*Zemgales apgabaltiesa*) convicted the applicant of aggravated murder and robbery and sentenced him to fifteen years' imprisonment.

10. On appeal and having examined the results of the first inpatient forensic psychiatric examination of the applicant (see paragraphs 23 and 24 below), the Criminal Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) upheld the ruling of the first-instance court.

2. Second set of criminal proceedings

11. On 28 December 2000, after initial hearings in connection with a charge of theft which had been brought against the applicant, the Jelgava Court (*Jelgavas tiesa*) ordered the second inpatient forensic psychiatric examination of the applicant in view of concerns about his mental health (see paragraphs 25 and 27 below).

12. Further hearings took place between May and December 2001. On 19 February 2002 the Jelgava Court ordered the third inpatient forensic psychiatric examination of the applicant in view of his behaviour during the trial (see paragraphs 28 to 31 below). The experts conducting the examination were specifically asked to consider if the applicant had been suffering from a mental illness after February 2001. During this examination, a primary arachnoid cyst in the applicant's brain was discovered (see paragraphs 28 to 31 below).

13. On 11 September 2002 the Jelgava Court ordered the fourth inpatient forensic psychiatric examination. The examination results showed that the cyst had doubled in size (see paragraphs 32 and 33 below).

14. Following hearings from 24 to 28 December 2002, on the latter date the Jelgava Court convicted the applicant of aggravated theft and sentenced him to three years' imprisonment, which term was less than the statutory minimum of six years' imprisonment for the crime owing to his state of health, but found that he had full mental capacity. The sentences handed

down in the first and second sets criminal of proceedings were combined to a total of fifteen years and ten months' imprisonment.

15. On 14 February 2003 the Zemgale Regional Court admitted an appeal brought by the applicant against the ruling of the first-instance court and scheduled the first appellate hearing for 1 April 2003. During that hearing the applicant suddenly felt ill. An ambulance was called to his aid and pain-relieving injections were administered to him. On the same date, the proceedings were stayed owing to the deterioration of the applicant's state of health. On 7 May 2003 the applicant was informed that the appellate proceedings would commence when his state of health improved.

16. On 22 January 2004 the Zemgale Regional Court upheld the applicant's conviction but reduced the total term of imprisonment to fifteen years. It appears that no appeal on points of law was lodged.

B. Medical examinations in detention

17. During his pre-trial detention and for the first years of his sentence the applicant was mainly held in two prisons, both of which were located next to each other in Rīga – Matīsa Prison and Central Prison. On 1 November 2008 these prisons were merged into one Rīga Central Prison (*Rīgas centrālcietums*).

18. On 2 November 2006 a request by the applicant to serve his sentence in Jelgava Prison was granted and he was transferred to serve his sentence there.

19. At various times the applicant was admitted to a prison hospital, which provided somatic and psychiatric inpatient care for sentenced and remand prisoners from all of the prisons in Latvia. The hospital was located on the premises of Central Prison in Rīga. On 1 November 2007 the hospital in Central Prison was closed.

20. On 26 June 2008 the applicant was recognised as being Category 3 disabled.

1. Outpatient examinations

21. On 10 March 1998 the applicant underwent an outpatient forensic psychiatric examination (*ambulatorā tiespihiatriskā ekspertīze*) in a neuropsychiatric hospital in Jelgava (*Jelgavas psihoneiroloģiskā slimnīca*). This examination had been ordered by the investigative authority. The experts found that the applicant had antisocial personality disorder but recommended that the courts declare him to have full mental capacity (*pieskaitāms*).

22. On 21 March 2000 the applicant underwent an outpatient forensic psychiatric examination at the prison hospital. This examination had been ordered by the appellate court in connection with the first set of criminal proceedings in view of the deterioration of the applicant's health after the

fight on 5 December 1998 (see paragraph 35 below). The experts did not reach any conclusions, but recommended an inpatient examination of the applicant because he had complained of memory impairment.

2. First inpatient examination

23. On 28 June 2000 the applicant was admitted to a psychiatry centre (*Psihiatrijas centrs*) for one month for the purpose of an inpatient forensic psychiatric examination (*stacionārā tiespsihiatriskā ekspertīze*). He was examined by an ophthalmologist, a neurologist, a therapist, a narcologist and a psychologist. Several clinical tests, an ultrasound test and an electroencephalograph ("EEG test") were carried out. The applicant told the doctors, among other things, that he had suffered memory impairment after the events of 5 December 1998 (see paragraph 35 below).

24. On 27 July 2000 the experts issued their report, no. 51-2000. They found that the applicant had antisocial and borderline personality disorders. The examination had not revealed any particular memory impairment. No mental illness had been detected. The experts opined that there were no demonstrable changes in the applicant's mental state which would have interfered with his ability to understand and direct his actions. He could participate in and follow the court hearings. It was recommended that the courts declare him to have full mental capacity.

3. Second inpatient examination

25. The applicant was admitted to the psychiatry centre again on 22 January 2001 for one month. During his stay at the centre he was examined by an ophthalmologist, a neurologist and a psychologist; several clinical tests and an EEG test were carried out. The latter showed minor negative dynamics compared to the previous EEG test results. Otherwise, the results of the second examination were identical to the first one.

26. On 16 February 2001 the experts issued their report, no. 18-2001. The experts opined that any changes in the applicant's mental state had not interfered with his ability to understand and direct his actions at the time of the offence.

27. One of the experts who had conducted this examination gave evidence at the applicant's trial in September 2001 before the Jelgava Court, stating that no trauma to the applicant's head that could have influenced his mental health had been detected. She stated that the trauma that the applicant had sustained in 1998 had not affected his memory.

4. Third inpatient examination

28. The applicant was admitted to the psychiatry centre again on 18 March 2002 and remained there until 2 May 2002. He was examined by an ophthalmologist, a neurologist and a therapist; several clinical tests and

an EEG test were carried out. The applicant was also subjected to an experimental psychological test.

29. In addition, on 24 April 2002 a computed tomography (CT) scan on the applicant's head was carried out and a primary arachnoid cyst stretching across the left temporal and frontal lobes measuring 4x5x7 cm was discovered. He was then examined by a neurosurgeon, who recommended mild dehydration for the next three months. After that period, he suggested another CT scan to determine a further course of treatment.

30. On 30 April 2002 the experts issued their report, no. 53-2002. They opined that the applicant did not suffer from a mental illness but that he had an organic personality disorder, as well as a mild cognitive disorder. He suffered from sudden attacks of temporary and mild psychotic conditions. Therefore, at that time the applicant was not fit to participate in the court hearings – he had to be observed and treated in the prison hospital's neuropsychology department. Another CT scan had to be performed after three months in order to decide on the need for neurosurgery.

31. One of the experts who had conducted this examination gave evidence at the applicant's trial in December 2002 before the Jelgava Court. It was her opinion that the applicant was suffering from a mental disorder, which was comparable to a mental illness. She explained that, prior to the third inpatient examination, it had been considered that the applicant had been fabricating his symptoms. According to her, the applicant ought to receive treatment – the number of epileptic seizures (*lēkmes*) he was suffering ought to be reduced, as every seizure damaged his brain cells. A lack of treatment could lead to dementia (*plānprātība*). It was her view that the applicant's condition necessitated treatment under the supervision of a neurologist and regular examinations by a neurosurgeon, a psychiatrist and a psychologist.

5. Fourth inpatient examination

32. During this examination another CT scan revealed that the cyst had grown to the size of 10x10x5 cm. The doctors described it as "huge" and "visually impressive". According to the neurologist and neurosurgeon, no particular treatment or surgery was necessary. It was recommended to monitor the applicant's medical condition and, if necessary, to carry out another CT scan, EEG test and other examinations. The expert's report, no. 109-2002 of 31 October 2002, concluded that the applicant did not suffer from a mental illness. It was recommended that he be declared to have full mental capacity.

33. One of the experts who had conducted this examination gave evidence at the applicant's trial in December 2002 before the Jelgava Court. According to her, the applicant's head injury in 1998 might have caused the cyst to shift. She also testified that no treatment was necessary for the applicant, save for consultations with a neurologist. The expert asserted that

an individual could live with such a cyst for many years, provided it was not affected by blows or other impacts. A cyst would not normally cause any disturbance provided that the individual did not suffer any injuries. The applicant ought to avoid any impacts to his head.

C. Medical assistance in prison and its review

1. Medical assistance

34. Prior to 5 December 1998 the applicant had not complained to the prison medical staff of pain in his head or memory impairment. He had made other complaints such as, for example, of toothache, which had been addressed by admitting him to the prison hospital for treatment between 27 November and 4 December 1998.

35. On 5 December 1998 the applicant was involved in a fight with other detainees in Central Prison in Rīga and received a blow to his head which caused a concussion and knocked him unconscious for a short while. The applicant was taken to the prison hospital on a stretcher and admitted to the neuropsychology department for examination. The applicant complained of headache and dizziness. The applicant had bruises on his neck and in the area of his back and chest. No damage to his central or peripheral nervous systems was detected after an examination by a neurologist. No fractures were detected on his head and chest after an X-ray examination. The applicant refused to receive pain relieving injections. He was discharged from the hospital ten days later.

36. On 9 April 1999 the applicant consulted a psychiatrist and complained of headache, insomnia, hearing voices, anxiety, agitation and irritability. The applicant explained that the reason for his refusal to receive injections after the events of 5 December 1998 had been his fear of being poisoned. The doctor concluded that the applicant was fabricating his symptoms.

37. During the forensic outpatient examination on 21 March 2000 the applicant complained of memory impairment. He also raised this complaint during the first and the second inpatient forensic examinations, in June 2000 and January 2001 respectively. Finally, during the third inpatient forensic examination in March 2002 he complained of constant headache.

38. On 28 March 2003 the head of the medical unit of Matīsa Prison reported that the applicant's medical condition had deteriorated and that medical treatment was necessary.

39. According to the information provided by the Government, the applicant was admitted to the prison hospital for the following periods:

(i) between 3 and 20 January 2003;
(ii) between 20 February and 6 March 2003;
(iii) between 6 November and 4 December 2003;

(iv) between 8 and 29 April 2004;
(v) between 27 January and 17 February 2005;
(vi) between 26 May and 7 June 2005;
(vii) between 16 and 22 September 2005;
(viii) between 25 October and 11 November 2005; and
(ix) between 17 May and 21 June 2006.

As concerns the applicant's treatment for those periods the Government referred to the fact that: (a) the applicant had been examined by a neurologist, a neurosurgeon, an ophthalmologist, a psychiatrist, a radiologist and an otolaryngologist; (b) two CT scans of the applicant's head had been carried out; and (c) the necessary clinical examinations had been performed.

40. According to the Government, in 2007 the applicant had twelve consultations with the medical staff at Jelgava Prison. The applicant was admitted to the prison hospital on 15 October 2007 and remained there at least until 29 October 2007. During that period he was examined by a neurologist, a surgeon and an ophthalmologist and received some medication (for example, diazepam and piracetam).

41. On 11 December 2007 and 12 June 2008 two more CT scans of the applicant's head were carried out. The size of the arachnoid cyst remained largely unchanged.

2. MADEKKI monitoring

42. From 17 January to 17 February 2003, at the applicant's request, the Inspectorate for Quality Control of Medical Care and Working Capability ("the MADEKKI") examined the adequacy of the applicant's medical treatment in prison. It was concluded that the applicant's medical condition had deteriorated and that medical treatment was necessary, including dehydration.

43. On 19 February 2003 the MADEKKI informed the applicant that it had advised the Prisons Administration to ensure further medical examinations were carried out and to arrange for him to have a consultation with a neurosurgeon. It appears that a CT scan of the applicant's head was carried out on 28 February 2003 and a neurosurgeon examined its results. The MADEKKI concluded on 17 March 2003 that its recommendations had been implemented.

44. From 10 January to 13 February 2004, at the applicant's request, the MADEKKI examined the adequacy of the applicant's medical treatment for the second time. It concluded that further medical examinations had been carried out but that the applicant had not had a consultation with a neurosurgeon in person. No surgery was needed. A further CT scan was recommended after six months.

45. On 13 February 2004 the MADEKKI informed the applicant that it had advised the Prisons Administration to ensure further medical

examinations were carried out and to arrange for him to have a consultation with a neurosurgeon.

46. From 27 April to 25 May 2005, at the applicant's request, the MADEKKI examined the adequacy of the applicant's medical treatment for the third time. It was established that the applicant was being examined twice a year by a neurologist and an ophthalmologist. The conclusion was that further CT scans and consultations with a neurosurgeon were not necessary, as no damage to his health had been detected.

47. From 7 November 2005 to 2 January 2006, at the applicant's request, the MADEKKI examined the adequacy of the applicant's medical treatment for the fourth time and found no shortcomings in the applicant's medical care.

D. Applications for release

48. On 8 March 2004, following a request by the applicant, the prosecutor's office refused to order a forensic medical examination with a view to the possible release of the applicant on health grounds, as it determined that he had not fallen ill with a mental illness or another illness. It was noted that his medical condition was congenital.

49. At the same time, Matīsa Prison's governor asked the prosecutor's office to order a forensic medical examination. In reply, the prosecutor's office instructed the Prisons Administration to commission a medical panel to decide on the necessity of such an examination. It appears that they reached the conclusion that the forensic examination was not necessary because, at that time, the applicant was not suffering from any mental disorder.

50. On 16 March 2005, following a repeated request by the applicant, relying on the previous year's findings by the medical panel, the prosecutor's office refused to order a forensic examination.

51. On 13 May 2005, on the applicant's complaint, a superior prosecutor explained that because the applicant's medical condition had not deteriorated a forensic examination would not be ordered.

52. On 26 August 2005, following a request by the applicant, the prosecutor's office instructed the Prisons Administration's medical unit to examine the applicant's state of health and to decide if a medical examination was necessary with a view to the possible release of the applicant on health grounds.

53. On 23 September 2005 the Prisons Administration informed the applicant that its medical unit had decided that a medical examination was not necessary because his state of health continued to be satisfactory.

54. At the end of 2005, the applicant complained to the prosecutor's office of the deterioration of his state of health.

55. On the prosecutor's request, on 15 June 2006, a medical examination of the applicant with a view to his possible release was carried out by medical staff of the Prisons Administration: three psychiatrists, one neurologist and one internist. They examined the applicant in person, his medical records and his medical condition and arrived at the conclusion that there were no grounds to initiate the applicant's release under section 116 of the Sentence Enforcement Code.

56. On 29 June 2006 the Prisons Administration informed the applicant that they did not have the authority to order a forensic medical examination. It was noted that the applicant's state of health was satisfactory.

57. On 14 July 2006 the prosecutor's office once again confirmed to the applicant that there were no grounds to order a forensic medical examination.

II. RELEVANT DOMESTIC LAW

58. According to the relevant paragraphs of section 59 of the Criminal Law (*Krimināllikums*), in force since 1 April 1999, if a convicted person has fallen ill with a mental illness which has interfered with his or her ability to understand and direct his or her actions, or with another severe and incurable illness after the pronouncement of a judgment, a court may release that person from serving the remainder of their sentence.

59. Section 640, paragraph 1 of the Law of Criminal Procedure (*Kriminālprocesa likums*), in force since 1 October 2005, provides that a judge may release a convicted person from serving the remainder of his or her sentence if he or she has developed a mental disorder and for that reason cannot remain in custody and needs to receive treatment. A medical examination must be commissioned for that purpose. Before the entry into force of the Law of Criminal Procedure, the relevant provision was contained in section 364 of the Code of Criminal Procedure (*Kriminālprocesa kodekss*).

60. According to section 116 of the Sentence Enforcement Code (*Sodu izpildes kodekss*), if a convicted person has fallen ill with a mental illness or another severe and incurable illness owing to which he or she is unable to serve the remainder of his or her sentence, the relevant penal institution has to order that a medical examination is carried out and, in view of its results, send an application for release to the appropriate court. Prior to the entry into force of legislative amendments that took effect on 9 December 2004, a forensic psychiatric or medical examination was required and could only be ordered by the prosecutor's office. After those amendments came into force, the type of medical examination required was not specified.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INADEQUATE MEDICAL ASSISTANCE

61. The applicant complained that the medical assistance provided to him within the penal system had been inadequate and that his medical condition had deteriorated. The Court will examine this complaint under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

63. The Government pointed out that the applicant's main concern in this regard was the primary arachnoid cyst which had been discovered in 2002. They asserted that the cyst had not required any specific treatment as long as there had been no objective indications that it had influenced the applicant's medical condition. The Government took the view that periodical CT scans of the applicant's head, accompanied by consultations with a neurologist and an ophthalmologist, had been sufficient to determine any changes in the applicant's medical condition that would have warranted treatment.

64. The Government maintained that immediate therapy or surgery would only have been required if the applicant's medical condition had deteriorated, such as through the deterioration of his eyesight or as a result of epilepsy attacks. The Government relied on the MADEKKI's monitoring activity to argue that the applicant's medical condition had not deteriorated and thus no immediate therapy or surgery had been necessary.

65. Finally, relying on the Court's case-law and the standard of proof "beyond reasonable doubt" (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 59, 20 June 2002), the Government submitted that the applicant

had not sufficiently proved that he had not been provided with adequate medical assistance.

66. The applicant submitted that his medical condition had deteriorated after the events of 5 December 1998 in Central Prison in Rīga and that the penal authorities had not provided any medical treatment to address his complaints, as they had considered his symptoms to be fabricated for over three years. In support of this argument, he relied on expert evidence given during his trial to the effect that he suffered from a mental illness (see paragraph 31 above).

67. The applicant further noted, first of all, that after the third inpatient examination, during which on 24 April 2002 the arachnoid cyst had been discovered, he had not received any treatment. Secondly, during the fourth inpatient examination it had been discovered that the arachnoid cyst had grown to double its previous size. Thirdly, he had only received some treatment in 2003 after he had himself raised complaints with the MADEKKI. In the applicant's submission, these facts attested to the inadequacy of his medical care.

68. In addition, the applicant disputed the Government's assertion that he had not required any specific treatment. To prove this point, he referred to the fact that medication such as diazepam and piracetam had been prescribed for him. None of those medicines, however, had been used to treat a mental illness. In the applicant's submission, the prescription of these drugs had therefore been aimed at suppressing his neurological symptoms, the monitoring of which had been necessary for the proper supervision of his medical condition. He concluded that this failing had resulted in a breach of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

69. From the outset, concerning the facts that are in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004).

70. The Court further recalls that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Farbtuhs*, cited above, § 51).

71. However, the mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The

authorities must also ensure that where necessitated by the nature of a medical condition the diagnoses and treatment are carried out in a timely fashion and that supervision, where necessary, is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006; and *Hummatov*, cited above, § 114). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006, and *Hummatov*, cited above, §116).

(b) Application of these principles to the present case

72. The Court notes that the main issue to be determined under this head is whether or not the respondent State has been able to provide adequate treatment for the applicant's medical condition, which had developed long before his placement in detention. The applicant's main concern in this regard is promptness on two accounts, firstly, as concerns the diagnosis of his medical condition and, secondly, as concerns the treatment of that condition.

73. In its assessment of these issues, the Court considers that it must be guided by the due diligence test, since the State's obligation to cure a seriously ill prisoner is that of means, not of result. Notably, the mere fact of a deterioration of the applicant's medical condition, albeit capable of raising, at an initial stage, doubt concerning the adequacy of the treatment in prison, cannot not suffice, as such, for a finding of a violation of Article 3 of the Convention, if, on the other hand, it can be established that the relevant domestic authorities have in a timely fashion resorted to all reasonably available medical measures in a conscientious effort to hinder the development of the condition in question.

74. First of all, the Court has been called upon to examine whether the applicant received a timely diagnosis of his medical condition. It is true that prior to the third inpatient examination, during which an arachnoid cyst was discovered on the applicant's brain for the first time, the applicant had been examined on four occasions by several medical specialists on an outpatient and an inpatient basis and several tests had been carried out (see paragraphs 21 to 23 and 25 above). The specialists' conclusion was that the applicant did not suffer from a mental illness and that he had full mental capacity. That conclusion was not altered upon the discovery of the arachnoid cyst on the applicant's brain on 24 April 2002 during the third inpatient examination. Even if the Court recognises that it took some time and a particular examination – a CT scan of the applicant's head – for the domestic authorities to diagnose the applicant's medical condition, in the particular circumstances of the case and in view of the fact that, as confirmed by the domestic criminal courts, the applicant continued to be

considered as having full mental capacity before and after the discovery of his primary arachnoid cyst, the Court considers that the time and manner in which the applicant's medical condition was diagnosed was adequate.

75. The Court will now turn to the second part of the applicant's complaint, namely, the allegedly inadequate medical assistance after the diagnosis of the arachnoid cyst. The Court in this connection has to determine if the applicant needed regular medical assistance, whether he was deprived of it as he claims and, if so, whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see *Hummatov*, cited above, § 111; and *Kaprykowski v. Poland*, no. 23052/05, § 70, 3 February 2009).

76. Having due regard to all the information at its disposal, the Court notes that the medical assistance provided to the applicant following the detection of the arachnoid cyst appears to have been adequate. Even though between the third and the fourth inpatient examinations the arachnoid cyst had grown in its size, the medical specialists concluded that it was not adversely affecting the applicant's health in any way. The mild dehydration that had been prescribed after the third inpatient examination was followed through.

77. The evidence also confirms that the applicant's medical condition did not in itself necessitate any particular treatment. While it is true that after the third inpatient medical examination it remained uncertain if surgery was necessary in the applicant's case, the following medical examinations confirmed that it was not (see paragraphs 32, 43, 44 and 46 above). Similarly, the results of the MADEKKI's monitoring activity confirmed that the applicant's condition did not require treatment, save for consultation by a specialist and further medical examinations when necessary (see paragraphs 43, 45, 46 and 47 above). The Court notes that the medical examinations and consultations recommended were carried out, in particular, several follow-up CT scans (see paragraphs 39 and 41 above). Admittedly, in its second review the MADEKKI found a shortcoming in the applicant's medical care in the prison hospital, in that he had not been examined by a neurosurgeon in person. However, this shortcoming was later remedied and the neurosurgeon's finding remained the same – no surgery was necessary in the applicant's case.

78. The applicant relied on the expert evidence given during his trial to argue that he suffered from a mental illness and that it had been necessary to provide treatment under the supervision of a neurologist in order to prevent the deterioration of his condition (see paragraph 31 above). This medical opinion, however, was given by an expert who had only examined the applicant once and whose opinion was not shared by other experts who conducted the third inpatient examination. Moreover, several subsequent medical examinations did not confirm her view. It was also rejected by the domestic criminal courts in holding that the applicant had full mental

capacity. Having duly examined all the material in its possession and noting that there is not a single piece of unrebutted evidence attesting to the fact that the applicant suffered from a mental illness, the Court concludes that the applicant's medical condition did not require any particular treatment, contrary to what has been claimed by the applicant.

79. As transpires from the facts of the case, the applicant's sole medical emergency was the sudden pain attack he experienced during the hearing of 1 April 2003. The Court considers that it was adequately addressed by calling for an ambulance, whose personnel administered pain-relieving injections to the applicant. The applicant did not claim that this was insufficient and that other treatment should have been provided instead. He admitted that he received some treatment in 2003.

80. Finally, the applicant's reliance on the fact that he was prescribed certain medicines (diazepam and piracetam) that are not used to treat mental illness only strengthens the argument that he did not, in fact, suffer from such an illness. The Court considers that the domestic authorities cannot be criticised for addressing the applicant's other complaints in circumstances where the medical condition under discussion did not require any particular treatment.

81. The foregoing considerations are sufficient to enable the Court to conclude that the overall medical assistance provided to the applicant was adequate.

82. It follows that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE AUTHORITIES' REFUSAL TO RELEASE THE APPLICANT ON HEALTH GROUNDS

83. The applicant complained of his continued detention, in spite of his deteriorating medical condition. The Court will examine this complaint under Article 3 of the Convention.

84. The Government explained the procedure for release on health grounds, referring to applicable domestic law (see paragraph 60 above). They stated, on the one hand, that a prosecutor may order a forensic examination for a person that has fallen ill with a mental illness. If the conclusion that the person needs to be treated in a psychiatric hospital is reached, the prison administration then lodges a request before the courts under section 640 of the Law of Criminal Procedure (see paragraph 59 above). On the other hand, if a person has fallen ill with another severe and incurable illness a simple medical examination is carried out upon the request of the Prisons Administration or a prosecutor.

85. As regards the applicant's case, the Government noted that he had never suffered from a mental illness and thus that the prosecutor's refusal to

order a forensic examination had been justified. As concerns the other medical examinations, the Government pointed out that their conclusions had been that the applicant's medical condition was satisfactory and thus that continued imprisonment was appropriate. Accordingly, there had been no grounds to bring an application before the courts seeking the release of the applicant on health grounds. Finally, the Government drew a distinction between the applicant's case and the above-cited case of Mr Farbtuhs.

86. The applicant was dissatisfied that a forensic medical examination had been denied. In his submission, his examination by prison medical staff had not been sufficient as they had not possessed the necessary medical qualifications.

87. There are at least three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner; (b) the adequacy of the medical assistance and care provided in detention; and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Farbtuhs*, cited above, § 53).

88. In view of the Court's conclusion above that the applicant's primary arachnoid cyst did not call for any particular medical treatment and that the overall medical assistance provided to him was adequate, the Court finds that that the applicant's complaint under this head is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicant alleged that he had not had an effective domestic remedy to complain about the medical assistance provided to him in custody. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] 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."

90. The Government argued that the MADEKKI's monitoring activity was an effective remedy for detained and convicted persons to complain about the quality of medical assistance provided to them in prison. They submitted that it was available not only in theory, but also in practice, as evidenced by the facts of the present case.

91. They further submitted that an appeal could be lodged against the MADEKKI's findings to its director and then, in turn, to the administrative courts.

92. The applicant, for his part, referring to domestic case-law, did not accept that monitoring by the MADEKKI was an effective remedy.

93. In view of the above finding of no violation of Article 3 of the Convention on account of the medical assistance provided to the applicant, the Court concludes that the applicant did not have an arguable claim to a remedy for that complaint under Article 13 of the Convention.

94. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. Lastly, citing various Articles of the Convention, the applicant claimed to have been the victim of numerous human rights violations during the period from 1993 to 1997, as well as during the first and second sets of criminal proceedings against him.

96. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

97. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning allegedly inadequate medical assistance admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President