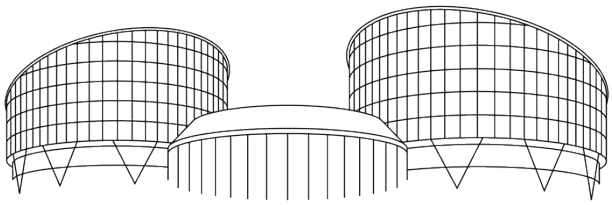

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF STOYAN MITEV v. BULGARIA

(Application no. 60922/00)

JUDGMENT

STRASBOURG

7 January 2010

FINAL

07/04/2010

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

In the case of Stoyan Mitev v. Bulgaria**,**

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 60922/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Stoyan Stoyanov Mitev ("the applicant"), on 27 July 2000. The applicant was born in 1934, lived in Sokolovo and passed away in 2001. By a letter of 6 April 2005 his son, Mr Asen Stoyanov Mitev, informed the Court that he wished to continue the application on behalf of his father.

2. The applicant was represented by Ms Y. Vandova, a lawyer practising in Sofia.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. The applicant alleged, in particular, that his continued detention in spite of his constantly deteriorating medical condition amounted to inhuman and degrading treatment in contravention of Article 3 of the Convention.

5. On 1 September 2005 the Court declared the application partly inadmissible and decided to communicate the complaint under Article 3 of the Convention to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

6. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 30 January 2009, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they had appointed in her stead Ms Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of the Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant

7. On 17 August 1997 the applicant was arrested after neighbours found him beating another elderly individual, who later died from his injuries.

8. In a judgment of 10 December 1998 the Burgas Regional Court found the applicant guilty of premeditated murder and sentenced him to seventeen years' imprisonment, to be initially served in a high security prison. The applicant appealed against the judgment.

9. In a judgment of 15 November 1999 the Burgas Court of Appeal upheld the lower court's judgment. The applicant lodged a cassation appeal.

10. Two hearings before the Supreme Court of Cassation were adjourned because of the applicant's failure to attend them as a result of his deteriorating medical condition.

11. On 21 July 2000 the Supreme Court of Cassation ordered the applicant's release on bail. The guarantee was deposited on 24 July 2000 and the applicant was released the next day.

12. Subsequently, several more hearings were scheduled, but none were conducted due to the deteriorating medical condition of the applicant.

13. On 14 December 2001 the applicant passed away.

14. In view of the applicant's death, by a decision of 19 March 2002 the Supreme Court of Cassation quashed the judgment of the Burgas Court of Appeal and discontinued the criminal proceedings against him.

B. The applicant's medical condition

1. Prior to the criminal proceedings

15. The applicant was a pensioner who retired on medical grounds. After a domestic accident in 1993 he became disabled, walked with a stick and limped because his left leg had become shorter than his right by six centimetres. The applicant was apparently a heavy smoker.

2. Injuries allegedly sustained during the arrest

16. At the time of his arrest on 17 August 1997 the applicant allegedly sustained an injury to his testicles. On 20 February 1998 his lawyer requested the courts to order that his client be provided with hospital treatment for the aforementioned injury. It is unclear whether the applicant

received any such treatment. At the time, he was held at the detention facility of the Burgas Investigation Service.

3. While in detention

(a) Angiopathy and inguinal hernia

17. On 21 November 1997 the applicant was transferred to Stara Zagora Prison where he was examined by a doctor. He complained of poor blood circulation in both legs and was found to have angiopathy[1]. It does not appear that he received any specific treatment for this condition. The applicant was also diagnosed with left-sided inguinal hernia[2] and was prohibited physically intensive work.

18. On 11 February 1998 the applicant was examined by the prison doctor, who found that the applicant's inguinal hernia was progressing and ordered that it be operated on.

19. On 4 March 1998 the applicant was transferred to Sofia Prison Hospital where on 10 March 1998 the operation was performed. The applicant remained hospitalised for at least another ten days, when his stitches were removed. He was discharged on an unspecified day, advised not to lift anything heavy and was given thirty days' home leave.

20. On an unspecified date before May 1998 the applicant returned to Stara Zagora Prison.

(b) Urinary infection

21. Some time prior to July 1998 the applicant developed an infection or complications which affected his urinary tract and he had difficulty urinating. It is unclear whether he received any treatment for this condition and when it cleared up.

(c) Stroke

(i) Stara Zagora

22. At around 10:30 a.m. on 28 January 2000 the applicant, while physically exerting himself for an unspecified reason, developed a very severe headache, his mouth became crooked, he started having difficulty speaking and his right limbs became numb. Upon examination, he was found to have very high blood pressure. The applicant was taken to the emergency room of Stara Zagora hospital where various tests were

[1] Angiopathy is the generic term for a disease of the blood vessels (arteries, veins, and capillaries). The best known and most prevalent angiopathy is diabetic angiopathy, a complication that may occur in chronic diabetes.

[2] Inguinal hernias occur when soft tissue – usually part of the intestine – protrudes through a weak point or tear in the lower abdominal wall.

performed, including a CAT scan (computed tomography) of the brain. As a result, it was discovered that he had suffered a stroke and was diagnosed with the following:

> "Brain atherosclerosis. Arterial hypertension - 3rd stage. Transient disturbance of the brain's blood circulation in the left carothic system (stroke). Right-sided hemiparesis."

23. The applicant returned to the medical ward in Stara Zagora Prison where he was placed under medical supervision and ordered to remain in bed. He was prescribed daily doses of Agapurin, Vasopren and Cinnarizine.

24. As the applicant's medical condition had stabilised, on 9 February 2000 the prison warden proposed that the applicant be transferred to Sofia Prison Hospital for further treatment and rehabilitation.

25. On 18 February 2000 the applicant was transferred to the neurological ward of Sofia Prison Hospital.

(ii) Sofia Prison Hospital

26. At Sofia Prison Hospital the applicant was prescribed a medication regime aimed at improving the blood circulation to his brain. On 23 February 2000 he also started physiotherapy.

27. The applicant's medical records from his stay at this facility indicate that his medical condition was regularly monitored, but sometimes not every single day. He also appears to have had regular contact with and access to doctors or medical personnel, who addressed, in so far as possible, the complaints or complications he had.

28. On 1 March 2000 a medical commission examined the applicant and concluded that it was not necessary to move him to an outside civil medical facility, as he was showing signs of improvement and the required treatment could be provided adequately at Sofia Prison Hospital.

29. The applicant's medical record indicates that on 20 March 2000 he said he had fainted while being led out to see a visitor.

30. It appears that the applicant's medical condition gradually began to deteriorate. Towards the end of April or the beginning of May 2000 it worsened considerably.

31. On 4 May 2000 another CAT scan of the applicant's brain was performed, which found evidence of a five millimetre encephalomacic lesion in the internal brain cavity.

32. A medical report by the head of the neurological ward of Sofia Prison Hospital indicated that the applicant's diagnosis was as follows:

> "Generalised and brain atherosclerosis; ischemic (thromboembolic) brain stroke; right-sided hemiparesis; partial aphasia; arterial hypothermia – 3rd stage".

It also specified that as a result of the lack of specialised rehabilitation and physiotherapy the applicant's ability to move would continue to

deteriorate, as had his speech as a result of the lack of a logopaedic specialist. The doctor concluded the following:

> "the patient is unsuitable to remain in [prison] conditions of high or standard level of security. [The applicant] requires constant monitoring of his arterial pressure, neurological status and to be given therapy...".

33. On 9 May 2000 a medical commission found the applicant's blood pressure too unstable, and that this precluded his participation in the hearing of that day. In addition, it reasoned that if the applicant's medical condition did not improve, due to the heightened risk of a second stroke it would be necessary to assess whether to propose that his detention be replaced with another measure to secure his participation in the court proceedings.

34. On 15 May 2000 a medical commission of three doctors from the Hospital of the Ministry of Internal Affairs prepared a report on the applicant's medical condition. They found that in spite of his initial improvement by following the prescribed treatment, the applicant's condition was deteriorating. They proposed that the applicant be released from detention for an initial period of three months in order to receive adequate treatment for his condition in a specialised civil medical facility. The report was sent to the warden of Stara Zagora Prison.

35. On 18 May 2000 the warden of Stara Zagora Prison proposed to the Burgas Regional Court that the applicant's detention be replaced with another measure to secure his participation in the court proceedings. He based his proposal on the findings of the medical commission of 15 May 2000 and the need for the applicant to receive treatment in a specialised rehabilitation centre.

36. On an unspecified date, the Burgas Regional Court apparently refused to replace the applicant's detention with another measure to secure his participation in the court proceedings. The applicant appealed, but on 2 June 2000 the Supreme Court of Cassation upheld the lower court's decision. The latter court based its decision on the contradictions it had found in the medical reports prepared since March 2000 regarding the applicant's medical condition, his ability to move, the course of the treatment required and the place most suitable to obtain it. The court concluded the following:

> "it cannot be unequivocally concluded that the applicant's [medical] condition had deteriorated to such an extent as to exclude the possibility that he might be moved or transported and, accordingly, that [the applicant] might abscond or reoffend".

37. On 20 June 2000, in spite of the medical restriction, the applicant was taken to court to attend a hearing without an escort or a wheelchair. When he returned at 11.45 a.m. he had very high blood pressure. He was given medication and by 4.30 p.m. his blood pressure had been lowered to a safer level.

38. On 1 July 2000 an interview with the applicant appeared in the national newspaper *Sega* which detailed his situation in Sofia Prison Hospital. In it the applicant expressed his desire to be released from prison on medical grounds and his fears that this would not happen and that he would die in detention before his case was examined by the courts.

39. Acting on a new petition for release, on 21 July 2000 the Supreme Court of Cassation ordered the applicant's release on bail. It based its decision on the proposal of the warden of Stara Zagora Prison of 18 May 2000 and the findings of the medical commission of 15 May 2000. The court noted the inability of the applicant to move on his own and thus to abscond or reoffend and also the need for him to receive treatment as an outpatient in a medical facility, which ruled out the imposition of house arrest as an alternative to detention.

4. Following the applicant's release on bail

40. The applicant was treated at various medical establishments following his release on bail, but with no viable improvement. For example, from 15 to 20 September 2000 he was a patient at the Neurological Clinic of the Military Medical Academy but was discharged

> "due to [his] financial constraints [and] with no improvement in the condition".

41. A report from the same facility of 8 November 2000 found, *inter alia*, that the applicant had severely damaged psychological and intellectual capacity due to the numerous strokes he had suffered as a result of the ageing of his arteries and his arterial hypertension. Given the damage caused to his brain he could no longer be considered sane and the likelihood that his condition would improve was minimal.

42. On 14 December 2001 the applicant passed away, the cause being "sudden cardiac arrest".

II. RELEVANT DOMESTIC LAW

Provision of medical services to persons in detention

43. Section 10 of the Execution of Sentences Act, as in force at the relevant time, provided that prisons might also accommodate persons who have been placed in detention.

44. In addition, section 20c of the Act, as in force at the relevant time, provided that such persons received free medical services at State and municipal medical facilities, as well as at those operated by the Ministry of Internal Affairs.

45. Finally, section 22 of the Act, as in force at the relevant time, provided that if medical establishments attached to prisons were not

adequate for the provision of a required treatment, then the detained person was to be sent to a civilian medical facility for that treatment.

THE LAW

I. PRELIMINARY ISSUE

46. The Court observes that the applicant passed away in 2001 and that his son, Mr Asen Stoyanov Mitev, informed the Court in a letter of 6 April 2005 that he wished to continue the application on behalf of his father.

47. In view of the above, the Court holds that the applicant's son has standing to continue the present proceedings in the applicant's stead.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained that his continued detention, in spite of his deteriorating medical condition, amounted to inhuman and degrading treatment in contravention of Article 3 of the Convention. He referred, in particular, to his advanced age, prior disability and difficulty in walking, the herniotomy performed on 10 March 1998, the stroke suffered on 28 January 2000 and the fear and anguish he felt that he would die in detention as a result of the allegedly inadequate medical capacity of the facilities where he had been detained.

Article 3 of the Convention provides as follows:

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

A. The parties' submissions

1. The Government

49. The Government stated that the applicant had been detained in conditions which were satisfactory and were not in any way different from those in which other detainees at the same facilities had been held.

50. In particular, they noted that the applicant had been examined on arrival at Stara Zagora Prison on 21 November 1997 and had been found to be suffering from a left-sided inguinal hernia. Subsequently he had been transferred to Sofia Prison Hospital, where he underwent an operation on 10 March 1998, made a full recovery and was given thirty days' home leave to recuperate. Likewise, in respect of the stroke suffered by the applicant on

28 January 2000, the Government stated that he had been immediately placed under medical supervision in the prison's infirmary and had then been taken to the emergency room of Stara Zagora hospital where various tests had been performed, including a CAT scan of his brain. After his condition had stabilised, the applicant had been transferred to Sofia Prison Hospital to continue treatment and to start physiotherapy. Accordingly, in respect of the level of care provided, the Government considered that during the stated period the applicant's medical condition had been closely monitored, he had been provided with all the required medicines, had undergone all the necessary tests and examinations by specialists and had been adequately cared for by the medical staff at the various facilities.

51. In addition, the medical commission that examined the applicant on 1 March 2000 concluded that it was not necessary to move him to an outside civil medical facility as he was showing signs of improvement and the required treatment could adequately be provided at Sofia Prison Hospital. Only subsequently, when the applicant's condition deteriorated, did another medical commission on 9 May 2000 reason that it might be necessary to reassess the need for his detention. Such a proposal was made on the 15th of the month by a medical commission from the Hospital of the Ministry of Internal Affairs and on the 18th of the month by the warden of Stara Zagora Prison. Based on these proposals, on 21 July 2000 the Supreme Court of Cassation ordered the applicant's release on bail.

52. In view of the above, the Government argued that by releasing the applicant on bail the domestic courts had fully complied with and had taken into account the conclusions of the medical experts. Moreover, the facts of the present case were not as severe as in *Kudła v. Poland* ([GC], no. 30210/96, § 46-50, ECHR 2000-XI), where the Court found there to have been no violation in spite of a delay of several months by the national courts to take into account the conclusions of medical experts that the applicant in that case was a danger to himself and might attempt suicide.

53. The Government notes that the applicant's unstable health and old age might have placed him in a more precarious situation compared to other detainees and might have increased his feeling of distress or anguish, but they noted the fact that the applicant had by that time already been charged with and convicted of premeditated murder at two levels of jurisdiction. In spite of this, the actions of the medical experts led to the applicant's release from detention. Accordingly, the Government considered that the applicant's detention could not be construed to have constituted inhuman or degrading treatment in contravention of Article 3 of the Convention.

2. The applicant

54. The applicant reiterated the substance of his complaint and considered that it was irrelevant whether he had been held in conditions similar to those of other detainees in the same facilities, because the

conditions they all shared were substandard. This was claimed to have been supported by the findings of the CPT in its reports over the given period and by statements of politicians in the national press.

55. In addition, the applicant argued that his age, difficulty in walking and precarious health should have made his detention unjustified and unnecessary from the outset. Instead he had been detained for a particularly lengthy period of time.

56. As to the information provided by the Government, the applicant considered that they had failed to respond adequately to the questions of the Court and had failed to provide sufficient documentation detailing the conditions in which he had been held. In particular, he noted that he had been detained at the Burgas Investigation Service in the initial months after his arrest. However, in respect of this period no information or data had been provided. As it was common knowledge that these detention facilities were much worse than the prisons, it must be concluded that the applicant had not been examined by a doctor over the said period in spite of his age.

57. As to the adequacy of the provided medical treatment, the applicant noted that on 21 November 1997 the doctor at Stara Zagora Prison had established that he suffered from inguinal hernia and angiopathy. The inguinal hernia had been operated on four months later, which should be considered inadequate, while the angiopathy had never been treated. Thus, it must be considered that he did not receive adequate care for these conditions. As the applicant's health had allegedly not been monitored over the period, it cannot be assessed to what extent the lack of treatment for the angiopathy contributed to the subsequent stroke.

58. In respect of the treatment provided for the stroke he had suffered, the applicant noted that the Government had once again failed to provide sufficient data in respect of the initial medical care provided at the infirmary of Stara Zagora Prison, so it cannot be established whether that care was sufficient or timely. Moreover, the event itself is questionable as the applicant was exerting himself when it happened and could therefore have been doing hard manual labour of some sort which he should not have been allowed to do in view of the medical restriction on heavy lifting. As to the subsequent care at Sofia Prison Hospital, it was argued that the applicant had not been monitored closely enough because the doctors visited him every day only at the beginning of his stay there. Subsequently, such visits became less and less frequent. His blood pressure was also not checked regularly over the period.

59. As to the decision of 21 July 2000 to release him on bail, the applicant argued that it had been taken too late, as his health had already deteriorated significantly. Moreover, there had been unjustified delays even after the procedure had been initiated by the medical commission and the warden at the beginning of May 2000. Note was also taken of the inexcusable event of 20 June 2000 when, in clear violation of the existing

medical restrictions, his life had been endangered as a result of being allowed to go to court to attend a hearing without an escort or a wheelchair.

60. In conclusion, the applicant disagreed with the position of the Government and considered that he had been subjected to inhuman and degrading treatment in contravention of Article 3 of the Convention as a result of having been detained for a period of over three years in spite of his age, disability and rapidly deteriorating state of health. This had placed him in a situation not comparable with that of other detainees, as he had had to endure much greater hardship as a result of having to fend for himself without assistance or care from relatives. Moreover, this had been evident and had been documented by the journalist in the interview of 1 July 2000.

B. Admissibility

61. The Court notes at the outset that the application was lodged with the Court on 27 July 2000. It further notes that it can examine conditions of detention only at facilities in which an applicant continued to be detained during the six months prior to the date of his application (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). Thus, the Court is competent to assess the conditions, and any medical assistance provided, only at the Stara Zagora Prison and Sofia Prison Hospital.

It follows that the part of the complaint under Article 3 in respect of the detention facility of the Burgas Investigation Service has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

62. The Court notes that the complaint in respect of Stara Zagora Prison and Sofia Prison Hospital 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. This part of the complaint must therefore be declared admissible.

C. Merits

1. General principles

63. 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 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 (see *Ireland v. the United Kingdom,* 18 January 1978, § 162, Series A no. 25). In the context of deprivation of liberty the Court has consistently stressed that to fall under Article 3 the suffering and

humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with the detention (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, 25 April 1978, § 30, Series A no. 26, and *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161). The Court often faces allegations of insufficient or inadequate medical care in places of detention. In exceptional circumstances, Article 3 may go as far as requiring the conditional liberation of a prisoner who is seriously ill or disabled. Thus, in *Farbtuhs v. Latvia*, (no. 4672/02, 2 December 2004), the Court concluded that the detention of a disabled seventy-nine-year-old applicant was in breach of Article 3 on account of "his age, infirmity and health situation" (see also *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001).

64. In deciding whether or not the detention of a seriously ill person raised an issue under Article 3 of the Convention, the Court has taken into account various factors. Thus, in *Mouisel v. France* (no. 67263/01, §§ 40-42, ECHR 2002-IX) the Court examined such elements of the case as (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. This test was further developed in the case of *Gelfmann v. France* (no. 25875/03, 14 December 2004), where the Court took into account, among other relevant factors, the dynamics of the applicant's health condition, the possibility of conditional release or parole for a seriously ill detainee if his health deteriorated, and the applicant's own attitude (namely his persistent refusal to cooperate with the doctors). In the cases of *Henaf v. France* (no. 65436/01, §§ 49 et seq., ECHR 2003-XI) and *Mouisel* (cited above) the Court also analysed whether the application of handcuffs or the shackling of a seriously ill detainee to his bed was justified by any security risks. The applicant's potential "dangerousness" was also taken into account in the case of *Sakkopoulos v. Greece* (no. 61828/00, § 44, 15 January 2004) in order to decide whether his continuous detention was justified.

65. In most cases concerning the detention of ill persons the Court has examined whether or not the applicant received adequate medical assistance in prison. The Court reiterates in this respect that even if Article 3 does not entitle a detainee to be released "on compassionate grounds", it always requires the health and well-being of detainees to be adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła* [GC], cited above, § 94; see also *Hurtado v. Switzerland*, 28 January 1994, § 79, Series A no. 280-A, opinion of the Commission; *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI; and *Khudobin v. Russia*, (no. 59696/00, § 96, ECHR 2006-... (extracts)).

66. The "adequacy" of medical assistance remains the most difficult element to determine. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has proclaimed the principle of comparability of health care in prison with that in the outside community (see the 3rd General Report [CPT/Inf (93) 12]). However, the Court has not always adhered to this standard, at least when it comes to medical assistance to convicted prisoners (as opposed to those in detention). In particular, on several occasions the Court has held that Article 3 of the Convention cannot be interpreted as securing for every detained person medical assistance of the same level as "in the best civilian clinics" (see the case of *Mirilashivili v. Russia* (dec.), no. 6293/04, 10 July 2007). In the case of *Grishin v. Russia* (no. 30983/02, § 76, 15 November 2007) the Court went further, holding that it was "prepared to accept that in principle the resources of medical facilities within the penitentiary system are limited compared to those of civil clinics".

2. Application of these principles to the present case

67. The Court observes that at the time of his arrest on 17 August 1997 the applicant was sixty-three years old and had pre-existing medical conditions, as he suffered from inguinal hernia and angiopathy, which were identified on 21 November 1997 upon his arrival in Stara Zagora Prison. Once detected, the applicant started treatment for the inguinal hernia and had an operation at Sofia Prison Hospital on 10 March 1998. He apparently made a full recovery and was even given thirty days' home leave to recuperate. Thus, he appears to have been adequately treated for this condition.

68. As to the angiopathy, there appears to have been no particular treatment prescribed for the applicant. However, the Court is unaware whether the applicant's condition was treatable and notes that he failed to provide any substantive submissions in that respect, such as a medical expert's opinion or information of subsequent treatment obtained after release, other than to claim that the condition should have been addressed. Thus, on the basis of the information before it, the Court is unable to assess whether the lack of treatment of the applicant's angiopathy amounted to a lack of provision of requisite medical assistance. As to the applicant's claim of a possible link between the lack of treatment of the angiopathy and the subsequent stroke, the Court once again notes that no medical evidence or expert opinion was presented to that effect other than the applicant's assertions. Thus, it would be pure speculation on the part of the Court to conclude one way or another as to a possible causal link, if any, between the two conditions.

69. In respect of the stroke suffered by the applicant on 28 January 2000, the Court notes that the applicant was immediately taken into the prison infirmary and then to the emergency room at Stara Zagora hospital, where

various tests were performed, including a CAT scan of the brain. He was treated for the immediate after-effects and, after his condition stabilised, on 18 February 2000 he was transferred for further treatment and rehabilitation to the neurological ward of Sofia Prison Hospital. There the applicant started physiotherapy on 23 February 2000 and, as indicated in the report of 1 March 2000, appeared to respond to the treatment, so it was considered unnecessary to move him to an outside medical facility. Accordingly, his treatment continued at Sofia Prison Hospital where his condition was monitored regularly, albeit not every day.

In view of the above actions undertaken by the prison authorities, the Court does not find that during this period the applicant failed to receive the requisite medical assistance. Moreover, he has not indicated in what respect the medical assistance received at the Sofia Prison Hospital during this period would have been different had he been in a civil medical facility.

70. When the applicant's medical condition did deteriorate towards the end of April or the beginning of May, further tests were conducted, including a CAT scan on 4 May 2000. When the results showed that there was an encephalomacic lesion on the internal cavity of the applicant's brain the head of the neurological ward of Sofia Prison Hospital concluded that the applicant was "unsuitable to remain in [prison] conditions". Soon afterwards on 9 May 2000 the applicant was not allowed to participate in a hearing before the Supreme Court of Cassation and the doctors reasoned that it might be necessary to reassess his detention. Then, on 15 May 2000 a medical commission proposed to the warden of Stara Zagora Prison that the applicant be released from detention for an initial period of three months in order to receive adequate treatment for his condition in a specialised civil medical facility. As a result, on 18 May 2000 the warden of Stara Zagora Prison proposed to the Burgas Regional Court that the applicant's detention be replaced with another measure to secure his participation in the court proceedings.

71. The domestic courts initially refused to release the applicant, as evidenced by the decision of 2 June 2000 of the Supreme Court of Cassation, citing conflicting medical reports and conclusions as to his condition and treatment. In particular, they considered that it had not been shown that the applicant's medical condition outweighed the risk of his absconding or reoffending. Nonetheless, acting on a new request the Supreme Court of Cassation released the applicant on bail a month and a half later on 21 July 2000 when it considered more pertinent the conclusions and proposal of May 2000.

72. Considering that the above procedure led to the applicant's release on bail on medical grounds, in spite of the fact that he had already been convicted of murder at two levels of jurisdiction, the Court finds that the prison, medical and judicial authorities responded adequately to the changing requirements for his treatment. In particular, within weeks of the

discovery of the encephalomacic lesion and the conclusion that the applicant could not be adequately treated in prison facilities a proposal had been made to the competent courts which eventually led to the applicant's release on bail. As to the delay in acting on the said proposals, the Court notes that during this period the applicant continued to be at Sofia Prison Hospital where medical assistance was available and specialised assistance could be provided in case of need while the applicant had difficulties in following the required course of treatment after release due to financial constraints. Therefore, the Court does not consider that the length of the delay can in itself be considered to have amounted to inhuman and degrading treatment in contravention of Article 3 of the Convention.

73. In conclusion, the Court accepts that the applicant's advanced age and medical condition might have made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. However, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court does not find it established that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

74. Accordingly, there has been no violation of that Article in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint in respect of the conditions of detention at Stara Zagora Prison and Sofia Prison Hospital 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 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President