FOURTH SECTION

**CASE OF A.N. v. LITHUANIA**

*(Application no. 17280/08)*

JUDGMENT

STRASBOURG

31 May 2016

FINAL

31/08/2016

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

In the case of A.N. v. Lithuania,

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

András Sajó, *President,* Boštjan M. Zupančič, Nona Tsotsoria, Paulo Pinto de Albuquerque, Egidijus Kūris, Iulia Motoc, Gabriele Kucsko-Stadlmayer, *judges,*  
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 19 April 2016,

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

PROCEDURE

1.  The case originated in an application (no. 17280/08) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr A. N. (“the applicant”), on 28 March 2008. The Chamber decided of its own motion to grant the applicant anonymity pursuant to Rule 47 § 4 of the Rules of Court.

2.  The applicant was represented by Mr V. Gžimaila, a lawyer practising in Akmenė. The Lithuanian Government (“the Government”) were represented by their then Agent, Ms E. Baltutytė.

3.  The applicant complained that, by depriving him of his legal capacity without his participation and knowledge, the domestic authorities breached his rights under Articles 6 and 8 of the Convention.

4.  On 3 January 2012 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1971 and lives in Naujoji Akmenė.

6.  In November 1989 he started military service in the armed forces of the Soviet Union. Medical records dated 20 June 1990 drafted by a panel of doctors in his military unit in Riazan (Russia), stipulated that at that time he had problems communicating with others and was autistic, though he had a normal memory and level of intelligence. He was diagnosed with sluggish schizophrenia, which he had developed during military service. On those grounds, he was released from military service.

7.  Having returned from the army to Lithuania, by 2005 he had been treated in psychiatric institutions no less than fifteen times. In 2004 he was diagnosed with residual and then paranoid schizophrenia.

8.  In February 2006 the applicant attempted suicide by setting himself on fire. He was admitted to the trauma unit of a hospital.

9.  In reply to a prosecutor’s request for information, on 14 November 2006 the Akmenė District Psychiatric Health Centre (*Akmenės rajono psichikos sveikatos centras*) confirmed that the applicant had been attending there since 1999, and continued to be treated there for schizophrenia. In 2004 episodes of the applicant’s illness became more frequent. That year the applicant attempted to commit suicide; he did not accept that he was ill. He was admitted to the Šiauliai Psychiatric Hospital (*Šiaulių psichiatrijos ligoninė*), where he spent about a month before being released for outpatient care at his own request. Since July 2005 the applicant stopped attending the Akmenė District Psychiatric Health Centre and taking his medication, because he firmly refused any consultations with the psychiatrists. He would also submit numerous complaints to various authorities.

10.  On 24 November 2006 the applicant’s mother asked a prosecutor to initiate proceedings with a view to her son being declared legally incapacitated. According to her, his mental illness started when he was in the Soviet army. She and her husband lived in a house separate from him in neighbouring Akmenė. By 2006 the applicant’s condition reached such a stage that he was afraid to leave his apartment or let his parents in, and he did not take care of himself. He even attempted to take his own life by setting himself on fire.

11.  On the same day, the prosecutor sent the request by the applicant’s mother to the Akmenė District Court, together with an extract from the applicant’s medical records. It was noted that his schizophrenia had worsened and that he had become a danger to himself. He was thus in need of help from others. It was indispensable to ascertain whether there was a basis for declaring him legally incapable, if psychiatrists established that he could not understand or control his actions. The prosecutor relied on Articles 2.10, 3.242 § 1 and 3 of the Civil Code, Articles 135, 462-465, 491‑493 of the Code of Civil Procedure, and Article 19 of the Law on Prosecution Service.

12.  By a ruling of 29 November 2006 the Akmenė District Court ordered an expert examination to ascertain (i) whether the applicant was suffering from mental illness, (ii) whether he could understand his actions and (iii) whether he could take part in court proceedings. His mother was to be informed of that decision.

13.  Having examined the applicant in person and scrutinised his medical records, on 8 January 2007 a psychiatrist concluded that he suffered from paranoid schizophrenia. He was also very mistrusting and had strong feelings of persecution. Psychiatrists took into account the letters by his mother to the Akmenė District Psychiatric Health Centre and the prosecutor to the effect that the applicant did not take care of his daily needs, and had social and health issues and suicidal thoughts. The psychiatrist thus established that the applicant could not correctly understand or control his actions, and noted that he “could not take part in court proceedings, could not be questioned, and court documents could not be served on him”.

14.  In a one page form sent to the Akmenė District Court on 29 January 2007, Akmenė District social services ticked a box to say that they “agreed” with the prosecutor’s request for the applicant to be declared incapacitated. They also indicated that they would not take part in the court hearing, which was scheduled for 31 January 2007.

15.  On 23, 24, 25 and 30 January 2007 attempts were made by the Akmenė District Court to personally serve the applicant with the summons concerning the forthcoming hearing for his legal incapacitation and care. The copy of the summons indicated that it had not been served because, according to his next door neighbour, the applicant was mentally ill and opened the door to no one.

16.  At a public hearing on 31 January 2007 the Akmenė District Court, relying on Articles 465-468 of the Code of Civil Procedure, granted the prosecutor’s request for the applicant to be declared incapacitated, on the grounds that he could not understand or control his actions. The prosecutor and the applicant’s mother were in attendance. The applicant’s mother testified about her son’s history of mental illness. She also stated that he had recently been living away from his parents, but could not take care of himself, did not pay maintenance fees for his apartment, and would not go out or take his medication.

The ruling stipulated that it could be appealed against within thirty days.

17.  The Government submitted that, given the fact that it had not actually been possible to serve the summons on the applicant, the decision of 31 January 2007 had only been sent to the interested parties in the case, that is to say the applicant’s mother, the prosecutor and social services.

18.  On 5 February 2007 the applicant drafted what appears to be a response to the prosecutor’s request of 24 November 2006 to incapacitate him. Therein he mentions that he received a copy of the prosecutor’s request on 30 January 2007. The letter appears essentially to be a complaint about his treatment in psychiatric hospitals and diagnosis with schizophrenia. He concludes by stating that because of obvious forgery of his medical examination results and clear bias on the part of the prosecutor, the applicant refused to undergo medical examination in Lithuania. A stamp on the letter indicates that it was received by the Akmenė District Court on 5 February 2007.

19.  Having established that the applicant was legally incapacitated, by a ruling of 6 March 2007 the Akmenė District Court appointed the applicant’s mother as his guardian and the administrator of his property. The decision was taken at a public hearing in which she, a prosecutor and a representative from social services took part. The ruling stipulated that the applicant had not taken part because of ill-health.

20.  The applicant was forcibly admitted to the Šiauliai Psychiatric Hospital on 9 March 2007, after showing signs of agitation and behaving aggressively towards his parents. The police and some firemen had to break down the door of his apartment to get to him. On 11 March 2007 he consented to treatment until 13 March 2007, when he refused any further treatment in writing.

21.  On 13 March 2007 the Šiauliai Psychiatric Hospital asked the State Guaranteed Legal Aid Service (“the Legal Aid Service”) to provide legal aid to the applicant, who was to be forcibly hospitalised. It was granted the same day, and a lawyer was appointed to represent him.

Later that day, in the presence of a psychiatrist and the appointed lawyer, the Šiauliai District Court granted a request by the psychiatric hospital for the applicant to be forcibly hospitalised. The court noted that the applicant was absolutely uncritical of his own behaviour, and that his state of mind at that time meant that he posed a danger to himself and others. The ruling was final and not appealable. It indicated that on 31 January 2007 the applicant had been declared legally incapacitated, and that on 6 March 2007 his mother had been appointed as his guardian.

22.  The Government submitted to the court an extract from the applicant’s medical records, which indicated that he had been at the Šiauliai Psychiatric Hospital from 9 March until 22 June 2007. The doctor indicated in that record that a copy of the court ruling of 13 March 2007 had been given to the applicant. It is not clear when that was done.

The Government submitted that the court decision of 13 March 2007 had been handed to the applicant by his treating doctor on 15 March 2007.

23.  On 6 April 2007 the applicant signed a document certifying that his treatment plan from the Šiauliai Psychiatric Hospital had been explained to him and that he agreed to follow it.

24.  Having been released from the psychiatric hospital, on 26 November 2008 the applicant approached the Legal Aid Service. In his application he wrote that by a ruling of 31 January 2007 he had been declared legally incapacitated, and that he would need the time-limit for appealing against it to be renewed. He also indicated that in March 2007 his mother had been appointed his guardian and the administrator of his property. He noted that he had not known about the two decisions until 9 March 2007, upon his admission to the Šiauliai Psychiatric Hospital. He also expressed a wish to appeal against them.

25.  On 31 December 2008 the Legal Aid Service refused the request as having no prospect of success. It noted that the applicant fell into the category of people entitled to legal aid; however, given that the proceedings for his incapacitation had been terminated, his request for legal aid was clearly irrelevant.

26.  The Legal Aid Service noted that the decisions the applicant wished to challenge had been taken in January and March 2007. Given that he had not requested legal aid until 28 November 2008, he had missed the deadline for appeal against those decisions. Representing him in such proceedings would have had no prospect of success.

27.  As to the appointment of the applicant’s mother as his legal guardian, the Legal Aid Service indicated that he had given no grounds for doubting her ability to perform her duties as guardian and the administrator of his property. Lastly, it observed that guardianship could be revoked at the request of a prosecutor or social services. Given that the applicant himself could not apply to the court with such a request, there was no legal basis for providing him legal assistance.

28.  On 15 December 2008 the applicant requested that the Akmenė District Court give him a copy of the court rulings regarding his incapacitation and the appointment of his legal guardian.

29.  On 16 December 2008 a judge of the Akmenė District Court wrote to the applicant informing him that those court rulings would not be given to him, because his mother had been appointed as his legal guardian and the administrator of his property.

30.  In their observations on the admissibility and merits of the case, sent to the Court on 2 May 2012, the Government noted that at that time the applicant had lived separately in his own apartment. He had been unemployed but had received disability pension. His guardian had helped him with daily chores. He had also received regular outpatient treatment at the Akmenė District Psychiatric Health Centre.

31.  On 13 August 2014 the applicant complained to the Šiauliai prosecutor’s office that in 2004 he had been forcibly admitted to the Šiauliai Psychiatric Hospital and made to undergo medical treatment. The applicant asked that a pre-trial investigation be opened regarding his allegations.

32.  By a final ruling of 11 November 2014, the Šiauliai Regional Court held that the applicant’s complaints about events in 2004 were unfounded.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

A.  Legal incapacity and guardianship legislation

33.  As concerns legal incapacity and guardianship, the Civil Code, in force at the material time and until 31 December 2015, provided:

Article 2.10. Declaration of a person’s incapacity

“1.  A natural person who, as a result of mental illness or dementia, is unable to understand the meaning of his actions or control them may be declared incapacitated. The incapacitated person shall be placed under guardianship.

2.  Contracts on behalf and in the name of a person declared incapacitated shall be concluded by his guardian...

3.  Where a person who was declared incapacitated recovers from illness or his state of health improves considerably, the court shall reinstate his capacity. Once the decision takes effect*,* guardianship of the person shall be revoked.

4.  A request to declare a person legally incapacitated may be lodged by a person’s spouse, parents or adult children, a care institution or a public prosecutor. They also have the right to apply to the courts for recognition of the person’s capacity.”

Article 2.11. Limitation of a person’s active civil capacity

“1.  The courts may impose restrictions on a person’s civil capacity if he abuses alcohol, drugs or narcotic or toxic substances. Once limitations on a person’s capacity have been imposed, he shall be placed under guardianship...”

Article 2.111. The Register of legally incapacitated persons and persons of limited capacity

“1.  The Register of legally incapacitated persons and persons of limited capacity shall record persons who are declared in accordance with the procedure laid down by the court to be legally incapacitated or whose civil capacity is limited ..., guardians and curators (*globėjai ir rūpintojai*) of such persons; the data of the court decisions, adopted in respect of them, concerning the establishment and revocation of legal capacity or limitation of legal capacity...”

Article 3.238. Guardianship

“1.  Guardianship is established with the aim of exercising, protecting and defending the rights and interests of a legally incapacitated person.

2.  Guardianship includes guardianship of a person’s assets, but if necessary, an administrator may be appointed to manage [these].”

Article 3.240. Legal status of guardians and curators

“1.  Guardians and curators represent those under guardianship in accordance with the law and defend the rights and interests of legally incapacitated people or people of limited active capacity without any specific authorisation.

2.  A guardian is entitled to enter into all necessary transactions in the interests and on behalf of the legally incapacitated person represented...”

Article 3.241. Guardianship and curatorship authorities

“1.  Guardianship and curatorship authorities are municipal or regional authorities concerned with the supervision and control of the activities of guardians and curators.

2.  The functions of guardianship and curatorship in respect of residents of a medical or educational institution or [an institution run by a] guardianship (curatorship) authority who have been declared by the court as legally incapable or of limited active capacity shall be performed by the relevant medical, educational or guardianship (curatorship) authority until a permanent guardian or curator is appointed...”

34.  In 2007, the year the applicant was declared legally incapacitated, the Code of Civil Procedure provided that an application to declare a person legally incapacitated could be submitted by his spouse, children or parents, a guardianship institution or a public prosecutor (Article 463 § 1). The parties to the incapacitation proceedings consisted of, besides the person who had initiated them, the person whose legal capacity was in question, as well as the guardianship (care) authority. The court could also invite close relatives or family members living with the person whose incapacitation was to be decided to join the proceedings. If it was impossible to call into or question in court a person subject to incapacitation proceedings or serve court documents on him because of his state of health, as confirmed by medical opinion, the court could hear the case in his absence (Article 464 §§ 1 and 2).

35.  An application for a person’s incapacity had to contain information about the mental illness (*psichikos sutrikimas*) which had left him unable to understand the meaning of his actions or control them. In addition, it had to contain a medical report and other evidence about his psychological state (Article 465). When preparing the case the judge had to order a psychiatric report to establish the person’s psychological state, and obtain medical documents necessary for the expert report (Article 466).

36.  The question of incapacity had to be decided at an oral hearing, having informed all the parties to the proceedings. If the court considered it necessary to hear and question the person whose legal capacity was in question, and he did not appear, the court could order the police to escort him, or order another court within whose territory that person resides, to question him. The person had to be questioned in the presence of a court psychiatrist (Article 467 §§ 1 and 2).

37.  A person declared legally incapacitated by the court had a right to appeal against the decision to a higher court (Article 468 § 5).

38.  A copy of the decision had to be sent to the parties and third parties absent from the hearing within five days of the date the decision was pronounced (Article 275 § 1).

39.  Article 366 § 1 (6) and (7) of the Code of Civil Procedure provided that proceedings could be reopened if one of the parties was incapacitated and did not have a representative, or if the court had taken a decision in respect of a party not involved in the proceedings.

40.  The Law on State Guaranteed Legal Aid (*Valstybės garantuojamos teisinės pagalbos įstatymas* – “the Law on Legal Aid”) provided that those subject to incapacitation proceedings were eligible for“secondary” legal aid regardless of their assets and level of income levels (Article 12 § 1 (11)). The authorities could refuse to provide legal aid where an applicant’s claims were manifestly ill-founded or where representation in the matter had no reasonable prospect of success (Article 11 § 6 (1, 2)).

41.  The Constitution provides that citizens who are recognised as incapable by the courts cannot participate in elections or stand for election as a Member of the Seimas (Articles 34 and 56).

42.  The Civil Code stipulates that a transaction is voidable if it is made by someone who, within the procedure established by law, is recognised as legally incapable by reason of a mental disorder (Article 1.84 § 2). A person who has been declared legally incapacitated by a court judgment in force cannot marry (Article 3.15 § 1). Furthermore, a will may only be made by a legally capable person able to understand the importance and consequences of his actions (Article 5.15 § 2).

43.  Article 27 of the of the Law on Mental Healthcare (*Psichikos sveikatos priežiūros įstatymas*) provides that a person who is seriously mentally ill and refuses hospitalisation can be admitted involuntarily to hospital if there is a real danger that by his actions he is likely to commit serious harm to his health or life or the health or life of others. In such circumstances, the patient may be involuntarily hospitalised and given treatment in a mental health facility without court authorisation for a period not exceeding forty-eight hours. If the court does not give authorisation within this time, the involuntary hospitalisation and treatment must be stopped (Article 28).

B.  Legislative steps to regulate the situation of those suffering from a mental disability

1.  Explanatory memorandum No. XIIP-1656 by the Ministry of Justice

44.  On 2 April 2014 the Ministry of Justice adopted an explanatory memorandum (*aiškinamasis raštas*) in connection with proposed legislative changes relating to the protection of the rights of the disabled. The changes were prompted by the ratification of the United Nations Convention on the Rights of Persons with Disabilities, ratified by Lithuania in 2010 (for the relevant extracts from that Convention, see paragraph 69 below) and the Court’s practice. The changes aimed at improving existing domestic standards in the light of Article 12 of the aforementioned Convention, which specifies that States should recognise that people with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and therefore States should take appropriate measures to provide them with access to the support they may require in exercising their legal capacity.

45.  The explanatory memorandum acknowledged that the law as it existed in Lithuania lacked a legal framework for how assistance could be provided to people with disabilities, including those suffering from mental illness. As a result, those with psychiatric illnesses, owing to which they could not always make decisions in their best interests, would be exposed to the most restrictive measure – full incapacitation. Even if a person could partially understand or control his actions, limiting his legal capacity by only allowing him to act in certain areas of life was not permitted by law. However, limited legal capacity could be established in respect of people who abused narcotic or psychotropic substances or alcohol (Articles 2.10 and 2.11 of the Civil Code, see paragraph 33 above).

46.  It was also pertinent that under Article 2.10 of the Civil Code, once a person was declared legally incapacitated, he lost the right to act in his name in all areas of his life. Moreover, under the law in force the person whose legal capacity could be restricted in future had no right to indicate how he wished his pecuniary or non-pecuniary rights to be dealt with after incapacitation. The existing law also lacked a means of guaranteeing that, after the person was declared incapacitated, his or her earlier wishes would be taken into account. The explanatory memorandum thus proposed that the existing law be amended by emphasising the need to individualise the measures of incapacitation so that they were fully justified (*visapusiškai pagrįstos*) and applied to each person’s particular situation.

47.  As to the misgivings concerning the proceedings for limiting a person’s capacity, the Ministry of Justice noted that, should a person’s health improve, the same people who could ask for his incapacitation could then submit a request to restore his legal capacity (Article 2.10 §§ 2 and 4 of the Civil Code, see paragraph 33 above). However, the incapacitated person could not apply to the court himself. Furthermore, no independent body had an obligation to periodically review the incapacitated person’s condition or ask the court to review the incapacitation decision. As a result, the existing legislation did not prevent situations where the guardian of the incapacitated person, abusing his or her rights or executing them improperly, failed to ask the court to declare the incapacitated person legally capable even if his health had improved. Moreover, there was no legal requirement for a court to review an incapacity decision if none of the people who could initiate incapacity proceedings had not asked for a review for a long time. Nor was it possible to ask for the decision to be reviewed by an independent body which monitors the incapacitated person’s state of health. As a result, the incapacitated person’s rights could be restricted for a disproportionately long time.

48.  The Ministry of Justice further observed that under Article 465 of the Code of Civil Procedure, the request for a person’s incapacitation had to contain a description of the circumstances, including the mental illness which had left the person unable to understand the meaning of his actions or control them. It also had to contain a doctor’s report and other evidence about the person’s state of mind (*apie asmens psichinę būklę*). However, this definition of evidence was restrictive and narrow.

2.  Legislative amendments in force from 1 January 2016

49.  On the basis of the aforementioned proposals by the Ministry of Justice, on 26 March 2015 the Seimas adopted a number of legislative amendments relating to the protection of the rights of people with disabilities. They came into force on 1 January 2016, and are summarised below.

(a)  Civil Code

50.  Article 2.10 of the Civil Code now provides that a person who cannot understand or control his actions in a particular area of his life because of psychological illness may be declared by the court as legally incapacitated in that area(*neveiksnus tam tikroje srityje)* by court decision. In that particular area the person must act through his guardian. The court must establish a definitive list stating in which areas the person is incapacitated. It must also restore legal capacity in those areas if his health improves.

51.  A request to declare a person legally incapacitated in a certain area may be submitted by his spouse, parents or adult children, a care institution or a prosecutor, who may all request that the court restore legal capacity. Unlike previously, the Civil Code now provides that such requests for restoration of legal capacity may be lodged, no more than once per year, by the person declared legally incapacitated.

52.  A request to restore a person’s legal capacity may also be lodged by the State [of Mind] of Incapacitated Persons’ Review Commission (*Neveiksnių asmenų būklės peržiūrėjimo komisija*), a new independent body to be established in every municipality. It must review the incapacitated person’s state of mind on its own initiative, if no request has been lodged by the parties entitled to do so within a year of the incapacity decision. Furthermore, it must be impartial and work on the basis that restriction of legal capacity should be used as little as possible and measures for limiting legal capacity should be individualised and reasoned. When reviewing the person’s state of health, the Commission must hear his opinion, except where objective reasons make that impossible. When it has doubts over whether it is appropriate to apply to the court for restoration of legal capacity, all of those doubts should be interpreted for the benefit of the incapacitated person (Articles 2.10 and 2.101).

53.  The Civil Code also extends the ability to restrict a person’s civil capacity in a particular area of his life (*fizinių asmenų civilinio veiksnumo apribojimas tam tikroje srityje*) to those with mental illnesses (Article 2.11). Accordingly, a person who, because of mental illness, may not understand or control his or her actions in a particular area, may be declared by a court to have limited active legal capacity in that area, where he may not act without the agreement of his curator. A request to declare a person partially legally restricted in a certain area may be submitted by his spouse, parents or adult children, a care institution or a prosecutor. They can also request the court to restore legal capacity. Unlike previously, the Civil Code now provides that a request to restore a person’s legal capacity may also be lodged by the person whose capacity was partially restricted.

54.  The Civil Code was also supplemented by new Article 2.1371, which concerns preliminary arrangements (*išankstinis nurodymas*). It provides that an adult may make preliminary arrangements about how his pecuniary or non-pecuniary rights will be managed, should he be declared incapacitated in a certain area or partially capacitated in another. In the preliminary arrangements the person may name a person he wishes the court to appoint as his guardian, express his intentions about where he will live in future, name a specific person to deal with any financial and non-financial matters, or make other arrangements. Such preliminary arrangements must be approved by a notary and take effect after the court decision regarding the person’s legal incapacity. From that point onwards, the preliminary arrangements are binding on everybody, unless the court decides that they are not in the incapacitated person’s interests.

(b)  Code of Civil Procedure

55.  Article 465 now stipulates that an application for a person’s incapacitation in a certain area must contain a description of the circumstances, including the medical condition which has left him unable to understand or control his actions. A medical report and other evidence must be added to the application. It must also list the areas in which the person should be declared incapacitated. Unlike previously, the new element to be included is a conclusion by a social worker about the person’s ability to take care of his or her daily needs independently or with assistance in particular areas.

56.  Article 467 § 6 now provides that when hearing a case for a person’s incapacity in a certain area, it is obligatory that the person concerned is represented by a lawyer.

57.  In accordance with Article 469, the court may review an earlier incapacity decision at the request of, *inter alia*, the incapacitated person himself, should his health improve. In such proceedings the person’s lawyer must take part, and if he does not have a lawyer the court will order the Legal Aid Service to secure one. Should a court decide to maintain a decision that a person is incapable in certain areas, it must *ex officio* evaluate whether he needs help in other areas and suggest to him that he agrees to assistance in those areas.

(c)  Other legislative changes

58.  The Law of Local Government (*Vietos savivaldos įstatymas*) was supplemented by adding “ensuring a review of the state [of mind] of incapacitated persons” (*neveiksnių asmenų būklės peržiūrėjimo užtikrinimas*) to the functions of local government (Article 7 § 37).

59.  The Law on State Guaranteed Legal Aid Service was amended to stipulate that when a healthcare institution contacts the Legal Aid Service for legal aid to be provided to a mental health patient, the Legal Aid Service must adopt a decision the same day and familiarise the patient with it. It must also provide appropriate facilities to enable the patient and his lawyer to communicate (Article 22).

C.  Supreme Court guidance regarding incapacity and guardianship proceedings

1.  Ruling of 11 September 2007 in civil case no. 3K-3-328/2007

60.  In the above ruling, the Supreme Court noted that a person whose incapacity was requested was also a party to the proceedings (Article 464 § 1 of the Code of Civil Procedure). As a result, he enjoyed the rights of an interested party, including the right to be duly informed of the time and place of any hearing. The fact that the incapacitation case was heard in the absence of D.L. – who did not open the door to anyone and thus did not accept correspondence – was assessed by the Supreme Court as a violation of her right to be duly informed of the time and place of hearing. It also found that by failing to hear the person concerned and without making sure that she had been aware of the proceedings, the first-instance court had breached the principle of equality of arms and her right to appeal against the incapacity decision, because it had not been served on her. The Supreme Court also referred to Principle no. 13 of Recommendation No. R(99)4 by the Committee of Ministers of the Council of Europe (see paragraph 68 below), stating that a person has the right to be heard in any proceedings which could affect his legal capacity. This procedural guarantee should be applicable to the fullest extent possible, at the same time bearing in mind the requirements of Article 6 of the European Convention on Human Rights. In this regard, the Supreme Court also referred to the Court’s case-law to the effect that mental illness could result in appropriate restrictions of a person’s right to a fair hearing. However, such measures should not affect the very essence of that right (the Supreme Court relied on *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33, and *Lacárcel Menéndez v. Spain*, no. 41745/02, § 31, 15 June 2006).

61.  In the same ruling, the Supreme Court also emphasised that determining whether a person can understand his or her actions was not only a scientific conclusion for forensic psychiatry, but also a question of fact which should be decided by the court on assessing all the other evidence and, if necessary, hearing expert evidence. Taking into consideration the fact that a declaration of incapacity entailed very serious interference with a person’s right to respect for his private life, it could only be made in exceptional circumstances.

2.  Ruling of 11 July 2008 in civil case no. 3K-3-370/2008

62.  In that ruling, the Supreme Court reiterated the Court’s case-law to the effect that depriving a person of legal capacity entailed serious restrictions on his rights under Article 8 of the Convention. Very weighty reasons therefore had to be given for incapacitation (the Supreme Court referred to *Matter v. Slovakia*, no. 31534/96, § 68, 5 July 1999). It drew attention to the fact that different degrees of incapacity may exist, and that it may vary from time to time. Full restriction of legal capacity should therefore not be an unavoidable result when protecting the rights of the mentally disabled. The Supreme Court established two criteria to be observed: medical, the mental illness or disorder, recognised by a forensic psychiatric examination report and legal, the inability to understand and control one’s actions because of the mental illness. Both criteria were essential and of equal importance to each case regarding someone’s incapacitation. The Supreme Court emphasised that the question of establishing incapacity could not be examined in a purely formalistic way, simply following the medical criteria established in the expert’s conclusion and considering it to be sufficient grounds for finding someone incapable (the Supreme Court relied on *Shtukaturov v. Russia*, no. 44009/05, ECHR 2008). Moreover, the medical expert report as to the mental capacity of the person did not bind the court.

63.  In the same ruling, the Supreme Court underlined that under Article 2.10 of the Civil Code, legal incapacitation entailed a very serious restriction on a person’s right to respect for his private life, because he would become completely dependent on his guardian for an indefinite period of time. Legal status could only be reviewed on the initiative of the person’s guardian or others, but not on the initiative of the incapacitated person. For that reason, fairness of the incapacitation proceedings was crucial. The Supreme Court also observed that under Article 464 of the Code of Civil Procedure, a person whose incapacitation was at issue should be present at the hearing where his incapacitation is being decided, unless medical experts have deemed his participation impossible because of his or her state of mind.

3.  Ruling of 23 March 2012 in civil case no. 3K-3-166/2012

64.  In that ruling, the Supreme Court observed that incapacitation stripped a person of all his rights, including the right to marry, vote, deal with his assets and choose where to live; in fact, it eliminated him from society. For that reason, it was vital to give priority to defending the rights of the vulnerable using all means possible during incapacitation proceedings. The Supreme Court once again reiterated that in order to justify full incapacitation, the mental disorder must be “of a kind and degree” warranting such a measure.

65.  In that particular case, the Supreme Court found that the question of legal capacity had only been examined at one level of jurisdiction, which was not sufficient to protect the incapacitated person’s interests. Moreover, when assessing fairness of proceedings, the entire proceedings, including the appellate stage, counted. In the circumstances of the case, the legally incapacitated person first appealed against the first-instance court’s decision to incapacitate her. Later she withdrew her appeal, an application which the appellate court had quickly accepted. The Supreme Court found that without holding a hearing and examining whether the plaintiff truly wished to terminate the court proceedings (and with information that she actually objected to her incapacitation), the appellate court had failed to take into account the importance of the issue at stake for her, and had thus breached her right to a fair hearing and the principle that priority must be given to the protection of the rights of the vulnerable. The Supreme Court referred to, *inter alia*, the Convention on the Rights of Persons with Disabilities, Article 12 of which reads that the disabled shall be provided with the support they may require in exercising their legal capacity.

66.  Lastly, in that case the incapacitated person’s guardian submitted a written request to the Supreme Court, arguing that she was the only person who could legally represent the incapacitated person. She requested that the court dismiss the incapacitated person’s appeal on points of law. The Supreme Court dismissed that request.

D.  Other relevant domestic law

67.  The Code of Civil Procedure provided at the material time that a court decision could be appealed against within thirty days. If there was a valid reason for missing that deadline, a request to extend the time-limit could be submitted within six months of the decision of the first-instance court (Article 307). Proceedings could be reopened if, for example, the court had ruled on the rights and obligations of a person not party to those proceedings. Such a request had to be submitted to the court within three months of the date the person learned of the grounds for reopening the proceedings, but no later than five years from the date the decision was adopted (Articles 365-368).

III.  RELEVANT INTERNATIONAL MATERIALS

68.  Recommendation No. R(99)4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults was adopted on 23 February 1999. The relevant parts read as follows:

Principle 3 – Maximum reservation of capacity

“1.  The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2.  In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ...”

Principle 6 – Proportionality

“1.  Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2.  The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention.”

Principle 7 – Procedural fairness and efficiency

“1.  There should be fair and efficient procedures for the taking of measures for the protection of incapable adults.

2.  There should be adequate procedural safeguards to protect the human rights of the persons concerned and to prevent possible abuses.”

Principle 11 – Institution of proceedings

“1.  The list of those entitled to institute proceedings for the taking of measures for the protection of incapable adults should be sufficiently wide to ensure that measures of protection can be considered in all cases where they are necessary. It may, in particular, be necessary to provide for proceedings to be initiated by a public official or body, or by the court or other competent authority on its own motion.

2.  The person concerned should be informed promptly in a language, or by other means, which he or she understands of the institution of proceedings which could affect his or her legal capacity, the exercise of his or her rights or his or her interests unless such information would be manifestly without meaning to the person concerned or would present a severe danger to the health of the person concerned.”

Principle 12 – Investigation and assessment

“1.  There should be adequate procedures for the investigation and assessment of the adult’s personal faculties.

2.  No measure of protection which restricts the legal capacity of an incapable adult should be taken unless the person taking the measure has seen the adult or is personally satisfied as to the adult’s condition and an up-to-date report from at least one suitably qualified expert has been submitted. The report should be in writing or recorded in writing.”

Principle 13 – Right to be heard in person

“The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.”

Principle 14 – Duration, review and appeal

“1.  Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.

2.  Measures of protection should be reviewed on a change of circumstances and, in particular, on a change in the adult’s condition. They should be terminated if the conditions for them are no longer fulfilled.

3.  There should be adequate rights of appeal.”

69.  The United Nations Convention on the Rights of Persons with Disabilities was ratified by the Republic of Lithuania on 27 May 2010, where it entered in force on 17 September 2010. The relevant parts read as follows:

Article 12  
Equal recognition before the law

“1.  States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2.  States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3.  States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4.  States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

5.  Subject to the provisions of this Article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

Article 13  
Access to justice

“1.  States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2.  In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

70.  Without relying on any particular provision of the Convention, the applicant complained about the fairness of his incapacitation proceedings.

71.  The Court considers that the complaint falls to be examined under Article 6 § 1 of the Convention. The relevant part reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A.  Admissibility

1.  Submissions by the parties

(a)  The Government

(i)  Six-month rule

72.  The Government firstly noted that the decision to declare the applicant legally incapacitated had been adopted on 31 January 2007. However, he had only lodged his application with the Court on 28 March 2008, nearly a year and two months later. The Government admitted that they did not have information to determine if or when the applicant had received the decision regarding his incapacitation. It could only be presumed that his mother, later appointed as his guardian, had informed him of that decision. In any case, it was completely clear that the applicant had found out about the decision on 9 March 2007, as he had referred to it himself in his request to be provided with legal aid on 26 November 2008 (see paragraph 24 above). On the basis of an extract from the applicant’s medical records (see paragraph 22 above), the Government argued that on 15 March 2007 the treating doctor had given him a copy of the Šiauliai District Court’s decision of 13 March 2007, and in the later decision it had been clearly indicated that he had been declared legally incapable by the Akmenė District Court on 31 January 2007. For the Government, the six‑month time-limit had therefore started running from at least 15 March 2007. They also noted the applicant’s letter to the Akmenė District Court, in which he had stated that he had seen the prosecutor’s request to have him declared incapacitated (see paragraph 18 above). The applicant, however, had not taken any action for nearly a year and a half, within either the domestic system or the international system. The Government were also of the view that the alleged violation of the applicant’s rights could not be considered to be of a continuous nature.

(ii)  Exhaustion of domestic remedies

73.  The Government further maintained that the applicant had failed to exhaust the available domestic remedies. Firstly, he had missed the thirty‑day time-limit to appeal against the Akmenė District Court’s decision of 31 January 2007, as well as the six-month time-limit to extend the time‑limit for lodging an appeal, if there had been valid reasons for missing the thirty-day time-limit (see paragraph 67 above). Nor had he given any valid reasons why any of those time-limits had been missed. It was therefore reasonable for the Legal Aid Service to have concluded that the appeal against the decision to incapacitate him had had no prospects. The Government also deemed it appropriate to note that in his request for legal aid the applicant had asked the Legal Aid Service to appeal against the aforementioned incapacity decision and had requested that the court extend the missed time-limit for lodging an appeal. However, he had not requested a reopening of the civil proceedings (*atnaujinti procesą*) regarding his legal incapacity, which was a different legal avenue (see paragraph 67 above). Lastly, he had not challenged before the administrative courts the Legal Aid Service’s refusal to assist him either.

(b)  The applicant

74.  The applicant submitted that he had not known about the incapacitation decision of 31 January 2007 or the decision of 6 March 2007 to appoint his mother as his guardian, because he had not taken part in those proceedings. He admitted that he had been “shown” both decisions by a doctor on 9 March 2007, when he had been taken to the Šiauliai Psychiatric Hospital. Until then, no one had informed him about the proceedings regarding his legal incapacitation. He had not been present at either of the hearings himself, and had not even known when they had taken place.

75.  Lastly, the applicant submitted that his mother would not give him the decisions, and that on 16 December 2008 the Akmenė District Court had refused to give him a copy of the decision regarding his legal incapacity. The applicant also pointed out that on 31 December 2008 the Legal Aid Service had denied his request for legal assistance in connection with the incapacitation proceedings.

2.  The Court’s assessment

(a)  Six-month rule

76.  The Court reiterates that the six-month rule is autonomous and must be construed and applied to the facts of each individual case, so as to ensure effective exercise of the right of individual petition (see, among many other authorities, *Büyükdağ v. Turkey* (dec.), no. 28340/95, 6 April 2000; *Fernández-Molina González and Others v. Spain* (dec.), nos. 64359/01 and others, ECHR 2002 IX (extracts); and *Zakrzewska v. Poland*, no. 49927/06, § 55, 16 December 2008). While taking account of domestic law and practice is an important aspect, it is not decisive in determining the starting point of the six-month period (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 52 and 55, 29 June 2012).

77.  The Court points out that the six-month period cannot start to run until the applicant has effective and sufficient knowledge of the final domestic decision. Furthermore, it is for the State relying on the failure to comply with the six-month time-limit to establish the date the applicant became aware of that decision (see *Baghli v. France*, no. 34374/97, § 31, ECHR 1999‑VIII, and more recently, *Sgaibă v. Romania* (dec.), no. 6005/05, § 25, 27 January 2015).

78.  In the instant case, the Court firstly observes that the Government did not deny that the Akmenė District Court decision had never been served on the applicant, but maintained that it had been sent to the applicant’s mother. Be that as it may, service on the applicant’s mother in the particular circumstances of this case is not sufficient, for it was precisely on her initiative that the applicant was declared legally incapacitated. Moreover, given that no appeal was ever lodged against the 31 January 2007 decision, it is clear that the mother agreed with it.

79.  The Court does not lose sight of the applicant’s statement that he had been “shown” the Akmenė District Court decisions of 31 January and 6 March 2007 regarding his legal incapacitation and the appointment of his legal guardian when he was placed in the Šiauliai Psychiatric Hospital on 9 March 2007 (see paragraphs 24 and 74 above). That notwithstanding, nothing in the case file indicates that those two decisions were in fact handed over to him. Moreover, it is not unreasonable to state that his mental illness, which had become more serious by that time, made it difficult for him to understand those decisions (see paragraph 20 above). The Court has also carefully scrutinised his medical records, relied on by the Government. It is however unable to find in those records an indication to the effect that either of the two decisions were given to the applicant on 15 March 2007 (see paragraph 22 above).

80.  Lastly, the Court refers, on the one hand, to its settled case-law stating that the applicant must show due diligence in obtaining a copy of the decision deposited with the court’s registry (see *Mıtlık Ölmez and Yıldız Ölmez v. Turkey* (dec.), no. 39464/98, 1 February 2005). On the other hand, and whilst noting that the UN Convention on the Rights of Persons with Disabilities was not in force in respect of Lithuania at the relevant time, the Court nevertheless stresses the State’s obligation to help to ensure that disabled people have effective access to justice (see Article 13 of that Convention, paragraph 69 above). Accordingly, it is somewhat struck by the Akmenė District Court’s letter to the applicant of 16 November 2008, informing him that the rulings regarding his legal incapacity and guardianship would not be given to him (see paragraph 29 above). Clearly, they were not without meaning to the applicant, nor did knowing their content present any danger to him (see, *mutatis mutandis*, Principle 11 of Recommendation No. R(99)4, cited in paragraph 68 above).

81.  In these circumstances and in the absence of any irrefutable evidence showing that the knowledge which the applicant presumably had about the Akmenė District Court’s decision regarding his legal incapacitation was effective and sufficient (see *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II), the Government’s preliminary objection that the application was lodged outside the six-month period must be dismissed.

(b)  Exhaustion of domestic remedies

82.  In the particular circumstances of the case, the Court considers that the Government’s objections as to the applicant’s failure to exhaust domestic remedies is intrinsically linked to his complaint that he did not have a fair hearing when the matter of his legal capacity was decided. These objections should therefore be joined to the merits.

(c)  Conclusion

83.  The Court also finds 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.  Submissions by the parties

(a)  The applicant

84.  The applicant complained about the lack of involvement in the proceedings regarding his incapacitation. As a result of those proceedings, however, he had been deprived of all of his “human and civil” rights and, in his words, had had no right to appeal to any court on any grounds. He also complained of a lack of assistance on the part of the Akmenė District Court, which had refused to give him a copy of his incapacitation decision, and the Legal Aid Service, which had not supported him when he had attempted to have his legal capacity restored. Another example of this lack of effective access to justice was his forced hospitalisation on 13 March 2007, when a lawyer he had never met had “represented” him during the hearing of that day at the Šiauliai District Court. He argued that the lawyer had in fact represented the interests of the Šiauliai Psychiatric Hospital, which earlier that day had asked the Legal Aid Service to secure a lawyer. It was not the practice of the Šiauliai Psychiatric Hospital for a person who was treated there to have a lawyer to represent his interests.

(b)  The Government

85.  The Government argued that the proceedings before the Akmenė District Court for the applicant’s legal incapacitation had been fair. The court had firstly assigned a forensic expert to determine whether the applicant’s mental health allowed his participation in the proceedings. Notwithstanding the experts’ negative answer, the court attempted to secure the applicant’s appearance at the hearing, having summoned him. Four attempts to serve that summons had failed because the applicant had not opened the door of his apartment.

86.  The Government also submitted that the aim of the applicant’s legal incapacitation proceedings had been to protect his interests, for he had been in need of constant care and help from others. Accordingly, his mother and the prosecutor, who had been protecting the public interest, had taken part in the court hearing on 31 January 2007, after social services had consented to the incapacitation proposal and asked the court to hear the case in their absence. The applicant’s mother had been questioned and had described the applicant’s state of health and expressed concern for his life. In this connection, the Government also noted that under Article 464 of the Code of Civil Procedure, the court was allowed to decide the case without the person subject to the incapacitation proceedings, if he could not be present for objective reasons (see paragraph 34 *in fine* above).

87.  The Government admitted that the Legal Aid Service had refused to provide free legal aid to appeal against the decisions of 31 January and 6 March 2007. However, there had been valid reasons for this (see paragraph 73 above). Lastly, the Government did not have any information that there would be a conflict of interests between the applicant and his mother.

2.  The Court’s assessment

(a)  General principles

88.  In most of the previous cases before the Court involving “persons of unsound mind”, the domestic proceedings concerned their detention and were thus examined under Article 5 of the Convention. However, the Court has consistently held that the “procedural” guarantees under Article 5 §§ 1 and 4 are broadly similar to those under Article 6 § 1 of the Convention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 232, ECHR 2012 and the case-law cited therein). In deciding whether the proceedings in the present case for the reopening of the guardianship appointment were “fair”, the Court will therefore have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention (see *D.D. v. Lithuania*, no. 13469/06, § 116, 14 February 2012).

89.  In the context of Article 6 § 1 of the Convention, the Court accepts that in cases involving a mentally-ill person the domestic courts should also enjoy a certain margin of appreciation. Thus, for example, they can make appropriate procedural arrangements in order to secure the good administration of justice, protection of the health of the person concerned, and so forth (see *Shtukaturov v. Russia*, no. 44009/05, § 68, ECHR 2008).

90.  The Court accepts that there may be situations where a person deprived of legal capacity is entirely unable to express a coherent view. It considers, however, that in many cases the fact that an individual has to be placed under guardianship because he lacks the ability to administer his affairs does not mean that he is incapable of expressing a view on his situation. In such cases, it is essential that the person concerned should have access to court and the opportunity to be heard either in person or, where necessary, through some form of representation. Mental illness may entail restricting or modifying the manner of exercise of such a right, but it cannot justify impairing the very essence of the right, except in very exceptional circumstances, such as those mentioned above. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental health issues, are not fully capable of acting for themselves (see *D.D. v. Lithuania*, cited above, § 118).

91.  The Court also reiterates that there is the importance of ensuring the appearance of the fair administration of justice and a party to civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward the matters in support of his or her claims. Here, as with other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, ECHR 2002-VI).

(b)  Application to the present case

92.  The Court firstly turns to the question of whether the applicant was aware of his incapacitation proceedings, so that he could effectively take part in them. Looking at the proceedings in a chronological order, it observes that there is nothing in the medical expert report of 8 January 2007 to conclude that when examined the applicant, who had been seen regularly by psychiatrists since 1990, was clearly informed or realised that this time it was his legal capacity at stake (see paragraph 13 above; see also *Shtukaturov*, cited above, §§ 15 and 69).

93.  The Court also has regard to the fact that the Akmenė District Court took efforts *proprio motu* to notify the applicant about the proceedings, but on 23, 24, 25 and 30 January the summons was not delivered because the applicant did not open the door of his apartment (see paragraph 15 above). Moreover, the Court accepts that the applicant should have learned about the incapacitation proceedings on at least 30 January 2007, when, in his words, he had found the prosecutor’s request for his incapacitation (see paragraph 18 above). Be that as it may, the Akmenė District Court ruled on the issue already the following day, and there is nothing to indicate that the applicant’s written plea of 5 February 2007 received any reaction from the court. The Court therefore concludes that the applicant did not participate in the 31 January 2007 hearing before the Akmenė District Court in any form. It remains to be ascertained whether, in the circumstances, this was compatible with Article 6 of the Convention.

94.  The Government argued that the decisions taken by the national judge had been lawful in domestic terms. However, the crux of the complaint is not the domestic legality but the “fairness” of the proceedings from the standpoint of the Convention and the Court’s case-law.

95.  In a number of previous cases (concerning compulsory confinement in a psychiatric hospital) the Court confirmed that a person of unsound mind must be allowed to be heard either in person or, where necessary, through some form of representation (see, for example, *Winterwerp v. the Netherlands*, 24 October 1979, § 60, Series A no. 33). In *Winterwerp*, the applicant’s freedom was at stake. However, in the present case the outcome of the proceedings was at least equally important for the applicant: his personal autonomy in almost all areas of his life was in issue (see paragraph 119 below).

96.  The applicant was indeed an individual with a history of psychiatric troubles. From the case material, however, it appears that despite his mental illness, he had been a relatively independent person. Indeed, and despite his suicide attempts in 2004 and 2006, for most of the time he lived alone, and could apparently take care of himself. Furthermore, the Court notes that the applicant played a double role in the proceedings: he was an interested party, and, at the same time, the main object of the court’s examination. His participation was therefore necessary, not only to enable him to present his own case, but also to allow the judge to have at least brief visual contact with him, and preferably question him to form a personal opinion about his mental capacity (see *Shtukaturov*, cited above, § 72). Given that the potential finding of the applicant being of unsound mind was, by its very nature, largely based on his personality, his statements would have been an important part of his presentation of his case (see *D.D. v. Lithuania.*, cited above, § 120; see also Principle 13 of the Recommendation No. R (99) 4 by the Council of Europe).

97.  The Court has already acknowledged the Akmenė District Court’s attempts to summons the applicant (see paragraph 93 above). Given that the attempts to secure his presence by sending a summons to his address failed for reasons beyond the district court’s control, it remains to be seen whether his absence could have been compensated for by other means, or through some form of representation.

98.  The Court has examined the Government’s argument that the applicant’s mother and the prosecutor attended the 31 January 2007 court hearing on the merits. However, and without doubting their good intentions, in the Court’s opinion their presence did not make the proceedings truly adversarial. Indeed, whilst by law the prosecutor was performing the function of defending the public interest, there was no one at the court hearing who could, on the applicant’s behalf, rebut the arguments or conclusions by his mother or the prosecutor. For the Court, taking into account the principle of procedural fairness (see Principle 7 in paragraph 68 above), it would have been appropriate for Akmenė District social services to pay more attention to the merits of the applicant’s case. However, their involvement was restricted to a simple indication of the word “agree” in their response to the prosecutors’ request, as sent to the Akmenė District Court (see paragraph 14 above), without providing a more elaborate or comprehensive response. In this connection, the Court also draws particular attention to the new Lithuanian legislation which requires social workers to provide what appears to be a very specific conclusion as to the person’s capacity or incapacity to act in particular areas (see paragraph 55 above). The Court also notes that after legislative changes in 2015 the State [of Mind] of Incapacitated Persons’ Review Commission, which has a very specific role of monitoring people with disabilities in order to protect their rights, was brought into Lithuanian legislation (see paragraph 52 above), thus making the current legal background substantially different from that which existed in 2007, when the applicant’s case was decided by the Akmenė District Court. The lack of any meaningful involvement on the part of social services in the applicant’s case, especially in view of the clear European standards that in 2007 already existed and that prompted amendments to Lithuanian legislation in order to rectify the shortcomings of the legislation applicable at the material time (see paragraphs 44, 68 and 69 above), leads the Court to conclude that his interests at the Akmenė District Court were not represented to make the proceedings fair in any form.

99.  Furthermore, it transpires from the Akmenė District Court decision of 31 January 2007 that the court ruled exclusively on the basis of the psychiatric report without summoning the medical expert who wrote it for questioning (see *D.D. v. Lithuania*, cited above, § 120). Furthermore, that medical expert report to the effect that the applicant could not take care of himself appears to be based on an account by the applicant’s mother, without there being any proof that those circumstances had been verified by the State or municipal authorities themselves. Similarly, the Court observes that the Akmenė District Court did not call anyone else as a witness so that more light could be shed on the applicant’s state of health (see paragraph 62 above).

100.  Lastly, the Court notes that it must always assess the proceedings as a whole, including the decision of the appellate court (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001). It also considers that the principle that particular attention must be given to the protection of the rights of the vulnerable extends to appeal proceedings. The Lithuanian Supreme Court clearly shared the view that rights of persons with disabilities had to be guaranteed at all stages of court proceedings (see paragraph 65 above). The Court has also held that the right to request that a court review a declaration of incapacity is one of the most important rights for the person concerned (see *Kędzior v. Poland*, no. 45026/07, § 89, 16 October 2012).

101.  In the present case, the Court points out that the applicant contacted the Legal Aid Service with a request to appeal against his incapacity decision and the decision to appoint a legal guardian. The Court reiterates its earlier finding that the decision of 31 March 2007 was never handed over to the applicant (see paragraphs 79-81 above). Accordingly, he may not be blamed for not appealing against that decision within thirty days, or for asking to extend the time-limit for appeal within six months of the date the incapacity decision was adopted. In this connection, it is also relevant that for the period of 9 March to 22 June 2007 the applicant was in the Šiauliai Psychiatric Hospital, where, this not having been disputed by the Government, he had no access to a lawyer. Against this background, and whilst accepting that by the time the applicant contacted the Legal Aid Service on 26 November 2008 the time-limits of thirty days and six months had already expired, the Court can only hold that the Legal Aid Service’s response was purely formalistic and limited to the question of time-limits which, in their view, the applicant had to observe (see paragraphs 25 and 26 above; also see paragraph 73 above regarding the Government’s suggestion about another legal avenue theoretically available to the applicant).

102.  The Court reiterates that the applicant was a person suffering from mental illness, a factor which militated in favour of the State employing measures to help him to ensure effective access to justice (see Article 13 of the UN Convention on the Rights of Persons with Disabilities, paragraph 69 above). Accordingly, and given the complexity of the legal issues at stake, the Court cannot share the Government’s view that in his plea to the Legal Aid Service the applicant should have specified the request to reopen civil proceedings as the appropriate legal avenue, whereas in fact he only asked to extend the time-limit to lodge an appeal against the 31 January 2007 decision (see paragraphs 24 and 73 above). To require him to have such an understanding of the law would be plainly disproportionate. The Court also is mindful of the fact that at the material time the applicant, once declared incapacitated, had no legal standing and thus could not bring any court action himself, including against the Legal Aid Service. In the light of the foregoing considerations, the Court dismisses the Government’s preliminary objection of failure to exhaust domestic remedies (see paragraph 73 above).

103.  As to the quality of legal assistance received by the applicant from the Lithuanian authorities, the Court lastly gives weight to his statement that during the proceedings for his forced hospitalisation the lawyer appointed by the Legal Aid Service “represented” him without even having seen or talked to him (see paragraphs 21 and 84 above). The Court nevertheless notes legislative changes that are a precondition for such practice to become extinct in future. Accordingly, from 1 January 2016 the Legal Aid Service are required by law to provide appropriate facilities to enable patients and their lawyers to communicate (see paragraph 59 above), which seems particularly relevant where a person is being held in isolation in a psychiatric hospital, as was the situation in the instant case.

104.  In view of the above considerations, the Court holds that at the material time the regulatory framework for depriving people like the applicant of their legal capacity did not provide the necessary safeguards. The Court will revert further to this matter in the context of the applicant’s complaint under Article 8 of the Convention.

105.  The Court also concludes that the applicant was deprived of a clear, practical and effective opportunity to have access to court in connection with his incapacitation proceedings, and particularly in respect of his request to restore his legal capacity (see *Kędzior*, cited above, § 90). There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II.  ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

106.  The applicant complained that by depriving him of his legal capacity, the authorities had stripped him of his right to private life.

107.  The Court considers that the complaint falls to be examined under Article 8 of the Convention. The relevant part reads as follows:

“1.  Everyone has the right to respect for his private ... life...

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A.  Submissions by the parties

108.  The applicant argued that he was conscientious, lived a normal life alone and took proper care of himself. That notwithstanding, because of his legal status as an incapacitated person, he had been effectively barred from taking part in community life and developing relationships with anyone of his choosing. In particular, he could not find a job, take part in elections, get married, enter into legal transactions or even draw up a will. His situation was exacerbated by the fact that, in accordance with Article 2.10 of the Civil Code, a request to restore legal capacity could only be lodged by a person’s family members, a care institution or a prosecutor. However, he had been prevented from directly applying to a court for restoration of his legal capacity. An incapacitated person had to rely on the good will of others, but not on objective factors such as improvement of health. This was impossible in the applicant’s case, because his mother considered him to be mentally ill, whereas he was healthy.

109.  The Government accepted that the applicant’s incapacitation could be considered to be an interference with his right to respect for his private life. However, that interference had a basis in domestic law and was aimed at protecting his interests. Lastly, and given that his mental illness had worsened to such a level that he had become a danger to himself, as illustrated by his attempts to commit suicide, the interference was necessary and proportionate.

110.  For the Government, it was also important that the Akmenė District Court’s decision to declare the applicant legally incapacitated had been based on his state of health. However, in compliance with Article 469 of the Code of Civil Procedure, where a person’s health improves considerably, the question of legal capacity could be examined again. According to the established practice of the courts, a person could initiate a review of his capacity by asking his guardian, care institution or a prosecutor to start proceedings to change his status. He could also submit a request to be provided with “secondary” legal aid himself. That notwithstanding, the Government had no information that the applicant had ever complained of a conflict of interests between him and his mother.

B.  The Court’s assessment

1.  Admissibility

111.  The Court has held that deprivation of legal capacity undeniably constitutesa serious interference with the right to respect for a person’s private life protected under Article 8 (see, for example, *Matter v. Slovakia*, no. 31534/96, § 68, 5 July 1999). It reiterates that Article 8 secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his personality (see *Smirnova v. Russia*,nos. 46133/99 and 48183/99, § 95, ECHR 2003‑IX (extracts)). It has not been disputed by the Government that the Akmenė District Court’s decision of 31 January 2007 deprived the applicant of his capacity to act independently in almost all areas of his life: at the relevant time he was no longer able to sell or buy any property on his own, work, choose a place of residence, marry, or bring a court action in Lithuania. The Court cannot but hold that the deprivation of legal capacity thus amounted to an interference with his right to respect for his private life (see *Shtukaturov*, cited above, § 83).

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

2.  Merits

113.  The Court reiterates that any interference with an individual’s right to respect for his private life will constitute a breach of Article 8 unless it was “in accordance with the law”, pursued a legitimate aim or aims under Article 8 § 2 and was “necessary in a democratic society” in the sense that it was proportionate to the aims sought.

114.  In the instant case, the Court acknowledges that the applicant’s incapacitation proceedings had a legal basis, namely Article 2.10 of the Civil Code, Article 19 of the Law on Prosecution Service and Article 465 of the Code of Civil Procedure (see paragraphs 11 and 16 above). The Court also has no reason to doubt that the measure was taken in the applicant’s interests.

115.  It remains to be examined whether the applicant’s legal incapacitation was necessary and proportionate.

(a)  General principles

116.  The applicant claimed that his full incapacitation had been an inadequate response to the problems he had experienced. Indeed, under Article 8 of the Convention the authorities had to strike a fair balance between the interests of a person of unsound mind and the other legitimate interests concerned. However, as a rule, in such a complex matter as determining somebody’s mental capacity, the authorities should enjoy a wide margin of appreciation (also see paragraph 125 below). This is mostly explained by the fact that the national authorities have the benefit of direct contact with the people concerned and are therefore particularly well placed to determine such issues. The task of the Court is rather to review under the Convention the decisions taken by the national authorities in the exercise of their powers in this respect (see *Shtukaturov*, cited above, § 87).

117.  At the same time, the margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. A stricter scrutiny is called for in respect of very serious limitations in the sphere of private life (ibid., § 88).

118.  Furthermore, the Court reiterates that whilst Article 8 of the Convention contains no explicit procedural requirements, the decision‑making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8 (see *Görgülü v. Germany*, no. 74969/01, § 52, 26 February 2004). The extent of the State’s margin of appreciation thus depends on the quality of the decision-making process. If the procedure was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see *Shtukaturov*, cited above, § 89).

(b)  Application to the present case

119.  The Court firstly notes that the interference with the applicant’s right to respect for his private life was very serious. As a result of his incapacitation, he became fully dependent on his mother as his guardian in almost all areas of his life, and this was clearly recognised by the Lithuanian Supreme Court (see paragraphs 61-64 above).

120.  The Court has already found that the proceedings before the Akmenė District Court did not give the judge an opportunity to examine the applicant in person. In such circumstances, it cannot be said that the judge had the benefit of direct contact with the person concerned, which would normally call for judicial restraint on the part of the Court. Furthermore, the applicant’s incapacitation proceedings ended at one level of jurisdiction, his participation in that decision-making process being reduced to nothing.

121.  Turning to the Akmenė District Court’s decision of 31 January 2007, the Court observes that it essentially relied on two pieces of evidence − the forensic expert report and the testimony of the applicant’s mother. The Court admits that the effect of the applicant’s illness on his social life, health and pecuniary interests was depicted more clearly by his mother, who stated that her son had recently lived apart, but could no longer take care of himself, did not go out or take medication, and would not pay maintenance fees for his apartment (see paragraphs 10 and 16 above).

122.  Because of the complexity of such an assessment and the special knowledge it requires, the Court finds that it was certainly correct that the Akmenė District Court sought to obtain an expert opinion on the applicant’s mental health, as it had been instructed by Article 464 of Code of Civil Procedure (see paragraph 34 above). That report, however, mainly referred to the applicant’s suffering from schizophrenia and his ensuing mistrust and feelings of persecution, without explaining what kind of actions, except for his inability to take part in the court proceedings, he was capable of understanding or controlling. It is true that the expert referred to the applicant’s inability to take care of his daily needs. However, that was more of a narrative of his mother’s opinion than an independent analysis by the psychiatrist.

123.  The Court does not cast doubt on the competence of the doctor who examined the applicant and accepts that the latter was seriously ill. However, the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation. By analogy with the cases concerning deprivation of liberty, in order to justify full incapacitation the mental disorder must be “of a kind or degree” warranting such a measure (see *Shtukaturov*, cited above, § 94; also see the Lithuanian Supreme Court’s analogous conclusion in paragraph 62 above). However, the questions to the doctor, as formulated by the judge, did not concern “the kind and degree” of the applicant’s mental illness (see paragraph 12 above). As a result, the report of 8 January 2007 did not analyse the degree of his incapacity in sufficient detail.

124.  It transpires that the existing legislative framework did not leave the Akmenė District Court any other choice. In case of mental illness, Article 2.10 of the Lithuanian Civil Code at that time distinguished only between full capacity and full incapacity, but did not provide for any “borderline” situation other than for drug or alcohol addicts (see paragraph 33 above). At this juncture, the Court considersthat where a measure of protection is necessary it should be proportionate to the degree of capacity of the person concerned and tailored to his individual circumstances and needs (see Principle 6 of Recommendation No. R(99)4, paragraph 68 above). Contrary to this standard, Lithuanian legislation did not provide for a tailor-made response. The Court thus finds that the guardianship regime was not geared to the applicant’s individual case but entailed restrictions automatically imposed on anyone who had been declared incapable by a court.This conclusion is further confirmed by the latest legislative changes and, in particular, the explanatory memorandum by the Ministry of Justice, wherein the flaws of the former legal regulation were pointed. Partial incapacity was thus introduced to Lithuanian legislation on 1 January 2016 (see paragraphs 44 et seq. above).

125.  The Court reiterates its view that the authorities in principle have broad discretion in determining a person’s mental capacity (see paragraph 116 above). However when restrictions on the fundamental rights apply to a particularly vulnerable group in society that has suffered considerable discrimination in the past, the Court has also held that then the State’s margin of appreciation is substantially narrower and must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs. In the past, the Court has identified a number of such vulnerable groups that suffered different treatment, persons with mental disabilities being one of them (see *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010, and *Kiyutin v. Russia*, no. 2700/10, § 63, ECHR 2011).

126.  The applicant has put much emphasis on the fact that he was unable to himself request that the court lift his legal incapacity. Indeed, the applicant’s incapacitation, which applied for an indefinite period, at the material time could not have been challenged other than by his guardian, on whose initiative the applicant was incapacitated, a care institution, whose involvement in the applicant’s case the Court has already found to be lacking (see paragraph 98 above), or a public prosecutor. The Court has already held, in respect of partially incapacitated individuals, that given the trends emerging in national legislation and the relevant international instruments, Article 6 § 1 of the Convention must be interpreted as guaranteeing a person, in principle, direct access to a court to seek restoration of his or her legal capacity (see *Stanev*, cited above, § 245). In the latter judgment the Court observed that eighteen of the twenty national legal systems studied in 2011 provided for direct access to the courts for any partially incapacitated individuals wishing to have their status reviewed. In seventeen States such access was open even to those declared fully incapable (ibid., §§ 95 and 243). This indicates that there is now a trend at European level towards granting legally incapacitated individuals direct access to the courts to seek restoration of their capacity. The Court has also had occasion to clarify that proceedings for restoration of legal capacity are directly decisive for the determination of “civil rights and obligations”. It may also be appropriate in cases of this kind that the domestic authorities establish after a certain lapse of time whether such a measure continues to be justified. Re-examination is particularly justified if the person concerned requests it (see *Matter*, cited above, §§ 51 and 68).

127.  The Court lastly takes note that recently the Lithuanian legislation was amended and from 1 January 2016 the applicant is finally able to initiate proceedings aimed at varying his incapacitation decision (see paragraph 57 above). However, this positive development cannot alter the above conclusion, which relates to the period prior to entry into force of the aforementioned amendment (see *Berková v. Slovakia*, no. 67149/01, §§ 174 and 175, 24 March 2009).

128.  In sum, having examined the decision-making process and the reasoning behind the domestic decisions, the Court concludes that the interference with the applicant’s right to respect for his private life was disproportionate to the legitimate aim pursued. There was, therefore, a breach of Article 8 of the Convention on account of the applicant’s full incapacitation.

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

129.  Lastly, the applicant complained about his placement in the Šiauliai Psychiatric Hospital in 2004.

130.  The Court observes, however, that in 2014 the applicant’s complaint was dismissed by the Šiauliai Regional Court as having no basis (see paragraph 32 above). In the light of the materials in its possession, the Court sees no reason to defer from that conclusion. Accordingly, this complaint must be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

131.  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

132.  The applicant did not submit any claims for pecuniary or non‑pecuniary damage, but requested a review of his diagnosis with schizophrenia and the decision regarding his legal incapacity.

133.  In the light of his submissions and the material in the case file, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

B.  Costs and expenses

134.  The applicant did not claim any costs or expenses. Accordingly, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Decides* to join to the merits the Government’s objection as to the exhaustion of domestic remedies and rejects it;

2.  *Declares* the complaints concerning the fairness of the applicant’s incapacitation proceedings and interference with his right to respect for his private life admissible, and the remainder of the application inadmissible;

3.  *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4.  *Holds* that there has been a violation of Article 8 of the Convention;

5.  *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 31 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli András Sajó  
 Registrar President