SECOND SECTION AAKcTÜRKİYE CASE (Application no. 56578/11) JUDGMENT Art 8 • Private life • Placement under judicial guardianship of the applicant, following a procedure which concluded that she suffered from a mental disorder hindering her ability to act • Existence of effective guarantees in the domestic procedure to prevent abuse by ensuring that the rights and interests of the applicant are taken into account • Participation of the applicant in the decision-making process at all stages of the procedure • Judicial mechanism having proceeded with fairness and necessary diligence as well as having gathered sufficient elements to assess the applicant's faculties and to prevent possible injustices • Limitation of the measure in time and in its purpose • Possibility of periodic review of two years, for the purposes of lifting the guardianship measure • Measure lifted by a court in accordance with the conclusions of a new psychiatric expertise STRASBOURG October 3, 2023 This judgment will become final under the conditions defined in Article 44 § 2 of the Convention .

It may undergo formal alterations. AAKcTÜRKİYE JUDGMENT 1 In the AAKcTürkiye case, The European Court of Human Rights (second section), sitting in a Chamber composed of: Arnfinn Bårdsen, President, Jovan Ilievski, Egidijus Kūris, Saadet Yüksel, Lorraine Schembri Orland, Diana Sârcu, Davor Derenčinović, judges, and Hasan Bakırcı, section clerk, Seen: the application (no. 56578/11) directed against the Republic of Türkiye and including a national of that State, Ms AAK

("the applicant") applied to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 June 2011, the decision to bring to of the Turkish government ("the Government") the request, the observations of the parties, Having deliberated in private on September 5, 2023, Issues the following judgment, adopted on that date: INTRODUCTION 1.

The present case concerns the placing under judicial guardianship of the applicant, following a procedure in which it was concluded that she suffered from a mental disorder hindering her capacity to act. It raises questions from the angle of Articles 6 and 8 of the Convention, taken separately and combined with Article 13.

THE FACTS 2. The applicant was born in 1955 and resides in Yenipazar (Aydın). She was represented by Mr. S. Cengiz, lawyer in İzmir. 3. The Government was represented by its co-agent Ms. Aysun Akceviz, head by Acting Human Rights Department of the Ministry of Justice of the Republic of Türkiye.

I. THE GENESIS OF THE CASE 4. On January 18 and 21, 2002, the applicant – an architect by profession and teacher of private lessons – was examined at the Forensic Institute for the purposes of establishing her psychiatric picture. A neurotic disorder accompanied by a mild schizoid state was diagnosed.

AAKcTÜRKİYE JUDGMENT 2 5.On October 13, 2004, she was re-examined by doctors at the Forensic Institute. According to the resulting report, she suffered from ordinary schizophrenia.6.In December 2007, one of her students in private lesson informed the applicant that the teacher NE

of her class had disclosed to the students a large part of the questions prepared for the purposes of a departmental competition. The applicant transmitted this denunciation to the competent authorities. On the occasion when NE had tried to speak to her, she exclaimed: "you kind of unworthy, why did you steal the questions (...), I will expose all your scams."

7.On May 14, 2008, public action was brought by the Yenipazar prosecutor ("the prosecutor") against the applicant for insulting a civil servant, namely, NEIn her brief of May 27, 2008, filed during her trial, the The applicant accused the HC registrar of having been recruited by illegal means.

At the hearing of October 23, 2008, she explained that she had attacked HC, because he had disturbed her "by dazzling her with his looks".8. By a judgment of November 6, 2008, the court The Yenipazar court ("the court") sentenced the applicant to ten months' suspended imprisonment.9. On July 7, 2008, the prosecutor again brought the applicant before the court for insulting a state agent, know HC

On November 27, 2008, she was also sentenced to two months and fifteen days of suspended imprisonment on this count. 10. On December 26, 2008, the prosecutor appealed this last judgment, considering that the behavior as well as the words and writings confused by the applicant would have required a prior assessment of her mental capacity to be carried out.

11.On February 11, 2009, the teacher was reprimanded following a disciplinary procedure for obstructing the fairness of a public competition.II.PUTTING THE APPLICANT UNDER JUDICIAL GUARDIANSHIP 12. On 10 April 2009, the Aydın public prosecutor's office instructed the prosecutor to investigate the question of whether the applicant should be placed under guardianship pursuant to article 405 § 1 of the Civil Code no. 4721 ("CC" - paragraph 40). below).

The following May 4, the prosecutor requested a copy of the files of the criminal cases involving the applicant. After examination, on May 12, 2009, he referred the matter to the court under article 405 § 2 of the CC (ibidem).13.The proceedings were opened before the court on May 13, 2009. The judge ordered the medical examination of the applicant at the Adnan Menderes University Hospital ("the hospital") and the establishment of a list of persons AAK JUDGMENT

c.TÜRKİYE 3 qualified to be her legal guardian as well as an inventory of her assets. According to the information communicated to the court, the applicant did not have any real estate or bank savings.14.On an unspecified date , the applicant requested in writing from the Aydın Bar Association to appoint a court-appointed lawyer for her, for legal assistance.

15.The court held its first hearing on June 4, 2009. It turned out that the applicant had objected to her medical examination at the hospital. The judge ordered the local security department to carry out this measure. 16.By a decision of June 11, 2009, the Aydın Bar Association rejected the applicant's request for legal assistance, on the grounds that she had a monthly income of between 600 and 1,000 Turkish liras, an amount considered sufficient to mandate an advice.

17.On June 10, 2009, the court was informed that the guardian best suited to protect the interests of the

applicant would be HK, namely her husband.18.On 29 June 2009, the applicant filed an opposition against the decision of the Aydın Bar (paragraph 16 above).19.On 9 July 2009, the Aydın Bar accepted the opposition of the applicant and instructed Me MA

to represent her ex gratia.20.The second hearing took place on July 16, 2009, in the presence of the applicant, who informed the court that a lawyer from the Aydın Bar would represent her and that she had passed the exam required medical treatment. The court took note of the fact that the relevant medical report was in the process of being finalized.

21.On August 14, 2009, the hospital health board issued its psychiatric evaluation report, after examining the applicant: it was stated that she suffered from “paranoid personality disorder” and, although no longer able to appreciate the reality of events, she firmly denied her psychological state.

According to the doctors, this justified his placement under guardianship; although it was possible for the applicant to be cured of this condition with appropriate treatment, she had nevertheless refused the care offered for this purpose. According to the applicant, the doctors would have ruled out a consultation which did not fulfill the criteria appropriate to this medical procedure.

22.On August 27, 2009, Mr. MA resigned from the Aydın Bar, stating his deep disagreement with the applicant who had demanded that he challenge the judge of the court on the grounds of partiality, based on exclusively personal reasons , devoid of any objectivity, that is to say contrary to the law.

23.It appears from the file that on 19 September 2009, the applicant underwent further tests and a psychological interview, apparently, at the psychiatry department of the Faculty of Forensic Medicine of the University Hospital of Istanbul.24.At the hearing of September 17, 2009, Me MA

declared that she had resigned from her duties (paragraph 22 above) and that the applicant should be informed of this. The court read out a faxed memorial sent by the applicant.25. By a decision of 24 September 2009, the Aydın Bar considered Mr. MA's excuse founded and then canceled the legal aid granted to the applicant.

26.At the next hearing on 1 October 2009, the applicant explained that she had asked the Istanbul Bar to appoint new counsel for her, as well as having requested the Istanbul University Hospital for a new assessment (paragraph 23 above).27.On 20 October 2009, the Aydın Bar Association informed the court that the legal aid granted to the applicant had been revoked and that no other lawyer would be appointed.

28.At the hearing of 22 October 2009, the minutes were read, due to the change of judge. The applicant was heard again. She contested the expert report of 14 August 2009 (paragraph 21 below). -above) and recalled that she had already contacted Istanbul University Hospital for a new assessment (paragraph 26 above).

The court summoned the applicant's husband to appear and, accepting the opposition that the applicant had filed against the first expert opinion, it decided to request the Forensic Institute to determine whether the applicant was still suffering from disorders justifying her placement under guardianship.29.At the hearing on November 24, 2009, the applicant was present, accompanied by her husband HK

; the latter declared that, if he were appointed, he would assume the guardianship mission with all the responsibilities that this would entail.30.On 23 December 2009, the applicant was taken to the Forensic Institute and examined by the Council of Specialists No. 4 , under consultation number 2009/605.

The psychogram established at the end of the interviews revealed a psychotic state. However, according to the applicant, she did not undergo any real examination at the Forensic Institute and everything was decided on the basis of her previous file.31. On January 21, 2010, the court, with the applicant's agreement, decided to wait until the report from the Forensic Institute was finalized.

32.This report was placed in the file on January 29, 2010. Taking into account the applicant's psychiatric history (paragraphs 4 and 5 above) and reconsidering the new elements in the file, the Forensic Institute confirmed that the applicant was suffering from " paranoid disorders" and thus not having the capacity to act, it was necessary to appoint a guardian for him.

 The Forensic Institute specified that these disorders were of a level and nature capable of removing the freedom to discern and act accordingly, as well as the ability to analyze events to draw healthy conclusions.Also , was the applicant unable to identify and protect her own interests or resist the manipulative influences of others; in short, she was incapable of engaging in anything autonomously and freely.

33.On March 2, 2010, HK, supported by the applicant, contested this second report and requested its review by the Plenary of the Istanbul Forensic Institute. The court dismissed this request, on the grounds that the criticized report did not present any contradiction and was therefore sufficient to establish a judgment.

By a judgment pronounced the same day, the applicant was placed under the guardianship of her husband HK. He was to fulfill this duty for an initial period of two years, which could be extended for the same period, if the court was received a request to this effect. It appears from the operative part that the measure was essentially aimed at the management of the applicant's assets, that HK

had been ordered to report each year on the management of the inventory of property in the file and that the land management and the banks had been prohibited from concluding any act with the person concerned without the approval of the court.34. On March 25, 2010, the applicant herself appealed to the Court of Cassation, citing in particular her exclusion from the benefit of a lawyer during the proceedings, the partial attitude of the court judge whom she had sought in vain to challenge and the non-conclusive nature of the report from the Forensic Institute drawn up against him (paragraphs 30 and 32 above).

By a judgment of December 6, 2010, the Court of Cassation dismissed the applicant's appeal, finding the contested judgment to be consistent with the law and procedure. The judgment was notified to the HK guardian on January 14, 2011. 35. The applicant filed an appeal for rectification of judgment.By a decision of March 14, 2011, the Court of Cassation rejected this appeal, on the grounds that this avenue was closed against the judgments rendered in guardianship cases.

III. THE REQUEST FOR RELEASE OF THE GUARDIANSHIP MEASURE 36. On July 9, 2014, approximately four years and four months later, the guardian HK applied to the Nazilli district court to request the lifting of the guardianship measure. Recalling that the hospital had previously clarified that his wife's recovery was possible with appropriate treatment (paragraph 21 above), it maintained that the applicant no longer showed any clear symptoms of illness.

Therefore, HK requested that two university hospitals be tasked with carrying out a new psychiatric assessment. 'Istanbul as well as those of the Dokuz Eylül University Hospital in İzmir.

38.The first hospital submitted its detailed report on February 27, 2015. Convinced that the applicant's “obsessive-compulsive-narcissistic” personality no longer reached a threshold serious enough to compromise her mental health, the doctors concluded that it was not there was no longer any reason to keep the person concerned under guardianship.

39. By a judgment of March 19, 2015, the court endorsed this conclusion and lifted the contested measure. THE RELEVANT LEGAL FRAMEWORK AND INTERNAL PRACTICE I. PUTTING UNDER GUARDIANSHIP 40. Article 405 §§ 1 and 2 of the Civil Code no 4721 (“CC”) is worded as follows: “1. Any adult person who, due to a mental illness or deficiency, is not able to provide for his or her needs, or who requires assistance is placed under guardianship. permanent for their needs and protection, or which endangers the safety of others.

2. Administrative authorities, notaries and courts which, in the exercise of their functions, note the existence of a situation requiring guardianship must immediately notify the competent supervisory authority. 41. Article 409 of the CC provides, for its part, that a decision on a request for placement under guardianship due to mental illness or insufficiency of mental faculties can only be made on the basis of a medical report.

According to this article, the judge can hear the person concerned before ruling, if he considers it necessary having regard to the content of the medical report.42.Under the terms of article 414 of the CC, the principle is to entrust the mission of tutorship to the husband or wife of the person concerned, except in exceptional circumstances. Under articles 472 and 474, any decision to place under guardianship may be lifted as soon as it is no longer justified to the light of medical expertise.

The request for lifting can be presented both by the person under guardianship and by their guardian. 43.According to article 382 of the Code of Civil Procedure No. 6100, promulgated on January 12, 2011, questions related to placement under guardianship fall under the non-contentious procedure. This is a simplified and inquisitorial procedure. , where it is up to the judge to administer ex officio the evidence and

to carry out on its own initiative all necessary investigations before ruling.

Exactly the same was true before the entry into force of the said code, but on the basis of the provisions stipulated in other laws, because the old code did not expressly govern non-contentious procedures. AAKcTÜRKİYE JUDGMENT 7 44. Article 36 of the Constitution establishes the right of anyone, plaintiff or defendant, to use all legitimate means and avenues to assert their case, to ensure their defense and to benefit from a fair trial before the judicial authorities.

II.THE OFFICIAL COMMISSION OF A LAWYER 45.Apart from legal aid which aims at the exemption of legal costs according to the code of civil procedure, and the granting of which falls within the competence of the courts, the attribution of a public defender, for legal assistance, is governed by Law No. 1136 on the profession of lawyer, as amended by Law No. 4667 of May 2, 2001 and by Regulation No. 25418 of March 30 2004.

According to article 176 of this law, the assistance in question is provided to persons who are unable to cover the costs of representation by a lawyer. The request for legal assistance – duly substantiated and documented – is made to the office established for this purpose within the bar concerned; this office is made up of lawyers commissioned by the board of directors of the bar; a rejection of the request is subject to opposition before the President of the Bar (article 178).

If the request is granted, the office appoints a court-appointed lawyer, who is required to carry out all the tasks relating to the profession. If the court-appointed lawyer requests to be excused from his mission, he would have to pay to the bar an amount equivalent to the fees provided for (article 179), unless the resignation is justified.

III. THE TEXTS OF THE COUNCIL OF EUROPE 46. Recommendation No. R(99)4 adopted on February 23, 1999 from the Committee of Ministers to Member States on the principles concerning the legal protection of incapable adults (“Principles”), provides that which follows, in Part II: “Principle 1 – Respect for human rights Concerning the protection of incapable adults, the fundamental principle serving as a basis for those set out in this text is respect for the dignity of each person as than being human.

Laws, procedures and practices relating to the protection of incapable adults must be based on respect for human rights and fundamental freedoms, taking into account the restrictions on these rights contained in relevant international legal instruments. Principle 7 – Fairness and effective procedure 1.

The procedures leading to the adoption of protective measures for incapable adults should be fair and effective. 2. Appropriate procedural guarantees should be provided to protect the human rights of the person concerned and to prevent possible abuses. AAK JUDGMENT

v.TÜRKİYE 8 Principle 8 – Preeminence of the interests and well-being of the person concerned 1. When establishing or implementing a measure of protection for an incapable adult, the interests and well-being of the latter must be taken into account in a manner

preeminent.2.This principle implies in particular that the choice of a person to represent or assist the incapable adult must be governed above all by the ability of this person to protect and promote the interests and well-being of the adult concerned.

3.This principle also implies that the property of the incapable adult is managed and used for his benefit and to ensure his well-being.Principle 9 – Respect for the wishes and feelings of the person concerned 1.When establishing or implementing a measure of protection for an incapable adult, it is appropriate, as far as possible, to seek out, take into account and duly respect the past and present wishes and feelings of the person concerned.

2.This principle implies in particular that the wishes of the adult concerned relating to the choice of a person to represent or assist them must be taken into account and, as far as possible, duly respected.3.It follows from this also that a person representing or assisting an incapable adult must provide him with adequate information whenever possible and appropriate, particularly with regard to any important decision affecting the adult, so that the latter can express his opinion.

» 47. Concerning the relevant procedural regime, the said Recommendation states: “Principle 12 – Investigation and evaluation 1. Appropriate procedures should be provided with regard to the investigation and evaluation of the personal faculties of the adult.2 .No protective measure having the effect of restricting the legal capacity of an incapable adult should be taken unless the person taking the measure has seen the person concerned or is aware of his or her situation and unless a recent report, drawn up by at least one qualified expert, has been produced.

The report should be written or recorded in writing.Principle 13 – Right to be heard personally The data subject should have the right to be heard personally in any proceedings which may affect his or her legal capacity.Principle 14 – Duration , review and appeal 1.

Protective measures should, to the extent possible and appropriate, be of limited duration. Periodic reviews should be considered.(...) 3. Appropriate remedies should be provided. » AAKcTÜRKİYE 9 JUDGMENT IN LAW ON THE ALLEGED VIOLATION OF ARTICLE 8 OF CONVENTION A.

Subject of the dispute and admissibility 48. The applicant, deploring that her legal incapacity was declared without valid reasons and in the absence of the assistance of a lawyer, complains in particular that the domestic courts did not take the necessary steps necessary to provide him with a court-appointed lawyer and to respond to his challenges to the medical reports on which he was placed under guardianship; in short, the Turkish judicial system would not have been able to protect her against this disproportionate measure which would have ruined her future.

In this regard, the applicant alleges a violation of her right to a fair trial guaranteed by Article 6 § 1 of the Convention as well as a disregard of her right to protection of her private life in breach of Article 8, two provisions that it invokes separately and combined with Article 13.

49.The Court observes that the main questions raised in the present case undoubtedly fall within the sphere of the applicant's private and family life, as they are closely linked to identity and personal development as well as the right to form and to develop relationships with fellow human beings and the outside world; the Court sees in the present case no particular reason to depart from its general tendency to approach Article 8 in relation to such questions (see, for example, Bensaid v.

United Kingdom, no. 44599/98, § 47, ECHR 2001 I, HFcSlovakia, no. 54797/00, § 47, 8 November 2005, and ANcLithuania, no. 17280/08, § 107, 31 May 2016).50.Indeed , in the present case, the difference between the aim pursued by the guarantees of Article 6 § 1 and that pursued by the guarantees of Article 8 does not necessarily justify the examination of the facts from the angle of each of these two provisions (see, for example, Golder v.

United Kingdom, February 21, 1975, §§ 41 to 45, Series A no. 18, Bianchi v. Switzerland, no. 7548/04, § 113, June 22, 2006, and Macready v. Czech Republic, nos. 4824/06 and 15512/ 08, § 41, April 22, 2010), especially since in this case the disputed procedure was governed by the inquisitorial principle, according to which it is up to the court to seek the truth ex officio (paragraph 43 above) ; the situation of the parties in procedures based on the inquisitorial principle is different from those based on the adversarial principle, it being understood that in this case the active role of the judge is an element which could be considered to compensate for a certain inequality of the parties to procedure, so as to lessen the importance of a separate examination under Article 6 § 1.

AAKcTÜRKİYE JUDGMENT 10 51. Control of the legal characterization of the facts of the case (see, Radomilja and others v. Croatia [GC], nos. 37685/10 and 22768/12, § 126, March 20, 2018, SMcCroatia [GC], no 60561/14, § 243, June 25, 2020, and more recently, Telek et al.
v. Türkiye, nos. 66763/17 and 2 others, § 76, March 21, 2023, and Calvi and CG

v. Italy, no. 46412/21, § 73, July 6, 2023), the Court therefore considers that, in the present case, the complaints raised with regard to Articles 6 § 1 and/or 13 are absorbed by those based on Article 8, under its procedural aspect (see, for example, Kutzner v. Germany, no. 46544/99, §§ 56 and 57, ECHR 2002 I, Diamante and Pelliccioni v.

San Marino, no. 32250/08, § 151, September 27, 2011, Anghel v. Italy, no. 5968/09, § 69, June 25, 2013, GBcLithuania, no. 36137/13, § 113, January 19, 2016, and SWcKingdom- Uni, no. 87/18, § 78, June 22, 2021), which covers, not only the judicial proceedings, but also the administrative processes involved (paragraph 65 below).

It will therefore examine the present case from the angle of Article 8 of the Convention, worded in its relevant part as follows: “1.Everyone has the right to respect for his or her private and family life (...).2.It There can only be interference by a public authority in the exercise of this right to the extent that this interference is provided for by law and that it constitutes a measure which, in a democratic society, is necessary (...), public safety, (...) the prevention of criminal offenses, the protection of health or morals, or the protection of the rights and freedoms of others.

» 52. In the absence of preliminary objections formulated by the Government, the Court finds that, within the framework defined above, the application is not manifestly ill-founded within the meaning of Article 35 § 3 a) of the Convention and that it is not otherwise opposed by any other reason

of inadmissibility.

The Court therefore declares it admissible.B.Merits 1.Arguments of the parties a) The applicant 53.The applicant maintains that she simply suffered a civil sanction as unjust as it was draconian, without being duly involved in the proceedings by the assistance of a lawyer, in defiance of the relevant case law of the Court (Jucius and Juciuvienė v.

Lithuania, no. 14414/03, November 25, 2008) and despite the seriousness of the issue for her. In short, the court took no measures to ensure effective representation during these proceedings, which ultimately resulted in the restriction of her capacity to act.54.In addition, the applicant specifies that, even during the second procedure which resulted in the lifting of the guardianship measure, the judge never assessed her need for legal assistance (Artico v .

Italy, 13 May 1980, § 33, AAKcTÜRKİYE JUDGMENT 11 series A no. 37, Granger v. United Kingdom, 28 March 1990, § 47, series A no. 174, and Timergaliyev v. Russia, no. 40631/02, § 59, October 14, 2008).55.Returning to the facts of the case, the applicant highlights the following elements, according to him, crucial in assessing the fairness of the disputed procedure: – Yenipazar, the district where the court was located, is a small agglomeration and the two judges and two prosecutors in office at the time were in collusion; – The guardianship action was initiated by one of these prosecutors, annoyed by the number of complaints filed by the applicant; – The lawyer appointed by the Aydın Bar resigned without reasonable cause; however, the said bar as well as the court accepted this resignation, without hearing the applicant or verifying the impact that this could have on the outcome of her trial; – The court never considered the granting of further legal aid, contrary to its obligations under Article 36 of the Constitution (paragraph 44 above), nor did it ensure that the applicant suffered thorough psychiatric examinations before deciding to place her under guardianship.

56. Beyond this procedural aspect, the applicant complains of having been declared incapable on the basis of insufficient reports that the doctors and the Forensic Institute had drawn up on the basis of her distant medical history, without duly l 'examine ; in this regard, she insists that her challenges against these reports were never taken into account by the court.

The applicant adds that the fact of having been declared incapable following such a procedure on the basis of false allegations made by a prosecutor destroyed her future, even though she was an architect who graduated from a renowned university. She concludes that in no case could her placement under guardianship present any interest capable of justifying the disproportionate measure to which she was subjected for approximately four years.

57.Moreover, the latest expert report rendered by the Istanbul University Hospital (paragraph 38 above) would have demonstrated that the diagnosis at the origin of the declaration of incapacity was erroneous. According to the applicant, if HK, her husband and guardian, had not requested the lifting of this measure, she would have been condemned to live incapacitated, which would demonstrate that the national system offers no protection to vulnerable people.

b) The Government 58.The Government recalls from the outset that the disputed procedure was governed by the inquisitorial principle, according to which it was up to the court to collect ex officio all

the conclusive evidence, which it did not fail to do.AAKcTÜRKİYE JUDGMENT 12 59.As regards the allocation of a court-appointed lawyer, the Government emphasizes that the applicant's related request was initially accepted by the bar, but that it subsequently annulled its decision due to the unacceptable behavior of the person concerned.

In any event, this decision would not have resulted in a significant disadvantage for the applicant.60. Indeed, throughout the procedure, the applicant was able to appear at the hearings, to express herself, to contest the medical elements concerning her, to be heard by the judge and to appeal to the Court of Cassation.

61.In view of these elements, the Government considers that the applicant benefited from all the necessary guarantees of an inquisitorial procedure and that if she was ultimately placed under guardianship, this decision was based on objective medical evaluations and had without dispute a solid legal basis, namely article 405 of the CC.

As for the question of "legitimate aim", the Government refers once again to the two medical assessments carried out by specialists, the conclusions of which do not open up to any criticism. According to these, the applicant - who had refused to be care – was not able to understand and protect his interests and the contested measure was precisely intended to protect their interests.

Moreover, the disputed interference did not have any significant repercussions on the private life of the applicant, the latter having never suggested that she had actually suffered from it or that she had suffered damage disproportionate to the aim pursued. 62.The Government finally recalls that the measure in question was lifted following a new medical report of February 27, 2015, which demonstrates that the regime in place in Türkiye is based on guarantees that are perfectly aligned with the relevant principles. posed both by the Court and by the Committee of Ministers of the Council of Europe (paragraphs 46 and 47 above).

2. Assessment of the Court a) General principles and considerations 63. It is undisputed that the decision to place the applicant under guardianship constituted an interference in the exercise of her right to respect for her private life. This interference was provided for by the law – Article 405 of the CC (paragraph 40 above) – and it pursued a legitimate aim, namely the protection of a person incapable of looking after his own interests due to a mental disorder.

These points are not controversial (see, Ümit Bilgiç v. Turkey, no. 22398/05, § 112, September 3, 2013).64.As for the necessity of the interference in question in a democratic society, the Court recalls that for a question as complex as AAKcTÜRKİYE JUDGMENT 13 that of determining the mental capacities of an individual, the authorities must generally enjoy a wide margin of appreciation; this, however, goes hand in hand with the Court's duty to exercise more rigorous control over deprivations of legal capacity, which undeniably constitute a serious interference in the exercise by the person concerned of the right to respect for his private life. guaranteed by Article 8 of the Convention.

Also, in cases where people with mental disorders have been deprived of legal capacity, the Court attaches particular importance to the quality of the process.

decision-making.65.If Article 8 does not contain any explicit procedural conditions, the Court has defined the procedural requirements necessary for respect for the rights resulting from it, which it often examines in combination with the principles drawn, among others, from the Article 6, in the sense that the decision-making process leading to measures of interference must be fair and capable of fully respecting the interests protected by this provision (see, for example, Jucius and Juciuvienė, cited above, § 30, Soares de Melo vs.

Portugal, no. 72850/14, § 65, February 16, 2016, and Mehmet Ulusoy and others v. Turkey, no. 54969/09, § 109, June 25, 2019). This requirement thus covers administrative as well as judicial procedures, but also in conjunction with the broader objective of ensuring due respect, among other things, for private life, which is at the heart of the present dispute (see among others, Golder, cited above, § 36, McMichael v.

United Kingdom, February 24, 1995, § 91, series A no. 307-B, Bianchi, cited above, § 112, and Tapia Gasca and Spain, no. 20272/06, §§ 111-113, December 22, 2009).66.L he extent of the margin of appreciation that the authorities enjoy in this area will therefore depend on the quality of the decision-making process: if the procedure has been seriously deficient for one reason or another, the conclusions of the domestic authorities are more open to doubt (see Principle 1 – paragraph 46 above; Görgülü v.

Germany, no. 74969/01, § 52, 26 February 2004, Chtoukatourov v. Russia, no. 44009/05, §§ 87-89, ECHR 2008, Berková v. Slovakia, no. 67149/01, § 165, 24 March 2009, Salontaji-Drobnjak v. Serbia, no. 36500/05, §§ 141-143, 13 October 2009, Ümit Bilgiç, cited above, § 113, Lashin v. Russia, no. 33117/02, §§ 79 and 80, 22 January 2013, Ivinovic v.

Croatia, no. 13006/13, §§ 36 and 37, September 18, 2014, and AN, cited above, §§ 116-118).b) Application of these principles to the present case i.As for the alleged exclusion of benefit of a court-appointed lawyer 67.As regards the decision-making aspect and insofar as the applicant denounces her exclusion from the benefit of a court-appointed lawyer, it should be emphasized that the Convention does not imply that the State must provide free legal aid in any dispute affecting a “civil right”.

However, the Court accepts, like the applicant (paragraphs 53 to 57 above), that the proceedings in this case – which presented very serious issues – had to be surrounded by appropriate procedural guarantees. enabling the applicant's rights to be protected and her interests to be taken into account (see, for example, HF

v. Slovakia, no. 54797/00, § 44, November 8, 2005). Under such guarantees, Article 8 can in fact require the authorities to provide the assistance of a lawyer when this proves essential for access effective to the judge (mutatis mutandis, Airey v. Ireland, October 9, 1979, § 26, Series A no. 32, and Romanov v.

Russia, no. 63993/00, § 108, October 20, 2005), taking into account the seriousness of the issue for the person concerned (P., C. and ScUnited Kingdom, no. 56547/00, § 100, ECHR 2002 -VI, Steel and Morris v. United Kingdom, no. 68416/01, § 61, ECHR 2005-II, HF cited above, § 37, and Ivinović, cited above, § 45, in fine).68. In the present case, if on July 9, 2009 the Aydın bar finally appointed Me MA

in order to represent the applicant (paragraphs 19 and 20 above), she resigned on the following August 27 – without ever participating in the proceedings – on the grounds that the applicant had demanded that she recuse the judge from the court for unacceptable reasons (paragraphs 22 and 25 above); there had therefore indeed been contact between the two protagonists (compare mutatis mutandis with Salontaji-Drobnjak, cited above, § 127).

Subsequently, the Aydın Bar Association announced that no other lawyer would be appointed (see paragraph 27 above) and the Istanbul Bar Association also appears to have refused to respond to the lawyer's request for legal assistance. applicant (paragraph 26 above). The court did not react automatically either, it being understood that the file does not include any trace of any request for legal assistance addressed directly to the judge.

69. As to the question of whether the conduct of Ms. M.Resigned may constitute a particular circumstance capable of incurring State responsibility under the Convention (Tuziński v. Poland (dec.), no. 40140/98, 30 March 1999) and/or with regard to Article 36 of the Constitution – as the applicant suggests (paragraph 55, in fine, above) – and if, therefore, the court – informed of the situation – should office replace this lawyer so that the applicant is not deprived in practice of effective assistance (Bertuzzi v.

France, no. 36378/97, § 30, CEDH 2003-III), the Court considers that it can answer it in the negative, because the appropriate procedural guarantees in question here (paragraph 65 above) are not limited to granting of legal assistance.70.In this context, it must be remembered that, in many cases, the fact that an individual must be placed under guardianship because he would not have the capacity to administer his affairs – as in the present case – does not mean that he is incapable of commenting on his situation; in such cases, it is essential that the person concerned has access to a court and the opportunity to be heard in person (see Jucius and Juciuvienė, cited above, § 30 and AN, cited above, § 90).

AAKcTÜRKİYE JUDGMENT 15 The Court must therefore verify whether, having regard to the particularities of the case and in particular the seriousness of the decisions to be taken, the applicant was sufficiently involved in the decision-making process, considered as a whole, to ensure the required protection of her interests, otherwise there would have been a breach of his private life, because the interference cannot be considered “necessary” within the meaning of Article 8 (see, ibid., and W.

v. United Kingdom, July 8, 1987, § 64, Series A no. 121).ii.As for the applicant's participation in the decision-making process 71.Returning to the facts of the case, the Court observes that, notwithstanding her psychological picture, the applicant had full knowledge of the request for a declaration of incapacity submitted by the public prosecutor's office (compare with Chtoukatourov, cited above, § 69) as well as sufficient capacity to present her case (McVicar v.

United Kingdom, no. 46311/99, §§ 48-62, ECHR 2002-III, and Steel and Morris, cited above, § 61); she actually took part in the process, throughout the hearings which followed, and where the court benefited from a direct relationship with the person concerned (compare with Chtoukatourov, cited above, § 91, and AN, cited above , § 120).

Indeed, from May 14, 2009, the date of the preparatory hearing, June 15, 2009, the applicant

informed the court that she wished to continue the proceedings through her lawyer and, following her lawyer's resignation, she often appeared at the consecutive hearings herself and heard her testimony; on July 16, 2009, she explained the examination she had taken at the Adnan Menderes University Hospital; on September 17, 2009, she sent a brief by email, which was read; on October 1, 2009, she informed the court of her request for reconsideration at Istanbul University Hospital; on October 22, 2009, she was heard by the new judge and challenged the expert report of August 14, 2009 requesting her transfer to the Forensic Institute, and this request was granted (compare mutatis mutandis with Salontaji-Drobnjak, cited above, § 127); on November 24, 2009, the applicant appeared with her husband HK

; on January 21, 2010, she was heard again by the judge; on March 2, 2010, she supported the challenge filed by her husband against the report of the Forensic Institute; on March 2, 2010, the previous opposition was rejected and the procedure was closed in his presence (compare, ibidem).72.Thus, with regard to the first instance procedure, even if the exact content of all the The applicant's statements do not emerge from the documents she has filed in the file, she should be considered to have been sufficiently involved in the decision-making process so as to enable her to defend her case, but also to allow the court to form its own opinion. own opinion on his mental capacities, as required by Article 409 of the CC (paragraph 41 above), the Court's case-law (see, mutatis mutandis, Kovalev v.

Russia, no. 78145/01, §§ 35-37, 10 May 2007 – compare with AAKcTÜRKİYE JUDGMENT 16 Chtoukatourov, cited above, §§ 72, 73 and 91, and AN, cited above, § 120) and Principle 13 (paragraph 47 ci -above).73.Moreover, it should be noted that in the present case, the disputed procedure was governed by the inquisitorial principle according to which it was up to the court to seek the truth ex officio.

Turkish civil procedure law (paragraph 43 above) requires the court ruling on the legal capacity of an individual to gather all the necessary evidence, whether the parties have offered it or not (for a comparable situation , see, HF, cited above, § 38).iii.

As for the fairness of the decision-making process 74. Before examining the examination undertaken by the court, it is appropriate to first respond to the arguments that the applicant draws from her lack of impartiality and the collusion which allegedly united the four magistrates from the small town of Yenipazar, including the prosecutor who allegedly requested her placement under guardianship, because he was annoyed by the complaints she had filed (paragraph 55 above).

75. Firstly, the Court observes that in the present case, Mr MA did not present to the court the request for recusal – described as abusive – of the applicant (paragraph 22 above) and there is nothing to indicate that the latter has personally challenged the judge who initially sat or her replacement (paragraph 28 above) nor taken any action against the prosecutor whom she accuses of having requested her placement under supervision out of animosity.

76.Moreover, it must be remembered that “the personal impartiality of a magistrate is presumed until proven otherwise” (see, for example, Micallef v. Malta [GC], no. 17056/06, § 94, ECHR 2009), the decisive element consisting of knowing whether the applicant's apprehensions can be considered objectively justified (ibidem, § 96, Wettstein v.

Switzerland, no. 33958/96, § 44, CEDH 2000-XII, and Pabla Ky v. Finland, no. 47221/99, § 30, CEDH 2004-V). However, that the four magistrates of Yenipazar know each other as colleagues cannot certainly be sufficient in itself to consider doubts as to their impartiality as objectively justified (see, for example, Steck-Risch and Others v.

Liechtenstein, no. 63151/00, § 48, 19 May 2005), it being understood that claims of bias should not be likely to paralyze the legal system of a respondent State and that in small local jurisdictions, such as of Yenipazar, the administration of justice could be unduly hampered by the application of overly strict standards in this regard (see, mutatis mutandis, AK

v. Liechtenstein, no. 38191/12, § 82, 9 July 2015, Nicholas v. Cyprus, no. 63246/10, § 63, 9 January 2018, and Koulias v. Cyprus, no. 48781/12, § 62, 26 May 2020).77.That being said, the Court recalls that, although the applicant's first psychiatric diagnoses date back to 2002 and 2004 (paragraphs 5 and 6 above), new examinations took place after the opening of the AAK JUDGMENT

v.TÜRKİYE 17 guardianship proceedings on April 10, 2009 (paragraph 14 above) and the court had ruled on the basis of these examinations, the purpose of which the applicant was perfectly aware of (compare, Chtoukatourov, cited above, § 69).In fact, on August 14, 2009, the health board of the Adnan Menderes University Hospital concluded that the “paranoid personality disorders” observed in the applicant were such as to justify her placement under guardianship (paragraph 21 above); if the interested party claims to have not been duly examined on this occasion (paragraph 56 in limine above), this is contradicted by the content of the said report; in any event, after having undergone further tests and a psychological interview at Istanbul University Hospital (paragraph 23 above), the applicant contested the results of the said report and, contrary to what she suggests (paragraph 56 in fine above) the court granted this request (paragraph 28 above); on December 23, 2009, a second opinion was thus carried out by the Council of Specialists No. 4 at the Forensic Institute (paragraph 30 above), the neutrality of which has never been called into question (Lashin, cited above, § 87), and whose conclusions entered into the file on 29 January 2010 were sufficiently clear (paragraph 32 above) as to the possible consequences of the applicant's troubles on her material interests (compare, Chtoukatourov, cited above, § 93), so that the rejection of the second opposition filed against this last report (paragraph 33 above) cannot have any consequences.

Thus, the Court cannot agree with the applicant when it criticizes the court for having failed to base its judgment on “thorough psychiatric examinations” (paragraph 55 in fine above), without in any way supporting the reasons.78.The last aforementioned medical examination, carried out by qualified experts on December 23, 2009, i.e. three months and one week before the adoption of the first instance judgment and less than one year before the cassation judgment, must therefore be considered as “recent” (compare with HF, cited above, §§ 41 and 42, Lashin, cited above, §§ 83 to 86, Nikolyan v.

Armenia, no. 74438/14, § 124, October 3, 2019) and probative within the meaning of the Court's case law and Principle 12 (paragraph 47 above).79.Moreover, this procedure went through two levels of jurisdiction (compare with AN, cited above, § 120); the applicant herself appealed to the Court of Cassation, whose role could be decisive in erasing a possible initial violation of the Convention (De Haan v.

Netherlands, August 26, 1997, § 54, Reports of judgments and decisions 1997-IV). Certainly, this appeal was rejected, but the applicant does not complain about it before the Court.80. In view of the above , the Türkiye judicial mechanism must be seen to have proceeded with the necessary fairness and diligence as well as to have gathered sufficient elements to assess the applicant's faculties and to prevent possible injustices (see Principle 7 – paragraph 46 above). -above; compare, HF, cited above, § 44).

AAKcTÜRKİYE JUDGMENT 18 iv.The ins and outs of the measure imposed on the applicant 81.In this regard, it is important to emphasize that under the terms of the judgment of 2 March 2010 (paragraph 33 above), the restriction of legal capacity imposed on the applicant was not total, was limited in time and could be contested by the applicant herself (compare, for example, Chtoukatourov, cited above, §§ 90 and 94, Stanev, cited above, §§ 239 and 240 , Lashin, cited above, § 90, AN, cited above §§ 111, 123 and 126, and Nikolyan, cited above, § 122).

In the present case, the contested measure targeted the management of the applicant's assets by her husband and guardian HK – whose appointment undoubtedly suited the applicant (see Principles 8 and 9 – paragraph 46 above) –, on the basis an inventory of property, and it was accompanied by a ban on concluding land and banking acts without the approval of the court.

The guardian's powers to represent the applicant therefore covered only the latter's property and financial affairs (paragraph 13 above) to the extent provided for in the relevant judgment (for a similar situation, under Finnish law, see A.- MVcFinland, no. 53251/13, § 85, March 23, 2017).

82.Moreover, it should be noted that this measure was imposed for an initial period of two years, capable of being extended for the same period; it follows that in the present case, in accordance with domestic law (paragraph 42 above), the applicant benefited – like her husband – from a possibility of periodic review for two years, for the purposes of the lifting of the guardianship measure (see Principle 14 – Ümit Bilgiç, cited above, § 114; compare, Drobnjak, cited above, § 134, and Stanev, cited above, § 239).

83. This is a crucial guarantee: the right to ask a court to review a declaration of incapacity proves to be one of the most important for the individual concerned because, once initiated, such a procedure is decisive for his civil rights and obligations (Stanev, cited above, § 233, and Lashin, cited above, §§ 79 to 81) and, more precisely, for the exercise of all the rights and freedoms affected by the declaration of incapacity; this right constitutes one of the essential procedural rights for the protection of persons declared partially incapable, like the applicant (Stanev, cited above, § 241).

This is also due to the growing importance given today to granting optimal legal autonomy to people with mental disorders both through national laws at European level and international instruments for the protection of these people, including the Recommendation No. R (99) 4 cited above (paragraphs 46 and 47 above) (see, in particular, Matter v.

Slovakia, no. 31534/96, §§ 51 and 68, July 5, 1999, Stanev, cited above, §§ 243 to 245, and AN, cited above, § 126).84.In the present case, the file as well as the observations of the applicant do not include an exact statement as to why no review was requested at the end of the initial two-year period, given that the applicant was still under guardianship in March 2014 (paragraph 36 above).

AAKcTÜRKİYE JUDGMENT 19 In any event, on July 9, 2014, HK submitted such a request to the Nazilli District Court and, in accordance with the conclusions of a new psychiatric expertise from Istanbul University Hospital, the said court ruled dated March 19, 2015, the lifting of the disputed guardianship measure (paragraphs 36 to 39 and 42 above).

85. Contrary to what the applicant suggests (paragraph 57 above), these latest medical conclusions in no way invalidate those at the origin of the placement under guardianship, because no expert opinion carried out until then had reported an incurable clinical picture; finally, there is no need to speculate about what would have happened if HK

had not taken this step, because the law authorized the applicant to do so herself (paragraph 42 in fine above).86.In light of the above, the Court underlines the need for the domestic authorities to achieve a balance between respect for the dignity and self-determination of the individual, as well as the need to protect them and safeguard their interests, particularly in circumstances where their abilities or specific circumstances place them in a situation of vulnerability.

In this context, the Court considers that a fair balance was struck in the present case: there were effective guarantees in the domestic procedure to prevent abuses – as required by the Convention and the relevant norms of international law – while ensuring that the rights and interests of the applicant are taken into account.

She was involved at all stages of the procedure: she was heard in person and was able to present her arguments. The interference was a matter for competent and impartial domestic courts, and the measure they took was in accordance with the law. the legitimate objective of protecting the property interests of the applicant, and in a broader sense her well-being; given its limitation in time and its purpose, as well as the domestic legal remedies provided for obtaining its lifting, there is nothing to suggest that this measure was disproportionate and/or unsuitable for the applicant's situation.

v.Conclusion 87.Therefore, the Court judges that in the present case the partial incapacity initially pronounced on the applicant could be considered necessary in a democratic society, and that, as a result, it did not prevail violation of Article 8 of the Convention. FOR THESE REASONS, THE COURT, UNANIMOUSLY, 1.

Declares the request admissible; 2. Holds that there has been no violation of Article 8 of the Convention. AAKcTÜRKİYE JUDGMENT 20 Done in French, then communicated in writing on October 3, 2023, in accordance with Article 77 §§ 2 and 3 of the Rules.Hasan Bakırcı Arnfinn Bårdsen Registrar President Attached to this judgment, in accordance with Articles 45 § 2 of the Convention and 74 § 2 of the Rules, is the statement of the separate opinion of Judge A.

Bårdsen.ARBHBAAKcTÜRKİYE JUDGMENT – SEPARATE OPINION 21 CONCURRING OPINION OF JUDGE BÅRDSEN 88. I agree with the conclusion of my colleagues that there has been no violation of the Convention in the present case. I have come to this conclusion with a little hesitation, and I would like to explain the reasons for my questions.

89.Although the Court chose to examine the case solely from the angle of Article 8 of the Convention, Article 6 § 1 is not without significance in the present case. Indeed, as regards concerns access to legal assistance in such a context, Article 8 must be interpreted and applied in the light of the principles developed in the context of Article 6 § 1.

This perspective being little present in the judgment, and given that the assistance of a lawyer may be required even in the context of inquisitorial proceedings, I would for my part like to reinforce the following six elements.90.First, I stresses that people involved in guardianship proceedings should generally be considered vulnerable.

Special procedural guarantees may be necessary to protect the interests of persons who, due to their mental disorders, are not fully capable of acting on their own behalf. However, in the present case, the authorities have established that the applicant suffered from a serious mental illness which had a direct impact on his ability to make informed decisions for himself.

91.Secondly, I recall that in guardianship proceedings it is often necessary – and this was the case in this case – to examine not only the legal issues, but also to thoroughly assess the mental health of the persons concerned. and their interactions with others. Since the applicant was considered seriously ill, she could not reasonably be presumed capable of coping with the legal and medical assessments in a constructive manner.

92.Thirdly, I note that the applicant did not have a guardian at the material time. She herself could not afford the cost of legal assistance. If, initially, a lawyer had been appointed to assist the applicant, it was precisely because it was deemed necessary to grant her legal aid.

93.Fourthly, the fact that the appointed lawyer withdrew due to “unacceptable behavior” on the part of the applicant cannot be held against the latter. The behavior in question reflected a lack of confidence on the part of the applicant towards the judge of the administrative court.

As has already been pointed out, the applicant was supposed to suffer from very serious mental disorders, in particular paranoia. It is precisely for these reasons that the assistance of a lawyer would have been beneficial to her.94. Fifthly, having regard to the situation in which the applicant found herself before the administrative court when the appointed lawyer withdrew, and taking into account the above considerations, the court would have JUDGED AAK

c.TÜRKİYE – SEPARATE OPINION 22 had solid reasons to examine ex officio whether it was necessary to appoint another lawyer. However, there is no trace of such an examination.95. Sixth, since we remind Again the fact that the applicant was not in a position, according to the Government, to make informed decisions on her own behalf, the fact that she did not ask the court to appoint a new lawyer is hardly relevant.

Furthermore, although the applicant denounced in her appeal the lack of access to a lawyer, the very succinct decision of the Court of Cassation makes no assessment on this question. 9.Despite the arguments I have set out above, I voted in favor of a finding of no violation of Article 8.

Indeed, I subscribe to the opinion of my colleagues according to which, having regard to all the facts of the case, in particular all the measures taken to safeguard the interests of the applicant, there was no crucial failure in the protection of the applicant's private life as guaranteed by Article 8 of the Convention.