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

SECOND SECTION

AFFAIRE AAK c. Türkiye

(Application no . 56578/11)

STOP

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 capacity to act • Existence of effective guarantees in the internal procedure to prevent abuses 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 abilities 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 measure of guardianship • 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 shape adjustments.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

En l'affaire AAK c. Türkiye,

The European Court of Human Rights (second section), sitting in a chamber composed of:

Arnfinn Bårdsen, *president,*
Jovan Ilievski,
Egidijus Kuris,
Saadet Yuksel,
Lorraine Schembri Orland,
Diana Sarcu,
Davor Derenÿinoviÿ, *juges,*

et de Hasan Bakÿrcÿ, *greffier de section,*

From:

the application (no. 56578/11) against the Republic of Türkiye and of which a national of that State, Ms AAK ("the applicant"), lodged a complaint with the Court under Article 34 of the Convention for the Protection of Human Rights man and fundamental freedoms ("the Convention") on June 17, 2011,

the decision to bring to the attention of the Turkish government ("the Government") the request,

the observations of the parties,

After having deliberated in private on September 5, 2023,

Renders the following judgment, adopted on this date:

INTRODUCTION

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

ACTUALLY

2. The applicant was born in 1955 and lives in Yenipazar (Aydÿn). She was represented by Me S. Cengiz, lawyer in ÿzmir.

3. The Government was represented by its co-agent Ms. Aysun Akceviz, Acting Head of the Human Rights Department of the Ministry of Justice of the Republic of Türkiye.

I. THE GENESIS OF THE CASE

4. On 18 and 21 January 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 profile. A neurotic disorder accompanied by a mild schizoid state was diagnosed.

5. On October 13, 2004, she was re-examined by doctors from the Forensic Institute. According to the resulting report, she suffered from ordinary schizophrenia.

6. In December 2007, one of her students in a private lesson informed the applicant that the NE teacher in 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 tried to speak to her, she exclaimed: “you unworthy person, why did you steal the questions (...), I will expose all your scams”.

7. On 14 May 2008, public action was brought by the Yenipazar prosecutor (“the prosecutor”) against the applicant for insulting a civil servant, namely, NE

In her brief of May 27, 2008, filed during her trial, the applicant accused the HC registrar of having been recruited by illegal means. At the hearing on 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 6 November 2008, the Yenipazar district 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, namely HC. On November 27, 2008, she was also sentenced on this count to two months and fifteen days of imprisonment. suspended imprisonment.

10. On December 26, 2008, the prosecutor appealed this last judgment, considering that the behavior as well as the confusing words and writings of the applicant would have required a prior assessment of her mental capacity to be carried out.

11. On February 11, 2009, the teacher NE received a reprimand 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 Aydÿn 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 applied 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

qualified to be his legal guardian as well as an inventory of his assets.

According to the information provided 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 Aydÿn Bar Association to appoint a court-appointed lawyer for her, for legal assistance.

15. The court held its first hearing on 4 June 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 Aydÿn Bar 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 10 June 2009, the court was informed that the most suitable guardian 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 Aydÿn Bar Association (paragraph 16 above).

19. On July 9, 2009, the Aydÿn Bar accepted the applicant's opposition and instructed Mr. MA to represent her *ex gratia.*

20. The second hearing took place on 16 July 2009, in the presence of the applicant, who informed the court that a lawyer from the Aydÿn Bar would represent her and that she had passed the required medical examination.

The court took note of the fact that the relevant medical report was being finalized.

21. On 14 August 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 that the applicant could be cured of this condition with appropriate treatment, she nevertheless refused the care offered for this purpose.

According to the applicant, the doctors ruled out a consultation that did not meet the criteria appropriate to this medical procedure.

22. On August 27, 2009, Mr. MA announced his resignation to the Aydÿn Bar, asserting his deep disagreement with the applicant who had demanded that he challenge the judge of the court for reasons 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 September 19, 2009, the applicant underwent further tests and a psychological interview, apparently, at the service of

Psychiatry of the Faculty of Forensic Medicine of Istanbul University Hospital.

24. At the hearing on 17 September 2009, Ms MA declared that she had resigned from her duties (paragraph 22 above) and that the applicant should be informed of this. The court read a faxed brief sent by the applicant.

25. By a decision of September 24, 2009, the Aydÿn Bar considered Mr MA 's excuse to be well founded and then canceled the legal aid granted to the applicant.

26. At the following 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 Aydÿn 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 on October 22, 2009, the minutes were read, due to the change of judge. The applicant was heard again. She contested the expert report of August 14, 2009 (paragraph 21 above) and recalled that she had already contacted Istanbul University Hospital for a new evaluation (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 his 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 designated, he would assume the supervisory 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 Specialist Council 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 take 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 agreement of the applicant, decided to wait for the report from the Forensic Institute to be finalized.

32. This report was placed in the file on 29 January 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 likely to take away the freedom to discern and act accordingly, as well as the ability to analyze events to draw healthy conclusions. Also, the applicant was not able to identify and protect her own interests nor to 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 rejected this request, on the grounds that the criticized report did not present any contradiction and was therefore sufficient to form a basis for 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 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 assets included 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 biased attitude of the judge of the court she had sought in futile to challenge and the non-conclusive nature of the report of the Forensic Institute drawn up in his charge (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 lodged an appeal for rectification of the 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, 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), he maintained that the applicant no longer showed any clear symptoms of illness. Therefore, HK requested that two university hospitals be responsible for carrying out a new psychiatric assessment.

37. On July 11, 2014, the court granted this request and ordered the examination of the applicant by the forensic services of Istanbul University Hospital as well as those of *Dokuz Eylül* University Hospital in ÿzmir.

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 there was no longer any reason to keep the applicant under guardianship.

39. By a judgment of March 19, 2015, the court endorsed this conclusion and raised the measure attacked.

THE LEGAL FRAMEWORK AND INTERNAL PRACTICE RELEVANT

I. PUTTING UNDER GUARDIANSHIP

40. Article 405 §§ 1 and 2 of 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 permanent assistance for his or her needs and protection, is placed under guardianship, 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 tutoring mission to the husband or wife of the person concerned, except in exceptional circumstances. Under articles 472 and 474, any decision to place people under guardianship may be lifted as long as it is no longer justified in the light of a 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 the evidence *ex officio* and to carry out on his own initiative all the 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.

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 courts. judicial authorities.

II. THE COMMISSION OF A LAWYER

45. Apart from legal aid which aims at exemption from legal costs according to the code of civil procedure, and the granting of which falls within the jurisdiction of the courts, the allocation of a court-appointed lawyer, under the 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 people who are unable to cover the costs of representation by a lawyer.

The request for legal assistance – duly supported and documented – is made to the office set up 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 should pay the bar an amount equivalent to the fees provided for (article 179), unless the resignation is justified.

III. COUNCIL OF EUROPE TEXTS

46. Recommendation No. R(99)4 adopted on 23 February 1999 of the Committee of Ministers to member States on the principles concerning the legal protection of incapable adults (“Principles”), provides the following, 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 a human being. Laws, procedures and practices concerning 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 – Fair and efficient procedure**
>
> 1. The procedures leading to the adoption of protective measures for incapable adults should be fair and effective.
>
> 2. Appropriate procedural safeguards should be provided to protect human rights of the data subject and to prevent possible abuse.

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 primarily.

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

3. This principle also implies that the property of an incapable adult be 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, past and present wishes should, as far as possible, be sought out, taken into account and duly respected. , and the 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 also follows that a person representing or assisting an incapable adult must provide him with adequate information whenever possible and appropriate, in particular with regard to any important decision affecting the adult, so that the latter can express your opinion. »

47. Concerning the related procedural regime, the said Recommendation states:

“ **Principle 12 – Investigation and evaluation**

1. Appropriate procedures should be provided for in relation to the investigation and the evaluation of the adult's personal abilities.

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 the person taking the measure has seen the person concerned or is aware of his or her situation and 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 the framework of any procedure which may have an impact on its 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. »

PLACE

ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Subject matter of the dispute and admissibility

48. The applicant, deploring that her legal incapacity was pronounced 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 to ensure her a 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 establish and to develop relationships with fellow human beings and the outside world; the Court sees no particular reason in this case to depart from its general tendency to approach Article 8 in relation to such questions (see, for example, Bensaid *v. the United Kingdom,* o 44599/98, § 47, ECHR 2001 I, *HF v. Slovakia,* n no. 54797/00, § 47, November 8, 2005, and *AN v. Lithuania,* no. 17280/08, § 107, May 31, 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 for 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.

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, *SM v. Croatia* [GC], no 60561/14, § 243, June 25, 2020, and more recently, *Telek and others 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,* n o 32250/08, § 151, 27 September 2011, *Anghel v. Italy ,* no. 5968/09, § 69, 25 June 2013, *GB v. Lithuania,* no. 36137/13, § 113, 19 January 2016, and *SW v. United Kingdom,* no. 87/18, § 78, 22 June 2021) , which covers, not only the legal 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 their private and family life (...).
>
> 2. 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 made 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 subject to any other grounds for inadmissibility.

The Court therefore declares it admissible.

B. Fond

1. Arguments des parties

a) The applicant

53. The applicant maintains that she simply suffered a civil sanction that was as unjust as it was draconian, without being duly involved in the proceedings through the assistance of a lawyer, in defiance of the relevant case-law of the Court (Jucius and Juciuvienÿ *v . Lithuania,* no. 14414/03, November 25, 2008) and despite the seriousness of the issue for her. In short, the court took no steps to provide him with effective representation during these proceedings, which ultimately resulted in the restriction of his ability to act.

54. Furthermore, 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,* May 13, 1980, § 33,

series A no. 37, *Granger v. United Kingdom,* March 28, 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 town and the two judges and two prosecutors in office at the time were in collusion;

– The guardianship action had been introduced by one of these prosecutors, annoyed by the number of complaints filed by the applicant;

– The lawyer appointed by the Aydÿn 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 benefit capable of justifying the disproportionate measure to which she was subjected for approximately four years.

57. Moreover, the latest expert report delivered 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 unable to act, 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 all the probative evidence ex officio, which it did not fail to do.

59. As regards the allocation of a court-appointed lawyer, the Government emphasizes that the applicant's request in this regard was initially granted by the bar, but that it annulled its decision by subsequently due to the unacceptable behavior of the person concerned.
In any event, that 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 evidence 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 would not be open to any criticism. According to them, the applicant – who had refused to seek treatment – was not able to understand and protect her 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 indeed lifted by virtue of 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. No one disputes 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 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

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 decision-making process.

65. Although Article 8 does not contain any explicit procedural conditions, the Court has defined the procedural requirements necessary to respect the rights arising from it, which it often examines in combination with the principles identified, among others, from 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 Juciuvienÿ, cited above, § 30, Soares *de* Melo *v. Portugal,* o 72850/14, § 65, February 16, 2016, and *Mehmet Ulusoy and others v. Turkey,* o 54969/09, § 109, June 25, 2019). This requirement thus covers administrative as well as judicial procedures, but also goes hand in n hand with the broader objective of ensuring fair respect, among other things, for private life, which is at the n heart of this dispute (see among others). others, *Golder,* cited above, § 36, *McMichael v. United Kingdom,* February 24, 1995, § 91, series A o 307-B, *Bianchi,* cited above, § 112, and *Tapia Gasca and D. v. Spain,* o 20272 /06, §§ 111-113, December 22, 2009).

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66. The extent of the margin of appreciation which 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 subject on bail (see Principle 1 – paragraph 46 above; *Görgülü v. Germany,* no. 74969/01, § 52, 26 February 2004, *Chtoukaturov 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, January 22, 2013, *Ivinoviÿ 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 the benefit of court-appointed counsel

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 legal aid free of charge in any dispute relating to a “civil right”. However, the Court admits, like the party

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,* o 54797/00, § 44, November 8, n 2005).

Under such guarantees, Article 8 can in fact require the authorities to provide the assistance of a lawyer when this proves essential to effective access 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), precisely taking into account the seriousness of the issue for the applicant *(P., C. and S. v . United 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 *Ivinoviÿ,* cited above, § 45, *in fine).*

68. In the present case, although on July 9, 2009 the Aydÿn Bar had finally appointed Ms. MA to represent the applicant (paragraphs 19 and 20 above), she resigned on the following August 27 – without ever participating in the procedure –, on the grounds that the applicant had demanded that he recuse the court judge 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 Aydÿn 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 Mr. MA who resigned may constitute a particular circumstance capable of incurring the responsibility of the State under the Convention *(Tuziÿski vs. Poland* (dec.), no. 40140/98, March 30, 1999) and/or with regard to Article 36 of the Constitution – as the applicant suggests (paragraph 55, *in fine,* above) – and if, by consequently, the court – informed of the situation – had to automatically replace this lawyer so that the applicant was not deprived in practice of effective assistance *(Bertuzzi v. France,* no. 36378/97, § 30, ECHR 2003-III), the Court considers that it can answer in the negative, because the appropriate procedural guarantees in question here (paragraph 65 above) are not limited to the granting of legal assistance.

70. In this context, it must be recalled that, in many cases, the fact that an individual must be placed under guardianship because he does not have the capacity to administer his affairs – as in the present case – does not 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 Juciuvienÿ,* cited above, § 30 and *AN,* cited above, § 90).

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, failing whereby 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 was fully aware of the request for a declaration of incapacity submitted by the public prosecutor's office (compare with Chtoukatourov, cited above, § 69) as well *as* a sufficient capacity to present his 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, on June 15, 2009, the applicant informed the court that she wished to continue the procedure through her lawyer and, following the resignation of the latter, she often appeared herself at the consecutive hearings and heard what she said; 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 applicant's statements does not emerge from the documents which she placed in the file, she should be considered to have been sufficiently involved in the decision-making process in such a way as to allow him to defend his case, but also to allow the court to form its own opinion on his mental capacities, as required by article 409 of the CC (paragraph 41 above), the case law of the Court (see, *mutatis mutandis, Kovalev v. Russia,* no. 78145/01, §§ 35-37, May 10, 2007 – compare with

Chtoukaturov, cited above, §§ 72, 73 and 91, and *AN,* cited above, § 120) and Principle 13 (paragraph 47 above).

73. Furthermore, 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 of its own motion. 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 of 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 no indication that she personally challenged the judge who initially sat or her replacement (paragraph 28 above) nor took 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, ECHR 2000-XII, and *Pabla Ky v. Finland,* o 47221/99, § 30, ECHR 2004-V). However, the fact that the n 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 , o 63151/00 , § 48, May 19, 2005), with the understanding that bias claims should not be likely to paralyze n the legal system of a respondent state and that in small local jurisdictions, such as Yenipazar, the administration 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,* o 63246/10 , § 63, 9 January 2018, and *Koulias v. Cyprus,* no. 48781/12, § 62,

n

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 investigation.

guardianship proceedings on 10 April 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 14 August 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 below). 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 follow 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 substantiating 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 a year before the cassation judgment, must therefore be considered “recent” (compare with *HF,* cited above, §§ 41 and 42, *Lashin,* cited above, §§ 83 to 86, *Nikolyan v. Armenia,* o 74438/14, n § 124, October 3, 2019) and probative in the sense of the Court's case-law and Principle 12 (paragraph 47 above).

79. Furthermore, this procedure has had 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,* 26 August 1997, § 54, *Reports of judgments and decisions* 1997-IV). Certainly, this appeal was rejected, but the applicant did not complain about it before the Court.

80. In view of the above, the Türkiye judicial mechanism must be considered 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; compare, *HF,* cited above, § 44).

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, *Chtoukaturov,* 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.- MV v. Finland,* 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). It is also the growing importance given today to the granting of optimal legal autonomy to people suffering from mental disorders both through national laws and at European level.

that the international instruments for the protection of these persons, including the aforementioned Recommendation No. R (99) 4 (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 applicant's observations 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).

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 assessment from Istanbul University Hospital, the said court ruled on the date of 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 invalidated 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 on 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 emphasizes the need for domestic authorities to strike a balance between respect for the dignity and self-determination of the individual, as well as the need to protect the individual and to safeguard his interests, particularly in circumstances where his abilities or his specific case place him in a vulnerable situation.

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 the responsibility of competent and impartial domestic courts, and the measure they took was consistent with the legitimate objective of protecting the applicant's property interests, 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 entail a violation of the 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.

Done in French, then communicated in writing on October 3, 2023, in application of article 77 §§ 2 and 3 of the regulation.

Hasan Bakÿrcÿ Clerk	Arnfinn Bårdsen 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.

A.R.B.
H.B.

OPINION CONCORDANTE DU JUGE BÅRDSEN

88. I agree with the conclusion of my colleagues that there has been no violation of the Convention in the present case. I came 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, with regard to access to legal assistance in such a context, Article 8 must be interpreted and applied in the light of the principles developed in the field 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 for my part would like to reinforce the following six elements.

90. Firstly, I emphasize that persons affected by guardianship proceedings must generally be considered vulnerable.
Special procedural safeguards 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 established that the applicant suffered from a serious mental illness which had direct consequences on her ability to make informed decisions on her own behalf.

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 dealing 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 could not afford the cost of legal assistance herself. If, initially, a lawyer had been appointed to assist the applicant, it was precisely because it was considered necessary to grant her legal aid.

93. Fourth, 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 believed to suffer from very serious mental disorders, including paranoia. It is precisely for these reasons that the assistance of a lawyer would have been beneficial to him.

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 foregoing considerations, the court would have

had solid reasons to examine ex officio whether it was necessary to appoint another lawyer. However, there is no record of such an examination.

95. Sixth, once we recall 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 that 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 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 breach in the protection of the applicant's private life as guaranteed by Article 8 of the Convention.