SECOND SECTION CASE A.A.K. v. TÜRKÍYE (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 impeding her ability to act • Existence of effective safeguards in the internal procedure to prevent abuses by ensuring that the applicant's rights and interests are taken into account • Participation of the complainant in the decision-making process at all stages of the procedure • Judicial mechanism having proceeded with the necessary fairness and diligence and having gathered sufficient elements to assess the applicant's abilities and to prevent possible injustices • Limitation of the measure in time and in its object • Possibility for periodic review for the purpose of lifting the guardianship measure • Action lifted by a court in accordance with the conclusions of a new psychiatric expert STRASBOURG 3 October 2023 This judgment In accordance with the conditions laid down in Article 44 § 2 of the Convention, it may be reworked in form.JUDGMENT A.A.K. v. TÜRKIYE 1In the case of A. A.K, v.Türkiye, The European Court of Human Rights (second section), sitting in a chamber composed of: Arnfinn Bårdsen, President, Jovan Ilievski, Egidijus K■ris, Saadet Yüksel, Lorraine Schembri Orland, Diana Sârcu, Davor Deren■inovi■, Judges, and Hasan Bak■rc■, Section Registrar, Having regard to: the application (No. 56578/11) against the Republic of Türkiya, of which a national of that State, Mrs A.a.K (the applicant) ("the applicant") referred 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 the knowledge of the Turkish Government ("the Government") the application, the observations of the parties, After having deliberate it in the Chamber of the Council on 5 September 2023, rendered the case before the court under appeal, rendered a judgment on the following: 2. The complainant was born in 1955 and resides in Yenipazar, Ayd■n. She was represented by S. Cengiz, a lawyer in Izmir. 3. The Government was represented, by her 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 complainant, a professional architect and private lecturer, was examined at the Forensic Institute for the purpose of establishing her psychiatric picture. A neurotic disorder accompanied by a mild schizoid condition was diagnosed.JUDGMENT A.A.K. v. TÜRKIYE 25. On 13 October 2004, it was reviewed by the doctors of the Forensic Institute. According to the report rendered accordingly, she suffered from an ordinary schizophrenia. 6. In December 2007, one of her students in private school informed the applicant that the teacher N.E. 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 N.S. had tried to speak to her, she exclaimed: "Species of indignity, why have you stolen the questions (...), I will reveal all your scams". 7. On 14 May 2008, a public action was brought by the Yenipazar prosecutor ("the prosecutor") against the complainant for insulting an official, namely, N. E. In her submission of 27 May 2008, filed during her trial, the applicant accused the Registrar H.C. of having been recruited by illegal means. On 6 November 2008, the Yenipazar District Court ("the court") sentenced the complainant to 10 months' suspended imprisonment. 9. On 7 July 2008, the prosecutor again brought the complainant before the court for insulting a State official, H.C. On 27 November 2008, she was also sentenced to two months' and fifteen days' suspended prison terms. 10. On 26 December 2008, the public prosecutor appealed the latter judgement, considering that the behaviour as well as the confused statements and writings of the complainant would have required a preliminary assessment of her mental capacity. 11. On 11 February 2009, the N.E. teacher was given a reprimand following a disciplinary procedure to obstruct the fairness of a public competition. II. THE JUDICIAL IMPLEMENTATION OF THE REQUEST 12. On 4 May 2009, the prosecutor requested a copy of the files of the criminal cases involving the complainant. After examination, on 12 May 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 13 May 2009. The judge decided on the applicant's medical examination at the university hospital of Adnan Menders ("the hospital") and the establishment of a list of persons.JUDGMENT A.A.K. v. TÜRKIYE 3 qualified to be her legal guardian and an inventory of her 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 complainant applied in writing to the bar of Ayd■n for the appointment of a lawyer appointed by the court as legal aid. 15. The court held its first hearing on 4 June 2009. It became clear that the complainant was opposed to her medical

examination at the hospital. The judge ordered the local security management to carry out this measure. 16. By a decision of 11 June 2009, the bar association of Ayt■n dismissed the applicant's request for legal assistance on the ground that she had a monthly income of between 600 and 1,000 Turkish pounds, which was considered sufficient to appoint counsel. 17. On 10 June 2009, it was informed that the guardian most able to protect the applicant's interests would be H.K, namely her husband. 18. L 20. The second hearing was held on 16 July 2009, in the presence of the complainant, who informed the court that a lawyer from the Ayd■n Bar would represent her and that she had passed the required medical examination. The court noted that the medical report was being made public. 21. On 14 August 2009, the hospital health board issued its psychiatric assessment report, after examining the complainant: it stated that she was suffering from "paranoid personality disorders" and, although she was no longer in a position to assess the reality of the events, she strongly denied her mental condition. According to the doctors, this justified her placement under guardianship; it was possible that the applicant would heal her of that condition. 22. On 27 August 2009, Mr. M.A. announced his resignation from the Ayd■n Bar, arguing that he strongly disagreed with the applicant, who had required her to challenge the court judge on the grounds of partiality, on the basis of purely personal grounds, without any objectivity, i.e. contrary to the law. 23. It appears from the case file that on 19 September 2009, the applicant was subjected to further tests and psychological interview, it seems, at the service of the Court of First Instance, with a view to ensuring that the applicant's medical treatment was properly treated and that she had refused the treatment provided for that purpose.JUDGMENT A.A.K. v. TÜRKIYE 4Psychiatry of the Faculty of Forensic Medicine of Istanbul University Hospital. 24. At the hearing on 17 September 2009, Mr. M. A. stated that she had been removed from office (para. 22 above) and that the applicant had to be informed thereof. The Court read a telecopied memorandum sent by the applicant. 25. By a decision of 24 September 2009, the Bar of Ayd■n considered the excuse of Mr. MA and then cancelled the legal aid granted to the complainant. 26. At the following hearing on 1 October 2009, the applicant explained that she requested the bar of Istanbul to appoint a new counsel, as well as to request the University Hospital of Istanbul for further expertise (para.23 above). 27. On 20 October 2009, Ayd■N's Bar informed the Court that the legal assistance granted to her had been revoked and that no other counsel would be assigned ex officio. 28. At the time of the hearing of 22 October 2009, at which the Court gave notice that the lawyer had been dismissed. 30. On 23 December 2009, the complainant was taken to the Forensic Institute and examined by the Council of Specialists No. 4, under consultation number 2009/605. Psychopsycho, as a result of the change of the judge. The complainant was again heard. She challenged the expert report of 14 August 2009 (para. 21 above) and recalled that she had already addressed herself to Istanbul University Hospital for a new assessment (para 26 above). The Court appointed the complainant's husband to appear and, welcoming the opposition she had raised against the first expert's opinion, decided to apply to the Medical Legal Institute for a determination as to whether the complainant still suffered from problems justifying his guardianship. 31. On 21 January 2010, the Court, with the consent of the applicant, decided to wait until the report of the Forensic Institute was finalized. 32. This report was placed on the file on 29 January 2010. Noting the complainant's psychiatric history (paragraphs 4 and 5 above) and reconsidering the new elements of the file, the Medical Forensic Institute confirmed that the applicant had "paranoid disorders" and thus had no capacity to act, it was appropriate to appoint a guardian.JUDGMENT A.A.K. v. TÜRKIYE 5L■Institut médicolegale specified that these disorders were of a level and nature that would remove the freedom to discern and act accordingly, as well as the ability to analyse events in order to draw sound conclusions. Therefore, the applicant was not able to identify and protect her own interests or to resist the manipulative influences of others; in short, she was unable to engage in anything independently and freely. 33. On 2 March 2010, H.K, supported by the applicant, contested this second report and requested its revision by the Plenary of the Forensic Institute of Istanbul. The court dismissed this request, on the ground that the report criticized presented no contradiction and was therefore sufficient to establish a judgment. By a judgment delivered on the same day, the complainant was placed under the supervision of her husband H. K. The latter had to discharge this duty for an initial period of two years, which could be extended. 34. On 25 March 2010, the complainant provided herself with cassation, including the exclusion of a lawyer in the proceedings, the biased attitude of the judge of the court whom she had sought in vain to challenge and the

non-substantial nature of the report of the forensic institute established on her behalf (paragraphs 30 and 32 above). By a judgment of 6 December 2010, the Court of Cassation dismissed the complainant, finding the judgment under appeal to be in conformity with the law and procedure. The judgment was notified to the guardian H.K. on 14 January 2011. 35. The Court of Appeal dismissed the author's application for the same period of time, if a request to that effect had been lodged with the court. The proceedings revealed that the measure was essentially aimed at the management of the applicant's assets, that H. K. had been ordered to report on an annual basis on the administration of the inventory of the property on file and that the land management and the banks had been prohibited from concluding with the person concerned any act without the court's consent. By a decision of 14 March 2011, the Court of Cassation dismissed this appeal, on the ground that this remedy was closed against the judgments handed down in the guardianship cases. III. THE APPLICATION FOR MAINTENANCE OF THE TUTELLE MEASUREMENT 36. On 9 July 2014, approximately four years and four months later, the H.K. guardian applied to the Nazilli court for the lifting of the guardianship measure. Recalling that the hospital had previously specified that a re-establishment of his wife was possible under appropriate treatment (para. 21 above), he argued that the applicant no longer showed any frank symptoms of illness. Therefore, H. K. requested that two university hospitals be entrusted with a new psychiatric expertise.JUDGMENT A.A.K. v. TÜRKIYE 637. On 11 July 2014, the Court granted the application and ordered the applicant to be examined by the medical services of the University Hospital of Istanbul, as well as by those of the Dokuz Eylül University Hospital in Dokozizmir. 38. The first hospital rendered its report circumstantiated on 27 February 2015. Convinced that the applicant's "obsessive-compulsive/narcissic" personality no longer reached a threshold sufficiently serious to compromise her mental health, the doctors concluded that there was no longer a need to keep the person concerned under guardianship. 39. By a judgment of 19 March 2015, the Court upheld this conclusion and lifted the measure under appeal. THE LEGAL FRAMEWORK AND INTERNAL PERTINENT PRACTICE I. THE SUBSTITUTION 40. Article 405 §§ 1 and 2 of Civil Code No. 4721 ("CC") reads as follows: "1. Article 409 of the CC provides, for its part, that a decision may be taken on an application for guardianship on the grounds of mental illness or insufficiency of mental faculties only on the basis of a medical report. 43. According to article 382 of the Code of Civil Procedure No. 6100, which was promulgated on 12 January 2011, matters relating to guardianship are dealt with in the non-controversial procedure. It is a simplified and inquisitorial procedure, in which the judge is responsible for administering the evidence ex officio and conducting all the necessary investigations on his own account before the decision is taken. The same applied exactly before the entry into force of the code, but on the basis of the provisions stipulated in other laws, since the old code did not expressly regulate non-contributory procedures.JUDGMENT A.A.K. v. TÜRKIYE 744. Article 36 of the Constitution enshrines the right of any person, claimant or defendant, to use all legitimate means and means to defend his case, to defend him and to have a fair trial before the courts. II. THE COMMISSION D-OFFICE D-UN AVOCAT 45. Apart from legal aid which seeks to exempt legal costs under the Code of Civil Procedure and whose award falls within the jurisdiction of the courts, the assignment of a lawyer appointed by the court under legal aid is governed by Law No. 1136 on the profession of lawyer, as amended by Law no. 4667 of 2 May 2001 and by Regulation No. 25418 of 30 March 2004. (Article 178) If the application is granted, the office shall appoint a lawyer appointed by the board of directors of the bar, who shall carry out all the duties of the profession. If the lawyer appointed of his/her own motion requested to be excused from his/ her duties, he/she shall pay to the bar an amount equivalent to the fees provided for in the latter (Article 179), unless the resignation is justified. III. THE TEXTS OF THE COUNCIL OF EUROPE 46. Recommendation No. R(99)4 adopted on 23 February 1999 by the Committee of Ministers to the Member States on the principles concerning the legal protection of incapable adults ("Principles"), provides in Part II: "Printique 1 – Respect for human rights With regard to the protection of incompetent adults, the fundamental principle underlying those laid down in this text shall be respect for: 2. Appropriate procedural safeguards should be provided for the protection of the human rights of the person concerned and for the prevention of possible abuses.JUDGMENT A.A.K. v. TÜRKIYE 8Principle 8 – Pre-eminence of the interests and well-being of the person concerned 1. When introducing or implementing a measure of protection of an incapable major, the interests or well- being of that person must be taken into account in a pre-ecular manner. 2.

This principle implies, inter alia, that the choice of a person to represent or assist the incapable major must be governed first and foremost by the ability of that individual to protect and promote the interest and welfare of the major concerned. 3. This principle also implies that the assets of the incapable adult must be managed and used for his or her benefit and to ensure his orher well-Being. Principle 9 – Respect for the wishes and feelings of the individual concerned 1. In the establishment or implementation of a measure to protect the incapable Major, it is appropriate, to the extent possible, to seek, take into account and duly respect the wishes of the past and present, and the sentiments of the persons concerned. 2. This principle implies in particular that the wishes of the adult concerned concerning the choice of a person to represent or assist him must be taken into account and, to the extent possible, duly respected. 3. It also implies that a person representing or assisting an incapable adult must provide him or her with adequate information whenever possible and appropriate, in particular with regard to any important decision affecting the adult, so that the adult may express his or her opinion. "47. With regard to the procedural regime relating thereto, the recommendation states: "Principle 12 – Investigation and evaluation 1. Appropriate procedures should be laid down for the investigation and evaluation of the adults' personal faculties. 2. No protective measures having the effect of restricting the legal capacity of an incapable major should be taken unless the person who takes the measure has seen the person concerned or has not been granted protection. The report should be written or recorded in writing. Principle 13 – Right to be heard personally The person concerned should have the right to be personally heard in any proceedings which may affect his or her legal capacity. Principle 14 – Duration, review and appeal 1. Protection measures should, to the extent possible and indicated, be of a limited duration. Periodic reviews should be considered. (...) 3. Appropriate remedies should be provided."JUDGMENT A.A.K. v. TÜRKIYE 9EN LAW ON THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION A. Subject matter of the dispute and admissibility 48. The applicant, regretting that her legal incapacity had been pronounced without valid grounds and in the absence of the assistance of counsel, complained, inter alia, that the domestic courts had not taken the necessary steps to provide her with a lawyer who had been appointed ex officio and to reply to her challenges to the medical reports which had established her guardianship; in short, the Turkish judicial system had not 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 and a lack of awareness of her rights to protection of her privacy in violation of Article 8, two provisions which she invokes in isolation and combined with Article 13. 49. 50. In the present case, the difference between the aim of Article 6 § 1 and that pursued by the guarantees of Article 8 does not necessarily justify the examination of the facts under each of these two provisions (see, for example, Golder v. United Kingdom, 21 February 1975, §§ 41 to 45, Series A No. 75. Switzerland, No. 04, § 113, 22 June 2006, and Macready v. Czech Republic, Nos. 4824/06 and 15512/08, § 41, 22 April 2010), all the less so since in the present case the contested procedure was governed by the inquisitorial principle, according to which it is for the court to ex officio seek the truth (paragraph 43 above); the situation of the parties in proceedings based on the inquiring principle is different from those based on adversarial principle, on the understanding that in this case the active role of the judge is an element which could be used to compensate for a certain inequality of the party to the proceedings, so as to diminish the importance of a separate examination under Article 6 § 1.JUDGMENT A.A.K. v. TÜRKÍYE 1051. Master of the legal characterization of the facts of the case (see, Radomilja et al. v, Croatia [GC], Nos. 37685/10 and 22768/12, § 126, 20 March 2018, S.M. vs. Croatia [GC], no. 60561/14, § 243, 25 June 2020, and more recently, Telek et al v.Türkiye, No. 66763/17 and 2 others, § 76, 21 March 2023, and Calvi and C.G. v-Italy, No.46412/21, § 73, 6 July 2023), the Court therefore considers that, in the present case, the grievances raised under Articles 6 § 1 and/or 13 are absorbed by those arising from Article 8, under its procedural component (see for example, Kutzner v. Germany, No 46544/99, § 56 and 57, ECHR 2002 I, Diamante and Pelliccioni v. San Marino, No 32250/08, No.22850, no judicial proceedings, § 151, c. Italy, no 465454/99, paragraphs 56 and 57. The Court will therefore consider the present case in the light of Article 8 of the Convention, which reads as follows: "1. Every person has the right to respect for his private and family life (...). 2. There may be interference by a public authority in the exercise of this right only to the extent that such interference is provided for by law and that it constitutes a measure which, in a democratic

society, is necessary (...), public security, (...), the prevention of criminal offences, the protection of health or morals, or protection of the rights and freedoms of others." 52. In the absence of preliminary exceptions 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, moreover, it does not encounter any other ground of inadmissibility. Therefore, the court declares it admissible. 53. The applicant submits that she was simply subjected to a civil sanction as unfair as it was draconian, without being duly associated with the proceedings by the assistance of a lawyer, in disregard of the relevant jurisprudence of the Court (Jucius and Juciuvien■ v. Lithuania, No. 14414/03, 25 November 2008) and despite the seriousness of the issue for her. In short, the court did not take any measures to ensure her effective representation during this procedure, which ultimately led to the restriction of her capacity to act. 54. Furthermore, the applicant states that, even in the second proceedings leading to the lifting of the guardianship measure, the judge never assessed her need for legal assistance (Artico v. Italy, 13 May 1980, § 33,JUDGMENT A.A.K. v. TÜRKIYE 11Series A No 37, Granger v. United Kingdom, 28 March 1990, § 47, Series A No 174, and Timergaliyev v. Russia, No 40631/02, § 59, 14 October 2008). 55. Returning to the facts of the case, the applicant highlighted the following elements, in her view, crucial to assessing the fairness of the proceedings at issue: – Yenipazar, district where the court was sitting, is a small town, and the two judges and two prosecutors serving at the time were of connivance; – The action of guardianship had been brought by one of those prosecutors, annoyed by the number of complaints lodged by the applicant; – L'avocado committed by the bar of Ayd■n, of its own motion, has been resigned without reasonable cause; or, the said bar and the court accepted the resignation, without hearing the applicant or verifying the impact that this might have on the outcome of the trial; – the court has never considered, contrary to its new legal obligations, to the granting of a new legal aid, to be granted by the Court of a further 56. Beyond this procedural aspect, the complainant complains that she was declared incapable on the basis of insufficient reports which the doctors and the forensic institute had drawn up on the grounds of her distant medical history, without due consideration; in this regard, she martes that her objections against these reports have never been taken into account by the court. The complainant adds that the fact that she had been declared incapable following such proceedings on the ground of false allegations by a prosecutor destroyed her future, whereas she was an architect with a recognized university degree. She deduces from this that in no case could her guardianship be of any interest which could justify the disproportionate measure she had suffered during the period of her detention. 57. Moreover, the last expert report of the Istanbul University Hospital (para. 38 above) would have shown that the diagnosis underlying the declaration of incapacity was incorrect. In the complainant's view, if H.K., her husband and guardian, had not requested that the measure be lifted, she would have been sentenced to live in an inability to act, which would show that the national system does not offer protection to vulnerable persons. (b) The Government recalls from the outset that the procedure at issue was governed by the inquisitorial principle, according to which it was for the court to collect all the evidence of its own motion, which it did not fail to do.JUDGMENT A.A.K. v. TÜRKIYE 1259. With regard to the assignment of a lawyer appointed by the Court of First Instance, the Government points out that the applicant's application was initially accepted by the Bar, but that the Bar subsequently annulled its decision because of the unacceptable conduct of the person concerned. In any event, this decision would not have resulted in a significant disadvantage for the person in question. 60. Throughout the proceedings, the complainant was able to appear at the hearings, express herself, challenge the medical evidence concerning her, be heard by the judge and seek cassation. 61. In the light of these elements, the government considers that the complainant has been given all the necessary guarantees of an inquisitorial procedure and that, if she was finally placed under guardianship, this ruling was based on objective medical assessments and had without dispute a solid legal basis, namely Article 405 CC. 62. Finally, the Government recalls that the measure in question was indeed lifted by a new medical report of 27 February 2015, which shows that the regime in place in Türkiye is based on guarantees which are perfectly in line with the relevant principles laid down both by the Court and by the Committee of Ministers of the Council of Europe (para. (a) General principles and considerations 63. There is no dispute that the decision to place the applicant under guardianship constituted interference in the exercise of her right to privacy. This interference was provided for by law – Article 405 of the CC

(paragraph 40 above) – and it pursued a legitimate purpose, namely the protection of a person who was unable to provide himself for his interests because of a mental disorder. These points are not controversial (see Ümit Bilgiç v. Turkey, No. 22398/05, § 112, 3 September 2013). 64. As to the necessity of the interference in question in a democratic society, the Court recalls that for a question as complex as that of the Court of Justice,JUDGMENT A.A.K. v. TÜRKIYE 13the determination of the mental capacity 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 the deprivation of legal capacity, which undoubtedly constitutes a serious interference in the exercise by the person concerned of the right to respect for his or her privacy guaranteed by Article 8 of the Convention. Therefore, in cases where persons with mental disorders have been deprived of legal power, the Court attaches particular importance to the quality of the decision-making process. 65. While Article 8 does not contain any explicit procedural requirements, the court has defined the procedural requirements necessary for the respect of the rights resulting therefrom, which it often examines in conjunction with the principles established, inter alia, by Article 6, in the sense that the decision making process leading to the adoption of the 66. The extent of the discretion enjoyed by the authorities in this area will therefore depend on the quality of the decision-making process: if the procedure has been seriously deficient for any reason or for any other reason concluded, the proceedings have been concluded or otherwise concluded, and the measures of interference must be fair and capable of fully respecting the interests protected by this provision (see, for example, Jucius and Juciuvien■, cited above, § 30, Soares de Melo v. Portugal, No. 72850/14, § 65, 16 February 2016, and Mehmet Ulusoy et al. v. Turkey, No 54969/09, § 109, 25 June 2019). This requirement thus covers administrative and judicial proceedings, but also goes hand in hand with the broader objective of ensuring due respect for privacy, among other things, which lies at the heart of the present dispute (see among others, Golder, cited supra, § 36, McMichael v. United Kingdom, 24 February 1995, § 91, Series A No. 307-B, Bianchi, cited, § 112, and Tapia Gasca and D. v Spain, No 20272/06, § 111-113, 22 December 2009). (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. Russian Federation, No 33117/02, § §§ 79 and 80, 22 January 2013, Ivinovi■ v. Croatia, No 13006/13, §cf 36 and 37, 18 September 2014, and A.N., supra, § 116-118). of the partJUDGMENT A.A.K. v. TÜRKIYE 14applicant (paragraphs 53 to 57 above), that the proceedings in this case – which presented a very serious issue – were to be accompanied by appropriate procedural guarantees to protect the applicant's rights and to take into account her interests (see, for example, H.F. c. Slovakia, No. 54797/00, § 44, 8 November 2005). Under such guarantees, Article 8 may in fact require the authorities to provide the assistance of a lawyer when this proves indispensable for effective access to the judge (mutatis mutandis, Airey v. Ireland, 9 October 1979, § 26, Series A No. 32, and Romanov v. Russia, No 63993/00, paragraph 108, 20 October 2005), precisely taking into account the seriousness of the issue for the person concerned (P., C. and S. v, United Kingdom, No.56547/00, Para. 100, ECHR 2002-VI, Steel and Morris v. United Kingdom of Great Britain, No 68416/01, § 61, ECHR v. Ms. M.A. for the purpose of representing the applicant (paragraphs 19 and 20 above), she resigned on 27 August – without ever taking part in the proceedings – on the ground that the applicant had required her to challenge the judge of the court on unacceptable grounds (paragraph 22 and 25 above); therefore, there had been contact between the two protagonists (compare mutatis mutandis with Salontaji-Drobnjak, supra, § 127). Subsequently, the Ayd■n Bar indicated that no other lawyer was going to be appointed (paragraph 27 above) and the Istanbul Bar also seemed to have refused to comply with the applicant's request for legal assistance (paragraph 26 above). The Court also did not react ex officio, on the understanding that there was no record of any request for judicial assistance addressed directly to the judge. 69. As to whether the resignation of Ms. MA may constitute a particular circumstance which could be considered to be of a particular nature. 70. In this context, it must be recalled 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 unable to decide on his situation; in such cases, it is essential that the person concerned should not be able to take responsibility for the State under the

Convention (Tuzi■ski v. Poland (Dec.), No. 40140/98, 30 March 1999) and/or under Article 36 of the Constitution – as the applicant suggests (para. 55, in fine, above) – and if, therefore, the court – notified of the situation – should of its own motion replace that lawyer in order to ensure that the applicant is not deprived in practice of effective assistance (Bertuzzi v. France, No. 36378/97, § 30, ECHR 2003-III), the Court considers it possible to respond to it by the negative, because the appropriate procedural guarantees referred to here (paras. 65 above) do not mean he is incapable of deciding on his position; in these cases it is crucial that the individual should be placed in guardianship because it would not be capable of administering his affairs, as in this case – as it does not signifies that he/he is incapable to decide whether he/his/he/he was unable to take a decision on his/he The Court of First Instance held that the Court of Justice of the European Communities had jurisdiction to hear the case in person (see Jucius and Juciuvien■, cited above, § 30 and A.N., cited, § 90).JUDGMENT A.A.K. v. TÜRKIYE 15The Court must therefore determine whether, having regard to the particulars of the case and in particular to the gravity of the decisions to be taken, the applicant was sufficiently involved in the decision-making process, considered as a whole, to ensure the necessary protection of her interests, failing which there would have been a breach of her privacy, since interference cannot be regarded as "necessary" within the meaning of Article 8 (see, ibidem, and W. c. United Kingdom, 8 July 1987, § 64, Series A No. 121). ii. As regards the applicant's participation in the decisionmaking process 71. Returning to the facts of the matter, the Court observes that, notwithstanding her psychic picture, the appellant was fully aware of the request for declaration of incapacity made by the prosecution (comparing with Chtoukatourov, cited above, § 69) and of a sufficient capacity to present her case (McVicar v. UnitedKingdom, No. 46311/99, §§ 48-62, ECHR 2002-III, and Steel and Morris, cited, § 61). In the course of the ensuing hearings, and in which the court benefited from a direct relationship with the person concerned (comparing with Chtoukatourov, cited above, § 91, and A.N., cited earlier, § 120). Indeed, as from 14 May 2009, the date of the preparatory hearing, on 15 June 2009, the complainant informed the court that she wished to continue the proceedings through her lawyer and, following her resignation, she often appeared at the consecutive hearings and heard in her own words; on 16 July 2009, she explained on the examination she had passed at the university hospital of Adnan Menders; on 17 September 2009, she sent an e-mail submission, the reading of which was given; on 1 October 2009, she informed the tribunal of her request for review at Istanbul University Hospital; on 22 October 2009, it was heard by the new judge and challenged the expert report of 14 August 2009 requesting her transfer to the medical institute. On 24 November 2009, the applicant appeared with her husband H.K.; on 21 January 2010, she was rehearsed by the judge; on 2 March 2010, she supported the challenge brought by her husband against the report of the Forensic Institute; on2 March 2010, the previous opposition was rejected and the proceedings closed in her presence (compare, ibidem). 72. Thus, with regard to the first instance procedure, even if the exact content of all the statements made by the applicant does not appear in the documents which she placed on the file, the latter should pass for having been sufficiently involved in the decision-making process to enable her to defend her case, but also to enable the court to form its own opinion on her 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, 10 May 2007 – compare withJUDGMENT A.A.K. v. TÜRKIYE 16Chtoukatourov, cited above, §§ 72, 73 and 91, and A.N., cited supra, § 120) and Principle 13 (paragraph 47 above). 73. It should also be pointed out that, in the present case, the proceedings at issue were governed by the inquisitorial principle that it was for 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 or not the parties proposed them (for a comparable situation, see, H.F., supra, paragraph 38). iii. As to the fairness of the decision-making process 74. Before considering the examination undertaken by the court, it is appropriate to answer first the arguments which the applicant derives from her lack of impartiality and the connivenence which would have united the four judges of the small agglomeration of Yenipazar, including the prosecutor who would have requested her placement under guardianship, because of the fact that: 75. First, the Court observes that, in the present case, Mr. M.A. did not submit to the court the applicant's application for challenge (paragraph 22 above) and there is no indication that the applicant personally challenged the judge who had originally served or replaced him (paragraph 28 above) or took any action against the prosecutor whom

she accused of having applied for guardianship by animosity. 76. Moreover, it should be recalled that "the personal impartiality of a magistrate is presumed until the proof to the contrary" (see, for example, Micallef v. Malta [GC], No. 17056/06, § 94, ECHR 2009), the determining factor of whether the appellant's apprehensions can be regarded as objectively justified (ibidem, § 96, Wetttstein v. Switzerland, No 33958/96, § 44, ECHR 2000-XII, and Pabla Ky v. Finland, § 30 or 7221/99). However, the Court recalls that, if the applicant's first psychiatric diagnoses date back to 2002 and 2004 (paragraphs 5 and 6 above), further examinations took place after the opening of the first psychiatric diagnosis in 2002 and 2004, (paragraph 5 and 6, above), new examinations were made after the beginning of the initial diagnosis of his psychiatric condition (see, for example, Steck-Risch et al. v. Liechtenstein, No. 63151/00, § 48, 19 May 2005), on the understanding that doubts as to their impartiality should not be objectively justified (see for example Steck Risch and others v.JUDGMENT A.A.K. v. TÜRKIYE 17procedure of guardianship on 10 April 2009 (para. 14 above) and the court had decided on the basis of those examinations, the applicant was fully aware of the subject matter (comparing Chtoukatourov, supra, para. 69). In fact, on 14 August 2009, the health board of the university hospital of Adnan Menders concluded that the "paranoid personality disorders" observed in the applicant were such as to justify her placement under guardianship (paras. 21 above); if the applicant claims not to have been duly examined on that occasion (paragraph 56 in limine above), this is contradicted by the content of that report; in any event, after further testing and psychological interviewing at the University Hospital of Istanbul (paragraph 23 above), the applicant challenged the results of the said report and, contrary to what it suggests (para. 56 in fine above) the court allowed this request (para 28 above), On 23 December 2009, a counter-expertise was thus carried out by the Council of Specialists No. 4 at the Forensic Institute (paragraph 30 above), the neutrality of which was never called into question (Lashin, cited above, § 87), and the conclusions of which were sufficiently clear on 29 January 2010 (paragraph 32 above) as to the possible consequences of the applicant's disturbances on her material interests (comparing, Chtoukatourov, cited earlier, § 93), so that the rejection of the second opposition against the latter report (paragraph 33 above) cannot give rise to any consequence. Thus, the Court cannot follow the applicant party when it accuses the court of failing to sit its judgment on "in-depth psychiatric examinations" (paragraph 55 in fine above), without in any way substantiating the reasons therefor. 78. The last medical examination referred to above, carried out on 23 December 2009 by qualified experts, that is three months and one week. Thus, before the adoption of the judgment of first instance and less than one year before the judgment in cassation, must be considered "recent" (comparing with H.F., supra, §§ 41 and 42, Lashin, supra), §§ 83 to 86, Nikolyan v. Armenia, No 74438/14, § 124, 3 October 2019) and proving within the meaning of the case-law of the Court of Cassation and Principle 12 (para. 47 above). 79. Moreover, this procedure has had two stages of jurisdiction (com paring with A.N., cited above, § 120); the applicant herself has been brought before the Courts of Cassation, the role of which could be decisive in order to erase an initial violation of the Convention (De Haan v. Netherlands, 26 August 1997, § 54, Reports of Judgments and Decisions 1997-IV). Although this appeal was rejected, the applicant did not complain to the Court at all. 80. In the light of the foregoing, the judicial mechanism of Türkiye must have passed for having proceeded with the necessary fairness and diligence, as well as to have gathered the elements sufficiently to assess them. 80 (see Principle 7 – paragraph 46 above; compare, H.F., cited above, § 44).JUDGMENT A.A.K. v. TÜRKIYE 18iv. In this respect, it is important to point out that, according to 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 challenged by the applicant herself (comparing, for example, Chtoukatourov, supra, §§ 90 and 94, Stanev, supra (§ 239 and 240, Lashin, supra), § 90, A.N., supra § 111, 123 and 126, and Nikolyan, supra). In the present case, the contested measure concerned the management of the applicant's assets by her husband and guardian H.K, the designation of which was undoubtedly appropriate for the applicant (see Principles 8 and 9 – paragraph 46 above), on the basis of an inventory of the assets, and it was accompanied by a prohibition to conclude land and banking acts without the consent of the court. 82. Moreover, it should be noted that this measure had been imposed for an initial period of two years, which could be extended for the same period; it follows that, in the present case, in accordance with domestic law (paragraph 42 above), the applicant, like her husband, enjoyed a possibility of periodic review for two years for the purpose of lifting the guardianship

measure (see Principle 14 – Ümit Bilgiç, cited above, § 114; compare, Drobnjak, cited supra, § 134, and Stanev, cited earlier, § 239). 83. This is a crucial guarantee: the right to request a court to review a declaration of incapacity proves to be one of the most important for the individual concerned, since, once initiated, such a procedure is decisive for his rights and obligations under the law of Finland (see A.-M.V. v. Finland, para. (Stanev, cited above, § 233, and Lashin, cited earlier, § 79 to 81) and, more specifically, for the exercise of all the rights and freedoms affected by the declaration of incapacity; this right constitutes one of the procedural rights essential for the protection of persons declared partially incapable, such as the applicant (Sganev, supra, § 241). It is also due to the increasing importance accorded today to the granting of optimum legal autonomy to persons with mental disorders both by national rights at European level and by the international instruments of protection of such persons, including the above-mentioned Recommendation No. R (99) 4 (paragraphs 46 and 47 above) (see, inter alia, Matter v. Slovakia, No. 31534/96, §§ 51 and 68, 5 July 1999, Stanev, referred to above, paras. 243 to 245, and A.N., paragraph 126). 84. In the present case, the file and the applicant's observations do not contain an exact indication as to why no revision has been made. At the end of the initial two-year period, since the applicant was still under guardianship in March 2014 (paragraph 36 above).JUDGMENT A.A.K. v. TÜRKIYE 19In any event, on 9 July 2014, H.K, filed such an application before the Nazilli Court of Appeal and, in accordance with the findings of a new psychiatric examination at Istanbul University Hospital, the said Court ruled on 19 March 2015 that the contested guardianship measure had been lifted (paragraphs 36 to 39 and 42 above). 85. Contrary to the applicant's suggestion (paragraph 57 above), the latter medical findings did not invalidate the findings at the origin of the guardianship, since no expert opinion had so far made any indication of an incurable clinical picture; and finally, there was no need to speculate on what would have happened if H. K. did not take this step, since the law allowed the applicant to do so itself (paragraph 42 in fine above). 86. In the light of the foregoing, the Court stresses the need for internal authorities to strike a balance between compliance with the requirements of the Court of Justice. In this context, the Court considers that a fair balance has been found in the present case: there were effective safeguards in the domestic procedure to prevent abuses – as required by the Convention and the relevant norms of international law – by ensuring that the rights and interests of the applicant are taken into account. The latter was involved in all stages of the proceedings: it was heard in person and was able to make its arguments known. Interference was a matter for competent and impartial domestic courts, and the measure taken was consistent with the legitimate objective of protecting the applicant's economic interests, and in a broader sense of its well-being; given its time and purpose limitations and the extent to which it was intended to protect the individual's dignity and self-determination, as well as the need to protect it and safeguard its interests, particularly in circumstances in which its specific capacity or case places it in a vulnerable situation. v. Conclusion 87. Accordingly, the Court held that, in the present case, the partial incapacity initially pronounced in the applicant's head could be considered necessary in a democratic society and that, as a result, it did not lead to a violation of article 8 of the Convention.JUDGMENT A.A.K. v. TÜRKIYE 20Done in French, then communicated in writing on 3 October 2023, pursuant to Article 77 §§ 2 and 3 of the Rules of Procedure. Hasan Bak■rc■Arnfinn Bårdsen Registrar President This judgment is appended, in accordance with Articles 45 § 2 of the Convention and 74 § 2 thereof, the statement of the separate opinion of Judge A. Bårdsen. A.R.B. H.B.JUDGMENT A.A.K. v. TÜRKIYE – SEPARATED OPINION 21OPINION CONCORDANT OF BÅRDSEN, J. 88. I agree with the conclusion of my colleagues that there has been no violation of the Convention in this case. I have agreed with this conclusion with a little hesitation, and I would like to state the reasons for my questions. 89. Although the Court has chosen to examine the case solely in the light of Article 8 of the convention, Article 6 § 1 is not without scope in the present case. Indeed, with regard to access to legal aid in this context, Article 8 must be interpreted and applied in light of the principles developed in the field of Article 6§ 1. This perspective is not present in the judgment, and since the assistance of a lawyer may be required even in the context of an inquisitorial procedure, I would for my part like to reinforce the following six elements. 90. First, I stress that the persons concerned by a procedure doiv may be involved in the proceedings. 91. Second, I would point out that in guardianship proceedings, it is often necessary – and this was the case in this case – to examine not only legal issues, but also to make a thorough assessment of the mental health of the persons concerned and their interactions with

others. 93. Fourthly, the fact that the designated lawyer had withdrawn because of "unacceptable conduct" on the part of the applicant cannot be held against the applicant. The conduct in question reflected a lack of confidence of the complainant in the judge of the administrative tribunal. As has already been pointed out, the applicant was presumed to suffer from very serious mental disorders, particularly paranoia. It is precisely for these reasons that the assistance of a lawyer would have been beneficial to her. 94. Fifthly, in view of the situation in which the applicant had been before the administrative court when the appointed lawyer withdrew, and taking into account the circumstances of the case, that she had not been a guardian at the time of the facts. The Court of First Instance held that:95. Sixthly, since it is recalled once again that the applicant was not in a position, according to the Government, to take informed decisions on her own behalf, the fact that she had not asked the court to appoint a new lawyer is not relevant. Furthermore, although the applicant has denounced in her appeal the lack of access to a lawyer, the very brief decision of the Court of Cassation does not make any assessment on this question. 9. Despite the arguments I have made above, I voted in favour of a finding of non-violation of Article 8 in fact, I agree with the opinion of my colleagues that, having regard to all the facts of the case, in particular all the measures taken to safeguard the applicant's interests, he did not have a crucial breach in his case. the applicant's privacy as guaranteed by Article 8 of the Convention.