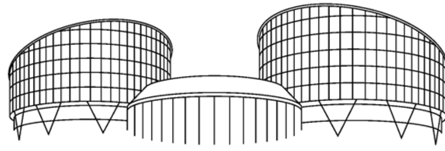

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NIKOLYAN v. ARMENIA

(Application no. 74438/14)

JUDGMENT

STRASBOURG

3 October 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Nikolyan v. Armenia,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 74438/14) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Gurgen Nikolyan ("the applicant"), on 13 November 2014.

2. The applicant was represented by Ms H. Harutyunyan and Ms A. Melkonyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia before the European Court of Human Rights.

3. The applicant alleged, in particular, that (1) he had been denied access to court in the determination of his divorce and eviction claim, and for restoration of his legal capacity, (2) the proceedings concerning deprivation of his legal capacity had not been fair and (3) his deprivation of legal capacity breached his right to private life.

4. On 17 November 2016 the complaints concerning the denial of access to court, the alleged lack of adversarial procedure and the applicant's deprivation of legal capacity were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Yerevan.

A. The applicant’s divorce and eviction claim and the proceedings concerning deprivation of his legal capacity

6. The applicant lived in a flat with his wife of 15 years and their son and the latter’s wife and child.

7. On 25 April 2012 the applicant instituted proceedings at the Shengavit District Court of Yerevan (“the District Court”) seeking to divorce his wife and evict her from his flat. The applicant submitted that their co-habitation had become unbearable, as in the past 12 years there had been conflicts in their relationship, as a result of which they had already *de facto* separated. The applicant submitted that the flat in question was not their common property and by law he was its sole owner.

8. On 4 July 2012 the applicant’s wife instituted “special” court proceedings (*հատուկ վարույթ*) under Article 168 of the Code of Civil Procedure (CCP), seeking to declare the applicant incapable. She submitted that the applicant had become unrecognisable: he constantly initiated arguments, made accusations and threatened her, other family members and in general people around him. He had recently threatened to take revenge and to throw all of them out onto the street. He had first applied to the police to have her and others’ registrations at that address cancelled and then lodged a claim to divorce and evict her which, she claimed, were signs of a mental disorder. The applicant’s wife explained that she had no choice but to apply to a court because the applicant’s behaviour posed a threat to the entire family, as his next step would be to evict the other family members and it was necessary to prevent that. Attached to her application was a statement signed by four of their neighbours, dated 28 June 2012, according to which the applicant had begun to behave strangely over the last few years, constantly seeking conflict with people around him and addressing absurd accusations at his wife and other family members. The neighbours added that they believed that the applicant was suffering from a mental disorder.

9. On the same date the District Court ordered the applicant’s examination by a panel of psychiatric experts, asking them to determine whether the applicant was able to understand the meaning of his actions and to control them. The District Court added that such examination was necessary because the evidence submitted by the applicant’s wife might be insufficient to grant her application.

10. On 25 September 2012 the panel of psychiatric experts issued their opinion after having examined the applicant and other evidence. The opinion, a two-page document, first summarised the statements made by his wife, neighbours and a local police officer, according to which in recent years the applicant had become suspicious, intolerant and argumentative, constantly seeking conflict with his wife and others around him, addressing absurd accusations at his wife, physically abusing her and accusing her of infidelity and of swindling him. It then analysed the applicant's behaviour during an interview conducted with him. Based on the above, the panel concluded that the applicant suffered from "delusional disorder", a mental illness whose symptoms had reached a degree which deprived the applicant of the ability to understand the meaning of his actions and to control them.

11. On 14 November 2012 the applicant's son also instituted "special" court proceedings under Article 168 of the CCP, seeking to declare the applicant incapable on the ground that he was suffering from a mental disorder and required special care.

12. On 22 November 2012 the District Court decided to stay the divorce and eviction proceedings until final resolution of the two applications that had been initiated in respect of the applicant after he had filed his divorce and eviction claim.

13. On 13 December 2012 the District Court examined the application lodged by the applicant's wife in the applicant's presence and decided to reject it, noting the conflict of interest between the applicant and his wife and finding that the expert opinion of 25 September 2012 was necessary, but insufficient evidence for depriving the applicant of his legal capacity. The District Court concluded that the applicant's wife's application did not pursue a legitimate aim; hence depriving the applicant of his legal capacity in such circumstances would entail serious and irreversible consequences for him, making him a potential victim of a breach of the Convention.

14. On 9 January 2013 the applicant's wife lodged an appeal against that judgment.

15. On 8 February 2013 the District Court, in a different composition, granted the application lodged by the applicant's son and declared the applicant incapable. The District Court relied on the psychiatric expert opinion of 25 September 2012 and concluded that the applicant was unable to understand the meaning of his actions and to control them. The applicant was not notified of the application lodged by his son or of the hearing at the District Court.

16. No appeal was lodged against that judgment so it became final on 11 March 2013.

17. On 20 March 2013 the local body of guardianship and trusteeship appointed the applicant's son as his guardian on the basis of the judgment of 8 February 2013.

18. On 28 March 2013 the Civil Court of Appeal reversed the judgment of 13 December 2012 and remitted the case upon the applicant's wife's appeal. The Civil Court of Appeal noted that at the time when the District Court examined the applicant's wife's application the final judgment of 8 February 2013 declaring the applicant incapable had not existed. Therefore she had not been able to present that judgment, which was key evidence for the resolution of the case, to the District Court for reasons beyond her control. The Civil Court of Appeal concluded that this reason alone was sufficient to reverse the judgment of 13 December 2012.

19. On 31 May 2013 the applicant, having learned about the judgment of 8 February 2013, lodged an appeal against it on the ground that the District Court had declared him incapable without notifying him of the hearing.

20. On 11 July 2013 the Civil Court of Appeal reversed the judgment of 8 February 2013 and ordered a new examination on the ground that the applicant had not been notified of the hearing of the case concerning his legal capacity.

21. On 30 August 2013 the District Court decided to involve the applicant as a third party to the proceedings.

22. On 3 October 2013 the District Court held a preparatory hearing in the applicant's presence and decided to join the applications lodged by the applicant's wife and son and examine them together.

23. On 31 October 2013 the District Court held another preparatory hearing. According to the record of the hearing, a representative of the local body of guardianship and trusteeship, R.S., represented the applicant, who was absent from the hearing. It is not clear from the record whether any issues were discussed at this hearing

24. On 18 November 2013 the District Court held a trial hearing with the participation of the applicant, his wife and R.S. After R.S. endorsed the applications lodged by the applicant's wife and son relying on the psychiatric expert opinion of 25 September 2012, the presiding judge invited the applicant to state his position in that respect. The applicant denied that he was suffering from a serious mental disorder and argued that bribery was involved in the process of his psychiatric examination. He also stated that his relationship with his wife had been unbearable, since she had swindled him and frequently ridiculed him in front of others and that, as a result, he wanted to divorce her. The applicant also urged the judge to read "Article 48 of the European law" and "Article 32 of the Armenian law". The presiding judge asked the applicant's wife to explain the reasons why she sought to deprive the applicant of his legal capacity. The applicant's wife firstly confirmed that they had had a conflictual relationship over the past 12 years and one of the reasons for this was that the applicant was overly jealous and suspicious. In addition, she stated that the applicant had threatened to stab himself with a knife. She explained that when the

applicant filed the divorce and eviction claim, she had felt compelled to lodge an application seeking to declare him incapable.

25. On 29 November 2013, in the applicant's presence, the District Court granted the joint application of his wife and son and declared the applicant incapable on the basis of Article 31 of the Civil Code (CC). Relying on the psychiatric expert opinion of 25 September 2012, the District Court held that, as a result of his mental disorder, the applicant was unable to understand the meaning of his actions and to control them.

26. The applicant lodged an appeal in which he argued that it had not been established that he was unable to understand the meaning of his actions. The District Court's interpretation and application of Article 31 of the CC unduly restricted the scope of his civil rights. It was questionable whether the stated illness, namely "delusional disorder", in fact deprived him of the ability to understand the meaning of his actions, as the contested judgment did not state any example or situation in which his alleged incapability was displayed. In addition, the District Court had failed to order a new medical assessment of his mental health and relied on the outdated opinion of 25 September 2012. Relying on Article 8 of the Convention and the Court's judgment in the case of *Shtukaturov v. Russia* (no. 44009/05, ECHR 2008), the applicant argued that the failure of the domestic courts to scrutinise closely the degree of his illness was a breach of his right to private life. The applicant also submitted that the motivation of the applicant's wife to deprive him of legal capacity was to deprive him of his flat. Finally, the applicant also expressed discontent with regard to his procedural status of a "third party", as he could not be a mere "third party" in a case concerning deprivation of his legal capacity.

27. On 7 March 2014 the Civil Court of Appeal rejected the applicant's appeal. It found that the psychiatric expert opinion of 25 September 2012 was sufficient evidence to declare the applicant incapable. The Court of Appeal stated that there was no evidence to rebut the findings made in that expert opinion or to suggest that the applicant had recovered.

28. The applicant lodged an appeal on points of law.

29. On 10 April 2014 the applicant wrote to the local body of guardianship and trusteeship asking that his opinion be taken into account when appointing his guardian.

30. On 30 April 2014 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

31. On 19 June 2014 the applicant's son filed a request with the District Court seeking to withdraw the applicant's divorce and eviction claim on the grounds that the applicant had been declared incapable. He also informed the District Court that he had been appointed as the applicant's guardian by a decision of the local body of guardianship and trusteeship of 20 March 2013.

32. On 14 August 2014 the District Court decided to resume the divorce and eviction proceedings.

33. On 16 September 2014 the body of guardianship and trusteeship endorsed its decision of 20 March 2013 appointing the applicant's son as his guardian, relying this time on the judgment of 29 November 2013.

34. On 1 October 2014 the District Court granted the request of the applicant's son and terminated the divorce and eviction proceedings on the ground that the domestic law authorised a guardian to withdraw the claim of a person declared incapable, on the latter's behalf. It also stated that the applicant's son was appointed as guardian with the applicant's consent and at his wish.

B. Contestation of guardianship

35. On 19 February 2015 the applicant lodged an application with the Administrative Court seeking to quash the decision of the body of guardianship and trusteeship of 20 March 2013 and to appoint a new guardian.

36. On 25 February 2015 the Administrative Court declared the applicant's application inadmissible on the ground that the applicant had been declared incapable, as a result of which he lacked standing to lodge such a claim.

37. The applicant appealed against that decision.

38. On 16 April 2015 the Administrative Court of Appeal dismissed the applicant's appeal.

39. The applicant lodged an appeal on points of law.

40. On 28 September 2016 the Court of Cassation granted the applicant's appeal on points of law and quashed the decision of the Administrative Court of Appeal. The Court of Cassation reasoned its decision to admit the applicant's appeal for examination on the ground that it was necessary to clarify whether or not a person declared incapable had the right to contest the decision appointing his guardian. As regards the merits, the Court of Cassation took note of the applicant's submissions on conflict of interest and regular disputes between him and his son. It found that, notwithstanding the duty of the body of guardianship and trusteeship under Article 37 § 3 of the CC to hear the opinion of the applicant and consider his wish when appointing his guardian, it had apparently failed to do so, even though the applicant had requested a hearing. It concluded that, in such circumstances, requiring the applicant to seek judicial protection as regards the appointment of his guardian exclusively through his guardian was, at least, ineffective in practice. As a person affected by the decision on the appointment of his guardian, the applicant should have enjoyed the right to contest such decision before a court since the impossibility to do so would violate the applicant's right of access to court.

41. On 14 November 2016 the Administrative Court of Appeal quashed the decision of the Administrative Court of 25 February 2015 and remitted the case for new examination.

42. At the time of final exchange of observations between the parties, the proceedings in question were still pending before the Administrative Court and their outcome is unknown.

C. The applicant's attempts to restore his legal capacity

43. On 23 May 2014 the applicant filed a letter with the Minister of Health, seeking a new psychiatric examination to determine whether or not he was able to understand the meaning of his actions and control them, because almost two years had passed since the only psychiatric expert opinion of 25 September 2012.

44. On 2 June 2014 the Ministry of Health replied that it had no authority to order such an examination.

45. On 22 August 2014 the applicant applied to a psychiatric hospital seeking a psychiatric expert examination. The hospital apparently never responded to this request.

46. On the same date the applicant applied to the District Court, stating that his state of health required a review because almost two years had passed since the psychiatric expert opinion of 25 September 2012 which had been the sole ground for declaring him incapable, and requesting the court to assign a new psychiatric expert examination to determine whether or not his mental health allowed him to understand the meaning of his actions and to control them.

47. On 28 August 2014 the District Court replied to the applicant that, under Article 173 § 1 of the CCP, it was competent to declare a person who has recovered legally capable on the basis of a relevant psychiatric expert opinion, upon an application lodged by the guardian, a family member or the administration of a psychiatric institution. It had no authority to request a new psychiatric expert examination in view of the final judgment of 29 November 2013.

48. On 7 April 2015 the Constitutional Court, upon an application lodged by the Ombudsman, declared Article 173 § 1 of the CCP unconstitutional, in so far as it deprived persons seeking to restore their legal capacity of the possibility to avail themselves personally of the right to be heard by a court and to participate in the proceedings.

49. On 11 May 2015 the applicant, represented by lawyers, instituted proceedings in the District Court seeking to be declared legally capable. The District Court admitted the applicant's application and granted him procedural status as a third party.

50. On 29 June 2015 the District Court ordered the applicant's examination by a psychiatric expert panel in order to determine whether he was able to understand the meaning of his actions or to control them.

51. On 29 October 2015 the panel concluded that the applicant could be suffering from "delusional disorder", "jealousy delirium" and "lightly expressed age-related personality change". It stated that an inpatient examination was necessary, as it was unable to make a precise diagnosis of the applicant's condition and answer the District Court's questions.

52. The applicant's lawyer lodged a request with the District Court seeking an outpatient psychiatric examination, arguing that an inpatient examination would adversely affect the applicant's mental and physical health.

53. On 1 August 2016 the District Court ordered the applicant's outpatient psychiatric examination and asked the examination panel to answer the following questions:

> "Whether or not [the applicant] suffers from any kind of mental disorder and whether or not he is able to understand the meaning of his actions and to control them".

54. On 6 December 2016 the psychiatric expert panel, having examined the applicant, delivered its report as follows:

> "[the applicant] suffers from a mental disorder, i.e. "intellectual retardation of mixed origin", which is expressed in grave disturbance of memory and intellect, disturbances of the functions of thought, analysis, cognition, speech, perception and production. The abovementioned [conditions] reached a degree which deprived [the applicant] of the ability to understand the meaning of his actions or to control them. Hence, under the current conditions, it is advised to deprive [the applicant] of his legal capacity".

55. At the time of exchange of observations between the parties, the proceedings were still pending before the domestic courts. The outcome of those proceedings is unknown.

II. RELEVANT DOMESTIC LAW

A. The Civil Code (1999)

56. Article 31 provides that a person who, as a result of a mental disorder, is unable to understand the meaning of his or her actions or to control them may be declared incapable by a court, in accordance with the procedure prescribed by the CCP. Transactions on behalf of a person declared incapable are handled by his or her guardian. A court restores a person's legal capacity, if the grounds on the basis of which he was declared incapable cease to exist. Guardianship is terminated on the basis of such judgment.

57. Article 32 provides that legal capacity of a person may be restricted by a court, in accordance with the procedure prescribed by the CCP, if he or she puts his family into a difficult financial situation as a result of alcohol or drug abuse or gambling. Trusteeship is assigned in respect of such persons.

58. Article 33 §§ 1 and 2 provides that guardianship and trusteeship are designated for the purpose of protecting the rights and interests of incapable persons or those whose legal capacity has been restricted. Guardians and trustees defend the rights and interests of their wards in their relations with everyone, including before the courts, without a special authorisation.

59. Article 37 §§ 1 and 3 provides that a guardian is appointed by the local body of guardianship and trusteeship. The appointment of a guardian may be contested before a court by persons concerned. When appointing a guardian, the nature of the relationship between the potential guardian and the ward and, if possible, the wishes of the ward are taken into account, among other things.

B. Code of Civil Procedure (1999-2018)

1. Procedure for declaring a person incapable

60. Section 2 of Part 3 of the Code, entitled "Special proceedings", includes Chapter 29 (Articles 168-173) which regulates the procedure for declaring a person incapable.

61. Article 168 § 1 provides that an application for a person to be declared incapable may be lodged by his or her family members, a body of guardianship and trusteeship or the administration of a psychiatric institution.

62. Article 169 § 1 provides that an application for a person to be declared incapable must indicate the circumstances demonstrating a person's mental disorder and as a result of which he or she is unable to understand the meaning of his or her actions or to control them.

63. Article 170 provides that, if there is a reasonable suspicion that a person suffers from a mental disorder, the judge orders a psychiatric expert examination to determine the state of mental health of the person in question.

64. Article 171 § 1 provides that an application for a person to be declared incapable must be examined in the presence of a representative of a body of guardianship and trusteeship. The person concerned may be invited to the hearing, if his state of health permits.

65. Article 172 § 1 provides that the body of guardianship and trusteeship appoints a guardian on the basis of a judgment declaring a person incapable.

66. Article 173 § 1 provides that, in cases prescribed by the CC, the court declares a person who has recovered capable, on the basis of a

relevant psychiatric expert opinion, upon an application lodged by the guardian, a family member or the administration of a psychiatric institution.

2. Other relevant provisions

67. Article 27 provides that persons participating in the proceedings include (1) the parties; (2) third parties; and (3) applicants in cases envisaged by Part 3 of the Code.

68. Article 35 § 2 provides that third parties who have no claims of their own in respect of the dispute enjoy the same rights as the parties, except the right to change the grounds or subject of a claim, to increase or decrease the amount of a claim, to withdraw a claim, to accept a claim or enter into a friendly settlement, and to demand compulsory enforcement of a judicial decision.

69. Article 43 § 1 provides that the rights and legitimate interests of persons declared incapable are defended before the courts by their parents (or foster parents), guardians or trustees.

70. Article 105 provides that the court must suspend the proceedings if, *inter alia*, it is impossible to examine the case until final resolution of another constitutional, civil, criminal or administrative case, or if the individual participating in the case has been declared incapable.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Council of Europe

71. On 23 February 1999 the Committee of Ministers of the Council of Europe adopted Recommendation No. R (99) 4 on "Principles concerning the legal protection of incapable adults". For the relevant parts of the Recommendation see *Stanev v. Bulgaria* ([GC], no. 36760/06, § 73, ECHR 2012). Other relevant parts not cited in that judgment read as follows:

Principle 8 – Paramountcy of interests and welfare of the person concerned

"1. In establishing or implementing a measure of protection for an incapable adult the past and present wishes and feelings of the adult should be ascertained so far as possible, and should be taken into account and given due respect.

2. This principle implies, in particular, that the wishes of the adult as to the choice of any person to represent or assist him or her should be taken into account and, as far as possible, given due respect."

Principle 12 – Investigation and assessment

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

2. No measure of protection which restricts the legal capacity of an incapable adult should be taken unless [...] an up-to-date report from at least one suitably qualified expert has been submitted."

Principle 16 – Adequate control

"There should be adequate control of the operation of measures of protection and of the acts and decisions of representatives."

72. On the same date the Committee of Ministers of the Council of Europe adopted the Explanatory Memorandum to Recommendation No. R (99) 4. Paragraph 47 provides the following explanation of Principle 8:

"This principle implies among other things that the choice of any person to represent or assist an incapable adult should be governed by the suitability of that person to safeguard and promote the adult's interests and welfare. In some family situations there are quite acute conflicts of interest and, while the invaluable and irreplaceable role of family members must be fully recognised and valued, the law must also be aware of the dangers which exist in certain situations of family conflict".

B. United Nations

73. In December 2006 the United Nations Convention on the Rights of Persons with Disabilities (hereafter "the CRPD") was adopted. It entered into force internationally in May 2008. By the end of September 2016, 44 out of the 47 Council of Europe member States had ratified the Convention. Armenia ratified the Convention on 22 September 2010. Article 12 of the CRPD, entitled "Equal recognition before the law", provides as follows:

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

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

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

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

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

THE LAW

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

74. The applicant complained (a) that, after having been divested of legal capacity, he had had no standing before the domestic courts either to pursue his divorce and eviction claim or to request the restoration of his legal capacity; and (b) that he had not had a fair hearing in the proceedings concerning deprivation of his legal capacity, in breach of his rights guaranteed by Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...."

A. Access to court

1. Admissibility

75. The Court notes that the applicant complained specifically about two restrictions on his access to court after he had been declared incapable: firstly, the inability to pursue his divorce and eviction claim and, secondly, the lack of possibility to apply to a court to have his legal capacity restored.

76. The Government raised a non-exhaustion objection regarding the second complaint, arguing that it was premature because, following the Constitutional Court's decision of 7 April 2015, the applicant was granted access to court to seek restoration of his legal capacity and those proceedings were still pending.

77. The applicant submitted that his complaint about the lack of access to court for restoration of his legal capacity was limited to the situation before the Constitutional Court's decision of 7 April 2015, specifically when in August 2014 he had tried to initiate a new medical examination and a review of his situation by the domestic court but was not able to do so because of the restriction imposed on his access to court by Article 173 of the CCP. The proceedings which he instituted after the Constitutional Court's decision were indeed still pending but were not part of his application lodged with the Court. Thus, he could still claim to be a victim in respect of denial of access to court in August 2014.

78. The Court notes that the applicant's complaint concerns the lack of possibility to have access to court to request restoration of his legal capacity prior to the Constitutional Court's decision of 7 April 2015. He was indeed granted access following that decision, but he does not complain about the fairness of those proceedings or the merits of that dispute. The fact that those proceedings are still pending is therefore irrelevant for the applicant's access-to-court complaint and no question of non-exhaustion or prematurity

of his complaint arises. The Court therefore dismisses the Government's objection in this respect.

79. On the other hand, the Court cannot overlook the fact that, taking into account that the applicant was eventually granted access to court to seek restoration of his legal capacity, a question arises as to whether the applicant can still claim to be a victim of an alleged violation of Article 6 § 1 of the Convention. In this respect, the Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of "victim" status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V).

80. In the present case, the Court notes that by virtue of the restriction contained in Article 173 § 1 of the CCP, the applicant did not have standing to initiate court proceedings with a view to reviewing and restoring his legal capacity. This situation changed when, on 7 April 2015, the Constitutional Court declared Article 173 § 1 unconstitutional and invalid in so far as it failed to ensure for persons declared incapable the right to initiate personally court proceedings, putting an end to the situation complained of by the applicant in his application and allowing him to institute court proceedings in May 2015. However, in the Court's view, the Constitutional Court's decision, which was moreover taken upon an application lodged by the Ombudsman and was not in any way related to the applicant's particular case, did not constitute either an implicit acknowledgement of a breach of the applicant's right of access to court or redress for the period during which the applicant was deprived of this right (see, *mutatis mutandis*, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 83, ECHR 2012).

81. The Court therefore concludes that the applicant can still claim to be a victim of an alleged violation of his right of access to court guaranteed by Article 6 § 1 of the Convention.

82. The Court notes that the applicant's complaints concerning lack of access to court are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

(i) The applicant

83. The applicant submitted that, after he had been declared incapable, he had no standing before the domestic courts either to pursue his divorce

and eviction claim or to apply to a court to have his legal incapacity reviewed, in breach of his right of access to a court guaranteed by Article 6 of the Convention.

84. As regards the divorce and eviction proceedings, the applicant submitted that he had initiated those proceedings before his wife and son applied to a court to have him declared incapable. He argued that the sole purpose of their action was to avoid the divorce and eviction, and once he was declared incapable he no longer had the possibility to present personally his divorce and eviction case in court or to request an examination of that claim after the proceedings had been stayed since, in accordance with Article 31 and 33 of the CC, he could act before the courts only through his guardian. The claim had eventually been abandoned not by him but by his son, with whom he had a conflictual relationship and regular disputes and who, in so doing, had acted against his will and interests. The withdrawal of the claim had therefore not been in his best interest and pursued the sole aim of avoiding divorce and eviction. Thus, he had been deprived of the possibility to pursue his divorce and to protect his right to private life.

85. As regards restoration of legal capacity, the applicant submitted that in August 2014 he had applied to a court with a request to appoint a new medical examination in order to review the decision declaring him incapable. The court, however, had refused to examine that request with reference to Article 173 of the CCP, which prevented his access to court to seek restoration of his legal capacity. Furthermore, the Armenian system did not provide for any possibility for a review of legal incapacity at reasonable intervals. Referring to the judgments in the cases of *Stanev* (cited above) and *Nataliya Mikhaylenko v. Ukraine* (no. 49069/11, 30 May 2013), the applicant argued that he should have enjoyed the right of access to court to seek restoration of his legal capacity, which had been violated by the refusal to examine his request in 2014. Such lack of judicial review had seriously affected many aspects of his life and had not pursued any legitimate aim.

(ii) The Government

86. The Government denied that the applicant's right of access to court had been violated.

87. As regards the divorce and eviction proceedings, the Government submitted that at the time when the court had decided to stay those proceedings the psychiatric expert opinion had already been issued in respect of the applicant and the domestic court had been obliged by law to stay those proceedings, since the determination of the question of the applicant's legal capacity was decisive for the examination of the divorce and eviction claim in terms of assessing the applicant's ability to understand the meaning of his actions and to control them. After the applicant had been deprived of his legal capacity, his divorce and eviction claim had been

withdrawn by his son, who had been appointed as his guardian in compliance with the requirements of domestic law and at the applicant's wish. The withdrawal of the claim had pursued a legitimate aim because the applicant's son, as his guardian, had been obliged to prevent the applicant from taking actions that could lead to severe consequences for others. Furthermore, the decision to terminate the divorce and eviction proceedings had not affected the applicant's right of access to court because the applicant had had the possibility to re-submit his claim if he were to succeed in restoring his legal capacity or if a new guardian were appointed or his son so wished.

88. As regards restoration of legal capacity the Government, referring to the proceedings which the applicant instituted after the Constitutional Court's decision of 7 April 2015, submitted that the applicant had enjoyed full access to court in those proceedings. He had been able to avail himself fully of all the rights enjoyed by a party to the proceedings, including to be present, to have a lawyer and to lodge requests. As regards his request lodged in August 2014, the District Court lacked the authority to order a new medical examination due to the fact that the case regarding the applicant's legal capacity had already been concluded by a final judgment. In any event, the request in question had not been a proper application lodged with a court and in order to complain about lack of access to court the applicant should at least have tried to lodge such an application first.

(b) The Court's assessment

(i) General principles

89. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. This "right to a court", of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see *Stanev*, cited above, § 229, and *Nataliya Mikhaylenko*, cited above, § 30).

90. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals". In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to

the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Stanev*, cited above, § 230, and *Nataliya Mikhaylenko*, cited above, § 31).

91. The Court has acknowledged in the past that restrictions on the procedural rights of a person who has been deprived of legal capacity may be justified for that person's own protection, the protection of the interests of others and the proper administration of justice (see *Stanev*, cited above, § 241). It is for the State to decide how the procedural rights of a person who has been deprived of legal capacity should be ensured at domestic level. In this context, States should be able to take restrictive measures in order to achieve the above-mentioned aims (see *Nataliya Mikhaylenko*, cited above, § 36).

(ii) Application of the above principles in the present case

92. The Court notes at the outset that in the present case none of the parties disputed the applicability of Article 6 to the proceedings in question and the Court has no reason to hold otherwise (see *Stanev*, cited above, § 233, and *Nataliya Mikhaylenko*, cited above, § 33, as regards, in particular, proceedings for restoration of legal capacity). The Court will address the two instances of restrictions on the applicant's access to court separately.

(α) Access to court in divorce and eviction proceedings

93. The Court notes that the applicant's divorce and eviction claim lodged on 25 April 2012 was never examined by the domestic courts, as a result of the decision to declare him legally incapable and the eventual withdrawal of that claim by the applicant's son, who acted as his guardian. In this respect, the Court reiterates that the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see, among other authorities, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 86, 29 November 2016).

94. The Court observes that, once declared incapable, the applicant no longer had legal capacity to act before the courts to pursue his divorce and eviction claim and, in accordance with Article 43 § 1 of the CCP and Article 33 § 2 of the CC, could do so only through his guardian. Thus, domestic law imposed a blanket ban on the applicant's access to court in all spheres of life. Furthermore, as will be discussed below under Article 8 of the Convention, the domestic legal system did not differentiate between different degrees of incapacity for persons suffering from a mental disorder and did not provide for measures of protection tailored to the individual

needs of the person concerned. Thus, such questions as to whether the applicant could understand the meaning of divorce or eviction and whether he could act autonomously in that sphere of life, including defending his rights before the courts, without causing disruption to the proper administration of justice or harm to himself or others, were never addressed and answered. Therefore, it is questionable whether such a blanket ban on the applicant's access to court, which resulted in his inability to pursue his divorce and eviction claim, pursued any legitimate aim. The Court, however, does not find it necessary to answer that question conclusively since, even assuming that it did, the restriction on the applicant's access to court was, in any event, unjustified in the particular circumstances of the case for the following reasons.

95. The Court notes that Article 37 § 3 of the CC required the body of guardianship and trusteeship, which was responsible for the appointment of the applicant's guardian, to take into account the nature of the relationship between the applicant and his potential guardian and, if possible, the applicant's wish. Furthermore, the applicant himself applied to that body and requested that his opinion be taken into account when appointing his guardian (see paragraph 29 above). However, as it follows from the decision of the Court of Cassation of 28 September 2016, the body of guardianship and trusteeship failed to hear the applicant and appointed his son as his guardian, despite the fact that the applicant apparently had a conflictual relationship with his son and opposed his appointment. In this connection the Court stresses the importance of respecting Principle 8 of Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe (see paragraph 71 above). It also refers to Article 12 § 4 of the CRPD which requires appropriate and effective safeguards ensuring that measures relating to the exercise of legal capacity by persons with disabilities be free of conflict of interest and undue influence (see paragraph 73 above) and which Armenia, by adhering to the CRPD, undertook to take into consideration (see *Guberina v. Croatia*, no. 23682/13, § 92, 22 March 2016). Those principles were of particular significance for the applicant in the present case since, being fully deprived of his legal capacity and, as a result, of his right of access to court, the only proper and effective means of protection of his legal interests before the courts was through a conflict-free guardianship.

96. The Court further notes that, from the circumstances of the case, it is doubtful whether the applicant's son was genuinely neutral and there was no conflict of interests as regards specifically the applicant's claim filed against his wife seeking to divorce and evict her. In this connection the Court observes that the District Court failed to carry out any examination of the question of whether the applicant's son's request to withdraw the claim was in the applicant's best interest and to provide any explanation for its decision to accept that request (see paragraphs 31 and 34 above). It is not

clear on what ground the District Court stated that the applicant's son had been appointed as the applicant's guardian upon his consent and at his wish, a finding which, as already indicated above, was later rebutted by the Court of Cassation. The Court therefore considers that the domestic court failed to carry out the necessary scrutiny and oversight when deciding to accept the request to withdraw the applicant's claim and that consequently the termination of the divorce and eviction proceedings was unjustified.

97. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the applicant's access to court in the divorce and eviction proceedings.

(β) Access to court for restoration of legal capacity

98. The Court notes at the outset that the applicant's complaint about lack of access to court for restoration of his legal capacity concerns only the period prior to the Constitutional Court's decision of 7 April 2015 when the applicant, by virtue of Article 173 § 1 of the CCP, had no *locus standi* to apply directly to a court for restoration of legal capacity and could do so only through persons listed in that Article, including his guardian, a family member or the administration of a psychiatric institution. Furthermore, as already indicated above, under domestic law a person declared incapable could act before the courts only through his or her guardian.

99. The Court has already examined a similar situation in the cases of *Stanev* and *Nataliya Mikhaylenko*, cited above, where it stated that the importance of exercising procedural rights would vary according to the purpose of the action which the person concerned intended to bring before the courts. In particular, the right to ask a court to review a declaration of incapacity was one of the most important rights for the person concerned since such a procedure, once initiated, would be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity (see *Stanev*, cited above, § 241, and *Nataliya Mikhaylenko*, cited above, § 37). This right was therefore one of the fundamental procedural rights for the protection of those who had been partially or fully deprived of legal capacity. Hence, such persons should in principle enjoy direct access to the courts in this sphere (see *Stanev*, cited above, § 241, and *Nataliya Mikhaylenko*, cited above, §§ 38-40).

100. The Court has further held that the State remains free to determine the procedure by which such direct access is to be realised. At the same time, it would not be incompatible with Article 6 for national legislation to provide for certain restrictions on access to court in this sphere, with the sole aim of ensuring that the courts are not overburdened with excessive and manifestly ill-founded applications. Nevertheless, it seems clear that this problem may be solved by other, less restrictive means than automatic denial of direct access, for example by limiting the frequency with which

applications may be made or introducing a system for prior examination of their admissibility on the basis of the file (see *Stanev*, cited above, § 242).

101. As regards the situation in Armenia at the material time, the general prohibition on direct access to a court by persons declared incapable did not leave any room for exception. At the same time, the domestic law did not provide safeguards to the effect that the matter of restoration of legal capacity was to be reviewed by a court at reasonable intervals, despite the requirement of Article 12 § 4 of the CRPD that measures restricting legal capacity be subject to regular review by a competent authority (see paragraph 73 above). The Court also notes that such blanket prohibition on direct access to court was not in line with the general trend at European level. In particular, the comparative analysis conducted in the case of *Stanev* showed that seventeen of the twenty national legal systems studied provided at the time for direct access to the courts for persons who had been declared fully incapable (see *Stanev*, cited above, §§ 88-90 and 243). In the applicant's case this situation was further exacerbated by the fact that the authorities had failed to ensure a conflict-free guardianship (see paragraph 95 above). Lastly, the Court considers it irrelevant whether the request lodged by the applicant in August 2014 could be considered as a "proper application lodged with a court" because, even assuming that it was not, the prohibition on the applicant's access to court was enshrined in law and the applicant cannot be held accountable for not trying to initiate a procedure which he had no right to initiate by law.

102. In the light of the above, the Court considers that the applicant's inability to seek restoration of his legal capacity directly at the material time was disproportionate to any legitimate aim pursued.

103. Accordingly, there has been a violation of Article 6 § 1 of the Convention as regards the applicant's lack of access to court to seek restoration of his legal capacity.

B. Proceedings concerning deprivation of the applicant's legal capacity

104. The Court observes at the outset that the applicant's allegations of an unfair trial amount to two distinct arguments: firstly, that he was not heard by a court and, secondly, that the domestic courts based their decisions on an outdated psychiatric expert opinion. As regards the second argument, the Court considers that it falls to be examined under Article 8 of the Convention (see paragraph 124 below).

1. The parties' submissions

105. The applicant submitted that the trial had not been fair since the case had been examined through "special procedure" which did not presuppose the existence of a dispute and of competing parties and were

therefore not adversarial. While he had been present at the hearings of 3 October and 18 November 2013, his presence had been only a formality and his right to be heard had not been respected. Due to the special nature of the proceedings, he had not been allowed to argue his case, make submissions regarding his wife and son's applications and contest the expert opinion, while the judge had not asked him any questions or inquired about his position, since he had been considered only an object of examination and not an interested party. The judgment of 29 November 2013 had been adopted after a hearing that lasted only a few minutes, during which the court read out the results of the psychiatric expert opinion and adopted its decision. He had therefore been deprived of the possibility to participate effectively in the proceedings.

106. The Government submitted that the applicant had lost his victim status in relation to his complaint about the lack of an adversarial procedure. In particular, while he had initially been excluded from the hearing where the question of his legal capacity had been decided, that judgment had been reversed by the Civil Court of Appeal exactly on that ground, thereby correcting the shortcomings of the initial trial and ensuring the protection of the applicant's rights. Following that decision the applicant had been granted the status of a third party and participated in the proceedings, during which he had enjoyed and exercised almost all the procedural rights of a party to the proceedings as provided by Article 35 § 2 of the CCP. He had been present at the hearings of 3 October and 18 November 2013, while failing to appear at the hearing of 31 October 2013 despite being duly notified. The final hearing of 29 November 2013 had lasted only several minutes since the examination of the case had already been completed at the hearing of 18 November 2013 and only the judgment had to be delivered during the final hearing. The applicant's allegations that his participation had only been a formality were of a speculative nature and, even assuming that this had been the case, this should be attributed to the applicant and his inability to present his position rather than to any shortcomings in the conduct of the courts.

2. The Court's assessment

107. The Court reiterates that in cases involving a mentally ill person the domestic courts should enjoy a certain margin of appreciation. Thus, for example, they can make the relevant procedural arrangements in order to secure the proper administration of justice, protection of the health of the person concerned, and so on. However, such measures should not affect the very essence of the applicant's right to a fair trial as guaranteed by Article 6 of the Convention. In assessing whether or not a particular measure, such as exclusion of the applicant from a hearing, was necessary, the Court will take into account all relevant factors (see *Shtukaturov*, cited above, § 68).

108. The Court further reiterates that the admissibility of evidence is primarily a matter for regulation by national law and that, as a general rule, it is for the national courts to assess the evidence before them (see *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII). The Court's sole task in connection with Article 6 of the Convention is to examine applications alleging that the domestic courts have failed to observe specific procedural safeguards laid down in that Article or that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 197).

109. In the present case, the Court considers that the fact that the case was examined through a special procedure which did not presuppose the existence of competing parties is not sufficient in itself to find a violation of Article 6 and it is necessary to examine the particular circumstances of the proceedings in question. In this connection, the Court observes that the applicant was indeed initially excluded from the hearing at which the District Court decided to divest him of his legal capacity, since he was not a party to those proceedings (see paragraph 15 above). However, this shortcoming was remedied by the Civil Court of Appeal which quashed that judgment specifically on that ground and remitted the case for a fresh examination (see paragraph 20 above). During the new examination of the case the applicant was granted status as a third party, allowing him to enjoy all the main procedural rights of a party, including the right to be present, make submissions, lodge requests and appeal against decisions. As a result, the applicant was summoned and took part in almost all the hearings before the District Court (see, by contrast, *Shtukaturov*, cited above, § 69; *X and Y v. Croatia*, no. 5193/09, § 81, 3 November 2011; and *Lashin v. Russia*, no. 33117/02, § 82, 22 January 2013). Furthermore, contrary to the applicant's claim, it follows from the materials of the case that he actually made submissions before the District Court and that questions were posed to him by the examining judge (see paragraph 24 above). The Court cannot therefore accept the applicant's argument that his participation in the hearing was of a purely formal nature. The Court notes that the applicant did not provide any other, more specific arguments in support of his allegations of an unfair trial. In such circumstances, the allegations of an unfair trial and lack of adversarial procedure, as formulated by the applicant, are not sufficient for the Court to conclude that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing.

110. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

111. The applicant complained that he had been deprived of his legal capacity in breach of the guarantees of Article 8 of the Convention, which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

112. The Government submitted that the applicant had failed to raise the issue of proportionality of the interference with his Article 8 rights before the domestic courts. He had not indicated which particular element of the interference had not been respected in his case and had therefore failed to exhaust the domestic remedies.

113. The applicant did not comment on the Government's objection.

114. The Court considers that the Government's objection is closely linked to the substance of the applicant's complaint and should therefore be joined to the merits.

B. Merits

1. The parties' submissions

115. The applicant submitted that his full deprivation of legal capacity was a disproportionate and inadequate measure. No tailor-made approach had been applied when deciding on that matter since the law did not provide for any intermediate form of limitation of legal capacity for mentally ill persons and the only choice was either to maintain full capacity or to deprive him of full capacity. Furthermore, the measure in question applied for an indefinite period of time, without a possibility to seek a review other than through his guardian, and resulted in complete loss of rights, including the ability to pursue his divorce and eviction claim against his wife. In depriving him of legal capacity, the courts had relied solely on an outdated medical report which did not reliably reflect his mental health at the material time. Moreover, it had lacked any explanation as to the kind of actions that his illness rendered him incapable of understanding or controlling. Nor did it establish the possible consequences of his illness on his social life, pecuniary interests and so on. The submissions made by his wife had been unreliable because she had had an interest in depriving him of

legal capacity in order to prevent the examination of his divorce and eviction claim. Lastly, the applicant argued that the decision to deprive him of legal capacity did not pursue any legitimate aim.

116. The Government submitted that the interference with the applicant's Article 8 rights was prescribed by law, namely Article 31 of the CC. It pursued a legitimate aim, namely the protection of the rights of others, including the right to life of his wife, whom the applicant had threatened to stab. Lastly, the interference was proportionate since it was not based solely on the medical report but also on the submissions of his wife and neighbours, as well as the personal impressions of the judge who had heard the applicant in person. Furthermore, the applicant had the right to challenge the appointment of a guardian before the courts as well as, following the Constitutional Court's decision of 7 April 2015, periodically to apply to a court to have his legal capacity restored.

2. The Court's assessment

117. The Court notes at the outset that it is not in dispute between the parties that the applicant's deprivation of his legal capacity amounted to an interference with his right to private life guaranteed by Article 8 and it does not see any reason to hold otherwise, especially in view of various serious limitations to the applicant's personal autonomy which that measure entailed (see *Shtukaturov*, cited above, § 83, and *Lashin*, cited above, § 77).

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

119. In the present case, the applicant did not allege that the interference had not been lawful and the Court notes that it was based on Article 31 of the CC. Furthermore, the Court does not find it necessary to examine whether the interference pursued a legitimate aim since the decision to deprive the applicant of his legal capacity was in any event disproportionate to any legitimate aim pursued for the reasons set out below.

120. The Court reiterates that under Article 8 the authorities must strike a fair balance between the interests of a person of unsound mind and the other legitimate interests concerned. However, as a rule, in such a complex matter as determining somebody's mental capacity, the authorities should enjoy a wide margin of appreciation. This is mostly explained by the fact that the national authorities have the benefit of direct contact with the persons concerned and are therefore particularly well placed to determine such issues. The task of the Court is rather to review under the Convention the decisions taken by the national authorities in the exercise of their powers in this respect (see *Shtukaturov*, cited above, § 87).

121. At the same time, the margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (see *Elsholz*, cited above, § 49). A stricter scrutiny is called for in respect of very serious limitations in the sphere of private life. In this connection the Court is mindful that depriving someone of legal capacity entails grave consequences for various spheres of that person's life (see *Shtukaturov*, cited above, § 88; *X and Y v. Croatia*, cited above, § 109; and *Lashin*, cited above, § 81).

122. In the present case the Court observes that, contrary to the Government's claim, the judgment of 29 November 2013 declaring the applicant incapable relied solely on the psychiatric expert opinion of 25 September 2012 (see paragraph 25 above). The Court does not cast doubt on the competence of the doctors who examined the applicant and the findings of that report. However, the Court has held in a number of cases that the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full deprivation of legal capacity. By analogy with the cases concerning deprivation of liberty, in order to justify full deprivation of legal capacity the mental disorder must be "of a kind or degree" warranting such a measure (see *Shtukaturov*, cited above, § 94, and *Lashin*, cited above, § 90). Both in *Shtukaturov* and *Lashin* the Court found that in the domestic proceedings the issue of "the kind and degree" of the applicant's mental illness remained unresolved, since Russian law did not provide for any intermediate form of limitation of legal capacity for mentally ill persons and distinguished only between full capacity and full incapacity.

123. In the present case the Court faces essentially the same situation as in the above-mentioned cases. The Armenian law similarly did not provide for any borderline or tailor-made response in situations like the applicant's and distinguished only between full capacity and full incapacity. Thus, the questions posed to the doctors, as formulated by the judge, similarly did not concern "the kind and degree" of the applicant's mental illness. As a result, the psychiatric expert opinion of 25 September 2012 did not analyse the degree of the applicant's incapacity in sufficient detail. It referred to the applicant's overly suspicious and at times aggressive behaviour, incoherent thoughts and inclination for conflict, and concluded that the applicant suffered from delusional disorder and was therefore unable to understand his actions and to control them. At the same time, the report did not explain what kind of actions the applicant was incapable of understanding or controlling. The incidence of the applicant's illness is unclear, as are the possible consequences of the applicant's illness for his social life, health, pecuniary interests, and so on. The opinion of 25 September 2012 was not sufficiently clear on these points. Nor did it allege any self-destructive or otherwise grossly irresponsible behaviour on the part of the applicant or that he was partially or completely unable to take care of himself (see, *mutatis mutandis*, *Shtukaturov*, cited above, §§ 93-94, and *Lashin*, cited above,

§§ 90-91). Assuming, nevertheless, that the applicant's condition required some sort measure of protection in his respect, the Court notes that, as already indicated above, the domestic court had no other choice than to apply and maintain full incapacity – the most stringent measure which meant total loss of autonomy in nearly all areas of life (see, by contrast, *A.-M.V. v. Finland*, no. 53251/13, §§ 89-90, 23 March 2017).

124. The Court also reiterates, as regards the relevant psychiatric expert opinion, that the objectivity of a medical expertise entails a requirement that it be sufficiently recent, while the question whether the medical expertise is sufficiently recent depends on the specific circumstances of the case (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 131, 4 December 2018). In the present case, the Court notes that the psychiatric expert opinion was issued on 25 September 2012, that is more than fourteen months before the judgment of the District Court declaring the applicant incapable and almost a year and a half before the decision of the Civil Court of Appeal upholding that judgment. That opinion, in the Court's view, cannot be regarded as "up-to-date" within the meaning of Principle 12 of the above-mentioned Committee of Ministers Recommendation No. R (99) 4 (see, *mutatis mutandis*, *H.F. v. Slovakia*, no. 54797/00, § 41, 8 November 2005). Furthermore, it was the first time that the applicant had been subjected to a psychiatric medical examination, as he had no history of mental illness, and nothing in the case file suggests that the applicant's condition was irreversible. The Court considers that, in such circumstances, the domestic courts should have sought some sort of fresh assessment of the applicant's condition (see, *mutatis mutandis*, *Lashin*, cited above, §§ 83-84). The District Court, however, relied solely on that opinion without questioning whether it credibly reflected the applicant's state of mental health at the material time, while the Civil Court of Appeal made reference to the absence of any evidence rebutting the findings of that report or suggesting that the applicant had recovered, despite the fact that it was the duty of the domestic courts to seek such evidence and, if necessary, to assign a new medical examination.

125. In the light of the above, the Court concludes that the measure imposed on the applicant was disproportionate to the legitimate aim pursued. As a result, the applicant's rights under Article 8 were restricted more than was strictly necessary.

126. Having reached this conclusion, the Court considers it necessary to address the Government's non-exhaustion objection. It notes, firstly, that while the applicant did not specifically use the word "proportionality" in his submissions before the domestic courts, he raised the question of the disproportionate nature of the interference in substance. Secondly, the Court notes that the full deprivation of the applicant's legal capacity – a measure which the Court found to be disproportionate in the circumstances of the case – was, as already indicated above, the only measure which the

domestic court was competent to apply under domestic law in the absence of any intermediate form of limitation of legal capacity for mentally ill persons. In other words, the domestic law itself deprived the domestic court of the possibility to assess the proportionality of the applicable measure in cases requiring a restriction of legal capacity. It is therefore doubtful that raising that issue, whether explicitly or in substance, had or could have had any prospects of success. In sum, the Court considers that the applicant has exhausted the domestic remedies and dismisses the Government's objection.

127. Accordingly, there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

129. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

130. The Government submitted that the amount claimed by the applicant was excessive and should be reduced, should the Court find a breach of the applicant's rights.

131. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage.

B. Costs and expenses

132. The applicant claimed EUR 3,900 for the costs and expenses incurred for his representation before the Court, comprising 76 hours of legal services at a rate of EUR 50 per hour.

133. The Government submitted that the applicant had failed to submit a contract with his representatives as a basis for the claim as regards costs and expenses. Therefore, they argued, the claim was unsubstantiated.

134. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the absence of any document supporting the claim, the Court decides to reject the applicant's claim for costs and expenses.

C. Default interest

135. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection of non-exhaustion of domestic remedies and dismisses it;

2. *Declares* the complaints under Article 6 concerning the applicant's right of access to a court and under Article 8 concerning the right to respect for his private life admissible, and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the applicant's right of access to a court as regards both the termination of the divorce and eviction proceedings and the applicant's inability to seek restoration of legal capacity;

4. *Holds* that there has been a violation of Article 8 of the Convention as regards the deprivation of the applicant's legal capacity;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Ksenija Turković President