



Armenian system for deprivation of legal capacity fails to take individual needs into account

In today's Chamber judgment¹ in the case of [Nikolyan v. Armenia](#) (application no. 74438/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right of access to court) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private life).

The case concerned an applicant who was declared legally incapable in 2013, following proceedings brought by his wife and son.

The Court found that the applicant could neither pursue his divorce and eviction claim against his wife nor seek restoration of his legal capacity in court because Armenian law imposed a blanket ban on direct access to the courts for those declared incapable. That situation had been exacerbated by the fact that the authorities had appointed the applicant's son as his legal guardian, despite their having a conflictual relationship.

Moreover, the judgment depriving the applicant of his legal capacity had relied on just one, out-dated psychiatric report, without analysing in any detail the degree of his mental disorder or taking into account that he had no history of such illness.

Principal facts

The applicant, Gurgen Nikolyan, is an Armenian national who was born in 1939 and lives in Yerevan.

In 2012 Mr Nikolyan lodged a divorce and eviction claim before the courts against his wife, submitting that their conflictual relationship made co-habitation unbearable. However, the domestic courts never examined his claim as he was declared legally incapable in 2013, following proceedings brought by his wife and son, who was living with his family in the same flat.

In particular, in November 2013 the District Court declared Mr Nikolyan incapable, holding that he had a mental disorder and was not able to understand his actions or control them. It based its findings on a court-ordered psychiatric report of September 2012, as well as statements by his wife, neighbours and a local police officer about overly suspicious, argumentative and at times aggressive behaviour and absurd accusations against his wife.

Mr Nikolyan's son, who had been appointed as his guardian during those proceedings, then requested termination of the divorce and eviction proceedings. The District Court granted that request in October 2014 on the grounds that domestic law authorised a guardian to withdraw the claim of a person deprived of their legal capacity.

Mr Nikolyan, who was also in conflict with his son, had asked the local body of guardianship to take into his account his opinion when appointing his guardian, to no avail. He went on to contest the guardianship decision before the courts and the Court of Cassation, taking note of the applicant's

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

submissions on conflict of interest and regular disputes with his son, remitted the case. In 2017 those proceedings were still ongoing and their outcome is unknown.

He also made a number of unsuccessful attempts to restore his legal capacity, writing to the Minister of Health and a psychiatric hospital and applying to the courts to review his state of health. In particular, as a person deprived of his legal capacity, he was not allowed by the law in force at the time to institute court proceedings.

Complaints, procedure and composition of the Court

Mr Nikolyan brought a number of complaints under Article 6 § 1 (right to a fair hearing/access to court). In particular, he argued that after he had been declared legally incapable he had no standing before the domestic courts to pursue his divorce and eviction claim or to apply for judicial review of his legal incapacity. Also relying on Article 8 (right to respect for private and family life, the home, and the correspondence), he complained that his being deprived of legal capacity had breached his right to respect for his private life.

The application was lodged with the European Court of Human Rights on 13 November 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 6 \(right to a fair trial/access to court\)](#)

The Court noted that Armenian law imposed a blanket ban on direct access to the courts for those declared incapable, such as Mr Nikolyan. Such a blanket ban, which did not leave any room for exception, was not in line with the general trend at European level.

The only proper and effective means to protect his legal interests before the courts had therefore been through a conflict-free guardianship.

However, the body of guardianship had appointed Mr Nikolyan's son as his legal guardian, despite their having a conflictual relationship. The Court doubted that the son could be genuinely neutral when representing his father in the divorce and eviction claim. Furthermore, the District Court had not examined at all whether the son's request to withdraw the claim had been in his father's best interests. Nor indeed had it provided any explanation for its decision to accept that request.

The authorities' failure to ensure a conflict-free guardianship had further exacerbated Mr Nikolyan's situation, namely the fact that the blanket ban prevented him from directly seeking restoration of his legal capacity with a court.

It therefore found that Mr Nikolyan's lack of access to court in the divorce and eviction proceedings and to seek restoration of his legal capacity had breached Article 6 § 1.

Article 8 (right to respect for private life)

The Court reiterated that national authorities' decisions to deprive someone of their legal capacity called for strict scrutiny, given the grave consequences for that person's private life. In previous cases it had held that fully depriving someone of their legal capacity had to be justified by a mental disorder "of a kind or degree" warranting such a measure.

However, Armenian law did not provide for any such tailor-made response. It only distinguished between full legal capacity or full legal incapacity. In particular, the judgment depriving Mr Nikolyan of his legal capacity had relied on just one psychiatric report, which was 14 months old, without analysing in any detail the degree of his incapacity. The report did not explain which actions exactly the applicant had been incapable of understanding or controlling, nor did it observe any self-destructive or grossly irresponsible behaviour or find that he had been unable to take care of himself. Indeed, he had no history of mental illness and it was the first time that he had had a psychiatric examination.

It concluded that depriving Mr Nikolyan of his legal capacity had been disproportionate to any intended legitimate aim. His right to respect for his private life had therefore been restricted more than had been strictly necessary, in breach of Article 8.

Article 41 (Just satisfaction)

The Court held that Armenia was to pay Mr Nikolyan 7,800 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.