# Analysis of domestic legal framework and practice on the restriction of legal capacity of persons with mental health issues: Execution of ECtHR judgement Nikolyan vs Armenia

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# ANALYSIS OF DOMESTIC LEGAL FRAMEWORK AND PRACTICE ON THE RESTRICTION OF LEGAL CAPACITY OF PERSONS WITH MENTAL HEALTH ISSUES: EXECUTION OF ECTHR JUDGEMENT NIKOLYAN VS ARMENIA

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## LIST OF ABBREVIATIONS

| | |
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| **CC** | Civil Code of the Republic of Armenia |
| **CM** | Committee of Minister of the Council of Europe |
| **CoE** | Council of Europe |
| **CPC** | Civil Procedure Code of the Republic of Armenia |
| **ECHR** | European Convention of Human Rights |
| **ECtHR** | European Court of Human Rights |
| **MoLSA** | Ministry of Labour and Social Affairs |

# INTRODUCTION

Legal capacity is a cornerstone in jurisprudence, delineating an individual's ability to exercise rights, make decisions, and partake in legal proceedings autonomously. However, this fundamental principle encounters challenges when it comes to persons with mental health issues. The balance between safeguarding autonomy and ensuring protection for individuals with mental health problems necessitates a thorough examination of legal frameworks, precedents, and ethical considerations.

The European Court of Human Rights (ECtHR) examined different aspects of this issue under Article 8 on the Right to respect for private and family life, home and correspondence of the European Convention on Human Rights (ECHR). Amongst other cases, *Nikolyan v. Armenia* has a unique role. It not only revealed the issues of a general nature in Armenia but also further developed the ECtHR case law about the human rights protection of persons with mental health issues.[1]

The current legal analysis aims to examine the legal framework and practice of Armenia regarding the restriction of legal capacities of persons with mental health problems within the execution of the ECHR judgement *Nikolyan vs Armenia*. In this frame, the report touches upon 4 main aspects: establishment of different levels of restricting the legal capacity, "recent" and detailed examination reports of experts, review of legal capacity and effectiveness of the guardianship system.

Notably, recommendations provided in the current report can be divided into three main types: legislative and institutional amendments directly relevant to the execution of the *Nikolyan v. Armenia* judgement, proposals for practical steps to implement those amendments, and suggestions for further improvement of the field. At the end of each section, along with the recommendations, notes are made about their relevance to the execution of the *Nikolyan v. Armenia* judgement.

In the context of the development of the document, the legal regulations related to administrative proceedings and civil proceedings, as well as other legal acts related to advocacy, were also analysed. The research also addresses practical challenges. The scope of studies includes not only the case law of the ECtHR and the domestic legal framework but also the precedent decisions of the RA Court of Cassation, the RA Constitutional Court, as well as the reports of the Human Rights Defender of Armenia.

While developing the current report, the results of expert discussions took place from 9 to 10 December 2022 on the "*Issues regarding the functional capacity of persons without mental health problems in the context of the case law of the European Court of Human Rights*" and on "*The Rights of Persons being Declared as Legally Incapable as a Result of Mental Health issues*" took place on 5 February 2024 are considered.

The report on the "*Access to Justice for Legally Incapable Persons and Non-Execution/Late Execution of Decisions of National Courts*" prepared in the frame of the "*Support for the execution by Armenia of judgment in respect of Article 6 of the European Convention on Human Rights*" was served as a ground for further analysis.

[1] Nikolyan v. Armenia (Application No. 74438/14, judgment 3 October 2019), available at: https://hudoc.echr.coe.int/eng?i=001-196149.

The report provides legislative amendments and practice improvement recommendations after the legal analysis. The consultant would like to express gratitude to the Project team and all stakeholders engaged in the assessment for their effective cooperation.

## BACKGROUND AND THE SCOPE OF ANALYSIS

Before turning to the analysis, it is important to present the key facts of *Nikolyan v. Armenia.* In April 2012, the applicant started legal actions to divorce his wife and remove her from his apartment. In return, his wife and their son took legal action to declare him legally incapable. Later in the same year, a panel of psychiatric experts concluded that the applicant suffered from a delusional disorder, which deprived him of his ability to understand and control his actions. In November 2013, the Yerevan Shengavit District Court declared Mr Nikolyan legally incapable. This decision was further confirmed by the Court of Appeal.

According to the domestic legal regulations at the given period, the person deprived of legal capacity could access the court exclusively through his guardian. In this context, the guardianship needed to be conflict-free. However, following the declaration of the applicant as legally incapable, the local body of guardianship and trusteeship appointed his son as the legal guardian, despite their conflictual relationship and the applicant's opposition. Hence, the guardianship and trusteeship body had failed to hear the applicant despite the legal requirement to consider his wishes, if possible.

However, in the given case, the conflict-free and neutral guardianship from the son of the applicant was doubtful, specifically in the frame of the claim the applicant filed against his wife, seeking to divorce and evict her. Following the request of his son as the legal guardian, the divorce and eviction cases were terminated. The ECtHR ruled that the District Court had failed to examine whether the applicant's son's request to withdraw the claim had been in the applicant's best interests or to provide any explanation for its decision to accept that request. The domestic court did not scrutinise and oversee when accepting the request to withdraw the applicant's claim. Consequently, the termination of those proceedings had been unjustified.

The right to ask a court to review a declaration of incapacity was one of the fundamental procedural rights for protecting those who had been partially or fully deprived of legal capacity. The general prohibition in Armenia at the material time on direct access to a court by persons declared incapable did not leave any room for exception. According to the ECtHR, the applicant's inability to seek restoration of his legal capacity directly at the material time was disproportionate to any legitimate aim pursued.

According to the Court, the deprivation of the applicant's legal capacity amounted to an interference with his right to private life under Article 8 of the ECHR. The District Court decision declaring the applicant incapable had relied solely on the psychiatric expert opinion. The existence of a mental disorder, even a serious one, could not 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 had to be "of a kind or degree" to justify such a measure.

The ECtHR also ruled that the psychiatric expert report had not analysed the degree of the applicant's incapacity in sufficient detail. The report did not explain what kind of actions the applicant could not understand or control. Furthermore, although the applicant's condition required some measure of protection in his respect, the domestic court had no choice but to apply and maintain full incapacity. In particular, Armenian law did not provide for any borderline or tailor-made response in situations such as that of the applicant. It distinguished only between full capacity and full incapacity. This most stringent measure meant total loss of autonomy in nearly all areas of life.

The objectivity of medical evidence entailed a requirement that it be sufficiently recent. The question of whether the evidence was sufficiently recent depended on the case's specific. The psychiatric expert opinion had been issued in September 2012, more than fourteen months before the judgment, declaring the applicant incapable and almost a year and a half before the decision of the Civil Court of Appeal upholding that judgment. Thus, the ECtHR considered that the opinion could not be regarded as "up to date". Moreover, it had been the first time that the applicant had been subjected to a psychiatric medical examination, as he had had no history of mental illness, and nothing suggested that the applicant's condition was irreversible.

The District Court had relied solely on that opinion without questioning whether it credibly reflected the applicant's state of mental health at the material time. As for the Civil Court of Appeal, it had referred 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. 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. Thus, the ECtHR unanimously found a violation of Articles 6 §1 and 8 of the ECHR.

According to the action report, the Armenian Government identified three general measures. The first one concerns the legislative blanket ban on direct access to the courts for those declared incapable, which did not leave any room for exception. Under this frame, the Government underlined the adoption of the new Civil Procedure Code of the Republic of Armenia (CPC). It prescribes the right of those declared as legally incapable to seek restoration of legal capacity in court. The provisions of the CPC introduce several procedural guarantees, which can be listed as follows:

the court of first instance examines the application on declaring a person as legally incapable with the mandatory participation of this person, his/her lawyer and the guardianship authority and hears the arguments from all the participants;

depending on the state of health of the person being declared as legally incapable, the court can examine the claim at the place of his/her record registration or at his/her residence or at the psychiatric institution in which the concerned person is placed;

upon accepting the application on declaring a person as legally incapable of proceedings, the court shall grant free legal aid to the person (a person being declared as legally incapable may refuse the services of a public defender and have an advocate of his/her own choice);

a person being declared as legally incapable has all the procedural rights, such as familiarise himself/herself with the materials of the case, submitting evidence and participating in its examination, filing motions, testifying before the court, presenting his/her arguments and position concerning all the issues arising during the court session, express his/her position with regard to motions and arguments of other persons participating in the case, appeal against judicial acts, etc.;

the person declared as legally incapable may at any time apply to the court to restore his/her legal capacity.[2]

The mentioned developments are thoroughly discussed in the report on "*Access to Justice for Legally Incapable Persons and Non-Execution/Late Execution of Decisions of National*

[2] Action Report (16 November 2020) of the Nikolyan v. Armenia (Application No. 74438/14, judgment 3 October 2019), available at: https://hudoc.exec.coe.int/ENG?i=DH-DD(2020)1061E.

*Courts*". The report concluded that the procedural safeguards (e.g., free legal aid, mandatory participation of the person in question, his/her lawyer and the guardianship authority, clear procedural status during court proceedings for the person declared legally incapable and the rights of persons participating in the case) for people whose legal capacity is being discussed were significantly strengthened. Moreover, the removal of the blanket ban on depriving legally incapable persons of access to court for seeking restoration of legal capacity was welcomed. Considering that the mentioned report concluded that the issues related to the access to court ruled by the ECtHR in the *Nikolyan v. Armenia* case and the decision of the Constitutional Court N SDO 1197 were solved through the amendments in the CPC, the current report will avoid discussing this issue in detail and concentrate more on the other observations, seeking general intervention.[3]

The next general measure the Armenian Government identifies is to ensure conflict-free guardianship. Under this, it is envisaged that the guardianship and trusteeship bodies, by participating in the court hearings on declaring a person legally incapable, will better understand the nature of the relationship between the person being declared as legally incapable and his/her relatives as potential guardians. As a result, it would be able to ensure conflict-free guardianship. While acknowledging the importance of the guardianship authority in participating in the court hearings not only from the perspective of gaining information but also serving as an important source of information for the court, in this aspect, further analysis and steps are required. It should aim to strengthen the capacity of the guardianship and trusteeship bodies to ensure conflict-free guardianship for persons declared legally incapable.[4]

The last general measure is about legal initiatives and policy papers to enhance the protection of the rights of persons with disabilities. Law on the Rights of People with Disabilities has been adopted. The Law defines the main principles of the state policy on ensuring, promoting and protecting the rights of persons with disabilities. However, this legislation is restricted to people with disabilities, which does not necessarily include persons with mental health issues.

The Armenian Government also highlighted the Strategic Programme of Legal and Judicial Reforms in the Republic of Armenia for 2019-2023 and the List of Measures Deriving from the Programme, the Action Plan deriving from the National Strategy on Human Rights Protection for 2020-2022 and the Programme of the Government of the Republic of Armenia for 2019-2022 include an extensive list of measures to be implemented to ensure compliance of the national legislation with international standards.[5]

One of the noteworthy activities is in the Action Plan of the National Strategy on Human Rights Protection 2020-2022, which envisages ensuring the participation of people with mental disabilities, including mental problems, in all decision-making processes concerning them. This included analysis of the field and submission of amendments to the Civil Code (CC) to the National Assembly.[6] Furthermore, referring to this activity, the Ministry of Labour and Social Affairs (MoLSA) drafted and circulated a draft of the Government decree to review the legal

[3] Report on "*Access to Justice for Legally Incapable Persons and Non-Execution/Late Execution of Decisions of National Courts*", prepared in the frame of the Council of Europe project "Support for the execution by Armenia of judgment in respect of Article 6 of the European Convention on Human Rights", Chapter I, Paragraph B, Sub-paragraph (ii).
[4] Ibid.
[5] Ibid.
[6] Action Plan deriving from the National Strategy on Human Rights Protection for 2020-2022 approved by the RA Government Decision N 1978-L on December 26, 2019, Annex N 2, Activity 47, available at: https://www.arlis.am/DocumentView.aspx?DocID=138194.

capacity system and establish a mechanism of support in decision-making.[7] However, according to the report, the Government decree was not adopted, and the draft has been returned to the MoLSA.[8]

Furthermore, the pending Action Plan of the National Strategy on Human Rights Protection 2023-2025 envisages the review of the legal regulations on the right to access the court of persons declared legally incapable, excluding unproportionate restrictions of their rights to apply to court and heard on the other issues related to their rights and interests.[9]

From the above-discussed main observation of the ECtHR findings and the state of execution, several other aspects that need general intervention were identified. The most problematic issue is the absence of borderline or tailor-made responses in situations such as that of the applicant. In this sense, this study aims to analyse the CoE standards, including the ECtHR case law and the experience of other member states, to provide recommendations on establishing different levels of restricting the legal capacity.

Another issue identified in the *Nikolyan v. Armenia* judgement is that the opinion was not "up to date". Moreover, the court's obligation to scrutinise other evidence is also important. The third issue relates to conflict-free guardianship. In this frame, the current report analyses the legislative regulations on the role and mandate of the guardianship and trusteeship bodies and provides recommendations on legislative amendments to ensure proper supervision over the guardianship of persons declared legally incapable.

The last issue that is analysed in the report relates to the review of legal capacity. According to the current regulations, the legal capacity can be restored by applying the legally incapable person himself/herself or his/her guardian. The possibility and models of periodic automatic review of the restoration of legal capacity are discussed in the current report.

[7] Draft RA Government decision on approving the program on reviewing the legal regulations on the institute of legal capacity and establishment of the mechanism for support in decision-making, available at: https://www.e-draft.am/projects/4923.

[8] 2022 Report on Action Plan deriving from the National Strategy on Human Rights Protection for 2020-2022, published by the Ministry of Justice, available at: https://moj.am/storage/uploads/%D5%84%D4%BB%D5%8A%202020-2022%20%D5%A9%D5%A9.%20%D4%B3%D4%BE%202022%20%D5%A9.%20%D5%BF%D5%A1%D6%80%D5%A5%D5%AF%D5%A1%D5%B6%20%D5%B0%D5%A1%D5%B7%D5%BE%D5%A5%D5%BF%D5%BE%D5%B8%D6%82%D5%A9%D5%B5%D5%B8%D6%82%D5%B6%20(2).pdf.

[9] Action Plan deriving from the National Strategy on Human Rights Protection for 2023-2025 approved by the RA Government Decision N 1674-L on September 28, 2023, Annex N 3, Activity 3.12, available at: https://moj.am/storage/uploads/1674.1.pdf.

## ESTABLISHMENT OF TAILOR-MADE RESTRICTIONS OF LEGAL CAPACITY

According to the ECtHR case law, the deprivation of legal capacity of a person or declaring himself/herself legally incapable would prevent him/her from acting independently in almost all areas of life, such as selling or buying any property on her/his own, working, travelling, choosing her/his place of residence, joining associations and marrying and would even allow her/his liberty to be limited without her/his consent, amounting to an interference with the Right to respect for private life guaranteed by Article 8 ECHR.[10]

Though the ECtHR considers that the legal capacity is not absolute and member states have a margin of appreciation for its restriction and even deprivation, procedural safeguards and guiding principles should be prescribed. In particular, to ensure the social protection of persons, state authorities should have other means at their disposal other than divesting persons of their legal capacity. The measure should be strictly necessary: divesting someone of legal capacity is a severe measure which should be saved for exceptional circumstances.[11] Furthermore, the existence of a mental health issue, even a serious one, cannot be the sole reason to justify full incapacitation. By analogy with the cases concerning deprivation of liberty, to justify deprivation of legal capacity, the mental health issues must be "of a kind or degree" warranting such a measure.[12] The deprivation of legal capacity can be legitimate, for instance, if a person is unable to control themselves, which causes problems with social life or health, [13] or when it is necessary to maintain public order and ensure the rights of others[14].

This is also ruled by the Constitutional Court of Armenia in its decision N SDO 1197, which refers to the relevant CoE standards, including the Committee of Ministers (CM) Recommendations, stating that persons with mental health issues must have the opportunity to exercise all civil and political rights. Restrictions on these rights are permitted only in strict accordance with the ECHR and cannot be based solely on the fact that a person has mental health issues.[15]

The legitimate aim of restricting the legal capacity entails its prescription in the law and the insurance of the proportionality principle. This is possible only if the legislation gives the possibility to ensure individual and tailor-made approaches to any case. Therefore, as the ECtHR also ruled in *Nikolyan v. Armenia*, the restriction of legal capacity should be on a necessary scale. Hence, the legislation should not prescribe two extreme possibilities: full legal

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[10] Shtukaturov v. Russia (Application No. 44009/05, judgement 27 March 2008), available at: https://hudoc.echr.coe.int/eng?i=001-85611.
Matter v. Slovakia (Application No. 31534/96, judgement 5 July 1999), available at: https://hudoc.echr.coe.int/eng?i=001-58266.

[11] X and Y v. Croatia (Application No. 5193/09, judgment 3 February 2012), available at: https://hudoc.echr.coe.int/eng?i=001-107303.

[12] A.N. v. Lithuania (Application No. 17280/08, Judgement 31 May 2016), available at: https://hudoc.echr.coe.int/?i=002-11075.

[13] Bocsi v. Hungary (Application No. 24240/94, Judgement 21 May 1998), available at: https://hudoc.echr.coe.int/eng#{%22docname%22:[%22bocsi%22],%22documentcollectionid2%22:[%22JUDGMENTS%22,%22DECISIONS%22],%22itemid%22:[%22001-4242%22]}

[14] Ollila v. Finland (Application No. 18969/91, Judgement 30 November 1992), available at: https://hudoc.echr.coe.int/eng#{%22docname%22:[%22ollila%22],%22documentcollectionid2%22:[%22JUDGMENTS%22,%22DECISIONS%22],%22itemid%22:[%22001-1438%22]}:

[15] Decision No SD1197 of the Constitutional Court dated 7 April 2015, available at: https://www.arlis.am/DocumentView.aspx?docID=96759:

capacity or full deprivation of legal capacity, but more flexible options for the courts on restricting the legal capacity.[16]

CM Recommendation No. R(99)4 "On the principles concerning the legal protection of incapable adults", dated February 23, 1999, prescribes that the intervention should be of the minimum necessary volume. In particular, it states that if a measure of protection is necessary, it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent consistent with achieving the purpose of the intervention. Hence, the legislation should provide different restriction levels, which may change over time. Accordingly, a measure of protection should not automatically result in completely removing legal capacity.

However, a restriction of legal capacity should be possible where it is shown to be necessary to protect the person concerned. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. Consideration should be given to legal arrangements whereby, even when representation in a particular area is necessary, the adult may be permitted to undertake specific acts or acts in a specific area with the representative's consent. Whenever possible, the adult should be able to enter into legally effective transactions of an everyday nature.[17]

Despite the importance of the principles of equality before the law and the proportional and necessary limitation of rights also enshrined in the Constitution, domestic legislation does not allow limiting or restricting a person's legal capacity other than full incapacity. It does not provide for different levels of legal capacity of persons with mental health problems, thus limiting the possibility for an individual approach. Due to this legislative issue, the courts don't have many options but either decline the application of declaring the person as legally incapable or decide on full deprivation of legal capacity. The existence of a tailor-made system would make it possible to adjust the extent of limiting the legal capacity to the person's mental capacity, ensuring the principle of proportionality. According to the current regulations, if the person is declared legally incapable, the only remaining right is access to court to restore the legal capacity.

In this frame, it is important to discuss the decision of the Court of Cassation No SD/1224/02/01 on setting criteria for the deprivation of legal capacity, finding the need for the development of legal practice and ensuring unified and foreseeable practice. In particular, it interprets the term "mental disorder" used in the CC, also referring to the judgement Nikolyan v. Armenia and defining the "legal incapacity". According to the court, legal incapacity is the lack of ability of a citizen to acquire and exercise civil rights through his/her actions, create civil duties for himself, and fulfil them. It adds that the necessary condition for recognising a citizen as incapacitated is to record the fact of not understanding the meaning of his actions or being unable to control them due to a mental disorder. The court highlights that the assessment of the proportionality

[16] Nikolyan v. Armenia (Application No. 74438/14, judgment 3 October 2019), available at: https://hudoc.echr.coe.int/eng?i=001-196149.

[17] Recommendation No. R(99)4 "On the principles concerning the legal protection of incapable adults", dated February 23, 1999, of the CoE Committee of Ministers, available at: https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec(99)4E.pdf.

of deprivation of legal capacity should be based on criteria such as the severity of the behaviour disorder and whether it requires care and treatment.

Summarising the above, the Court of Cassation notes that the citizen's inability to understand the meaning of his actions or his inability to control them is a sufficient condition for considering a certain "kind of a degree" of behavioural disorder as a consequence of mental health issues, which can also occur without a mental disorder. It is necessary to show certain functions and behavioural disorders in such a way that it will be possible to unconditionally identify which actions the citizen cannot understand or control, to form a clear picture of the degree of the citizen's illness, the possible consequences of his illness on his social life, health, material interests, etc., as a result, also about the proportionality of the application of the measure of recognising the citizen as legally incapable.

Furthermore, the Court of Cassation also provided some guiding principles for the lower instance courts on assessment of the evidence in cases on deprivation of legal capacity. The main principle flagged by the court is that the deprivation of legal capacity is important and should be applicable, as well as that mental disorder also covers behavioural disorders. In the concluding part of the decision, the court sent it back for re-examination and ordered to address more specific questions to be asked to the forensic psychiatric experts.[18]

The analysis of the domestic legislation and experience of other CoE member states revealed several models. One of them is to elaborate on the system of limited legal capacity enshrined in the CC and include persons with mental health issues. This mechanism comes from the so-called “Soviet period” and exists in Armenia as well. It refers to a person who has put his family in a difficult financial situation as a result of alcohol or drug abuse, as well as being attracted to gambling. This is the reason why it existed in the post-Soviet countries, as discussed below.

In Armenia, the court may limit the legal capacity under the procedure established by the CPC and establish a trusteeship for the person. The person whose legal capacity is restricted can conclude other transactions, as well as receive salary, pension and other incomes and manage them only with the consent of the trustee. If the grounds on which the person's legal capacity was limited have disappeared, the court removes the limitation of his legal capacity. Based on the court's decision, the trusteeship established for him/her is abolished.

The main purpose of such restriction is to limit the autonomy of a person concerning the decisions on his/her property, thus leaving the right to conclude only minor household transactions independently. It is not relevant to persons with mental health issues. The aim and scope of restrictions in the case of a person with mental health issues and those who have put their family in a difficult financial situation as a result of alcohol or drug abuse, as well as being attracted to gambling, are significantly different.

In discussing the reforms of this mechanism in other states, particular attention should be paid to the ECtHR case *Shtukaturov v. Russia*, part of the *Rakevich v. Russia* group of cases, is necessary. The domestic regulations of Russia during the given period were very similar to those of Armenia: the domestic courts should either recognise the person as completely incapable or reject the application to recognise the person as incapable without the possibility of making a proportional decision. The Civil Code of the Russian Federation has provided for a third, intermediate status of legal capacity to execute these judgements, among other

[18] Decision No SD/1224/02/01 of the Court of Cassation dated 6 April 2023, available at: https://www.cassationcourt.am/precedent/precedent-single-decision/civil-cases/2020.

implemented general measures.[19] Notably, the CM considered the implemented general measures, including the reforms in the Civil Code, sufficient and found the *Rakevich v. Russia* group of cases, including the *Shtukaturov v. Russia* case, executed and closed.[20]

In particular, the Civil Code of Russia states that a person who, due to mental health issues, can understand the meaning of his/her actions or manage them only with the help of other persons may be limited by the court in a legal capacity in the manner established by Civil Procedure Code legislation. Trusteeship is established over him/her. The financial transactions of these people are being restricted and, in some cases, need the approval of the trustee. However, in general, a person whose legal capacity is limited due to mental health issues shall independently bear property liability for transactions made by him.[21]

Nevertheless, the study of the domestic legislative changes made within the framework of the judgement in the case of *Shtukaturov v. Russia* proves that the reform has shortcomings: it does not provide the possibility of an individual approach and, in some cases, has a formal character focusing rather on the right to property of the person whose legal capacity was limited.

According to the Mental Disability Advocacy Center, the use of the mechanism of limited legal capacity in relation to persons with mental health issues alone will not lead to improvements. In this form, limited legal capacity will not ensure the measure's flexible, proportionate, and effective use. The legislation of many countries contains a list of those areas of decision-making in which you can use a measure of guardianship, as well as a list of rights that cannot be limited under any circumstances (for example, people under guardianship may always have a right of access to justice).[22]

Furthermore, the civil legislation of Russia does not differentiate between mental health issues. So, theoretically, to recognise a person as having limited legal capacity, the presence of any mental health issue is sufficient unless, in concrete cases, it is established that, as a result of this issue, the person can understand the meaning of his/her actions or manage them only with the help of another person. Obviously, in such cases, the court's adoption of an appropriate decision must be preceded by a forensic psychiatric, forensic psychological or complex forensic psychological and psychiatric examination. The expert opinion will be assessed by the court along with other case circumstances.

A similar solution, extending the institute of limited legal capacity to cover persons with mental health issues, is made in Ukraine. In particular, according to the Civil Code, the court may limit the legal capacity of an individual if he/she suffers from a mental health issue that significantly affects his/her ability to understand the meaning of his/her actions and (or) manage them. The Ukrainian legislation pointed out the need to establish the significance of the influence of a mental health issue on the ability of an individual to understand the meaning of his/her actions and (or) manage them.[23]

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[19] Action Report (18 November 2020) of the *Rakevich and 8 other cases v. Russian Federation* (Application No. 58973/00), available at: https://rm.coe.int/0900001680a075df:

[20] Resolution CM/ResDH(2020)333 on the Execution of the judgments of the European Court of Human Rights Nine cases against the Russian Federation, available at: https://hudoc.exec.coe.int/eng?i=001-207280:

[21] Civil Code of the Russian Federation, Article 30, available at: https://www.consultant.ru/document/cons_doc_LAW_5142/a7eba7d96ab59aedad870b2adf2bba34dcc30c3e/.

[22] "Recommendations for legislative measures necessary for complete execution of the judgement of the European Court of Human Rights Shtukaturov v. Russia", Mental Disability Advocacy Center, available at: https://www.mdac.org/sites/mdac.info/files/Russian_Shtukaturov_v_Russia.pdf.

[23] Civil Code of Ukraine, Article 36, available at: https://zakon.rada.gov.ua/laws/show/en/435-15#Text.

In comparison, Russian legislation also contains an element of materiality, but in different wording: limiting the legal capacity of a person in connection with mental health issues is possible only when he/she can understand the meaning of his/her actions or manage them only with the help of another person. If a person, even with the help of another person, cannot understand the meaning of his/her actions or manage them, he must be declared incompetent. And vice versa, if a person, even if he/she has a mental health issue, without the help of another person, can understand the meaning of his/her actions or manage them, the legal capacity should remain intact.[24]

In Lithuania, the legal framework governing the legal incapacitation procedure and safeguarding the rights of persons with mental health issues was reformed in 2016, *inter alia* by amendments to the Civil Code, the Code of Civil Procedure and the Law on the State Guaranteed Legal Aid, to allow courts to declare a person suffering from mental health issues, legally incapacitated only in a certain area of his life. In such cases, the court should provide a definitive list of areas where the person declared with limited legal capacity cannot act independently.[25] Following these amendments, the CM closed the case.[26] In some of the above-mentioned states, the full deprivation of legal capacity and the plenary guardianship are still in force.

According to another model, some CoE member states abolished the full deprivation of legal capacity and left only the possibility of restricting the legal capacity with a focus on limiting the autonomy in making transactions. For instance, according to the General Part of the Civil Code Act of Estonia, persons who, due to mental health issues, are permanently unable to understand or direct their actions have restricted active legal capacity. The restricted active legal capacity of an adult affects the validity of the transactions entered into by the person only to the extent to which he or she cannot understand or direct his or her actions. If a guardian is appointed by a court to this person, he/she is presumed to have restricted active legal capacity to the extent to which a guardian has been appointed to him/her.[27]

The court thus no longer declares anybody to be without active legal capacity but instead identifies a person as having restricted active legal capacity where necessary. Restricted active legal capacity is thus an objective status. Estonia has proceeded from the principle that it is not democratic to regard or declare anyone as having no active legal capacity whatsoever. Even a person who is mentally disturbed should be granted certain rights that he or she can exercise independently. The person's ability to do so depends on the specific circumstances.[28] A similar approach is established in Austria.[29]

According to the Swiss Civil Code, a person has legal capacity within the meaning of the law if he or she does not lack the capacity to act rationally by virtue of having mental health issues.

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[24] "Legal status of citizens limited in legal capacity due to mental disorder", Bogdanov E.V., Head of the Department of Civil Law of the Republican Party of Justice of the Ministry of Justice of Russia, Doctor of Law, Professor, available at: http://psyhosp.ru/about/articles/pravovoe-polozhenie-grazhdan-ogranichennykh-v-deesposobnosti-vsledstvie-psikhicheskogo-rasstroystva/.

[25] Action Report (14 February 2020) of the D.D. v. Lithuania (Application No. 13469/06), available at: https://hudoc.exec.coe.int/?i=004-4336.

[26] Resolution CM/ResDH(2020)267 Execution of the judgment of the European Court of Human Rights D.D. v. Lithuania, available at: https://hudoc.exec.coe.int/?i=001-206922.

[27] General Part of the Civil Code Act of Estonia, Article 8, available at: https://www.riigiteataja.ee/en/eli/528082015004/consolide.

[28] "Restrictions on Active Legal Capacity", Paul Varul, Anu Avi and Triin Kvirisild, available at: https://www.juridicainternational.eu/public/pdf/ji_2004_1_99.pdf.

[29] General Civil Code of Austria, Articles 21 and 24, available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622.

A person cannot act independently if he/she is legally incapable or is subject to a general guardianship. Persons who are legally capable but lack the capacity to act may only enter into obligations or give up rights with the consent of their legal representative. Without such consent, they may only accept advantages that are free of charge or carry out minor everyday transactions. They are liable for damages for unpermitted acts.[30] This means that Swiss legislation does not prescribe the full deprivation of legal capacity but only restricts a certain financial nature.

German Civil Code specifies that persons who are in a state of pathological mental disorder that precludes the free formation of will if such condition is not temporary by nature have no active legal capacity. Suppose a person of full age incapable of contracting enters into an everyday transaction that can be effected with funds of low value. In that case, the contract he enters into is regarded as effective with regard to performance and, if agreed, consideration as soon as performance has been effected and consideration rendered. This does not apply in the case of considerable danger to the person or the property of the person incapable of contracting.[31] The deprivation of legal capacity does not, therefore, exist under German law. Limited guardianship exists where it is considered that it is necessary for a particular domain of decision-making (e.g. health and personal welfare, property and financial affairs).[32]

According to the Civil Code of the Czech Republic, it is impossible to deprive a person of legal capacity fully, and any restriction of legal capacity is to be viewed only as an option of last resort. For such a restriction to be imposed, the following two conditions must be met: that individual would otherwise be under a threat of serious harm; milder and less restrictive measures would not suffice to protect his/her interests. The limits on the legal capacity of the individual are, therefore, confined to the particular area in which it has been decided that he or she "lacks" legal capacity.[33] The Civil Procedure Code stipulates that a court may limit the legal capacity of an individual to the extent to which the individual is unable to make juridical acts due to a mental disorder which is not only temporary and shall define the extent to which it has limited the capacity of the individual to make independent juridical acts.[34]

The third model is mixing the restriction of legal capacity with the system of support in decision-making. The Civil Code of Georgia, following the decision of the Constitutional Court, was amended and now provides that "[s]upport shall be established for a beneficiary of support". There is, therefore, an assumption that legal capacity is not to be removed, and systems of support must instead be established to ensure that that legal capacity can be exercised. The Civil Code provides that a court may make a declaration which declares a person as a "beneficiary of support", may assign a supporter, and define the limits of support and the rights and duties of the supporter. The Civil Code does provide for "exceptional cases" where it is "objectively impossible for a supporter to declare the intent of a beneficiary of support for more than one month, and that the prohibition of making a decision instead of the beneficiary of support can significantly prejudice him/her" where the court may authorise the supporter to

[30] Swiss Civil Code, Articles 17, 18, 19, 19a-19d, available at: https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en#art_17.

[31] German Civil Code, Articles 104, 105 and 105a, available at: https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Alemao-BGB-German-Civil-Code-BGB-english-version.pdf.

[32] "A study on Equal Recognition before the law", Contribution towards the Council of Europe Strategy on the Rights of Persons with Disabilities, available at: https://edoc.coe.int/en/people-with-disabilities/7277-pdf-a-study-on-the-equal-recognition-before-the-law-contribution-towards-the-council-of-europe-strategy-on-the-rights-of-persons-with-disabilities.html.

[33] Ibid.

[34] Civil Procedure Code of the Czech Republic, Section 57 (1), available at: http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf.

conclude “necessary” transactions on behalf of the beneficiary of support and based on his/her interests”. It was interpreted that this provision would only be applicable in cases where a person is in a coma for more than a month, and their property is under some threat, leading to the need for a legal representative to make decisions in relation to these interests.[35]

Pilot projects on supported decision-making have been carried out in several CoE member States. They have occurred in two contexts: as part of a law reform process and to “build the case” for law reform. These states are the Czech Republic, Latvia and Bulgaria.[36]

The last option is an assisted decision-making system without the restriction of the legal capacity of a person on the grounds of mental health issues, which exists in Ireland. The Irish legislation stipulates regulations on appointing a “decision-making assistant” to help persons with mental health issues make decisions regarding their “personal welfare or property and affairs”. An assistant is not entitled to decide on behalf of the appointer.[37]

It should be noted that a number of CoE bodies are promoting the transition from the traditional guardianship system to supported decision-making. The Council of Europe has been actively addressing the rights of persons with disabilities regarding legal capacity, demonstrating a consistent human rights progression. It endeavours to align its instruments with global human rights standards through interpretive practices and evolutive approaches. For example, the Member States are urged by the Council of Europe Committee of Ministers to ensure that persons with disabilities enjoy equal rights to participate in political and public life, including the right to vote and stand for election, without discrimination based on their disability or perceived capacity, in alignment with international conventions and case law.[38]

In Resolution 1642 (2009), the CoE Parliamentary Assembly emphasises the importance of ensuring that people with disabilities retain and exercise legal capacity on an equal basis with others. It calls for tailored measures and support for decision-making while recognising the rights of individuals placed under guardianship, including safeguards against abuse. Despite permitting certain forms of substitute decision-making under certain circumstances, the resolution prioritises individual autonomy and the need for support.[39]

The CoE Commissioner for Human Rights highlighted in a 2012 Issue Paper recommended the CoE member states review existing legislation, abolish full incapacitation and plenary guardianship mechanisms, ensure the right to challenge guardianship, develop supported decision-making alternatives, and involve persons with disabilities in reform processes. The paper underscored the need to transition from substituted decision-making to support-based models while providing immediate procedural safeguards for individuals whose legal capacity had been removed, pending legislative reforms by member states.[40]

The study of the European Union Agency for Fundamental Rights on the “Legal capacity of Persons with intellectual disabilities and persons with mental health problems” provides more country-specific experiences on this matter.[41]

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[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Resolution 1642 (2009), the Council of Europe Parliamentary Assembly, Principle 7, available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17697&lang=en.

[40] “Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities” Issue Paper of the Council of Europe Commissioner for Human Rights, available at: https://rm.coe.int/16806da5c0.

[41] European Union Agency for Fundamental Rights, “Legal capacity of Persons with intellectual disabilities and persons with mental health problems”, Pages 27-32, available at: https://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health.

Turning back to the Armenian context, as was highlighted during the expert discussions and the interviews, it is desirable to carry out the reforms of the field in a “step-by-step” form. This means the current challenges, for instance, the lack of capacity and human resources of the guardianship and trusteeship authorities on the local levels, shortcomings in conflict-free guardianship and proper monitoring, should be considered, and feasible solutions should be provided.

**Taking into account the observations of the ECtHR in the judgement *Nikolyan v. Armenia* and the case law in general, CoE standards and the experience of different CoE member states, as well as the country-specific context, it is recommended to carry out a comprehensive legislative reform in the CC and CPC and ensure a tailor-made system of restricting the legal capacity of people with mental health issues. This can be done in the frame of the mechanism of limited legal capacity, as it is other members of the CoE. The pros of such a model are that the possibility of restricting the legal capacity will be connected to certain rights, as it is in the other CoE member states discussed above.**

**The establishment of a tailor-made system of restricting the legal capacity of people with mental health issues should be not only established in the law but effectively implemented in practice. Nevertheless, in the case of such legislative reform, for its proper implementation in legal practice, following the amendments to the CC and CPC, it will be necessary, for example, to adopt specific guidelines on the limitation of individual rights based on the level of a person's mental capacity and to implement joint capacity enhancement measures for judges and psychiatric experts, which will also be aimed at to the formation of interaction.**

**Except for the step recommended to be implemented for the purpose of execution of *Nikolyan v. Armenia* above, it is suggested to improve the field further through the following proposals, which will need further research and analysis:**

**In the first stage of the reform, the full deprivation of legal capacity may remain. However, following the preparedness of the mental health system, the automatic deprivation of legal capacity is advisable to abolish. This will entail the examination of restricting the rights one by one, without the possibility of automatic deprivation of legal capacity.**

**Following the legislative reforms, piloting the supported decision-making mechanism is also recommended. However, the system's readiness should be properly measured, and the capacity of responsible entities, such as the guardianship and trusteeship body, should be enhanced.**

## ASSESSMENT OF LEGAL CAPACITY AND "SUFFICIENTLY RECENT" EXPERT OPINION

According to the ECtHR case law, the restriction of legal capacity should be properly justified. This involves presenting compelling evidence that the person cannot provide for their own needs or poses a threat to the rights or interests of others.[42] The justification should not be of a general nature but sufficiently concrete.[43] Undoubtedly, one of the most important pieces of evidence is the expert opinion of forensic psychiatrists requested by the courts.

In the frame of this analysis, it is crucial to distinguish between legal capacity and mental capacity. Legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise these rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to a person's decision-making skills, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors.[44] Indeed, mental capacity and legal capacity are closely linked: while deciding on the legal capacity of the person, mental capacity is assessed.

Though this is done by forensic experts, the process has other actors, in particular judges. Judges are the responsible authority to make a decision on the legal capacity of the person with mental health issues. In practice, the judges may rely on the expert opinion of forensic examination, but this should not serve as the only evidence; rather, it should be discussed in the general context with others.

In the case of *Ivinović v. Croatia,* the ECtHR noted that the decision to deprive the applicant of her legal capacity partly relied to a decisive extent on the report drawn up by two psychiatrists. The ECtHR flagged its awareness of the relevance of medical reports concerning persons suffering from impairment in their mental faculties and agrees that any decision based on an assessment of a person's mental health has to be supported by relevant medical documents.

However, the judge and not a physician must assess all relevant facts concerning the person in question and his or her personal circumstances. It is the function of the judge conducting the proceedings to decide whether such an extreme measure is necessary or whether a less stringent measure might suffice. When such an important interest in an individual's private life is at stake, a judge has to carefully balance all relevant factors to assess the proportionality of the measure to be taken.[45]

It is essential to consider the collaboration of forensic experts and courts ruling on the legal capacity of the person concerned. In particular, it should be observed what questions were raised by the court and whether the expert medical report covers those questions. In *Sýkora*

[42] X and Y v. Croatia (Application No. 5193/09, judgment 3 February 2012), available at: https://hudoc.echr.coe.int/eng?i=001-107303.
[43] M.S. V. Croatia (Application No 36337/10, judgement 25 April 2013), available at: https://hudoc.echr.coe.int/eng#{%22docname%22:[%22M.S.%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-118736%22]}:
[44] General comment No. 1 (2014) Article 12: Equal recognition before the law, CRPD, Paragraph 12, available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1.
[45] Ivinović v. Croatia (Application No. 13006/13, judgment 18 September 2014), available at: https://hudoc.echr.coe.int/eng?i=001-146393.

*v. Czech Republic,* the ECtHR considers that any deprivation or limitation of legal capacity must be based on sufficiently reliable and conclusive evidence. An expert medical report should explain what kind of actions the applicant is unable to understand or control and what the consequences of his illness are for his social life, health, pecuniary interests, and so on. The degree of the applicant's incapacity should be addressed in sufficient detail by the medical reports.[46]

However, the role of a judge is also important and affects the content of the medical report. It is also important for the court to put a relevant and targeted question for the examination of the medical experts, which will further impact the decision about the legal capacity of the person concerned. In the case of *A.N. v. Lithuania*, the ECtHR observed that the questions to the doctor, as formulated by the judge, did not concern "the kind and degree" of the applicant's mental illness.[47]

In *Nikolyan v. Armenia*, the ECtHR ruled that the objectivity of medical evidence required it to be "sufficiently recent". Whether the evidence was sufficiently recent depended on the case's specific. In the specific case, the psychiatric expert opinion had been issued more than fourteen months before the judgment, declaring the applicant incapable and almost a year and a half before the decision of the Civil Court of Appeal upholding that judgment. Thus, the ECtHR considered that the opinion could not be regarded as "up to date".

The Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults also contains procedural safeguards about the restriction of legal capacity. In particular, there should be adequate procedures for the investigation and assessment of the adult's personal faculties. No measure of protection which restricts the legal capacity of an incapable adult should be taken unless the person taking the measure has seen the adult or is personally satisfied with the adult's condition and an up-to-date report from at least one suitably qualified expert has been submitted. The report should be in writing or recorded in writing.[48]

CPC stipulates a special chapter on the procedure of declaring a person legally incapable and with limited capacity and restoring legal capacity. According to those provisions, in the presence of reasonable suspicions regarding the mental health issues of a person, the court of first instance appoints a forensic psychiatric examination to find out the existence of grounds for recognising the person as legally incapable.[49] However, the legislation does not provide any further regulations. Judges do not have any guidance on what questions should be addressed to the experts to ensure individual approach and collect proper evidence regarding the concrete case.

According to the information collected during the interviews and expert discussions, the questions addressed by the judges to the experts are mainly of a rather general nature and sometimes repetitive. It seems that there is a lack of individual approach. There is also a lack of proactiveness from the end of the experts to provide a comprehensive analysis of the

[46] Sýkora v. Czech Republic (Application No. 23419/07), judgment 22 November 2012), available at: https://hudoc.echr.coe.int/eng?i=001-114658.

[47] A.N. v. Lithuania, (Application No. 17280/08, Judgement 31 May 2016), available at: https://hudoc.echr.coe.int/?i=002-11075.

[48] Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults, Principle 12, available at: https://search.coe.int/cm?i=09000016805e303c.

[49] Civil Procedure Code, Article 252 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

examination on the "kind of a degree" and actions the person cannot understand or control and what the consequences of his illness are for his social life, etc.

Another issue reported during this assessment is that, in the frame of the procedure of deciding on the legal capacity of the person with mental health issues, judges mainly rely on expert opinions. This should not be the case. Though the expert opinion has a crucial role in the assessment process, judges should make the analysis more comprehensive, collecting and covering other evidence. For instance, it is important for the court to hear the person whose legal capacity is being assessed in person. According to the ECtHR case law, in particular, the *Shtukaturov v. Russia*, the ECtHR notes that the applicant played a double role in the proceedings: he was an interested party and, at the same time, the main object of the court's examination. His participation was, therefore, necessary not only to enable him to present his own case but also to allow the judge to form her personal opinion about the applicant's mental capacity.

Furthermore, in the same case, the ECtHR also observed that the applicant was indeed an individual with a history of psychiatric problems. From the materials of the case, however, it appears that despite his mental illness, he had been a relatively autonomous person. In such circumstances, it was indispensable for the judge to have at least a brief visual contact with the applicant and preferably to question him. The ECtHR concludes that the decision of the judge to decide the case based on documentary evidence without seeing or hearing the applicant was unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 (1) ECHR.[50]

It should be noted that following the CPC reforms, the presence of the person whose legal capacity is being assessed is envisaged.[51] Hence, the issues related to the assessment of the legal capacity of a person with mental health issues are generally practical. This issue has no legislative solution. Such a solution will contain risks of deepening the general approach and lacking individual one.

**Therefore, for the purpose of ensuring the implementation of legislative provisions in line with the ECtHR case law in practice, it is recommended to:**

**Adopt guidance notes or other documents that give judges proper advice on what questions should be asked for forensic medical examination. Those papers need to cover the principles of addressing the questions to the forensic experts on the mental capacity of the person whose legal capacity restriction is being discussed. The aim of such a guidance note for the court will be to put a relevant and targeted question for the examination of the medical experts, which will further impact the decision about the legal capacity of the person concerned. Another important part of this document should be collecting other evidence (e.g., medical reports, opinions of local authorities) and comprehensive assessment.**

**Based on the adopted documents, capacity-building activities for judges and psychiatric forensic experts should be carried out. It would be advisable to incorporate such training into the regular training programme of judges and their candidates at the Academy of Justice. The possibility of conducting a mixed group training of judges and psychiatric forensic experts is suggested.**

[50] Shtukaturov v. Russia (Application No. 44009/05, judgement 27 March 2008), available at: https://hudoc.echr.coe.int/eng?i=001-85611.
[51] Civil Procedure Code, Article 251 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

## REVIEW OF RESTRICTION OF LEGAL CAPACITY

As was already discussed, the domestic legislation does not envisage a restriction of legal capacity for persons with mental health issues but full incapacity. According to the relevant regulations of the CPC and CC, the restoration of legal capacity can be initiated by the application of a person recognised as incapable, his/her guardian, family member or a psychiatric organisation. The restoration of legal capacity is possible if the grounds for the deprivation are not there, and it should be based on the appropriate conclusion of a forensic psychiatric examination on recognising the person as legally capable. In case of lifting the deprivation of legal capacity, based on the final judicial act of the court, the guardianship established for the person is being abolished.[52]

The issue of "right to court" in the case of persons with mental health issues arises, particularly about their access to court for restoration of their legal capacity. The CPC reforms, carried out after the respective decision of the Constitutional Court, envisage the possibility for the person deprived of legal capacity to apply to the court for its restoration. This is also true for persons whose legal capacity is restricted.[53] The issue was observed also in the *Nikolyan v. Armenia* judgement. This reform carried out before this judgement, aligns with the ECtHR case law.

In particular, in *Stanev v. Bulgaria*, the ECtHR acknowledged that restrictions on a person's procedural rights, even where the person has been only partially deprived of legal capacity, may be justified for the person's own protection, the protection of the interests of others and the proper administration of justice. However, considering that the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned since such a procedure, once initiated, will be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity, the ECtHR, considered that this right is one of the fundamental procedural rights for the protection of those who have been partially deprived of legal capacity.

Moreover, the ECtHR highlighted that in the light of the foregoing, in particular the trends emerging in national legislation and the relevant international instruments, Article 6 (1) ECHR must be interpreted as guaranteeing in principle that anyone who has been declared partially incapable, has direct access to a court to seek restoration of his or her legal capacity. The ECtHR noted that a comparative study of the domestic law of twenty Council of Europe member States indicates that in the vast majority of cases (Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Luxembourg, Monaco, Poland, Portugal, Romania, Slovakia, Sweden, Switzerland and Turkey) the law entitles anyone who has been deprived of legal capacity to apply directly to the courts for discontinuation of the measure. So, the court considered the right to access the court for legally incapable persons to restore their capacity somewhat absolute.

In the given case, the applicant, who has been partially deprived of legal capacity, complained that Bulgarian law did not afford him direct access to a court to apply to restore his capacity. The ECtHR needs to clarify that proceedings for restoration of legal capacity are directly decisive for the determination of "civil rights and obligations"; thus, Article 6 (1) ECHR is applicable in those cases. The ECtHR observed that, as far as access to court is concerned,

[52] Civil Procedure Code, Article 255 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625. Civil Code, Article 31 (3), available at: https://www.arlis.am/DocumentView.aspx?DocID=186960.
[53] Civil Procedure Code, Article 255 (2), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

domestic law made no distinction between those who were entirely deprived of legal capacity and those who, like the applicant, are only partially incapacitated. Moreover, domestic legislation did not allow for automatic periodic review of whether the grounds for placing a person under guardianship remain valid. Lastly, in the applicant's case, the measure in question was not limited in time. Therefore, in this particular case, the ECtHR found a violation of Article 6 (1).[54]

Another important step was free legal aid for both groups to restore their legal capacity. Nevertheless, it is necessary to emphasise that the discussed groups are absent from the list of persons receiving free legal aid according to the RA Law on Advocacy.[55] The study of statistical data and domestic court cases shows that this mechanism is ineffective in practice. It may be related, for example, to improper notification of persons recognised as incompetent. This can be linked to two major issues: unawareness of persons declared legally incapable and their guardians and lack of conflict-free guardianship when guardians won't be interested in the restoration of the legal capacity of the person.

In this frame, the experience of Poland might be useful. In particular, Additionally, according to Polish legislation, a court shall appoint an ex-officio lawyer for a person who is directly affected by the proceedings, even if she/he has not applied for a lawyer, in case such a person is not able to apply for a lawyer because of her/his mental health state and the court assesses that participation of a lawyer in the proceedings is needed. An ex-officio lawyer will also be appointed for a person admitted to a psychiatric hospital or a social care home without her/his consent.[56]

There is no other procedure for restoring the legal capacity of a person declared legally incapable or his/her capacity was limited other than the one described above. Domestic legislation does not prescribe a review of the legal capacity of a person declared legally incapable or his/her capacity at reasonable intervals. Furthermore, the legislation also does not oblige courts to prescribe by their decisions a duration for restricting the legal capacity or its deprivation. It strongly contradicts the important principle of applying limited and necessary duration for the protection measures restricting the rights of the person with mental health issues.

In particular, in *Nataliya Mikhaylenko v. Ukraine,* the ECTHR criticised that the domestic law does not provide safeguards to the effect that the matter of restoration of legal capacity is to be reviewed by a court at reasonable intervals. In the given case, the Court noted that the applicant's inability to seek the restoration of her legal capacity directly resulted in that matter not being examined by the courts. The absence of judicial review of that issue, which seriously affected many aspects of the applicant's life, could not be justified by the legitimate aims underpinning the limitations on access to a court by incapacitated persons. The facts of the present case lead the Court to conclude that the situation in which the applicant was placed amounted to a denial of justice as regards the possibility of securing a review of her legal capacity. There has, therefore, been a violation of Article 6 (1) of the Convention.[57]

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[54] Stanev v. Bulgaria (Application No. 36760/06), judgment 17 January 2012), available at: https://hudoc.echr.coe.int/?i=002-129.

[55] RA Law on Advocacy, Article 41 (5), available at: https://www.arlis.am/DocumentView.aspx?DocID=186162.

[56] Action Report (28 May 2018) of the K.C. and Kedzior v. Poland (Applications No. 31199/12, 45026/07), available at: https://hudoc.exec.coe.int/?i=DH-DD(2018)332-revE.

[57] Nataliya Mikhaylenko v. Ukraine (Application No. 49069/11), judgment 30 August 2013), available at: https://hudoc.echr.coe.int/eng?i=001-119975.

Following this judgement, as described in the action report presented by the Ukrainian authorities on *Nataliya Mikhaylenko v. Ukraine*, at the request of the Ministry of Social Policy of Ukraine, the Ministry of Justice of Ukraine provided an explanatory statement for the relevant authorities and the courts concerning the application of the relevant article of the Code of Civil Procedure of Ukraine. According to this statement, the validity of a decision declaring a physical person's incapacity shall be determined by the court but can not exceed two years. Thus, the period of declaring a physical person incapable ends the following day after the expiry of the period for recognition of a person incapable, specified in the court decision. The court decision shall be considered as a title document in such cases.[58] Following this action report, the CM closed the examination of this case.[59]

According to the action report on *D.D. v. Lithuania*, in Lithuania, the legal framework governing the legal incapacitation procedure and safeguarding the rights of persons with mental disabilities was reformed in 2016, inter alia by amendments to the Civil Code, the Code of Civil Procedure and the Law on the State Guaranteed Legal Aid, *inter alia,* to oblige the courts to restore legal capacity if the person's health improves, so that full incapacitation would be envisaged as ultima ration only. A request to declare a person legally incapacitated in a certain area may be submitted by his spouse, parents or adult children, a care institution or a prosecutor, who may also request that the court restore legal capacity. Such requests for restoration of legal capacity may be lodged no more than once per year and also by the person declared legally incapacitated himself/herself. It may also be lodged by the Incapacitated Persons' Review Commission, a new independent body to be established in every municipality. The amended Civil Code also provides a possibility to appeal against acts of the guardian and to initiate proceedings to dismiss him from his office.[60] The CM decided to close the examination of this case.[61]

Problems related to excessively frequent applications should not be solved by denying access altogether. Instead, the number of complaints within certain time frames could be limited.[62] The application of a period of three years within which no application for restoration of legal capacity can be made has nevertheless been deemed too restrictive by the Court.[63] In sum, this means that persons under guardianship regimes must also retain legal capacity to apply for restoration of their full legal capacity within a reasonable period of time.

The Recommendation Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults also states the importance of restoring the legal capacity as soon as there are no grounds. In particular, it stipulates that protection measures should be of limited duration whenever possible and appropriate. Consideration should be given to the institution of periodical reviews. Protection measures should be

[58] Action Report (8 August 2008) of the Nataliya Mikhaylenko v. Ukraine (Application No. 49069/11), available at: https://hudoc.exec.coe.int/eng?i=DH-DD(2019)896E.

[59] Resolution CM/ResDH(2019)324 Execution of the judgment of the European Court of Human Rights Nataliya Mikhaylenko against Ukraine, available at: https://hudoc.exec.coe.int/eng?i=001-199603.

[60] Action Report (13 January 2020) of the D.D. v. Lithuania (Application No. 13469/06), available at: https://hudoc.exec.coe.int/?i=DH-DD(2020)145E).

[61] Resolution CM/ResDH(2020)267 Execution of the judgment of the European Court of Human Rights D.D. v. Lithuania, available at: https://hudoc.exec.coe.int/?i=001-206922.

[62] Stanev v. Bulgaria (Application No. 36760/06), judgment 17 January 2012), available at: https://hudoc.echr.coe.int/?i=002-129.

[63] Berková v. Slovakia (Application No. 67149/01, judgement 24 June 2009), available at: https://hudoc.echr.coe.int/rus?i=001-91802.

reviewed in a change of circumstances, particularly in the adult's condition. They should be terminated if their conditions are no longer fulfilled.[64]

The Explanatory Report of the mentioned Recommendation commends that measures of protection should not be established for an indefinite duration unless this is necessary or appropriate in the interests of the adult concerned, for instance, when the adult who needs the appointment of a representative suffers from senile dementia from which there is no possibility of recovery. Consideration should be given to the institution of periodical reviews of any measure of protection taken unless the measure of protection is of fixed and short duration. The periodicity of such a review could be fixed, for example, by the authority establishing the measure of protection. The national law should determine the persons entitled to demand a review of measures of protection. In this respect, the adult concerned should be entitled to demand such a review.

Taking into account the present recommendation's approach – which recognises that there may be different degrees of incapacity, that incapacity may vary from time to time, and that, therefore, any measure of protection should be governed by the idea of the maximum preservation of capacity of the adult concerned – any change of circumstances and, above all, a change in the condition of the adult should lead to a review of measures of protection. Relevant changes of circumstances other than changes in the adult's condition might include, for example, the inheritance of property by the adult or changes in the adult's place of residence. Furthermore, if the conditions which determined the establishment of a measure of protection are no longer fulfilled, that measure should be terminated.[65]

Member states have different approaches in stipulating the duration of restriction of the legal capacity of the person with mental health issues. For example, according to the Civil Procedure Code of Ukraine, the validity period of the judgment on declaring an individual incapable shall be determined by a court but may not exceed two years. The petition for an extension of the validity period of a judgment on recognition of an individual incapable should be submitted by a guardian, a representative of the guardianship authority, no later than fifteen days before the expiration of the period. The petition for an extension of the validity period shall contain circumstances indicating the continuation of a chronic, persistent mental disorder, as a result of which the person continues to be unaware of the significance of his/her actions and (or) manage them, confirmed by the conclusion of the forensic psychiatric expert examination.[66]

According to the Civil Procedure Code of the Czech Republic, a court may limit legal capacity in connection with a certain matter for a period necessary to arrange such matter or for an otherwise defined definite period not exceeding three years; legal effects of the limitation are extinguished upon the expiry of that period. However, if proceedings to extend the period of limitation are initiated within this period, the legal effects of the original decision shall last until a new decision has been made, but no longer than one year. If the circumstances change, a court shall, even of its own motion, change or cancel its decision without delay.[67]

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[64] Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults, Principle 14, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e303c.

[65] Explanatory Report to the Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults, Paragraphs 56 and 57, available at: https://rm.coe.int/09000016805e302a.

[66] Civil Procedure Code of Ukraine, Article 300, available at: https://zakon.rada.gov.ua/laws/show/en/1618-15#Text.

[67] Civil Procedure Code of the Czech Republic, Sections 59 and 60, available at: http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf.

The Georgian Civil Code stipulates that limitation of legal capacity shall cease when the grounds for limitation of a person's legal capacity no longer exist.[68] According to the Civil Procedure Code, in such case, a court shall deliver a judgment to cancel a decision declaring a citizen as having limited legal capacity based on the application of the citizen him/herself, his/her guardian or a family member.[69]

The study of the European Union Agency for Fundamental Rights on the "Legal capacity of Persons with intellectual disabilities and persons with mental health problems" provides more country-specific experiences on this matter.[70]

Intervention to the right of a person with mental health issues through restriction of his/her legal capacity is made by the state, namely courts. It is the positive obligation of the authorities to closely follow the dynamic of the condition of mental health of this person as a result of the treatment provided by the state and assess the possibility of lifting some of the restrictions of legal capacity or restoring the legal capacity at large. The importance of bearing such duty is essential in the conditions of the ineffectiveness of the guardianship system and alleged conflict of interest from the end of guardians. In such conditions, the guardians may not be interested in reviewing the legal capacity.

**Following the findings presented above and for the purpose of execution of the *Nikolyan v. Armenia* judgement, it is recommended to prescribe in the CPC the maximum duration of restriction of the legal capacity of a person with mental health issues and the obligation for the courts to provide a duration of restriction or deprivation and stipulate the maximum duration. This should also be based on the opinion provided by the psychiatric forensic expert. In all cases, the review of legal capacity should include an appointment for psychiatric examination, study of medical history, etc.**

**Furthermore, in this frame, a mechanism of court supervision over the treatment of the person with mental health issues whose legal capacity was restricted can be established and restored as soon as the grounds for such restrictions are not present. The mechanism of reporting by the institutions providing treatment and the guardianship and trusteeship authority can be placed.**

[68] Civil Code of Georgia, Article 14 (3), available at: https://matsne.gov.ge/en/document/view/31702?publication=129.
[69] Civil Procedure Code of Georgia, Article 327 (1), available at: https://matsne.gov.ge/en/document/download/29962/92/en/pdf.
[70] European Union Agency for Fundamental Rights, "Legal capacity of Persons with intellectual disabilities and persons with mental health problems", Pages 37-39, available at: https://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health.

## GUARDIANSHIP AND TRUSTEESHIP SYSTEM

The next question that the ECtHR addressed in the *Nikolyan v. Armenia* judgment related to the effectiveness of the guardianship and trusteeship system. In particular, it was recorded in the judgment that the disagreements between the applicant as a guardian and his son as a guardian were not taken into account, as well as the suspicion of the latter's impartiality and the improper investigation of the domestic court, even though the applicant himself applied to change the guardian with a question. Moreover, the problem was also discussed in the context of a general measure.

Therefore, to ensure the integrity of this analysis, it is necessary to address the efficiency of the guardianship and trusteeship system and the need for efficient and effective mechanisms to exclude possible conflicts of interest between the person whose legal capacity was restricted and the guardian. In this context, it is necessary to pay attention to the hearing of the person recognised as incapable by the guardianship and trusteeship body and the right to appeal the decision made by that body in court.

According to the CC, guardianship is established for persons recognised by the court as legally incapable due to mental health issues. Within three days after the entry into legal force of the final judicial act declaring a person legally incapable or restricting his/her capacity, the court sends it to the guardianship and trusteeship body of the person's place of residence to establish guardianship or trusteeship over him. A guardian or trustee is appointed by the guardianship and trusteeship body of the place of residence of a person in need of guardianship and trusteeship within one month, starting from the day the body became aware of the need to establish guardianship or trusteeship over a citizen. For a person in need of guardianship or trusteeship, until a guardian or trustee is appointed, the guardianship and trusteeship body performs the duties of the guardian or trustee.[71] The head of the community is empowered to establish guardianship and trusteeship.[72] In other words, the heads of the community exercise the powers of guardianship and trustee bodies. In Yerevan, these powers are exercised by the heads of the administrative districts of the city of Yerevan.

A guardianship and trusteeship commission is established as an adjunct to the guardianship and trusteeship bodies, a consultative body that operates pro bono. From three to nine people can be included in the commission. The commission may include employees of the structural units of the staff of regional governors (Yerevan: Yerevan Municipality), territorial centres, community employees of the municipal administration, health workers, community pedagogues, psychologists, social work specialists and lawyers, employees of the specialised unit of the Police, as well as representatives of NGOs, upon their consent.[73]

The functions of the guardianship and trusteeship body include supervision of the activities of guardians and trustees, including monitoring and examining applications and complaints about actions or inaction of guardians and trustees. Furthermore, the guardianship and trusteeship

[71] Civil Code, Article 34 (1), Article 36 (2) and Article 37 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=186960.
Civil Procedure Code, Article 254 (2), available at: https://www.arlis.am/DocumentView.aspx?DocID=190625.

[72] Law on Local Self-Government Bodies, Article 36 (2) (2), available at: https://www.arlis.am/DocumentView.aspx?docid=193167.

[73] Civil Code, Article 37 (1), available at: https://www.arlis.am/DocumentView.aspx?DocID=186960.
Decision N 631-N of 2 June 2016 of the RA Government on approving the statute of the guardianship and trusteeship bodies on recognition of void of the Decision N 164-N of 24 February 2011 of the RA Government, Paragraphs 11, 12 and 14, available at: https://www.arlis.am/DocumentView.aspx?DocID=152354.

body can also relieve the guardian or trustee from his/her duties. Among the reasons, the statute stipulates cases of improper performance of his/her duties by the guardian or trustee, including using the guardianship or trusteeship for profit purposes or leaving the guardian without supervision and necessary assistance, while taking necessary measures to bring him/her to the responsibility established by law. It also allows the guardian to make transactions around the incapacitated person's property and provides support on treatment and arrangements over rest.[74]

Based on the government's decision to approve the guardianship and trusteeship bodies statute, the Minister of Labor and Social Affairs approved a methodological guide on the activities of the guardianship and trusteeship commissions adjunct to the guardianship and trusteeship bodies. The purpose of the guide is to provide practical support to the guardianship and trusteeship bodies to ensure the protection of the rights and legal interests of children and persons declared legally incapable or with limited capacity within the framework of the powers assigned to them by the legislation. However, the methodological guide does not provide detailed guidance for the rights protection of persons declared legally incapable or with limited capacity; rather, it focuses on children.[75]

The report on the "*Access to Justice for Legally Incapable Persons and Non-Execution/Late Execution of Decisions of National Courts*" thoroughly analysed the legal status of the guardianship and trusteeship body and the type of legal act, the decision on appointing a guardian. In this context, referring to the decision No. VD/0477/05/15 of the Court of Cassation.[76] Referring to the nature of the decision to appoint a guardian for a person recognised as incapable by the guardianship and trusteeship body, the Court of Cassation recorded that it is an administrative act. Therefore, the decision of the guardianship and trusteeship body to appoint a guardian for a person recognised as incapable, as an administrative act, is subject to appeal under the procedure established by the Code of Administrative Procedure. The possibility of appealing against the decision of the guardianship and trusteeship body is envisaged by the CC and the statute of the guardianship and trusteeship bodies.[77]

In its decision, the Court of Cassation commented on the provisions of the CC. In particular, the court also noted that the mentioned procedure enables interested persons to request a change of guardian. The court considered that the question of whether a person recognised as legally incapable is included in the scope of interested persons provided for in Article 37 of the CC, who can initiate a judicial appeal of the guardianship decision or not, is subject to clarification. It ruled that a person with mental health issues who is declared legally incapable must have the opportunity to be heard in person in cases concerning the establishment of guardianship over him/her to express his/her point of view since the making of the said decision is no less important for the latter, taking into account that the protection of his rights and interests must be carried out exclusively through the guardian. Hence, the Court of Cassation ruled that the person declared legally incapable should not only have the right to

[74] Ibid., Paragraph 9.
[75] Decree No N 12-A/1 of 31 June 2017 of the Minister of Labor and Social Affairs on approving a methodological guide on the activities of the guardianship and trusteeship commissions adjunct to the guardianship and trusteeship bodies, available at: https://www.irtek.am/views/act.aspx?aid=96439.
[76] Decision No VD/0477/05/15 of the Court of Cassation dated 28 September 2016, available at: https://iravaban.net/wp-content/uploads/2016/10/VD-0477-05-15-ANGORCUNAK-mijankyal.pdf?fbclid=IwAR2I7pusZdVd8KGe8BSmhHvEg358sRtnaD_ssilDKxgEwM09vCmb9d5IlSs.
[77] Decision N 631-N of 2 June 2016 of the RA Government on approving the statute of the guardianship and trusteeship bodies on recognition of void of the Decision N 164-N of 24 February 2011 of the RA Government, Paragraphs 6, available at: https://www.arlis.am/DocumentView.aspx?DocID=152354.

appeal against the decision to appoint a guardian but must also have the opportunity to participate fully in the proceedings and exercise his/her rights.[78]

After the mentioned conclusion, it is necessary to discuss whether the regulations required to ensure this legal position of the Court of Cassation are provided by the legislation of administrative proceedings. According to the Administrative Procedure Code, each natural or legal person has the right to apply to an administrative court. The ability to have judicial rights and bear judicial duties (judicial capacity) is recognised equally for all natural and legal entities. Nevertheless, it is also stated that the rights and freedoms of persons recognised as legally incapable are represented in the trial by their guardians. During the examination of the case, persons recognised as having limited legal capacity have the right to be heard. The court may grant the right to be heard during the case investigation to a person declared legally incapable.[79]

It turns out that although a person declared legally incapable or with limited capacity can theoretically apply to the administrative court on his/her own and challenge the decision of the guardianship and trusteeship body, nevertheless, not having the legal capacity (իրավունակությունն) and functional capacity (գործունակությունն), his rights and freedoms will be represented in the trial by a legal representative. In other words, if a person recognised as legally incapable appeals the decision to appoint a guardian, for example, based on a conflict of interests between him/her and the guardian, he/she will be represented in court by his legal representative, the guardian himself/herself.

According to international standards, guaranteeing conflict-free guardianship for persons declared legally incapable and proper monitoring and supervision should be among the core functions of the guardianship authorities. This function must be provided by the legislation and adequately implemented in practice. The importance of proper engagement and the right to appeal to the person over whom the guardian will be appointed is also highlighted.

In the case of *N. v. Romania (no. 2)*, the ECtHR considered that the decision-making process for the applicant's change of legal guardian had not been accompanied by adequate safeguards. The applicant had been excluded from the proceedings for the sole reason that he had been placed under guardianship. No consideration had been given to his capacity to understand the matter and express his preferences. Moreover, the reason for the change was insufficient, and the decision was disproportionate.

The Recommendation Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults also contains relevant provisions about the representation and assistance of incapable adults, as well as control and limitations of such support. In particular, it states that steps should be taken to provide an adequate number of suitable qualified persons to represent and assist incapable adults. Consideration should be given to the need to ensure that any powers conferred on any person by operation of law, without the intervention of judicial or administrative authority, to act or take decisions on behalf of an incapable adult are limited and their exercise controlled. Furthermore, the

[78] Decision No VD/0477/05/15 of the Court of Cassation dated 28 September 2016, available at: https://iravaban.net/wp-content/uploads/2016/10/VD-0477-05-15-ANGORCUNAK-mijankyal.pdf?fbclid=IwAR2I7pusZdVd8KGe8BSmhHvEg358sRtnaD_ssilDKxgEwM09vCmb9d5IlSs.

[79] Administrative Procedure Code, Article 3 (1) and Article 4 (1), (6) (7), available at: https://www.arlis.am/DocumentView.aspx?DocID=193219.

recommendation also states that the national law should determine which juridical acts are of such a highly personal nature that they cannot be done by a representative.[80]

The study of the European Union Agency for Fundamental Rights on the "Legal capacity of Persons with intellectual disabilities and persons with mental health problems" provides more country-specific experiences on this matter.[81]

The issues on the domestic level are strongly connected with the problem of conflict of interests between the guardian and the person declared legally incapable, which was reported during the interviews and expert discussions. In addition, as was mentioned, the guardianship and trusteeship commissions operate on a pro bono basis, and they lack sufficient capacity to examine the risks of conflict of interest properly. Furthermore, the supervision and monitoring of guardianship is also not effective. It might be linked to the lack of guidance and capacity-building activities. Though the problem seems deeply rooted, it is not connected with legislative shortcomings. The issue is rather linked to the lack of human and other resources.

**Taking into account the above-presented findings and for the purpose of execution of the Nikolyan v. Armenia judgement, it is recommended to supplement the Code of Administrative Procedure and provide for the right to appeal for a person recognised as legally incapable regarding the decision on appointing a guardian of the guardianship and trusteeship body, ensuring his rights as a person participating in the case. Nevertheless, considering the possible health problems associated with the person's ability to function and the difficulty of making independent decisions, it is proposed that the right to free legal aid be provided within the framework of administrative proceedings.**

**It is also recommended that the powers of the guardians over the property of the person declared legally incapable be limited, and initial approval of competent bodies is required depending on the scale of the property (guardianship and trusteeship body or court).**

**For the purpose of ensuring the implementation of legislative provisions in line with the ECtHR case law in practice, it is recommended to:**

> **Taking into account the practical issues, in order to exclude the possible conflict of interests between the guardian and the person declared legally incapable and to effectively implement the control/monitoring function provided by the law by the guardianship and guardianship body, consider the institution of periodic review of the guardianship issue, as well as the provision of necessary funds and the capabilities of that body development opportunity. It is also suggested that the decree of the Minister of Labour and Social Affairs be supplemented, as discussed in this chapter, providing guidance on the exclusion of conflict of interests and the supervision and monitoring of guardianship and trusteeship.**

[80] Rec (99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults, Principles 17-19, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e303c.

[81] European Union Agency for Fundamental Rights, "Legal capacity of Persons with intellectual disabilities and persons with mental health problems", Pages 33-37, available at: https://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health.