



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

FIRST SECTION

CASE OF IVINOVIĆ v. CROATIA

(Application no. 13006/13)

JUDGMENT

STRASBOURG

18 September 2014

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

In the case of Ivinović v. Croatia,

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Paulo Pinto de Albuquerque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 August 2014,

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

PROCEDURE

1. The case originated in an application (no. 13006/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Marija Ivinović (“the applicant”), on 11 January 2013.

2. The applicant was represented by Mrs M. Savić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, about the manner in which the proceedings by which she had been partly deprived of her legal capacity had been conducted and that there had been no grounds for partial deprivation of her legal capacity.

4. On 18 March 2013 the application was communicated to the Government.

5. Third-party comments were received jointly from the civil-society partnership PERSON project (Partnership to Ensure Reforms of Support in other Nations) and Mental Health Europe, which had been granted leave by the President to make written submissions to the Court (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1946 and lives in Zagreb. She has suffered since her early childhood from cerebral palsy and uses a wheel chair. In 1968 she was deprived of her legal capacity on account of “her physical illness and intellectual underdevelopment”. On 10 July 1979 her legal capacity was fully restored by a ruling of the Zagreb Municipal Court.

7. On 12 November 2009 the Pešćenica Social Welfare Centre (hereinafter “the Centre”) asked the Zagreb Municipal Court to institute proceedings with a view to partially depriving the applicant of her legal capacity in order to prevent her from disposing of her assets. They relied on a previous ruling of 1968 by the same court by which the applicant had been deprived of her legal capacity (see the preceding paragraph). They further asserted that the applicant had been suffering from “grave bodily damage” (*velika tjelesna oštećenja*) since early childhood, as she had been diagnosed with cerebral palsy and various chronic illnesses such as diabetes, high blood pressure and defective eyesight.

8. They further asserted, relying on a statement given by the applicant’s son at the Centre and a report by the Centre’s social worker, that the applicant’s condition had worsened after she had undergone an operation on her head on 9 September 2008. Since then she had suffered from personality changes, manifested in managing her money in an irrational manner, such as by not paying the monthly instalments for the purchase of her flat, electricity, water and other bills, and by purchasing mobile telephone cards instead of food. This could have led to the applicant’s eviction from the flat she occupied, as she had already received a final warning that a civil action in that respect was to be lodged.

9. The Centre’s request was supported by evidence, such as an electricity bill of 27,625.70 Croatian kunas (HRK) dated 30 March 2009, a copy of a final demand for payment of monthly instalments for the purchase of the applicant’s flat, with the debt amounting to HRK 8,290.25 as at 7 March 2009, a notice that the water supply for the applicant’s flat would be stopped as of 25 May 2009 on account of non-payment of a debt in the amount of HRK 4,447.42, and a debt recovery notice for the amount of HRK 451.70 payable to Croatian Radio and Television (HRT).

10. On 28 October 2009 the Centre appointed its employee, Ms J.T., as the applicant’s legal guardian in the proceedings before the Zagreb Municipal Court. In the proceedings before that court the guardian gave her full consent to the Centre’s application. The applicant was represented by a lawyer of her own choosing.

11. The Municipal Court heard the applicant on 24 March 2010 and established that:

“The respondent was found at her address in a wheelchair. She gave very meaningful answers; [she] stressed that she acted autonomously, kept her flat tidy, prepared her meals and was provided with help by her son and a tenant. She moved about independently in her wheelchair and did her own shopping, [and] paid [her own] bills, which gave rise to difficulties during winter. She stated that in the period when she had undergone a head surgery in September [2008], she had been late with paying her utility bills ... She did not agree with the proceedings [being brought] and considered that she did not need a guardian. She stressed that she regularly took [her] prescribed medication ... It is to be noted that the respondent was presentable and her home was tidy.”

12. In her written submissions the applicant explained that during her hospitalisation she had empowered her son to retrieve money from her bank account and pay the utility bills, which he had not done but had instead taken the money for himself. She asked that her son be examined by the court.

13. A psychiatric report commissioned for the purposes of the proceedings, drawn up on 12 April 2010 by D.P. and G.M., in so far as relevant reads as follows:

“A psychiatric examination of the respondent was carried out on 3 April 2010 at her home ... She stated that she had completed elementary school and had been an average pupil, that she had studied law for one year and knew all about the law. To me she said: ‘You know how it was when you operated on me.’ She is dissatisfied with the court proceedings [being brought]: ‘I dislike the Peščenica [Social Welfare Centre] because they attempted to send me to [a home in] Novi Marof.’ And in respect of her son she said: ‘I am sorry when someone blackmails him’. She stated that she had been paying all her bills and that ‘I previously had a huge negative [balance], [because] I had to pay for the hospital’. She stated that she had a lot of acquaintances who were her former lodgers, whom she saw regularly when out and about in her wheelchair in her neighbourhood and ‘they all respect me’. Upon a direct question she denied having any mental problems.

Psychological status: conscious, contact easily established, uncertain about time, in other respects well oriented. Has a wide and viscous (*viskozni*) thought process, with loss of determining tendency. Interacts without distance. In thought content confabulatory with a paranoid position, projections and infantile explanation. Basic disposition is elevated. Intellectually – memory functions are primarily insufficient at the LMR level, additionally compromised with psychoorganic type. Lacks insight into her condition.

Marija Ivinović suffers from MB. Little, paraparesis spast., monoparesis ext. sup. spast. sin., LMR, condition after brain haemorrhage, condition after stroke, condition after meningoencephalitis, with a lack of insight into her condition [and] the need for and purpose of treatment. Owing to this, she is not able to entirely look after her personal needs, rights and interests. Also, because of her state of health and lack of insight she may jeopardise the rights and interests of others.”

14. On 19 May 2010 the applicant lodged written submissions whereby she objected to the psychiatrists’ findings, stating that it was not clear how they had concluded that she was unable to properly dispose of her money, given that the debts referred to had been incurred by her son when she had been hospitalised.

15. At a hearing held on 21 October 2010 the psychiatrists gave the following opinion evidence:

“We entirely endorse our written report of 3 April 2010 and to the objections filed by the respondent we would state the following: on the basis of the enclosed medical records, social history and our own examination we have established that the respondent suffers from Morbus Littlee. She also suffers from tripareisis with preserved functions of her right hand, mild mental retardation, and conditions following a brain haemorrhage and meningoencephalitis. Her intellectual capabilities are, owing to the above-mentioned [conditions], additionally compromised on the psychoorganic type. During the interview we noticed confabulations in the content of her thoughts, that is to say fabricated content, a paranoid position, in particular as regards her close family and the employees of the social welfare centre, and infantile explanation. The respondent lacks insight into her condition. All this led us [to conclude] that the respondent does not possess sufficient intellectual capacity to adequately protect her own rights and interests, and because of her lack of insight she might also jeopardise the rights and interests of others. We therefore consider that the application for deprivation of the respondent’s legal capacity as regards disposing of her money and assets and as regards taking decisions about her medical treatment, is appropriate.”

16. On 21 October 2010 the Zagreb Municipal Court partially deprived the applicant of her legal capacity, thereby stopping her from disposing of her money and other assets and from making independent decisions concerning her medical treatment. The ruling relied exclusively on the opinion given by the two psychiatrists and extensively repeated their findings stated in their written report and their oral evidence given at the hearing of 21 October 2010.

17. The applicant lodged an appeal on 11 November 2010, in which she argued that partially depriving her of her legal capacity solely on the basis of the psychiatric report had not been justified, because the psychiatrists had lacked knowledge of how she spent her money and how she disposed of her assets. She argued that she had purchased the flat where she lived herself and there was no danger that she would give it up. The assertion that she was paranoid as regards her close family members was not correct. She had had troubled relations with her son at times because he had moved into her flat with his girlfriend and her daughter and had had an interest in having her removed from the flat and placed in a home. Therefore, she had successfully sought their eviction from her flat. She had also changed her bank and her son no longer had authority to use her credit card. She lived a peaceful life, and was a member of the Association of Disabled Persons with Cerebral Palsy and Poliomyelitis. The court conducting the proceedings had had the chance to establish that normal communication with her was possible and that she lived in a tidy flat. The Centre had not proven the need for her to be partially deprived of her legal capacity. Only a bookkeeping expert could have established the facts concerning her debts.

18. The applicant’s appeal was dismissed by the Bjelovar County Court on 26 January 2012, which again relied extensively on the psychiatric

report. The appeal court added that the applicant had been hospitalised between 9 and 25 September 2008 and 23 October and 13 November 2008, whereas the unpaid bills (see paragraph 9 above) were dated 9 April 2009 (electricity bill of HRK 27,625.70), 18 March 2009 (HRK 8,290.25 in monthly instalments for the purchase of the flat) and 22 May 2009 (water bill of HRK 4,477.42), which indicated that the debts concerned a much longer period than the applicant's hospitalisation.

19. The applicant then lodged a constitutional complaint, in which she repeated the arguments from her appeal, stressing that the debts in question had been incurred during the period in which she had been hospitalised and her son had had her bank card. Instead of paying her bills he had used the money from her account for his own needs. She added that only one of the psychiatrists who had drawn up the report on her mental state had interviewed her. She also stressed that it was entirely unclear what rights and interests of others she might jeopardise. The complaint was dismissed by the Constitutional Court on 13 June 2012.

II. RELEVANT DOMESTIC LAW

20. The relevant provisions of the Family Act (*Obiteljski zakon*, Official Gazette nos. 116/2003, 17/2004, 136/2004 and 107/2007) read:

Section 159

“(1) An adult who, on account of mental illness or for other reasons, is unable to look after his or her own needs, rights and interests, or presents a risk to the rights and interests of others, shall be partly or completely deprived of [his or her] legal capacity by a court of law in non-contentious proceedings.

(2) Before adopting a decision under subsection 1 of this section, a court shall obtain the opinion of a medical expert concerning the state of health of the person concerned and its effect on his or her ability to look after all or some of their personal needs, rights and interests and whether it might put the rights and interests of others at risk”

Section 161

“(1) A social welfare centre shall initiate court proceedings if it considers that, on the grounds set out in section 159(1) of this Act, there is a need to either completely or partly deprive a person of [his or her] legal capacity.

(2) A social welfare centre shall appoint a special guardian for a person in respect of whom proceedings for deprivation of his or her of legal capacity have been instituted...”

Section 162

“The competent social welfare centre shall place under guardianship any person ... deprived of [their] legal capacity ...”

Section 179

(1) The guardian shall look after the person and his or her rights, obligations and well-being with due diligence, manage his or her assets and take measures aimed at enabling the ward to lead an independent professional and personal life.

...”

Section 184

“(1) The guardian represents the ward.

...”

Section 185

“In order to take more important measures concerning the ward, [his or her] personal status or health, the guardian shall obtain prior consent from a social welfare centre.”

PROCEEDINGS FOR DEPRIVATION AND RESTORATION OF LEGAL CAPACITY**Section 326**

“(1) A court shall invite to a hearing the requesting party, the person concerned, his or her guardian and a representative of a social welfare centre.

(2) The persons mentioned in paragraph 1 may participate in the presentation of evidence, hearings and the presentation of the outcome of the entire proceedings.

(3) A court shall try to hear the person concerned. Where that person has been placed in a psychiatric or social care institution, he or she shall be heard in that institution.

(4) A court may decide not to invite and hear the person concerned where it could be detrimental for that person or where it is not possible to hear that person in view of his or her mental impairment or state of health.”

Section 329

(1) A court decision depriving someone of [their] legal capacity shall be served on the requesting party, the person concerned, his or her guardian and a social welfare centre.

(2) The court is not obliged to serve the decision on the person concerned where he or she cannot understand the legal consequences of that decision or where it would be detrimental to his or her health.

...”

III. RELEVANT INTERNATIONAL INSTRUMENTS

A. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)

21. This Convention entered into force on 3 May 2008. It was signed and ratified by Croatia in 2007. The relevant parts of the Convention provide:

Article 12

Equal recognition before the law

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

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

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

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

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

B. Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults (adopted on 23 February 1999)

22. The relevant parts of this Recommendation read as follows:

Principle 2 – Flexibility in legal response

“1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations.

...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned.

...”

Principle 3 – Maximum reservation of capacity

“1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or 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.

...”

Principle 6 – Proportionality

“1. Where 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.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The applicant complained that the manner in which the proceedings for partial deprivation of her legal capacity had been conducted and the findings reached therein had violated her right to respect for her private life. She relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

24. The Government argued that the applicant had failed to exhaust all available domestic remedies because she had not instituted fresh proceedings seeking to have her legal capacity fully restored, an option envisaged under the Family Act.

25. The applicant replied that her complaints concerned the manner in which the proceedings for partial deprivation of her legal capacity had been conducted and the findings reached in those proceedings, and that in the course of those proceedings she had exhausted all available domestic remedies.

26. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of directly remedying the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

27. The Court notes that the present case concerns the applicant's complaints related to the manner in which the proceedings by which she was partly deprived of her legal capacity were conducted and about the findings reached in those proceedings. In the Court's view, such issues should properly be considered in the course of the proceedings themselves. During the domestic proceedings the applicant unsuccessfully raised the same complaints she is now presenting before the Court in her appeal against the first-instance ruling and in her constitutional complaint.

28. The Court therefore considers, noting that the rule on exhaustion of domestic remedies concerns only remedies that relate to the breaches alleged (see *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77), that by using all available domestic remedies concerning her complaints in the course of the relevant domestic proceedings, the applicant exhausted domestic remedies as required by Article 35 § 1 of the Convention (see *Golubović v. Croatia*, no. 43947/10, § 41, 27 November 2012).

29. Against the above background, the Court considers that the Government's objection must be rejected. It further notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants' submissions

30. The applicant argued that in the proceedings at issue the national courts had not established all relevant circumstances concerning her personal state and had partly deprived her of her legal capacity without giving adequate reasons. She stressed that the court ruling to that effect had solely relied on the psychiatric report, which had been drawn up by two psychiatrists, one of whom had interviewed her for thirty minutes, while the other had never met her. Furthermore, the psychiatrists had had no knowledge of how she had been spending her money and disposing of her assets. She had had troubled relations with her son at times because he had spent her money on his own needs when she had been hospitalised, instead of paying the bills for her. In addition, he had moved into her flat with his girlfriend and her daughter, and had thus had an interest in the applicant being removed from the flat and placed in a home. Therefore, she had successfully sought their eviction from her flat. She had also changed her bank and her son no longer had authority to use her credit card. The court conducting the proceedings had had the opportunity to establish that normal communication with her was possible and that she lived in a tidy flat. The Centre had not proven the need to partly deprive her of her legal capacity. Only a bookkeeping expert could have established the facts concerning her debts. She also stressed that it was entirely unclear what rights and interests of others she might jeopardise.

(b) The Government's submissions

31. The Government accepted that the ruling by which the applicant was partly deprived of her legal capacity had amounted to an interference with her right to respect for her private life under Article 8 of the Convention. However, in their view the interference had been based in law, had pursued a legitimate aim and had been proportionate to the aim sought. The legal basis for the interference had been section 159 of the Family Act. The ruling in question had been adopted in order to protect the applicant, as it had been established that she was not able to look after her own rights and interests in terms of disposing of her assets and making decisions concerning her medical treatment. The applicant had run up debts of about HRK 40,000, whereas her monthly pension amounted to about HRK 3,950.

32. The applicant had had the opportunity to present her views during the proceedings and all her procedural rights had been respected. The facts of the case showed that the applicant had not been paying her bills, which had led to the electricity and water supply to her flat being cut off. There

had also been the risk that she would be evicted from her flat, as she had not been paying the monthly instalments for the purchase of the flat.

33. The psychiatric report had been drawn up on the basis of the applicant's medical records, which had showed that the applicant had been suffering from various illnesses since birth and had also been treated for a brain haemorrhage and meningoencephalitis. During the interview conducted by the psychiatrist, the applicant had wrongly stated that the psychiatrist had operated on her, that her debts had concerned the costs of her hospitalisation (while in reality her medical insurance had covered all her medical costs) and that she had been operated on in 2002 (the operation had actually happened in 2008).

(c) The third-party intervention

34. The PERSON Project and Mental Health Europe, relying on the Court's case-law, observations of the Council of Europe Commissioner for Human Rights and the United Nations Convention on the Rights of Persons with Disabilities, submitted that the deprivation of legal capacity was an unjustified intrusion on a person's private life and that the authorities should firstly consider less restrictive measures. Deprivation of legal capacity had been identified by the Commissioner for Human Rights as an area of concern in relation to involuntary institutional placement, which was of crucial importance in the present case because the applicant had been deprived of her right to make independent decisions about her medical care. The United Nations Convention on the Rights of Persons with Disabilities should be understood as requiring the States to replace substitute decision-making by supported decision-making in the exercise of legal capacity. A range of specialist means of support for the exercise of one's legal capacity developed around the world had proved to be successful in aiding people with mental disabilities. The interveners criticised decisions to deprive people of their legal capacity which relied solely on expert evidence, arguing that such a practice allowed for a considerable arbitrariness.

2. The Court's assessment

(a) General principles

35. The Court reiterates that deprivation of legal capacity may amount to an interference with the private life of the person concerned (see *Shtukurov v. Russia*, no. 44009/05, § 83, ECHR 2008 and *Lashin v. Russia*, no. 33117/02, § 77, 22 January 2013). This is so even when a person has been deprived of his or her legal capacity only in part (compare to *Berková v. Slovakia*, no. 67149/01, § 164, 24 March 2009, and *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 144, 13 October 2009).

36. The Court reiterates further that, whilst Article 8 of the Convention contains no explicit procedural requirements, "the decision-making process

involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8” (see *Görgülü v. Germany*, no. 74969/01, § 52, 26 February 2004). The Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify the measures taken were “relevant and sufficient” and whether the decision-making process afforded due respect to the applicant’s rights under Article 8 of the Convention. It must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows from these considerations that the Court’s task is not to substitute itself for the domestic authorities in the exercise of their responsibilities regarding deprivation of legal capacity, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their power of appreciation (see, *mutatis mutandis*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 71, ECHR 2001-V; *Sahin v. Germany* [GC], no. 30943/96, § 64, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts); *Görgülü*, cited above, § 41; and *Wildgruber v. Germany* (dec.), no. 32817/02, 16 October 2006).

37. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. The extent of the State’s margin of appreciation thus depends on the quality of the decision-making process. If the process was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see, *mutatis mutandis*, *Sahin v. Germany*, no. 30943/96, §§ 46 et seq., 11 October 2001, and *Salontaji-Drobnjak*, cited above, § 143). In this connection, the Court would like to stress that strict scrutiny is called for where measures that have such adverse effect on an individual’s personal autonomy, as deprivation of legal capacity has, are at stake.

(b) Application of these principles in the present case

38. Turning to the particular circumstances of the present case, the Court notes that the national courts partially deprived the applicant of her legal capacity, thereby stopping her from disposing of her money and other assets and from making independent decisions concerning her medical treatment. In the Court’s view, depriving a person of his or her legal capacity, even in part, is a very serious measure which should be reserved for exceptional circumstances (see, *mutatis mutandis*, *X and Y v. Croatia*, no. 5193/09, § 91, 3 November 2011). Bearing in mind the utmost importance of the consequences of such a measure for the applicant’s private life, the Court considers that a careful examination of all relevant factors by courts dealing with the case was necessary to ensure that the requirements of Article 8 of the Convention were complied with.

39. In this respect the Court also reiterates that proceedings before courts must conform to the rule of law, which can be identified with the good

administration of justice and that, in the absence of any obligation for a judicial authority to give reasons for their decisions, the rights guaranteed by the Convention would be illusory and theoretical. Without requiring a detailed response to each argument presented before a court, this obligation nevertheless presupposes the right of a party to the proceedings to have his or her essential contentions carefully examined (see, *mutatis mutandis*, *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A; *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B; and *Novoseletskiy v. Ukraine*, no. 47148/99, § 111, ECHR 2005-II (extracts)).

40. The Court notes that the decision to partly deprive the applicant of her legal capacity relied to a decisive extent on the report drawn up by two psychiatrists. The Court is aware of the relevance of medical reports concerning persons suffering from impairment to 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, it is the judge and not a physician who is required to 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 for an individual's private life is at stake a judge has to carefully balance all relevant factors in order to assess the proportionality of the measure to be taken. The necessary procedural safeguards require that any risk of arbitrariness in that respect is reduced to a minimum (see *X and Y v. Croatia*, cited above, § 85).

41. As regards the reasons adduced by the national authorities for depriving the applicant of her legal capacity, the national court relied on two main factors – the applicant's illness and the allegations that she had incurred significant debts which had put her in a vulnerable position and could possibly have entailed the loss of her flat.

42. As regards the applicant's health problems, the Court notes that there is no indication in the case file that the applicant had not been looking after her health. The national courts did not provide any reasons in that respect. Furthermore, the Municipal Court never attempted to hear evidence from a doctor who regularly saw the applicant, such as her general practitioner.

43. As regards the applicant's financial situation, the national authorities failed to establish all relevant facts so as to elucidate the exact circumstances in which the applicant had incurred her debts. The Municipal Court never attempted to establish the exact period in which bills had gone unpaid or to hear evidence from the applicant's son, whom the applicant alleged had squandered her money during her hospitalisation. While the appeal court mentioned the sums owing for a number of debts and the date of the bills, it also failed to establish the exact period to which these debts related (see paragraph 18 above). Thus, the crucial issue as to whether the applicant was responsible for the debts incurred remained unanswered.

44. Even when the national authorities establish with the required degree of certainty that a person has been experiencing difficulties in paying his or her bills, deprivation, even partial, of legal capacity should be a measure of last resort, applied only where the national authorities, after carrying out a careful consideration of possible alternatives, have concluded that no other, less restrictive, measure would serve the purpose or where other, less restrictive measure, have been unsuccessfully attempted. However, there is no indication that any such option was contemplated in the present case.

45. As regards the representation of the applicant in the proceedings at issue, the Court notes that an employee of the Centre was appointed as the applicant's legal guardian (see paragraph 10 above). However, given that it was the Centre itself that had instituted the proceedings for deprivation of the applicant's legal capacity, her appointment as the applicant's legal guardian put her into a conflict of loyalty between her employer and the applicant as her ward. In the present case the guardian gave her full consent to the application for partial deprivation of the applicant's legal capacity, and made no submissions as regards the evidence to be presented. Notwithstanding the fact that the applicant engaged the services of a lawyer at her own expense (see paragraph 10 above), it cannot but be noted that national law does not provide for obligatory representation of the person concerned by an independent lawyer, despite the very serious nature of the issues concerned and the possible consequences of such proceedings (see *M.S. v. Croatia*, no. 36337/10, § 104, 25 April 2013). Furthermore, the Court reiterates that in cases of mentally disabled persons the States have an obligation to ensure that they are afforded independent representation, enabling them to have their Convention complaints examined before a court or other independent body (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 161, 17 July 2014).

(c) Conclusion

46. The Court therefore finds that the national courts, in depriving partially the applicant of her legal capacity, did not follow a procedure which could be said to be in conformity with the guarantees under Article 8 of the Convention. There has accordingly been a violation of that provision.

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

47. The applicant complained about the manner in which the proceedings for partial deprivation of her legal capacity had been conducted. She relied on Article 6 § 1 of the Convention which, in so far as relevant reads:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

48. The Government contested that argument.

49. The Court notes that this complaint is linked to the complaint examined above and must therefore likewise be declared admissible.

50. Having regard to the finding relating to Article 8 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

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

A. Damage

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

53. The Government submitted that the amount claimed was unfounded, excessive and unsubstantiated.

54. The Court considers that the applicant must have suffered non-pecuniary damage as a result of the institution of the proceedings to partly deprive her of her legal capacity. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

55. The applicant also claimed EUR 2,500 for costs and expenses incurred before the domestic courts and before the Court.

56. The Government submitted that the applicant had failed to prove that the costs of her representation before the Court had actually been incurred.

57. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads of claim.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President