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SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

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Item reference: Action Plan (18/10/2021)

Communication from Finland concerning the case of X v. Finland (Application No. 34806/04)

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Réunion : 1419e réunion (décembre 2021) (DH)

Référence du point : Plan d'action (18/10/2021)

Communication de la Finlande concernant l'affaire X c. Finlande (requête n° 34806/04) ***(anglais uniquement)***

MINISTRY FOR FOREIGN AFFAIRS OF FINLAND
Legal Service
Unit for Human Rights Courts and Conventions

DYFN2F3-7

15 October 2021

Department for the Execution of Judgments of the ECHR
DGI - Directorate General of Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex
FRANCE

Updated action plan; case X. v. Finland (no. 34806/04)

Dear Madam / Sir,

On behalf of the Government of Finland I submit the updated action plan in the case *X v. Finland* (no. 34806/04) to the attention of the Committee of Ministers.

Yours sincerely,

Krista Oinonen
Director, Unit for Human Rights Courts and Conventions
Agent of the Government of Finland
before the European Court of Human Rights

Attachments: Action plan for *X v. Finland* (no. 34806/04)

X. V. FINLAND

ACTION PLAN ON THE EXECUTION OF THE JUDGEMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS

Respondent State	**Finland**
Application no.	**34806/04**
Name	**X.**
Judgement	**03/07/2012**
Final	**19/11/2012**
Violation of the Convention	**Art. 5 § 1** Right to liberty and security of person The European Court found that the procedure prescribed by national law in respect of the applicant's confinement for involuntary care in a mental hospital after an initial six-month period did not provide adequate safeguards against arbitrariness and the domestic law was thus not in conformity with the requirements imposed by Article 5 § 1 (e) of the Convention and, accordingly, there had been a violation of the applicant's rights under that Article. **Art. 8** Right to private life The Court found that the absence of sufficient safeguards against forced medication by doctors deprived the applicant of the minimum degree of protection to which she was entitled under the rule of law in a democratic society. The interference in question was not "in accordance with the law" as required by Article 8 § 2 of the Convention. There had therefore been a violation of Article 8 of the Convention.
Case description	This case concerns the confinement of the applicant for involuntary care in a mental hospital between 17 February 2005 and 27 January 2006, where extensions of her confinement were decided by the head of the hospital. The case concerns also the interference with the applicant's physical integrity due to the recourse to forcible administration of medication.
Type	Leading case.

Introduction

1. The Government submitted an updated action plan concerning the execution of the aforementioned judgment on 27 August 2021. This is an updated action plan, which replaces the aforementioned action plan.

Individual measures

Just satisfaction

2. The just satisfaction awarded by the Court to the applicant has been duly paid.

3. The applicant was awarded EUR 10,000 in respect of non-pecuniary damage and EUR 8,000 (plus VAT) in respect of costs and expenses.

4. The applicant has been paid altogether EUR 18.000 (plus VAT in respect of cost and expenses) on 19 February 2013 and on 25 March 2013.

Other measures

5. The re-opening of the case is available under Finnish legislation.

General measures

Instruction of the Ministry of Social Affairs and Health

6. Immediately after the judgment became final, the Ministry of Social Affairs and Health gave, on 18 December 2012, an instruction on measures to be taken when continuing involuntary treatment and when given treatment to a patient who is ordered for involuntary treatment, including the medication of a patient (*Menettelytapaohje mielenterveyslain soveltamiseksi - Tahdosta riippumattoman psykiatrisen hoidon jatkaminen sekä lääkitys ja muut hoitotoimenpiteet potilaan tahdosta riippumatta; Anvisning om förfaringssätt vid tillämpning av mentalvårdslagen - Fortsatt psykiatrisk vård oberoende av patientens vilja samt medicinering och andra behandlingar oberoende av patientens vilja*). The instruction shall be complied with until the necessary legislative amendments enter into force (see below). The instruction is attached to this action plan as Annex I.

7. The instruction describes the main elements of the judgment and instructs authorities acting in the field accordingly. With respect to medication, it is instructed, inter alia, that the medication shall at all times be recorded in the patient record and that the patient has the right

to lodge a complaint with the Regional State Administrative Agency. The instruction applies regardless whether the patient has been taken to involuntary treatment on the basis of section 11 (Hearing the patient and ordering treatment) or section 17 (Involuntary treatment after psychiatric examination) of the Mental Health Act (*mielenterveyslaki, mentalvårdslag*; 1116/1990).

8. The instruction was drafted in co-operation with the Finnish Institute for Health and Welfare, National Supervisory Authority for Welfare and Health and the Regional State Administrative Agency for Southern Finland. State psychiatric hospitals and hospital districts were heard when preparing the instruction.

9. The instruction has been distributed to all municipalities, state psychiatric hospitals, hospital districts and all Regional State Administrative Agencies. The instruction is also published (in Finnish and in Swedish) on the website of Ministry of Social Affairs and Health (https://stm.fi/-/anvisning-om-forfaringssatt-vid-tillampning-av-mentalvardslagen).

Amendments to the Mental Health Act in 2014

10. The Mental Health Act was amended in 2014 by Act 438/2014, which entered into force on 1 August 2014.

11. By the aforementioned Act, provisions on the right to external medical evaluation and the right to have the conditions for continuing treatment assessed were added to the Mental Health Act as sections 12 a to 12 d. These provisions regulate the right of a patient ordered to undertake involuntary treatment to receive an assessment and an opinion on the need for treatment from a physician independent of the hospital that is responsible for the treatment, before the decision on the continuation of the treatment is made (section 12 a to c), and the right of the patient to have the conditions for continuing the treatment assessed also during the treatment and before the maximum time period for treatment has ended (section 12 d).

12. The relevant provisions read as follows:

> ***Section 12a (438/2014)***
>
> ***External assessment***
>
> *(1) Before a decision is taken whether to continue the involuntary treatment of a patient, the hospital shall, at his or her request, provide him or her with an opportunity to obtain an assessment and a statement concerning his or her need for treatment from an independent physician outside the treating hospital. The hospital shall inform the patient about his or her right to obtain an assessment from a physician outside the hospital. The external physician shall be a medical specialist in psychiatry in a public-service employment relationship, or*

another licensed physician in a public-service employment relationship and qualified in psychiatry.

(2) The hospital calls the external physician to examine the patient and to issue a statement on whether the conditions for ordering the him or her to involuntary treatment continue to be met. For issuing the statement, the external physician has the right of access to the patient documents concerning the patient.

(3) The assessment made by the external physician does not bind the physician preparing the statement on observation or making the decision, but the views expressed in the assessment shall be taken into account in the decision-making. If the assessment by the external physician differs from the conclusion made in the statement on observation, the reasons for the resolution deviating from the assessment of the external physician shall be stated in the statement on observation and the decision on whether to continue the treatment.

Section 12b (438/2014)

Patient's right to refuse external assessment

The patient has the right to refuse an external assessment referred to in section 12a. The refusal and the grounds that the patient may have given for it shall be recorded in the patient documents, and an explanation on them shall be presented to the Administrative Court together with the documents submitted to it.

Section 12 c (438/2014)

Patient's right to choose an external physician

(1) Before a decision is taken whether to continue the treatment, the patient shall also be given an opportunity to request an assessment of his or her need for involuntary treatment from a physician of his or her own choice. The patient shall bear the costs for an assessment arranged by himself or herself.

(2) In all other respects, the provisions of section 12a, subsection 3 apply to the assessment.

Section 12d (438/2014)

Assessment of the conditions for continued treatment made during the treatment

A patient ordered to treatment shall be given an opportunity to have the grounds for his or her continued treatment reviewed during the treatment even before the expiry of the maximum period. If only a short time has passed since an earlier request by the patient and it is obvious that his or her condition has not changed, the assessment may be omitted. The grounds for omitting the assessment shall be recorded in the patient documents.

13. According to the government proposal (HE 199/2013 vp) to amend the Mental Health Act, it was found appropriate to grant the patient the right to refuse an outside assessment

because under **the Act on the Status and Rights of Patients** (*laki potilaan asemasta ja oikeuksista, lagen om patientens ställning och rättigheter*; 785/1992) examinations are to be carried out and care provided in agreement with the patient.

14. Other amendments were also made to the Mental Health Act by the aforementioned Act, including to provisions concerning involuntary treatment after mental examination in section 17, which were clarified, *inter alia*, by adding a reference to new sections 12 a and 12 c.

15. In this connection, the Government notes also that section 12 and 17 of the Mental Health Act stipulate the time limits for making decisions on the continuation of the treatment. In addition, according to section 11 of the Mental Health Act, a patient shall always be heard before such a decision is made and, according to section 24 of the Mental Health Act, the patient has the right to appeal against the decision to the administrative court.

16. The aforementioned provisions read as follows:

> ***Section 11***
>
> ***Hearing the patient and ordering treatment***
>
> *(1) The opinion of a patient who is under observation shall be found out before the patient is ordered to treatment. The parents and providers of a minor and persons who have been in charge of the care and upbringing of the minor immediately before his or her admission for observation shall be given an opportunity to be heard either orally or in writing as far as possible.*
>
> *(2) The decision on ordering a person under observation to treatment against his or her will is made by the chief physician in charge of psychiatric care or, if that physician is disqualified or prevented, by another physician appointed to the task, preferably one specializing in psychiatry. The decision shall be made in writing, it shall be based on the referral for observation, the statement on observation and the case history, and it shall be presented no later than four days after the day of the patient's admission for observation. The decision must state, with reasons, whether or not the conditions for ordering the patient to treatment against his or her will are met. The patient shall be informed of the decision without delay.*
>
> *(3) If the patient ordered to treatment is a minor, the decision must be immediately submitted for the approval of an Administrative Court. (1066/2009)*
>
> ***Section 12 (438/2014)***
>
> ***Continuation of treatment***
>
> *(1) A person ordered to treatment may, on the basis of a decision referred to in section 11, be detained for treatment against his or her will for a maximum of three months. If it seems probable before the end of this period that treatment will have to be extended beyond this date, but the patient does not agree with this, a new statement on observation shall be produced indicating whether or not the conditions for ordering the patient to treatment against his or*

her will are still met. A decision on whether treatment should be continued or discontinued shall be made in writing by the physician referred to in section 11 before the treatment has continued for three months. A decision to continue treatment shall be made known to the patient without delay and submitted immediately for the approval of an Administrative Court.

(2) On the basis of the decision to continue treatment, the patient may be detained for treatment against his or her will for a maximum of six months. After this period, the fulfilment of the conditions for ordering the patient to treatment against his or her will shall be assessed again as provided in sections 9a and 10.

Section 17 (753/2015)

Involuntary treatment after mental examination

(1) If the conditions for ordering a mental health examination for treatment against his or her will exist after the mental health examination has been submitted, the Finnish Institute for Health and Welfare shall order the person to treatment against the person's will.

(2) If, after the order mentioned in subsection 1, the court finds that a mental examination and treatment against the person's will has been ordered for an innocent person, the treatment order issued by the Finnish Institute for Health and Welfare shall lapse. The decision to order treatment is then made in accordance with Chapter 2.

(3) The person ordered to treatment may be detained for treatment against his or her will on the basis of the decision of the Finnish Institute for Health and Welfare for six months at most. Before the end of this period a statement on observation of the patient shall be produced indicating whether or not the conditions for referring the person for treatment against his or her will are still met. A decision on whether treatment should be continued or discontinued shall be made in writing by the physician referred to in section 11 before the treatment has continued for six months.

(4) The hospital shall provide the patient referred to in subsection 1 with the opportunity to receive an assessment of the need for treatment by a doctor outside the hospital as provided in sections 12 a and 12 c before a decision is made to continue treatment.

(5) The decision to continue the treatment of a patient referred to in subsection 1 above shall be notified to him or her without delay and immediately submitted to the administrative court for confirmation, in which case the administrative court shall examine whether the conditions for prescribing treatment still exist. The decision to discontinue treatment must be notified to the patient without delay and immediately submitted to the Finnish Institute for Health and Welfare for confirmation. The Finnish institution for Welfare and Health must either confirm the decision to discontinue treatment or, if the conditions for ordering treatment regardless of the patient's will exist, order the patient for treatment.

(6) On the basis of the decision to continue treatment the patient may be detained for treatment against his or her will for a maximum of six months. If it seems probable at the end of this period that continuing the treatment is still necessary, measures in accordance with subsections 3 to 5 shall be taken.

(7) If it appears during the treatment of a person ordered to treatment that the conditions for ordering the patient to treatment against his or her will do not exist, measures in accordance with subsections 3 to 5 shall be taken.

Section 24 (20/2016)

Appeals

(1) An appeal may be lodged with the Administrative Court against the decision of a hospital physician to order a person to treatment or to continue treatment against the person's will, or to take possession of a patient's personal property or to limit a patient's contacts in virtue of section 22 j (2). The appeal must be lodged within 14 days of the notification of the decision. Otherwise all appeals are subject to the provisions of the Administrative Judicial Procedure Act (586/1996). In appeal matters information of a patient's state of health may only be given with the patient's consent or in cases referred to in section 9 of the Act on the Status and Rights of Patients. The decisions of the Administrative Court that concern taking possession of a patient's personal property may not be appealed.

(2) Appeals against a decision of the Finnish Institute for Health and Welfare to order a person to treatment or continue treatment against the person's will or to order a person to hospital examination in a case referred to in section 21, and against a decision concerning special care given against a person's will, can be lodged as provided in the Administrative Judicial Procedure Act.

(3) An appeal against an interim decision of a hospital doctor, referred to in section 17b (2), and the Finnish Institute for Health and Welfare referred to in section 17c (2) to continue treatment and a decision of a hospital doctor to examine a patient referred to in section 17b (2) can be lodged to court. The appeal must be lodged within 14 days of notification of the decision. An appeal may be heard in an administrative court without seeking the opinion of the authority which made the contested decision. In other respects, an appeal is provided for in the Administrative Judicial Procedure Act. The decision of the administrative court issued as a result of the appeal may not be appealed.

(4) Appeal against a decision referred to in subsections 1 to 3, addressed to the appellate authority, can also be given to the chief physician in charge of psychiatric treatment in the hospital or to another person appointed for this purpose within the appeal period. A certificate of the reception of the petition of appeal shall be given and the name of the appellant and the date of reception of the appeal shall be written on the petition. The chief physician shall send the petition of appeal, the documents relating to the decision subject to appeal and his or her statement concerning the appeal to the appellate authority without delay.

(5) Appeal against a decision to order a minor to treatment or to continue treatment under subsections 1-3 may be lodged by a minor who has reached the age of 12 years him/herself, the minor's parents and guardians and a person who was in charge of the care and upbringing of the minor immediately before the minor was ordered to treatment. Appeal against a decision to limit the contacts of a minor referred to in subsection 1 may be lodged by a minor who has

reached the age of 12 years him/herself, as well as by the minor's guardian, representative or legal representative or by another interested party whose contacts with the child have been limited by the decision.

17. In the Government's view, the aforementioned measures taken have fulfilled the obligations that arise from the Court's judgment with respect to the violation of Article 5 § 1 of the Convention.

Legal remedies

18. A patient has at his or her disposal, in particular, the legal remedies provided for in the Act on the Status and Rights of Patients, namely an objection or a complaint.

19. The provisions on the objection and the complaint in the Act on the Status and Rights of Patients were amended by Act 1101/2014, which entered into force on 1 January 2015.

20. By the aforementioned amendment, the already existing section 10 of the Act was amended by adding an obligation of the health care unit to inform its patients of the right to submit an objection; a new subsection 2 was added to section 10, according to which the health care unit shall process the objection in an appropriate manner and give a written reply in a reasonable time from the submitting it; and a new Section 10 a was also added stipulating the already existing right of a patient to submit an administrative complaint under chapter 8 a of the Administrative Procedure Act (*hallintolaki, förvaltningslag*; 434/2003) to the social and health care supervisory authority.

21. The relevant provisions of the Act on Status and Rights of Patients and the Administrative Procedure Act read as follows:

Chapter 3

Objections and patient ombudsman

Section 10 (1101/2014)

Objections

(1) A patient who is not satisfied with the health care or medical care and the related treatment received by him/her has the right to submit an objection on the matter to the director responsible for health care in the health care unit in question. The health care unit shall inform its patients' of the right to submit an objection in a sufficient manner and make the submission of the objection as effortless as possible to them. The objection shall in principle be filed in writing. It can be made orally for a particular reason.

(2) The health care unit shall register and process the objection in an appropriate manner and give a written reply in a reasonable time from the submitting it. The reply shall be reasoned in a manner required by the nature of the matter.

(3) Submitting an objection does not restrict the right of a patient to appeal to the health care supervisory authority about the care or related treatment received by him/her.

(4) If, when the objection is dealt with, it becomes obvious that the care or other treatment of the patient may cause liability for patient injury meant in the Patient Injury Act (585/1986), indemnification liability meant in the Act of Torts (412/1974), taking legal action, cancelling or restricting the right of vocational practise or disciplinary proceedings meant in the legislation on vocational practise of health care staff or disciplinary proceedings meant in other law, the body processing the objection shall advise the patient as to how the matter can be initiated in a competent authority or organ.

Section 10 a § (1101/2014)

Complaint

(1) The provisions concerning an administrative complaint under chapter 8 a of the Administrative Procedure Act (434/2003) shall be applied to a complaint.

(2) If no objection has been submitted in the matter and the supervisory authority concludes that it is most appropriate to examine the complaint as an objection, the authority may transfer the matter to the competent health care unit for consideration. The transfer must be made immediately after the conclusion. The complainant must be informed about the transfer. The health care unit must inform the transferring supervisory authority about the reply given in the transferred matter.

(3) If the matter is transferred, no decision shall be made on the inadmissibility of the complaint.

22. Chapter 8 a of the Administrative Procedure Act reads as follows:

Chapter 8a (368/2014)
Administrative complaint
Section 53a (368/2014)
Filing an administrative complaint

(1) Anyone may file, with the authority that oversees the respective activities, an administrative complaint concerning the unlawful conduct of an authority, a person employed by an authority or another entity performing a public administrative duty, or about their failure to fulfil an obligation.

(2) An administrative complaint shall be filed in writing. With the consent of the supervisory authority, the complaint may be filed orally. The complainant shall state the grounds for considering the conduct to be wrong and, wherever possible, provide information about the time of occurrence of the act or omission in question.

Section 53b (368/2014)

Considering an administrative complaint

(1) The supervisory authority shall take the measures that it considers appropriate on the basis of the administrative complaint. If the complaint does not require any measures to be taken, the complainant shall be notified of this without delay.

(2) In considering an administrative complaint, the foundations of good administration shall be complied with and the rights of the persons directly affected by the matter shall be protected.

(3) An administrative complaint concerning a matter dating back more than two years shall not be admitted for examination without a special reason.

(4) The provisions of this Act apply to a decision on a complaint matter and to the service of the decision.

Section 53c (368/2014)

Administrative guidance issued as a result of an administrative complaint

In its decision on an administrative complaint matter, a supervisory authority may draw the attention of the supervised entity to the requirements of good administration or inform it of the authority's understanding of lawful conduct. If this is not found sufficient in view of the circumstances influencing the overall assessment of the matter, the supervised entity may be given an admonition, unless the nature or severity of the act forming the subject of the complaint requires measures to institute a procedure provided in another act. In the latter case, the consideration of the complaint shall cease.

Section 53d (368/2014)

Prohibition of request for review

No appeal may be made against a decision given in an administrative complaint matter.

23. According to the government proposal concerning the aforementioned amendments (HE 185/2014 vp) an objection is the primary means to react to grievances because it must be replied in writing and without delay. Furthermore, according to the proposal, a state governed by the rule of law must, however, also have adequate avenues for referring a matter to an independent external actor for review, and therefore, section 10 a of the Act provides the right to make a complaint under the Administrative Procedure Act to the authority supervising health care. In addition, a patient also has the right to file a complaint to the authorities overseeing legality, *i.e.* the Parliamentary Ombudsman and the Chancellor of Justice of the Government.

24. The Government notes that in case of both objections and complaints, the authorities assess, among other things, whether the conduct of a health care professional has been appropriate, including whether the medication of a patient has been correct and proportionate or whether other, more appropriate options would have been available in the case.

25. The Government notes, moreover, that by virtue of section 11 of the Act on the Status and Rights of Patients, a patient ombudsman shall be appointed for health care units to advise patients in issues concerning the application of the said Act, to help patients in the matters meant in paragraphs 1 and 3 of section 10, to inform patients of their rights, and to act also otherwise for the promotion and implementation of patients' rights as follows:

> ***Section 11***
>
> ***Patient ombudsman***
>
> *(1) A patient ombudsman shall be appointed for health care units. The patient ombudsman may also be common to two or more units.*
>
> *(2) The tasks of a patient ombudsman are:*
>
> *1. to advise patients in issues concerning the application of this Act;*
>
> *2. to help patients in the matters meant in paragraphs 1 and 3 of section 10;*
>
> *3. to inform patients of their rights; and*
>
> *4. to act also otherwise for the promotion and implementation of patients' rights.*

26. A patient also has the right to file a complaint to the authorities overseeing legality, *i.e.* the Parliamentary Ombudsman and the Chancellor of Justice of the Government and the right to refer his or her matter to a court for consideration, for instance by way of an action for damages.

Ongoing legislative measures

27. In addition to the amendments made to the existing legal remedies, the Ministry of Social Affairs and Health is preparing amendments to the legislation regarding involuntary medication and legal safeguards. The required amendments are part of a larger scale reform of the legislation concerning self-determination of those using social welfare and health care services.

28. During the electoral term of 2011 to 2015, in 2014, a proposal concerning the legislative reform was submitted to Parliament. The proposal lapsed as Parliament was not able to process it before the end of the electoral term. Notably, provision regarding involuntary medication and legal safeguards under the Mental Health Act were included in this proposal because the Mental Health Act was planned to be amended separately. However, these provisions have been considered in further legislative drafting processes relating to involuntary medication and legal safeguard during involuntary psychiatric care (see below).

29. During the next electoral term, the Ministry of Social Affairs and Health appointed a new working party. The working party prepared a new proposal (a new Client and Patient Act). The proposal was circulated for comments in June 2018. A workshop and other consultations were also held as part of the proposal. However, the proposal could not be submitted to Parliament before the end of the Government term in March 2019. Provision regarding involuntary medication during involuntary psychiatric care and legal safeguards were included in this proposal.

30. In the current, Prime Minister Sanna Marin's Government Programme (10 December 2019 onwards), the Government has undertaken to amend legislation to strengthen the self-determination of those using social welfare and health care services, including the patient in involuntary psychiatric care. However, due to the exceptional and unexpected circumstances posed by the COVID-19 pandemic, the Ministry of Social Affairs and Health has had to target, from spring 2020 to spring 2021, significant amount of the Ministry's law-drafting resources to the numerous legislative projects arising from the pandemic. This has also affected the preparation of the aforementioned self-determination legislation.

31. The Ministry has, however, been able to continue the preparation of the legislation in May 2021. The Ministry published information about the continuation of the preparation on 1 June 2021 (https://stm.fi/-/asiakkaan-ja-potilaan-oikeuksia-vahvistetaan-kehittamalla-pitkajanteisesti-lainsaadantoa-ja-toimintatapoja). In September 2021, the Ministry of Social Affairs and Health set up a monitoring group inter alia to support the preparation of legislation.

32. The Ministry of Social Affairs and Health has decided to divide the preparation of the self-determination legislation into different stages due to the very extensive scope it is to cover. The amendments to be made in the first stage include provisions regarding the legal remedies applied to involuntary drug treatment in psychiatric care to fully implement the aforementioned judgment. The preparation will use, to the extent possible, the earlier (draft) proposals and take into account international human rights treaties and the recommendations of monitoring bodies. The government proposal on these legislative amendments is intended for submission to Parliament in 2022.

33. The following general premises are taken into account in and guide the legislative work. The medication given irrespective of one's will as referred to in the Mental Health Act refers to acute psychiatric treatment where medication may be adjusted every few hours, for example, and which, thus, largely corresponds to somatic emergency treatment. Thus, when enacting provisions on the possibility of lodging appeals regarding medication given in connection with involuntary treatment, the frequency of decisions that are subject to appeal in relation to potential need to adjust medication even quite often must be taken into account. It follows, thus,

also that it must be considered whether it is possible to take a single decision when medication is initiated, or should a decision be made every time the medicinal substance or dosage is adjusted and the patient opposes the adjustment. Alternatively, a decision could possibly be made for a specific time period, for instance at a daily, weekly or monthly basis, in such a manner that all the times medication objected by the patient is initiated or administered during that period is included in the same decision.

34. Moreover, giving due note to the fact that administrative work related to decision-making or the processing of an appeal must not jeopardise the medically justified treatment of a patient or the possibilities of doctors to focus on treating patients, special consideration must be given to safe implementation of treatment and to the administrative aspects of decision-making. It must, thus, also be decided to what extent the medication and the relevant decision can be enforced in spite of any appeals filed.

35. Furthermore, medication given to a patient against his or her will is always based on case-specific consideration, where the physician weighs the benefits of medication against potential adverse effects. The medication given and the grounds for giving them are entered in the patient records. Involuntary drug treatment is always a measure of last resort, used only to ward off a hazard of the patient imperilling his or her life.

36. In addition, whereas in some countries it is possible to admit to involuntary care patients who do not need drug therapy, in Finland the criteria for admitting a person to care against his or her will is high. Admitting a person to care against his or her will requires that the person is diagnosed as mentally ill (a mental health disorder is not sufficient grounds), and he or she needs treatment for a mental illness which, if not treated, would become considerably worse or severely endanger the person’s health or safety or the health or safety of others. In addition, the person can be ordered involuntary psychiatric treatment only if all other mental health services are inapplicable or inadequate. In practice, in consequence of the requirements described above, the criteria for admitting a person to involuntary care are not met in case of a patient who would not be in need of drug treatment as well. Therefore, it is medically justified to give patients admitted to involuntary care the drug therapy they need as part of their treatment. In Finland, medication cannot be administered on any other basis than strictly medical grounds. Drug treatment cannot be used as a ‘chemical restraining method’.

Publication and dissemination

37. The judgment has been sent on 10 July 2012 to all the relevant courts and authorities, i.e. the Supreme Court, the Supreme Administrative Court, Turku Court of Appeal, Tampere District Court, the Office of the Prosecutor General, the Ministry of Justice, the Constitutional

Law Committee of Parliament, the Parliamentary Ombudsman and the Office of the Chancellor of Justice.

38. The Ministry for Foreign Affairs published a press release concerning the judgment on the day the judgment was delivered.

39. The summary of the judgment has been published on the Government's website on national legislation and case law (www.finlex.fi) in Finnish.

Conclusion

40. In the Government's view, the measures taken with respect to individual measures have fulfilled the obligations that arise from the Court's judgment. The Government considers that Finland has complied in this respect with its obligation under Article 46 of the Convention.

41. As to the general measures, the Government will keep the Committee of Ministers duly informed.

Annex: Procedural guideline for application of the Mental Health Act

Unofficial translation, unedited

Procedural guideline for application of the Mental Health Act

18.12.2012 10.51
BULLETIN N5-61685

Continuation of involuntary psychiatric treatment and medication and other treatment measures administered against the patient's will

Background to the procedural guideline

On 3 July 2012, the European Court of Human Rights (ECtHR) issued a judgment in the matter *X v. Finland* (n. 34806/04). The judgment ruled on an application made by a 'criminal patient', *i.e.* an individual who had been prosecuted for an offence but for whom punishment had been waived because of their mental state, and they had been ordered to involuntary treatment.

The ECtHR ruled in its judgment that the case constituted a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on two grounds: firstly, in the continuation of the involuntary treatment after the initial period of 6 months; and secondly, in the administering of medication to the patient against her will.

With regard to continuation of the involuntary treatment, the ECtHR ruled that the procedure under Finnish legislation for continuation of involuntary treatment does not provide sufficient safeguards against arbitrariness. The Court stated:

The patients do not have a possibility to benefit from a second, independent opinion. The Court finds such a possibility to be an important safeguard against possible arbitrariness in the decision-making when the continuation of confinement to involuntary care is concerned.

and

A patient who is detained in a mental hospital does not appear to have any possibilities of initiating any proceedings in which the issue of whether the conditions for his or her confinement to an involuntary treatment are still met could be examined.

The ECtHR, thus, found that because a patient in involuntary treatment does not have an opportunity to obtain a second opinion independent of their care facility concerning the continuation of involuntary treatment, the system does not provide sufficient protection against arbitrariness. Moreover, in the ECtHR's view the legislation does not allow the patient the possibility of subjecting the grounds for involuntary treatment for assessment by a party outside the hospital while the treatment is in progress.

On these grounds, the ECtHR held that Finland's national legislation is not in conformity with the requirements imposed by Article 5 § 1(e) of the Convention.

Concerning forcible administration of medication, the ECtHR considered that the forcible administration of medication represents a serious interference with a person's physical integrity and must accordingly be based on legislation that guarantees proper safeguards against arbitrariness. The Court stated:

The decision-making was solely in the hands of the treating doctors who could take even quite radical measures regardless of the applicant's will. Moreover, their decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could require a court to rule on the lawfulness, including proportionality, of the forced administration of medication and to have it discontinued.

The ECtHR thus found that the decision-making in respect of the forcible administration of medication was solely in the hands of the doctors treating the patient, who could take even quite radical measures regardless of the applicant's wishes. Moreover, their decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could have the procedure discontinued. This constitutes a violation of Article 8 of the Convention.

The Court's judgment became final on 21 November 2012. Guidelines in compliance with the Court's decision shall hereafter be followed when deciding on the continuation of treatment for psychiatric patients and on the treatments and examinations given regardless of the patient's will that are provided for in section 22b of the Mental Health Act.

In respect of the judgment of the ECtHR, the Ministry of Social Affairs and Health is launching an urgent revision of the Mental Health Act so as to bring it into line with the Convention as regards the continuation of involuntary treatment and treatments given regardless of the patient's will.

Because the aforementioned legislative amendments will take at least a few months to enact, the Ministry of Social Affairs and Health has published this guideline regarding procedures to be followed in respect of continuation of involuntary psychiatric treatment and giving treatment to a patient in involuntary treatment including forcible administration of medication. The guideline shall apply to continuation of involuntary treatment and to treatments given regardless of the patient's will in the course of such involuntary treatment, regardless of whether such treatment has been ordered pursuant to section 11 or section 17 of the Mental Health Act. This guideline shall be complied with until the aforementioned amendments to the Mental Health Act enter into force.

This guideline was drawn up in collaboration with the Finnish Institute for Health and Welfare (THL), the National Supervisory Authority for Welfare and Health (Valvira) and the Southern Finland Regional State Administrative Agency. Feedback was requested

and received from state-run mental hospitals and from hospital districts during preparation of the guideline.

Continuation of involuntary psychiatric treatment

Pursuant to the judgment of the ECtHR, when deciding on continuation of involuntary treatment of a patient, the patient shall be allowed the possibility of obtaining a psychiatric assessment by a party outside of the hospital regarding whether the grounds for ordering that treatment as per section 8 of the Mental Health Act continue to exist.

In its judgment, the ECtHR particularly addressed the issue of whether the procedure in place allows the patient sufficient protection against arbitrariness and ruled that it must be possible to obtain an assessment of the necessity of the treatment by a party outside the hospital where the patient is being treated. Because in the Finnish Mental Health Act the grounds for ordering involuntary treatment are medical, such a second opinion must obviously be delivered by a physician. On the other hand, the ECtHR ruled that the assessment should be psychiatric, without making any comment on how the statement should be obtained or whether the physician delivering the statement should be a specialist in psychiatry.

Considering the principal intent of the ECtHR judgment, i.e. protecting the patient against arbitrariness, it may be considered minimally sufficient to allow the patient the opportunity to obtain an assessment of their need for treatment from a physician outside of the hospital, e.g. a health centre physician, before the decision regarding continuation of treatment is made. However, the principal approach should be to have such an assessment made by a specialist in psychiatry or a physician otherwise experienced in psychiatry. In practice, the hospital needs to arrange for a physician from the outside to come in to examine the patient and to deliver a statement. The physician may deliver a statement on the basis of information received even if the patient refuses an examination. In such a case, however, the statement will be rather limited in content.

If, before the expiry of the 3-month deadline as per section 12 or the 6-month deadline as per section 17(2) of the Mental Health Act, it is evident that continuation of involuntary treatment may be necessary, the patient shall be informed that, before the observation statement is prepared, an outside physician will be invited to examine the patient and to deliver a statement as to whether the grounds for treatment as per section 8 of the Mental Health Act still exist. An outside assessment shall not constitute an observation referral as specified in section 9 of the Mental Health Act; it is a separate physician’s statement not provided for by law. This is not a task involving the exercise of public powers which shall be undertaken by a public authority and whose assignment to a party other than a public authority would have to be provided for by law.

A request for an outside assessment may be submitted to a health centre or other institution. It is the considered opinion of the Ministry of Social Affairs and Health that health centres do not have a statutory obligation to conduct such assessments. If an outside assessment cannot be agreed upon with a health centre, then the hospital shall

request another party to perform the assessment. An outside assessment arranged by the hospital shall not result in costs to the patient.

Because this procedure is not recognised in the Mental Health Act, and because by default examinations and treatment shall be conducted with the patient's consent, the patient shall have the right to refuse such an outside assessment. If a patient refuses an outside assessment, then this refusal and the patient's grounds for the refusal (if any) shall be entered in the patient record, and a report explaining this shall be appended to the documents submitted to the Administrative Court.

A patient may also prohibit the disclosure of their patient information to the person conducting the outside assessment, even if the patient agrees to the assessment itself. In such a case, the statement returned by the person conducting the assessment shall explain the information based on which the statement was prepared.

Patients shall be given the opportunity to request an assessment as per section 8 of the Mental Health Act, to be conducted by a physician of their choice, before the decision whether to continue the treatment is made. This may be in addition to the outside assessment arranged by the hospital, if the patient so wishes. However, the patient shall be liable for any costs incurred through an additional assessment arranged by the patient.

Once an outside assessment as referred to above has been received for the patient, the hospital shall perform the other procedures involved in the possible continuation of the treatment according to the Mental Health Act. The statement, or assessment of the grounds for treatment as provided for in section 8 of the Mental Health Act, delivered by the outside, independent physician shall be considered in this procedure. The outside assessment shall not be binding upon the physician preparing the observation statement or making the decision, but the views given in the statement must be considered. If the outside assessment differs from the conclusion reached in the observation statement, then the reason for why the conclusion differs from the outside assessment shall be given in the observation statement or in the decision to continue treatment.

Obtaining an outside assessment shall not change the time limits for continuation of involuntary treatment specified in the Mental Health Act. The hospital shall therefore ensure that, in the interests of the integrity of the treatment and decision-making, the outside assessment is conducted as close as possible to the time when the continuation decision must be made, but so that the decision can in fact be made before the time limit expires.

In the case of a patient admitted to treatment pursuant to section 11 of the Mental Health Act, section 12(2) of the Mental Health Act shall be complied with after a decision has been made to continue treatment (after 3 months of treatment) as described above. In other words, while a decision to continue treatment after the 3-month period shall involve obtaining an outside assessment, a decision to continue treatment after the 6-month period following the previous decision requires an observation referral as per section 9 and an observation statement and decision based thereon. However, in this context too

the patient shall have the opportunity to request an assessment of the criteria for treatment pursuant to section 8 of the Mental Health Act by a physician of their choice, at the patient's expense.

By contrast, continuation of involuntary treatment for criminal patients at 6-month intervals shall follow the procedure described above: each decision to continue treatment shall involve an outside assessment.

Assessment of criteria for treatment during involuntary treatment

The ECtHR also found that patients should have the opportunity to have the criteria for their involuntary treatment examined even while they are in treatment. Sections 12(1) and 14 of the Mental Health Act clearly imply that if circumstances change so that the criteria for involuntary treatment are no longer met, institutional treatment cannot be continued unless the patient voluntarily submits to it. This also applies to criminal patients.

According to the ECtHR judgment, hospitals shall, whenever a patient so requests, examine whether the criteria referred to in section 8 of the Mental Health Act are met. The patient's request and the resulting assessment shall be entered in the patient record. If it is deemed in the assessment that the criteria for involuntary treatment remain fulfilled, the patient shall be notified accordingly and shall also be informed that they may lodge a complaint with the Regional State Administrative Agency in respect of the continuation of treatment.

If only a short period has elapsed since an earlier request made by the patient, and it is evident that there has been no change in the patient's condition, then the examination may be waived. However, this waiver and the grounds for it shall also be entered in the patient record.

Measures administered to patients regardless of their will (including forcible administration of medication)

Chapter 4a of the Mental Health Act provides for the limitation of a patient's right of self-determination and other fundamental rights during involuntary treatment and examinations. The provisions in this chapter entered into force on 1 June 2002. Chapter 4a of the Mental Health Act contains general provisions on the limitation of a patient's right of self-determination and particular provisions on e.g. the treatment of mental illness. Even in the case of patients subjected to involuntary treatment, the basic principle is that patients should be treated with their consent as far as possible.

Under section 22k(2) of the Mental Health Act, hospitals shall keep a list of the limitations on the right of self-determination referred to in section 4a of the Act. Under section 12(6) of the Decree of the Ministry of Social Affairs and Health on Patient Documents (298/2009), a separate entry shall be made in patient records showing the reason for, nature of and duration of the measures undertaken, along with an assessment of their

impact on the patient's treatment. The names of the physician ordering the measure and the person(s) performing the measure shall also be entered.

As indicated above, all examinations performed and treatments given under involuntary treatment (including forcible administration of medication) shall be entered in separate entries in the patient records.

Patients shall also have the right to lodge a complaint with the Regional State Administrative Agency in respect of any involuntary examinations and treatments. The decision issued for such a complaint will be relevant particularly in cases where the limitations imposed are in place for a long time and a decision by the appellate authority might lead to them being discontinued. A decision for a complaint addressing limitation measures that have already been discontinued may be relevant in terms of legal protection after the fact.

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