

Relevant requirements under Article 8 of the European Convention on Human Rights in the light of X v. Finland

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X v. Finland - 34806/04, Judgment 3.7.2012

- In 2012, Finland received a judgment from the European Court of Human Rights in the case of X v. Finland.
- The judgment was based on a complaint filed by an individual accused of a crime who, due to their mental state, had not been convicted and was subsequently placed under involuntary treatment.
- In its judgment, the ECtHR found that the right to liberty under Article 5 of the European Convention on Human Rights and the right to respect for private life under Article 8 had been violated.

Violations of Article 5 § 1 and Article 8

Violation of the right to liberty under Article 5§1.

- Continuation of involuntary treatment beyond the initial six-month period.
- The applicant's initial confinement had been ordered by an independent specialized authority following a psychiatric examination and had been subject to judicial review, but
- the safeguards against arbitrariness had been inadequate as regards the continuation of the applicant's involuntary confinement after that period.

Violation of the right to respect for private life under Article 8.

- Administration of medication against the patient's will.
- The Court considered that the law on which such treatment was based had to guarantee proper safeguards against arbitrariness.
- In the applicant's case such safeguards had been missing.



Execution of the judgment in relation to the violation of Article 5 § 1.

- Following the ECtHR's judgment in X v. Finland, the details of involuntary commitment outlined in the Mental Health Act were specified:
 - Patients were granted the opportunity to receive an assessment and opinion from an external physician regarding the necessity of treatment before a decision on its continuation is made.
 - Additionally, patients were granted the right to request an evaluation of the conditions for continuing treatment from the hospital themselves during the treatment period (Section 12d).
- These legislative changes came into effect in 2014.



Examination by the CM under the enhanced procedure.

- As for the second part of the judgment, the violation of Article 8 regarding legal safeguards in relation to forceful medication, still hadn't been executed as of 2021.
- In December 2021, the Committee of Ministers examined the status of implementation and reasons for its delay, deciding to pursue the examination of the case under the enhanced procedure.
- The monitoring of implementation was next discussed at the meeting of the Committee of Ministers in March 2023.
 - The legislative and other measures taken regarding the violation of Article 5 were deemed sufficient, and no further action was necessary.
 - Concerning legal remedies for involuntary medication, the Committee of Ministers urged Finland to urgently take all available measures to prevent further delays in necessary legislative action.



Finland takes action...

- The amendments to the Finnish Mental Health Act were confirmed in January 2024 and will come into effect on April 1, 2024.
 - The implementation of medication for a patient's mental illness when the patient opposes to it requires an administrative decision.
 - An administrative decision must also be issued upon the patient's request.
 - The patient will have the opportunity to appeal this decision to the administrative court. The decision may be enforced immediately despite any appeal.
 - The appeal regarding the decision must be handled by the court as an urgent matter.
- On 5 February 2024, the Finnish authorities submitted a revised action report to the Committee of Ministers. Among other things, the authorities explained that legislative measures have been adopted to provide a judicial safeguard for decisions concerning forcible administration of medication.



Participation of the National Human Rights Institution in the monitoring of execution

- Rule 9 of the Rules of Procedure of the Committee of Ministers allows National Human Rights Institutions (NHRI) as well as NGOs to submit statements regarding the monitoring of the implementation of ECtHR judgments to the Committee of Ministers.
- The Human Rights Centre has utilized this opportunity on October 21, 2021, and again on January 27, 2023, concerning the case X v. Finland.
- The Execution Department of the Council of Europe visited Finland in February 2023 at the invitation of the Ministry of Foreign Affairs. During their two-day visit, representatives of the department met with officials from ministries, highest judicial authorities, and legal oversight bodies, and also officials from the Human Rights Centre. The main focus of the discussions was the X v. Finland case.

Participation of the National Human Rights Institution in the monitoring of execution

- In addition to the Rule 9 procedure, the Finnish National Human Rights Institution has followed closely the drafting of the amendments to the Mental Health Act and given statements to the Ministry during the drafting.
- In both procedures, the Finnish NHRI has raised for example the following questions:
 - There still is no law about decisions on involuntary medication and effective legal remedy. Guidelines issued by the Ministry of Social Affairs and Health are still in use but they, obviously, are not a law.
 - Decisions regarding involuntary medication are treated as administrative measures solely in hands of the treating doctors. These decisions and measures are not considered as restrictions on human rights, and they are not appealable.
 - To ensure the patient's legal protection, the prerequisite for receiving a written decision should be the absence of informed, explicit consent rather than resistance to medication.

Why has the execution of the second part of the judgment been problematic?

- The legislative initiatives regarding right to self-determination of patients and clients of health and social services have been repeatedly delayed (2011-2014, 2015-2019, and now also 2020-2023, spanning three government terms!).
- Reasons:
 - The government term ends before the legislation is considered, or
 - the government proposal has not been forwarded to the parliament due to critical opinions.



Why has the execution of the second part of the judgment been problematic?

- Reasons related to structures and traditions:
 - Providers of mental health services along with the judiciary are extremely concerned about the additional workload and resources needed caused by documenting decisions, providing justifications, and handling appeals. They feel that these concerns have not been adequately taken into account in legislative proposals.
 - Healthcare in Finland is essentially characterized as practical administrative action. The idea of decisions regarding healthcare being subject to judicial scrutiny is alien. While social welfare in Finland inherently includes guarantees of good governance and legal safeguards with written decisions, reasoning, and avenues for appeal, such procedures are not recognized in treatment decisions.

Resolution CM/ResDH(2024)43, Execution of the judgment of the European Court of Human Rights, X against Finland

- The Committee of Ministers adopted on 14 March 2024 at the 1592nd meeting of the Minister's Deputies a resolution, where, after examining the action report by the Finnish government and having satisfied itself that all the measures required by Article 46, paragraph 1, had been adopted
 - Declared that it had exercised its functions under Article 46, paragraph 2, and
 - Decided to close the examination.

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