



Finnish courts' refusal to replace the mentor of an intellectually disabled man, thus preventing him from living in the place of his choice, was justified

The case [A.-M.V. v. Finland](#) (application no. 53251/13) concerned an intellectually disabled man's complaint about the Finnish courts' refusal to replace his court-appointed mentor, meaning that he has been prevented from deciding where and with whom he would like to live. His court-appointed mentor had previously decided that it was not in his best interests for him to move from his home town in the south of Finland to live in a remote village in the far north with his former foster parents. In the related court proceedings his request to replace the mentor was refused.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been **no violation of Article 8 (right to respect for private and family life) or of Article 2 of Protocol No. 4 (freedom of movement)** to the European Convention on Human Rights.

The Court considered that the Finnish courts' decision to refuse to make changes in the mentor arrangements, reached following a concrete and careful consideration of the applicant's situation, had essentially taken into account his inability to understand what was at stake if he moved, namely that it would involve a radical change in his living conditions. Such a decision, taken in the context of protecting the applicant's health and well-being, had not therefore been disproportionate. Moreover, the applicant had been involved at all stages of the proceedings and his rights, will and preferences had been taken into account by competent, independent and impartial domestic courts.

Principal facts

The applicant, A.-M.V., is a Finnish national who was born in 1990. He is intellectually disabled.

A.-M.V. was taken into public care in 2001 and placed with a foster family. However, in 2007 the child welfare authorities decided to remove him from the family and to place him in a disabled children's home – with one of his brothers – in his home town in southern Finland. This was because the foster parents had made important decisions without consulting the authorities, namely they had moved to a remote village in the far north of Finland and had planned on placing him in a vocational school 300 km away.

In February 2011 a mentor, who had been appointed by a court when A.-M.V. turned 18, took a decision concerning A.-M.V.'s place of residence which, according to him, was against his own will. A.-M.V. wished to move from his home town in the south to live in the north with his former foster parents. His mentor considered, however, that it was in his best interests for him to live in his home town where other members of his family lived and where he had better educational and work opportunities; he could spend holidays with his former foster parents.

A.-M.V. thus brought court proceedings asking to replace the mentor by another person insofar as matters concerning the choice of his place of residence and education were concerned. This request was ultimately refused in 2013 by the domestic courts. Having considered expert testimony (by a psychologist) and having heard A.-M.V. in person as well as several witnesses, they concluded that

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

he was clearly unable to understand the significance of the planned move to a remote part of the country. It notably took into account the level of his intellectual capacity, assessed as equal to that of a six to nine year old child, and the fact that he had no particular complaints about his current situation in his home town where he lived in a special unit for intellectually disabled adults, went to work, had hobbies and a support network of relatives, friends and staff from the social welfare authorities. Lastly, the courts expressed doubts as to whether his opinion was genuinely his own or his foster parents. There was thus no reason to replace the mentor by another person as far as matters concerning the applicant's place of residence and his education were concerned.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) and Article 2 of Protocol No. 4 (freedom of movement), A.-M.V. complained that, because of the courts' decisions refusing to replace his mentor, he has been prevented from deciding where and with whom he would like to live.

The application was lodged with the European Court of Human Rights on 30 July 2013.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Ledi **Bianku** (Albania),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

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

Decision of the Court

First, the Court considered that there had been an interference with the applicant's right to respect for his private life, the domestic courts' refusal to change the mentor arrangements, in essence, having resulted in the applicant being prevented from deciding for himself where and with whom to live. That interference had had a legal basis, namely the Guardianship Services Act, and was clearly justified by the legitimate aim of protecting the applicant's health, in the broader sense of his well-being.

Furthermore, the Court was satisfied that the courts' decision had been reached following a concrete and careful consideration of all the relevant aspects of the applicant's situation: namely, his intellectual capacity; as well as his present and prospective circumstances in the case of a move. The decision had therefore essentially been based not on a qualification of the applicant as a person with a disability, but on his inability to understand what was at stake if he moved, namely that it would involve a radical change in his living conditions. Therefore it was necessary for the applicant's well-being and interests to maintain the mentor arrangement.

Moreover, a proper balance had been struck between respect for the dignity and self-determination of the applicant and the need to safeguard his interests, especially given his particularly vulnerable position. There had been effective safeguards in the domestic proceedings to prevent abuse, as required by the standards of international law², which had ensured that the applicant had been

² Notably, the United Nations Convention on the Rights of Persons with Disabilities, which has been ratified by Finland.

involved at all stages of the proceedings and that his rights, will and preferences had been taken into account. The interference with the applicant's rights had therefore been proportionate and tailored to his circumstances, and was subject to review by competent, independent and impartial domestic courts.

In sum, the courts' decisions had been based on relevant and sufficient reasons and the refusal to make changes in the mentor arrangements had not been disproportionate to the legitimate aim of protecting the applicant's health, in the broader sense of his well-being.

Consequently, there had been no violation of Article 8 in the applicant's case.

Lastly, the Court did not consider that an examination of the applicant's complaint about a breach of his freedom of movement could lead to different findings and therefore held that there had been no violation of Article 2 of Protocol No. 4 either.

The judgment is available only in English.

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