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Council of Europe

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Rule 9 Submission for the Execution of the Judgment in the case of X v. Finland (Application No. 34806/04)

Introduction

In the case of **X v. Finland,** the Court found a violation **in 2012** with regard to **Art. 5 § 1** (Right to liberty and security of person) and **Art. 8** (Right to private life). The related events took place in 2005 and 2006. The 1419th meeting of the Committee of Ministers, in December 2021, is due to examine the status of implementation and reasons for its delay. Both Action Plans provided by the Government in 2021 (August, October) have been examined prior to preparing this submission.

This is a submission of the Human Rights Centre, Finnish A-status NHRI[1] that has the monitoring of the implementation of the ECHR judgments as one of its statutory tasks.

Art. 5 § 1 (Right to liberty and security of person)

The Court found that the procedure in respect of the applicant's confinement for involuntary care in a mental hospital did not provide adequate safeguards against arbitrariness.

As submitted by the Government, legislative changes have been made with regard to adequate safeguards against arbitrariness. Legal remedies have been put in place with regard to decision on involuntary care.

The changes include, among others, a second opinion by a physician *ex officio* as well as an option for the patient to have additionally a physician of his/her choice to give a third opinion. This is all in line with the judgment. In all, no major issues exist in this regard, as duly noted by the Government.

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.

According to the Government submission (para 16), "the amendments to be made in the first stage include provisions regarding the legal remedies applied

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to involuntary drug treatment in psychiatric care. The draft provisions from the earlier (draft) proposals will serve as a basis for the drafting process. The government proposal on these legislative amendments is intended for submission to Parliament in 2022."

The HRC notes that, with regard to legal remedies against forced medication, the two previous attempts by the Government and the Parliament to bring the legislation in line with the requirements of the judgment in this case, as well as other international human rights instruments, have failed. Instead, since 2012, guidelines that were intended to be temporary are still in force.

For a patient to legally challenge involuntary medication, a separate decision with a right to appeal would need to be made in writing. This is not done as no law requires it. Therefore, there is no decision with written reasoning, no guidance to lodge an appeal, no instance to appeal to nor is there a legal remedy nor legal aid available.

The law notes that when needed, a doctor takes a decision on involuntary medication. The law does not mention anything concerning an appeal on this decision. The right to appeal exists with regard to ordering a person to involuntary care, continuation of the said care, limiting contacts or taking custody of property. The law treats forced medication as an actual administrative action and as a normal course of treatment, not as a restriction of fundamental rights. Thus, the law is incomplete and contrary to human rights.

With regard to the guidelines, which currently are used to remedy the insufficient legislation, one must note that they are not a law, nor do they include a right to appeal. It is thus unclear what action and by whom could legally be taken to correct and compensate an action that is in violation of said guidelines. Guidelines are not enforceable in strict sense of the law. In short, the patient has no effective legal remedy.

The only legal avenue available in cases of forced medication, even today, is a complaint to the Regional State Administrative Agency, with no possibility to appeal. This is not *per se* an effective legal remedy. No change in the treatment or compensation can be ordered.

Additionally, the Parliamentary Ombudsman could recommend compensation, based on a complaint, but this is not an effective legal remedy either as the decisions by the Parliamentary Ombudsman are only recommendations.

As duly noted by the Government in its submission, in 2011-2014 the proposal on the self-determination of clients and patients lapsed as Parliament was not able to process it before the end of the electoral term. In 2015-2019 the Government did not even bring the proposal to Parliament due to critical statements on the proposal received during a consultation round.

Now the third effort has been delayed by the pandemic, among other reasons. The Government proposal, not yet even in the consultation phase, is due to be brought to Parliament in summer 2022 (as noted in the ministry website (in Finnish) https://stm.fi/-/asiakkaan-ja-potilaan-oikeuksia-vahvistetaan-kehittamalla-pitkajanteisesti-lainsaadantoa-ja-toimintatapoja). The next elections take place in April 2023. There is a serious risk that once more, for the third time, the proposal will not reach the Parliament in time, or the proposal will lapse due to the end of electoral term.

The question is difficult, and there are multiple details to consider, as the Government points out in its submission. The main difficulty has been that reform of this law has been included in an overall reform of all questions related to self-determination in all possible cases within the national social and health care system. The overall reforms have failed and now more detailed and targeted reforms are attempted.

However, the repeated failures to legislate the matter in over 10 years' time shows the difficulties towards full and proper implementation of this judgment and the inability to correct the situation in general.

This is highlighted further by the fact that a new case concerning lack of legal remedy against forced medication in a psychiatric hospital (*E.S. against Finland*, *application no. 23903/20*) has been lodged before the Court in June 2020 and communicated to the Government in March 2021. In that case both a regular court and two levels of administrative courts found the question to be outside their area of competence. Thus, the applicant was left with no legal avenue to pursue the case having tried to exhaust all possible domestic remedies potentially available. Naturally this case is yet to be decided by the Court, but the case summary publicly available gives indication that no changes in this regard have taken place.

All in all, the implementation of this decision has taken far too long. It seems that there could be lack of consensus within the administration and the Government to rectify this matter.

Government observations to CPT in 6/2021
Noteworthy is to mention that in its most recent report (2020) the CPT has taken up the same themes as in the case of *X v. Finland*, namely the involuntary care and forced medication. CPT states (para 103):

CPT once again calls upon the Finnish authorities to introduce at all psychiatric establishments in Finland, without further delay, a procedure whereby patients' free and informed consent to treatment is actively sought and every patient capable of discernment is given the opportunity to refuse treatment or any other medical intervention. The relevant legislation should be amended so as to stipulate the fundamental principle of free and informed consent to treatment, as well as to clearly and strictly define exceptional circumstances that may cause any derogation from this principle.

The relevant legislation should be further amended so as to:
- require an external psychiatric opinion in any case where a patient does not agree with the treatment proposed by the hospital's doctors;
- provide patients with the possibility to appeal against a proposed treatment to an independent outside authority, to benefit from legal assistance to that end and to receive the respective ruling within an appropriately short timescale.

It should further be ensured that the patient's consent or refusal is in any case recorded prior to its commencement. As regards informing patients about avenues of complaint, reference is made to paragraph 105.

The CPT gave essentially the same recommendations after its 2014 visit. In its reply in 2015 the Government stated that written consent is not required with regard to treatment in such cases as the national legislation does not require it. No promises were made to correct the legislation.

In its reply in June 2021 to the same recommendations by the CPT, the

Government stated that, unlike in 2015, the legislation is consistent with the CPT recommendation. This, despite the lack of any new legislative initiatives or action having been taken in the meantime. This information by the Government is contradictory, misleading and false.

The Human Rights Centre wishes to thank for the opportunity to provide this additional information for the execution of this judgment. Should you wish any more information on this or other related matter, do not hesitate to contact us.

This document is signed electronically.

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