

# FINLAND

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# Executive summary

## Definitions

- [1]. *Kehitysvammainen henkilö* is the translation for a person with intellectual disability, or a mentally handicapped person as in the unofficial translation for the Act on Special Care for the Mentally Handicapped [*laki kehitysvammaisten erityishuollosta/lag angående specialomsorger om utvecklingsstörda* (519/1977)]. A person with intellectual disability is defined as someone whose development or mental functions have been disturbed by an inborn or developmental disorder or disability.
- [2]. The Mental Health Act [*mielenterveyslaki/mentalvårdslagen* (1116/1990)] refers to *mielenterveydenhäiriöitä poteva henkilö* as a translation for a person with mental disorders, and *mielisairas henkilö* for a person with mental illness. The definitions of a mental disorder and mental illness follow the international medical criteria.

## Anti-discrimination

- [3]. Equality and the prohibition of discrimination are enshrined as fundamental rights in Section 6 of the Constitution of Finland [*Suomen perustuslaki/Finlands grundlag* (731/1999)]. This provision contains a general equality provision and an extensive prohibition of discrimination making an explicit reference to health and disability.
- [4]. Discrimination is also prohibited in a variety of Acts, such as the Penal Code [*rikoslaki/strafflag* (391/1889)] and the Non-Discrimination Act [*yhdenvertaisuuslaki/lag om likabehandling* (21/2004)]. The Non-Discrimination Act transposes the Race Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC into national law.
- [5]. The Non-Discrimination Act is a general piece of legislation in the sense that its material scope is wide. The Act covers discrimination on grounds of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics.
- [6]. The weak spot of the existing anti-discrimination national framework is that it does not fully extend to persons with mental disorders, persons with intellectual disability and persons with dementia. Furthermore, the scope of the current antidiscrimination national framework is not currently in line with the UNCRPD (which covers more or less all life spheres, not just employment and training). A reform of the non-discriminatory legislation is however currently underway.

## Specific fundamental rights

- [7]. In Finland, the legal framework guaranteeing rights and freedoms has been in transition since the extensive reform of the domestic system for the protection of fundamental rights that came into force in 1995.
- [8]. The domestic system for the protection of fundamental rights is supplemented with relevant international human rights treaties binding upon Finland. As a matter of Finnish

constitutional law, international human rights obligations binding upon Finland lay down the *minimum standard of protection*, but this does not prevent domestic courts and authorities from giving more stringent protection on the basis of the Finnish Constitution. Moreover, all courts and public authorities are under a constitutional duty to guarantee the observance of constitutional rights and human rights (Section 22 of the Constitution). This provision provides a constitutional basis for the 'human rights oriented interpretation approach' by Finnish courts and authorities.

- [9]. However, the Convention on the Rights of Persons with Disabilities may bring some added values as it appears to strengthen the status of economic, social and cultural rights and expand human rights to areas which have traditionally been considered to be a matter of social policy and of discretionary nature in Finland. In addition, the rights guaranteed by the Convention are formulated in a manner that may differ to some extent from the approach of the Finnish Constitution. In the Convention e.g. the formulations on accessibility (art 9) and reasonable accommodation go beyond the Finnish Constitution (if you don't provide reasonable accommodation that is considered to be discrimination).

## Involuntary placement and involuntary treatment

- [10]. The involuntary treatment in psychiatric hospitals is governed by the Mental Health Act. Involuntary care of persons with intellectual disability is governed by the Act on Special Care for the Mentally Handicapped. For persons with dementia there is currently no legislation in force on involuntary treatment or care. The signing of the UN Convention would need such legislation in Finland. Therefore, the Ministry of Social Affairs is currently setting up a working group with the task of preparing legislation on self-determination and restrictions thereof, which would cover at least persons with intellectual disabilities, persons with dementia and persons with mental health disorders.
- [11]. The aims pursued by the legislation concerning involuntary treatment under the Mental Health Act are treatment of illness and safeguarding the health or security of the patient and others. The aims of the involuntary special care under the Act on Special Care for the Mentally Handicapped emphasize the need of special care in relation to the risks of health and security of the person with intellectual disability or others.
- [12]. The Act on Special Care for the Mentally Handicapped includes only a very general provision on coercion. The Mental Health Act has been amended in 2001 to include somewhat more detailed provisions concerning limitations on patients' fundamental rights during involuntary treatment and examination.

## Competence, capacity and guardianship

- [13]. In Finland, the Guardianship Services Act [*laki holhoustoimesta/lag om förmyndarverksamhet* (442/1999)] governs the management of affairs of persons who cannot themselves take care of their financial affairs owing to incompetency, illness, absence or another reason. The Act governs to some extent also non-financial affairs.
- [14]. If an adult, owing to illness, disturbed mental faculties, diminished health or some comparable reason, is incapable of looking after his or her interests or taking care of personal or financial affairs in need of management, a guardian may be appointed for him or her. If appointment of a guardian is not sufficient, a court may restrict a person's competency.

# 1. Definitions

- [15]. *Kehitysvammainen henkilö* is the translation for a person with intellectual disability, or a mentally handicapped person as in the unofficial translation for the Act on Special Care for the Mentally Handicapped [*laki kehitysvammaisten erityishuollosta/lag angående specialomsorger om utvecklingsstörda* (519/1977)]. According to Section 1, the Act covers special care aimed at persons whose development or mental functions have been disturbed by an inborn or developmental disorder or disability.
- [16]. The Mental Health Act [*mielenterveyslaki/mentalvårdslagen* (1116/1990)]<sup>1</sup> refers to *mielenterveydenhäiriöitä poteva henkilö* as a translation for a person with mental disorders, and *mielisairas henkilö* for a person with mental illness.
- [17]. The definitions of a mental disorder and mental illness follow the international medical criteria and have not been defined in more detail in the Mental Health Act. It is noted in the Government Bill for the Mental Health Act that in medical terms mental illness refers to a serious mental disorder involving a clear loss of contact with reality or even psychosis.<sup>2</sup> The Supreme Administrative Court has concluded in a case from 2008 that also a psychosis that has organic basis could be regarded as a mental illness in the sense of the Mental Health Act.<sup>3</sup> The Supreme Administrative Court has, in a case concerning a minor, regarded Tourette's syndrome to form such a severe mental disorder that would seriously endanger the growth and development of a young person.<sup>4</sup>
- [18]. *Vammainen henkilö* is the translation for a person with disabilities, for instance, in the Act on Services and Assistance for the Disabled [*laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista/lag om service och stöd på grund av handikapp* (380/1987)], which, according to Section 2 and the Government Bill for the Act, refers to a person with such a disability or disorder that causes long-term specific difficulties with his or her normal life including elements such as housing, work, study, participation, movement, transactions and leisure time.<sup>5</sup> The Government Bill for the Mental Health Act makes a reference to the Act on Services and Assistance for the Disabled noting that the Act obliges also to provide services to those person with a mental disorder that are regarded as (severely, in case of housing, for instance) disabled.<sup>6</sup> It should also be noted that the division, on the one hand, to

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<sup>1</sup> An unofficial translation of the Mental Health Act, by the Ministry of Social Affairs and Health, is available at: <http://www.finlex.fi/en/laki/kaannokset/1990/en19901116.pdf> (15.10.2009).

<sup>2</sup> Government Bill HE 201/1989 vp mielenterveyslaiksi/RP 201/1989 rd med förslag till mentalvårdslag (not available on-line). See also the decision of the Supreme Administrative Court, Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO:2002:70 (04.11.2002). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2002/200202802> (15.10.2009).

<sup>3</sup> Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO:2008:80 (04.11.2008). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2008/200802758> (15.10.2009).

<sup>4</sup> Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO:2005:32 (02.06.2005). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2005/200501311> (15.10.2009). See also R. Kaltiala-Heino (2003) *Alaikäisten tahdosta riippumaton hoito: Mitä mielenterveyslain käsite vakava mielenterveydellinen häiriö alaikäisillä tarkoittaa?* [Treatment against the will of a minor: What does the concept of the Mental Health Act 'serious mental disorder' mean in regard to minors?] Helsinki: Reports of the Ministry of Social Affairs and Health 2003:7. Available in Finnish (with and English summary) at: <http://pre20090115.stm.fi/pr1064836219743/passthru.pdf#37> (15.10.2009).

<sup>5</sup> Government Bill HE 219/1986 vp laiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista/RP 219/1986 rd med förslag till lag om service och stöd på grund av handikapp (not available on-line).

<sup>6</sup> See also Government Bill for the amendment HE 201/1989 vp mielenterveyslaiksi/RP 201/1989 rd med förslag till mentalvårdslag (not available on-line); the decision of the Supreme Administrative Court Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO:2004:69 (07.07.2004), available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2004/200401652> (15.10.2009); and Government Bill for an amendment of the Act on Services and Assistance for the Disabled, HE 166/2006 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2006 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp

persons with intellectual disability and, on the other, to persons with disabilities is regarded increasingly as outdated, and a reform for unifying the Act on Special Care for the Mentally Handicapped and the Act on Services and Assistance for the Disabled is currently underway in Finland. With the latest amendment to the Act on Services and Assistance for the Disabled, the primacy of this Act in relation to the Act on Special Care for the Mentally Handicapped has been affirmed in Section 4 of the Act.<sup>7</sup>

## 2. Anti-discrimination

### 2.1. Incorporation of United Nations standards

- [19]. The topics discussed in the open-ended consultation on key legal measures for the ratification and implementation of the Convention on the Rights of Persons with Disabilities seem to be reflected also in the current legal amendments and ongoing legislative reforms in Finland. Mainstreaming disability policies is the key word for the ongoing work on a disability policy programme and the principle of normalisation is emphasized in the latest legal amendments. The latest amendment of the Act on Services and Assistance for the Disabled stresses the effect of personal assistance for self-determination and the enhancement of the possibility to participate. Coerced institutionalization is one of the most discussed topics with regard to mental disorders and intellectual disability.

### 2.2. The anti-discrimination national framework

- [20]. Finland has signed the UN Convention on the Rights of Persons with Disabilities and also the Optional Protocol on 30.03.2007. According to Finnish government officials, although Finnish legislation complies for the most part with the Convention, some amendments of the domestic legislation are needed before the Convention can be ratified. It has also been noted that the Convention strengthens the domestic status of economic, social and cultural rights and expands human rights thinking to areas which have traditionally been considered as a matter of social policy and of discretionary nature in Finland.<sup>8</sup>
- [21]. The government is in the process of amending legislation, and a disability policy programme aiming at mainstreaming disability policy is currently under work.<sup>9</sup> In order to ratify the Convention, Finland would, *inter alia*, need to establish a government body designated to

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och 4 § i lagen om klientavgifter inom social- och hälsovården. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2006/20060166.pdf> (15.10.2009).

<sup>7</sup> See the Government Bill for an amendment of the Act on Services and Assistance for the Disabled, HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>8</sup> See the Government bill for the amendment of the Act on Services and Assistance for the Disabled, HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>9</sup> See the website of *Valtakunnallinen vammaisneuvosto (VANE)/Riksomfattande handikapprådet* [the National Council on Disability], [http://www.vane.to/vampo\\_yleis\\_eng.html](http://www.vane.to/vampo_yleis_eng.html) (15.10.2009). See also the website of the Ministry of Social Affairs and Health (in Finnish) at: [http://www.stm.fi/vireilla/tyoryhmat/vammaispoliittinen\\_ohjelma](http://www.stm.fi/vireilla/tyoryhmat/vammaispoliittinen_ohjelma) (15.10.2009).

attend the task enlisted in Article 33(2) of the Convention. So far, at least the following needs for amendments have been recognised: Article 14 of the Convention (liberty and security of person) concerning the use of coercion on mentally disabled persons in special care and persons with dementia requires amendments in legislation. Also Articles 18 (liberty of movement and nationality) and Article 19 (living independently and being included in the community) require the restriction laid down in Section 3 of the Municipality of Residence Act [*kotikuntalaki/lag om hemkommun* (201/1994)] to be eliminated, and Section 13 of the Social Welfare Act [*sosiaalihuoltolaki/socialvårdslagen* (710/1982)] to be amended so that social services may be provided not only to persons residents of a municipality but also to persons moving there.<sup>10</sup>

- [22]. Section 6 of the Constitution of Finland [*Suomen perustuslaki/Finlands grundlag* (731/1999)]<sup>11</sup> contains a general equality provision and an extensive prohibition of discrimination in the following terms, making an explicit reference to health and disability:

Everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language religion, conviction, opinion, health, disability or other reason that concerns his or her person.

In 2005, Section 6 of the Constitution was referred to by the Supreme Administrative Court in a case concerning funds allocated in a municipal budget to services for persons with disabilities.<sup>12</sup>

- [23]. Section 6 of the Constitution of Finland is supplemented with relevant international human rights treaties including the principle of non-discrimination. As a matter of Finnish constitutional law, international human rights obligations binding upon Finland lay down the *minimum standard of protection*, but this does not prevent domestic courts and authorities from giving more stringent protection on the basis of the Finnish Constitution. Moreover, all courts and public authorities are under a constitutional duty to guarantee the observance of constitutional rights and human rights (Section 22 of the Constitution). This provision provides a constitutional basis for the 'human rights oriented interpretation approach' by Finnish courts and authorities. Accordingly, Finnish courts and authorities are obliged to interpret *all* domestic legal provisions on equality and the prohibition of discrimination in light of international human rights treaties, as interpreted by international courts or monitoring bodies.

- [24]. The Non-Discrimination Act [*yhdenvertaisuuslaki/lag om likabehandling* (21/2004)],<sup>13</sup> which entered into force in 2004, prohibits discrimination based on, *inter alia*, state of health and disability, or other personal characteristics. The Act defines discriminatory behaviour and lists conditions for situations in which it would be acceptable to place someone in an unequal position in cases falling under the scope of the Act. The Non-Discrimination Act improves the access of persons with disabilities to employment and vocational training making it possible for a person with disabilities to base his or her claim on the Act.

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<sup>10</sup> OHCHR, Views and information for the preparation of the thematic study to enhance awareness and understanding of the Convention on the Rights of Persons with Disabilities, pursuant to Human Rights Council resolution 7/9 on the human rights of persons with disabilities — The Government of Finland <http://209.85.229.132/search?q=cache:I8S-4JKIfpIJ:www2.ohchr.org/english/issues/disability/docs/consultation/Statesinputs/FINLAND16092008.doc+views+and+information+for+the+preparation+government+finland&cd=1&hl=fi&ct=clnk&gl=fi&client=firefox-a> (15.10.2009). See also a speech given by Minister of Justice Tuija Brax at Vike Conference on 20 May 2008, available at: <http://www.vn.fi/ajankohtaista/puheet/puhe/en.jsp?toid=2072&c=1&moid=5439&oid=229513> (15.10.2009).

<sup>11</sup> An unofficial translation of the Constitution of Finland, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf> (15.10.2009).

<sup>12</sup> Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO 18.01.2005/89 (1593/3/02) (full text not available on-line).

<sup>13</sup> An unofficial translation of the Non-Discrimination Act, by the Ministry of Labour, is available at: <http://www.finlex.fi/en/laki/kaannokset/2004/en20040021.pdf> (15.10.2009).

- [25]. Chapter 2, Section 2 of the Employment Contracts Act [*työsopimuslaki/ arbetsavtalslag* (55/2001)] prohibits the employer from unjustly discriminating against employees on the basis of health and disability. The prohibition covers also the recruitment of employees.<sup>14</sup> The Act on State Officials [*valtion virkamieslaki/statstjänstemannalag* (750/1994)] and the Act on Civil Servants in Local Government [*laki kunnallisesta viranhaltijasta/lag om kommunala tjänsteinnehavare* (304/2003)] contain similar provisions.
- [26]. Chapter 11, Section 9 of the Penal Code [*rikoslaki/strafflag* (39/1889)]<sup>15</sup> prohibits discrimination based on state of health or other comparable circumstance in the following way:

A person who in his/her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason

(1) refuses someone service in accordance with the generally applicable conditions;

(2) refuses someone entry to the amusement or meeting or ejects him/her; or

(3) places someone in an unequal or an essentially inferior position

owing to his/her race, national or ethnic origin, colour, language, sex, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for discrimination to a fine or to imprisonment for at most six months.

Chapter 47, Section 3 of the Penal Code prohibits work discrimination in similar vein.

An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts a job seeker or an employee in an inferior position

(1) because of race, national or ethnic origin, colour, language, sex, age, relations, sexual preference or state of health; or

(2) because of religion, political opinion, political or industrial activity or a comparable circumstance shall be sentenced for work discrimination to a fine or to imprisonment for at most six months.

Several other Acts also include specific provisions on equality and discrimination.

- [27]. There are various provisions on preferential treatment of persons with disabilities in Finnish legislation. According to Section 19 of the Constitution, on the right to social security, those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. In 2008, the Chancellor of Justice referred to this provision when he argued that persons with severe disability should be entitled to a personal assistant in order to better guarantee equality in today's society.<sup>16</sup> Jukka Kumpuvuori, who has worked on various studies on persons with disabilities in Finland, has argued that preferential treatment is nowadays seen as an obligation in order to guarantee equality.<sup>17</sup>

<sup>14</sup> An unofficial translation of the Employment Contracts Act, by the Ministry of Labour, is available at: <http://www.finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> (15.10.2009).

<sup>15</sup> An unofficial translation of the Penal Code, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf> (15.10.2009).

<sup>16</sup> Valtioneuvoston oikeuskanslerin päätös Dnro 1052/1/06, as cited in the Government Bill for an amendment of the Act on Services and Assistance for the Disabled, HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>17</sup> J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvamma palveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveystieteiden tutkimuskeskus, pp. 36–37. Available in Finnish (with an English summary) at:

The Act on Services and Assistance for the Disabled has recently been amended with provisions on personal assistance.<sup>18</sup> The Act on Special Care for the Mentally Handicapped stipulates on specific care of persons with intellectual disability with provisions on special services such as housing, work and day activities, family and institutional care.<sup>19</sup> With regard to persons with mental disorder, the Mental Health Act could be seen as a preferential treatment as far as it provides for mental health services. It should, however, be remembered that the line between preferential treatment and segregation can be fine, if it leads to hospitalism, for example.<sup>20</sup> In connection to the latest amendments to the Act on Services and Assistance for the Disabled, the subsidiary nature of special Acts, such as the Act on Special Care for the Mentally Handicapped, to the more general Act on Services and Assistance for the Disabled, has been emphasized as reflecting the principle of normality.<sup>21</sup>

- [28]. Also, for example, Section 5 of the Non-Discrimination Act, which concerns improving the access to employment and training of persons with disabilities, provides an example of preferential treatment arrangements.<sup>22</sup>
- [29]. The Non-Discrimination Act implements the Employment Equality Directive and makes a reference to discrimination based on, *inter alia*, health, disability and other personal characteristics. The Act does not make an explicit reference to mental disorders but since the list is broad including health, disability and other personal characteristic, it could be referred to also with regard to mental disorders.
- [30]. In addition, the Åland Islands, an autonomous province of Finland which has exclusive legislative competence over matters pertaining to some specific matters, has a distinct set of acts transposing the directive.<sup>23</sup>
- [31]. The scope of application of the Non-Discrimination Act covers health care, social protection and housing with regard to discrimination based on ethnic origin only, and does not extend to discrimination based on health or disability. Section 2 of the Act does, however, cover discrimination based on health and disability with regard to education or training, whether these activities are taken by public or private actors.
- [32]. Section 5 of the Non-Discrimination Act stipulates on improving the access to employment and training of persons with disabilities ordering a person commissioning work or arranging training to take reasonable steps to help a person with disabilities to gain access to work or training, to cope at work and to advance in their career. In assessing what constitutes reasonable, factors such as the costs of the steps, the financial position of the person

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[http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>18</sup> Government Bill HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården. Available in Finnish and Swedish at:

<http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>19</sup> For an overview, see the website of the Ministry of Social Affairs and Health, [http://www.stm.fi/en/social\\_and\\_health\\_services/disability\\_services](http://www.stm.fi/en/social_and_health_services/disability_services) (15.10.2009).

<sup>20</sup> See, e.g., J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvammopalveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveysministeriön selvityksiä 2006:45, p. 37. Available in Finnish (with an English summary) at: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>21</sup> Government Bill HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården, p. 14. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>22</sup> See paragraph 26 above. See also J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvammopalveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveysministeriön selvityksiä 2006:45, pp. 36–37. Available in Finnish (with an English summary) at:

[http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>23</sup> See M. Aaltonen and T. Ojanen (2009) *FRA Thematic Legal Study on Impact of the Race Equality Directive, Finland*.

commissioning work or arranging training, and the possibility of support from public funds or elsewhere towards the costs may be taken into account.

- [33]. The weak spot of the existing anti-discrimination national framework is that it does not fully extend to persons with mental disorders, persons with intellectual disability or persons with dementia. While the scope of competence of the Occupational Safety and Health Authorities covers all grounds of discrimination mentioned in the Non-Discrimination Act, including disability, the jurisdiction of the Ombudsman for Minorities [*vähemmistövaltuutettu/minoritetsombudsmannen*] does not extend to discrimination based on disability under the Non-Discrimination Act. Similarly, the scope of competence of the National Discrimination Tribunal [*syrjintälautakunta/diskrimineringsnämnden*] covers only discrimination based on ethnic origin, *i.e.* it does not extend to persons with disability.
- [34]. Aside from these specialized institutions in the field of discrimination, the role of the *Parliamentary Ombudsman* — as well as two Deputy-Ombudsmen also acting independently and with the same authority as the Ombudsman — deserves to be mentioned. The Parliamentary Ombudsman exercises oversight to ensure that public authorities and officials observe the law and fulfil their duties in the discharge of their functions. In addition to authorities and officials, the scope of oversight includes other parties performing public functions. The Parliamentary Ombudsman is obliged to pay special attention to the implementation of constitutional rights and human rights by virtue of Section 109 of the Constitution of Finland and, therefore, her mandate includes the observance of national standards and practices relating to access to justice, discrimination and free movement of persons.
- [35]. In January 2007, the Ministry of Justice set up a committee to reform the non-discrimination legislation. The purpose of the committee was to strengthen the guarantees of non-discrimination by making the legislation cover more clearly all grounds of discrimination, apply more uniformly to all spheres of life and provide for the most uniform possible legal remedies and sanctions for instances of discrimination. During the reform process the task of the committee was also to revise the position, duties and powers of the authorities currently responsible for discrimination matters. The committee was commissioned to prepare a proposal for new non-discrimination legislation by the end of October 2009. According to information from the Ministry of Justice at the beginning of December 2009, the report was being finalized for publication and due to be published at the end of December 2009.

## 3. Specific Fundamental Rights

### 3.1. The Right to life

- [36]. Section 7 of the Constitution stipulates on everyone's right to life. The right to life is regarded to have a close connection to indispensable subsistence and care,<sup>24</sup> and is one of the central basic rights to determine the way in which the public authorities shall guarantee social and health services in accordance with Section 19 of the Constitution governing the right to social security.<sup>25</sup>
- [37]. The right to life was one of the provisions invoked by the Parliamentary Ombudsman Paunio in the spring of 2009 when she issued a reprimand to the Hospital District of Helsinki and Uusimaa for discriminatory guidelines excluding patients from resuscitation or intensive care on the ground of a handicap. The hospital district chief physician had told the staff that 'the severely disabled usually do not come under intensive care'. Paunio noted in her reprimand that disability was no grounds to rule out treatment.<sup>26</sup>
- [38]. The Center for Human Rights of Persons with Disabilities has also pointed out that current Finnish legislation [*laki raskauden keskeyttämisestä/lag om avbrytande av havandeskap* (239/1970)] concerning abortion could be in contrast with Article 10 of the UN Convention on the Rights of Persons with Disabilities since the legislation provides for continuation of reconsideration of abortion if the fetus is disabled.<sup>27</sup>
- [39]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.2. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- [40]. Section 7 of the Constitution provides that no one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity. Under the Penal Code, different acts of torture are punished as aggravated assault, coercion and/or other serious offences, or as aggravated abuse of public office but so far torture is not punishable as a specific type of

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<sup>24</sup> See the Government Bill concerning basic rights, HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

<sup>25</sup> See the Government Bill for the amendment of the Act on Services and Assistance for the Disabled, HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården, p. 14. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

<sup>26</sup> *Kehitysvammaisten Tukiliitto ry/De Utvecklingsstördas Stödförbund* [The Finnish Association for Persons with Intellectual Disabilities] <http://www.kvtl.fi/sivu/News> (14.10.2009). The Decision of the Parliamentary Ombudsman on 23.03.2009 (3624/2007), available in Finnish at: <http://217.71.145.20/TRIPviewer/show.asp?tunniste=eoah+3624/2007&base=ereopaa&f=WORD&kieli=su&ylapalkki=eoaratk/eoartripview&palvelin=www.eduskunta.fi&triptemp=eo> (15.10.2009).

<sup>27</sup> Vammaisten ihmisoikeuskeskuksen lausunto YK:n yleissopimuksesta, <http://www.kynnys.fi/content/view/427/430/> (15.10.2009).

offence. A Government Bill has been submitted to Parliament with a proposal on a specific provision on torture to be included in the Penal Code.<sup>28</sup>

- [41]. In his study on limitations of basic rights in provision of special care for the mentally disabled in 2006, Jukka Kumpuvuori raised the question of whether the treatment of persons with intellectual disability could sometimes be seen to violate human dignity, for instance, if a person had been tied to a wheelchair so that he would cause less disturbance, or if a person had been punished for his behaviour by leaving him without food or grounding him for weeks.<sup>29</sup>
- [42]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.3. The right to freedom from exploitation

- [43]. The Constitution of Finland does not include an express reference to freedom from exploitation. The wide formulation of Section 7 of the Constitution: 'Everyone has the right to life, personal liberty, integrity and security. No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity', has been referred to in relation to prohibition of servitude,<sup>30</sup> and could, possibly be seen to include this freedom, especially with emphasis on personal integrity, liberty and human dignity.
- [44]. The definition of sexual abuse in Chapter 20, Section 5 of the Penal Code makes a reference to taking advantage of the incapacity of a person to defend himself or herself, or to make or express a decision, owing to unconsciousness, illness, handicap or other helplessness. Labour legislation, such as the Employment Contracts Act, applies equally to everyone and includes prohibition of discrimination as explained shortly above.
- [45]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.4. The right to liberty and security

- [46]. According to Section 7 of the Constitution, everyone has the right to personal liberty, integrity and security. The section notes that personal integrity of an individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.

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<sup>28</sup> Government Bill HE 76/2009 vp kidutusta koskeviksi rikoslain säännöksiksi sekä laiksi pakkokeinolain 5 a luvun 2 ja 4 §:n muuttamisesta/RP 76/2009 rd med förslag till bestämmelser om tortyr i strafflagen samt till lag om ändring av 5 a kap. 2 och 4 § i tvångsmedelslagen. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2009/20090076.pdf> (15.10.2009).

<sup>29</sup> J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvammaapalveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveysministeriön selvityksiä 2006:45, pp. 39–40. Available in Finnish (with an English summary) at: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>30</sup> Government Bill concerning basic rights, HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

- [47]. The right to personal liberty, integrity and security are of special importance with regard to use of coercive means, involuntary care of persons with intellectual disability and involuntary treatment of persons with mental disorder. Liberty as a basic right includes not only liberty in physical terms but also free will and self-determination. The right to integrity protects from involuntary medical operations and the status of integrity as a basic right sets the threshold for interference high. Any limitation has to be based on an Act and be both acceptable and necessary. Security is understood to refer to positive obligations of government officials to protect members of society from crimes or other illegal acts.<sup>31</sup>
- [48]. The Government Bill concerning basic rights refers to the Mental Health Act with regard to deprivation of liberty and notes that both taking into involuntary treatment and further limitations of integrity need to fulfil the conditions for limitations of basic rights.<sup>32</sup> The Supreme Administrative Court has emphasized, in a case concerning conditions for involuntary treatment, under the Mental Health Act, that the conditions concerning limitations to integrity as a basic right need to be interpreted in accordance with the exact wording of the Act and its legislative history.<sup>33</sup>
- [49]. The Parliamentary Ombudsman has already in 1996 observed that the legislation concerning the use of coercion with regard to persons with intellectual disability should be more specific with regard to limitations of self-determination.<sup>34</sup>
- [50]. Section 6 of the Act on the Status and Rights of Patients [*laki potilaan asemasta ja oikeuksista/lag om patientens ställning och rättigheter* (785/1992)]<sup>35</sup> on patients' right to self-determination stipulates that a patient has to be treated in a mutual understanding with him or her. If the patient cannot decide on treatment because of mental disorder or intellectual disability, the legal representative or a family member or other close person has to be heard. Also these persons would need to respect the patient's previously expressed wishes. Section 6 makes a reference to the Mental Health Act and the Act on Special Care for the Mentally Handicapped for involuntary treatment. These in turn refer to the security of a person or other persons as a ground for the limitation of liberty, as shall be discussed more in detail under Chapter IV concerning involuntary care or treatment.

### 3.5. The right to fair trial

- [51]. Section 21 of the Constitution provides that everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Section 21 states further that provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right to appeal, as well as other guarantees of a fair trial and good governance shall be laid down by an Act. Constitutional

<sup>31</sup> Government Bill HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

<sup>32</sup> Government Bill HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

<sup>33</sup> Finland/högsta förvaltningsdomstolen/korkein hallinto-oikeus/KHO:2002:70 (04.11.2002). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2002/200202802> (15.10.2009). See also a decision of the Parliamentary Ombudsman, EOA 2995/4/04 (04.07.2006). Available at: <http://www.eduskunta.fi/triphome/bin/eoar3000.sh?HAKUSANA=2995%2F4%2F04> (15.10.2009).

<sup>34</sup> EOA 121/2/95, as cited in EOA 2969/5/06 (31.10.2006). Available at: <http://www.eduskunta.fi/triphome/bin/eoar3000.sh?HAKUSANA=2969%2F5%2F06> (15.10.2009).

<sup>35</sup> An unofficial translation of the Act on the Status and Rights of Patients, by the Ministry of Social Affairs and Health, is available at: <http://www.finlex.fi/en/laki/kaannokset/1992/en19920785.pdf> (15.10.2009).

guarantees of good governance under Section 21 of the Constitution are particularly relevant insofar as access to effective remedies through *non-judicial mechanisms* is concerned.

- [52]. Provisions of the Code of Judicial Procedure [*oikeudenkäymiskaari/rättegångs balk* (4/1734)],<sup>36</sup> Administrative Procedure Act [*hallintomenettelylaki/lag om förvaltningsförfarande* (598/1982)]<sup>37</sup> and Criminal Procedure Act [*laki oikeudenkäynnistä rikosasioissa/lag om rättegång i brottmål* (689/1997)]<sup>38</sup> stipulate on the right of action before courts. A person's right of action may be limited if he or she has been appointed a guardian or he or she has been declared incompetent (the unofficial translation of the Code of Judicial Procedure uses expression 'without full legal capacity').
- [53]. In a case of the Supreme Administrative Court from 1998, the mother who was also the guardian of her son, placed in involuntary psychiatric treatment, had the right to appeal on behalf of her son who was not capable, due to the illness, to safeguard his non-financial interests.<sup>39</sup>
- [54]. Acts, such as the Mental Health Act and the Act on Special Care for the Mentally Handicapped, contain specific provision on appeals concerning, *inter alia*, the lawfulness of involuntary treatment. However, many of the limitations of basic rights, such as seclusion, are regarded as administrative actions which cannot be subject to appeal but for which the legal remedy can be administrative complaint, or objection to the patient ombudsman or social ombudsman.<sup>40</sup>
- [55]. In a case concerning the continuation of involuntary treatment of a person who had been treated against his will for a long time based on provisions of the Mental Health Act, the Supreme Administrative Court noted that administrative courts need to provide for oral hearing in reasonable intervals when a person has been in involuntary treatment for a long time. In its decision, the Court referred to Section 21 of the Constitution as interpreted in the light of Article 5(4) of the European Convention on Human Rights.<sup>41</sup>

### 3.6. The right to privacy, including the access to one's own confidential medical records

- [56]. The right to privacy and the protection of personal data, including the access to one's own confidential medical records, are regulated in Section 10 of the Constitution in the following terms:

Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act. The secrecy of correspondence, telephony and other confidential communications is inviolable. Measures

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<sup>36</sup> An unofficial translation of the Code of Judicial Procedure, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/1734/en17340004.pdf> (15.10.2009).

<sup>37</sup> An unofficial translation of the Administrative Procedure Act is available at: <http://www.finlex.fi/fi/laki/kaannokset/1982/en19820598.pdf> (15.10.2009).

<sup>38</sup> An unofficial translation of the Criminal Procedure Act, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/1997/en19970689.pdf> (15.10.2009).

<sup>39</sup> Finland/korkein hallinto-oikeus/ högsta förvaltningsdomstolen/KHO 5.5.1998/742 (2648/3/97) (full text not available on-line).

<sup>40</sup> See E. Koivuranta (2002) *Perusteltuja rajoituksia vai huonoa kohtelua: Selvitys sosiaali- ja terveydenhuollon pakotteista* [Well-founded restrictions or bad treatment: Report on the need for the regulation of sanctions in social welfare and health care], Helsinki: Sosiaali- ja terveysministeriön työryhmämuistioita 2001:33. Available in Finnish (with an English summary) at: <http://pre20031103.stm.fi/suomi/pao/julkaisut/pakoterap/pakoterap.pdf> (15.10.2009).

<sup>41</sup> Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO 25.09.2009/2339 (1801/2/09) (full text not available on-line).

encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act.

- [57]. It is to be emphasized that, as a matter of Finnish constitutional law, the protection of personal data must be conceived of as featuring as an *autonomous fundamental right*, distinct from the right to respect of private and family life. Moreover, the protection of personal data must be read in conjunction with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
- [58]. For present purposes, it is also important to recall that fundamental rules pertaining to the protection of personal data offer a very high level of protection to the processing of personal data relating to medical records. According to Article 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data ‘revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning *health or sexual life*, may not be processed automatically unless domestic law provides appropriate safeguards’.
- [59]. In Finland, there are several Acts which need to be taken into consideration when assessing a person’s right to access his or her own confidential medical records: the Act on the Status and Rights of Patients includes provisions on the patient’s right to be informed (Section 5); Sections 26, 27 and 28 of the Personal Data Act [*henkilötietolaki/personuppgiftslag* (523/1999)]<sup>42</sup> govern also a patient’s right to access to confidential medical records; and the Act on the Openness of Government Activities [*laki viranomaisten toiminnan julkisuudesta/lag om offentlighet i myndigheternas verksamhet* (621/1999)]<sup>43</sup> Section 11 and 12. In principle, according to Section 11 of the Act on the Openness of Government Activities, a person whose right, interest or obligation is concerned has the right to access to the contents of a document which is not in public domain, if they may influence the consideration of his or her matter. This right could, however, be restricted if this would result to be contrary to a very important public or private interest. As such interest has been mentioned in the Government Bill (HE 30/1998 vp)<sup>44</sup> the interest of the person in question, if, for instance, the information contained in the document would have adverse effects on the person’s mental condition. The Act on the Status and Rights of Patients includes also Section 11 on patient ombudsman whose tasks include advising patients in matters concerning the application of the Act.
- [60]. A case of the Supreme Administrative Court from 2004 concerning involuntary treatment based on the Mental Health Act refers at length to a patient’s right to access his or her medical files with regard to brief reasoning of the decision on involuntary treatment.<sup>45</sup>
- [61]. With regard to persons with intellectual disability, Jukka Kumpuvuori has discussed the right to privacy in broad terms in relation to housing arrangements of persons with

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<sup>42</sup> An unofficial translation of the Personal Data Act is available at:  
<http://www.finlex.fi/en/laki/kaannokset/1999/en19990523.pdf> (15.10.2009).

<sup>43</sup> An unofficial translation of the Act on the Openness of Government Activities, by the Ministry of Justice, is available at:  
<http://www.finlex.fi/en/laki/kaannokset/1999/en19990621.pdf> (15.10.2009).

<sup>44</sup> Government Bill HE 30/1998 vp laiksi viranomaisten toiminnan julkisuudesta ja siihen liittyviksi laeiksi/RP 30/1998 rd med förslag till lag om offentligheten i myndigheternas verksamhet samt till lagar som har samband med den. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1998/19980030> (15.10.2009).

<sup>45</sup> Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/KHO:2004:4 (23.01.2004). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2004/200400093> (15.10.2009).

intellectual disability considering especially the institutions as problematic for the enjoyment of private life.<sup>46</sup>

### 3.7. The right to marry, to found a family and to respect of family life

- [62]. The Constitution does not include a provision on the right to marry or to found a family and to respect of family life. However, Section 10 of the Constitution (see para. 56) can be referred to in this context. In the Government Bill concerning basic rights in 1993, the protection of private life was considered to include also family life.<sup>47</sup>
- [63]. Chapter 2 of the Marriage Act [*avioliittolaki/äktenskapslag* (234/1929)]<sup>48</sup> contains a list of impediments to marriage that used to include also Section 5 requiring the consent of the guardian of a person under guardianship. This section has since been repealed, and the list of impediments no longer contains conditions related to capacity or competence of a person. Section 18 contains still a general provision concerning the ceremony according to which the officiator shall not perform a marriage ceremony if he or she deems that an engaged person is evidently unable to understand the significance of marriage due to his or her disturbed state of mind. The Government Report on Disability Policy 2006 notes that the proportion of disabled persons who are married is lower than among other people, and that especially persons with intellectual disability are rarely married. The report states specifically that people with disabilities have the right to set up a family.<sup>49</sup>
- [64]. The Center for Human Rights of Persons with Disabilities has called for reformation of legislation noting that limitations on the right to choose one's place of residence with regard to social and health services may lead to limitations of family life.<sup>50</sup>
- [65]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.8. The right to have children and maintain parental rights

- [66]. The Constitution of Finland does not include a provision on the right to have children and maintain parental rights. Section 19 on the right to social security states that the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children. In the Government Bill concerning basic rights it has been stressed that the interference into

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<sup>46</sup> See J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvammapalveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveysministeriön selvityksiä 2006:45, p. 42. Available in Finnish (with an English summary) at: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>47</sup> Government Bill HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

<sup>48</sup> An unofficial translation of the Marriage Act, by the Ministry of Justice, is available at: <http://www.finlex.fi/en/laki/kaannokset/1929/en19290234.pdf> (15.10.2009).

<sup>49</sup> *Government Report on Disability Policy 2006*, Helsinki: Publications of the Ministry of Social Affairs and Health 2006:11, p. 15. Available at: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3927.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3927.pdf) (15.10.2009).

<sup>50</sup> Vammaisten ihmisoikeuskeskuksen lausunto YK:n yleissopimuksesta, available at: <http://www.kynnys.fi/content/view/427/430/> (15.10.2009).

family lives should be exceptional, and that it is the duty of the government officials to support those who are responsible for providing for children.<sup>51</sup>

- [67]. The Center for Human Rights of Persons with Disabilities has noted that although legislation in Finland concerning adoption does not limit the possibilities of disabled persons to adopt, the guidelines on adoption in practice often result in limitations.<sup>52</sup>
- [68]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.9. The right to property

- [69]. Section 15 of the Constitution provides that the property of everyone is protected. Provisions for the expropriation of property, for public needs and against full compensation, are laid down by an Act.
- [70]. In principle, persons with mental disorder or intellectual disability enjoy the right to property like everyone else. Right to property can be restricted by limitation to a person's competence in the way described below under Chapter V. Ordering a person to involuntary treatment or care does not restrict the right to property. However, Section 22g of the Mental Health Act permits taking possession of personal property of a person who has been ordered to observation or treatment in a psychiatric hospital under certain conditions related to risk to the health or safety of the patient or others.<sup>53</sup>
- [71]. A recent example of a limitation of the right to property is restriction of the freedom of contract, considered to form a part of the right to property, by the amendment to the Act on Services and Assistance for the Disabled in so far as the Act does not allow a person with disability to choose as his or her assistant a relative or some other close person.<sup>54</sup>
- [72]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.10. The right to vote

- [73]. Section 14 of the Constitution provides that every Finnish citizen who has reached 18 years of age has the right to vote in the national elections and referendums, and that every Finnish citizen and every foreigner permanently resident in Finland, having attained 18 years of age, has the right to vote in municipal elections. Under Section 27 of the Constitution, everyone with the right to vote and who is not under guardianship can be a candidate in parliamentary

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<sup>51</sup> Government Bill HE 309/1993 vp perustuslakien perusoikeussäännösten muuttamisesta/RP 309/1993 rd med förslag till ändring av grundlagarnas stadganden om de grundläggande fri- och rättigheterna. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1993/19930309> (15.10.2009).

<sup>52</sup> Vammaisten ihmisoikeuskeskuksen lausunto YK:n yleissopimuksesta, available at: <http://www.kynnys.fi/content/view/427/430/> (15.10.2009).

<sup>53</sup> See also a decision of the Parliamentary Ombudsman EOA 2506/4/02 (21.05.2004), available in Finnish at: <http://www.eduskunta.fi/triphome/bin/eoar3000.sh?HAKUSANA=2506%2F4%2F02> (15.10.2009).

<sup>54</sup> Government Bill HE 166/2008 vp laeiksi vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista annetun lain sekä sosiaali- ja terveydenhuollon asiakasmaksuista annetun lain 4 §:n muuttamisesta/RP 166/2008 rd med förslag till lagar om ändring av lagen om service och stöd på grund av handikapp och 4 § i lagen om klientavgifter inom social- och hälsovården, p. 14. Available in Finnish and Swedish at: <http://www.finlex.fi/fi/esitykset/he/2008/20080166.pdf> (15.10.2009).

elections. The Election Act [*vaalilaki/vallag* (714/1998)]<sup>55</sup> and the Municipalities Act [*kuntalaki/kommunallag* (365/1995)] contain further provisions on the right to vote. For instance, the Election Act includes Section 46 on advance voting for persons who are in hospitals, in a facility with round-the-clock treatment care or in any other operational unit of social services.

- [74]. A keyword-based search of the FINLEX case law database, conducted on 29.11.2009, did not yield any relevant case law.

### 3.11. Other fundamental rights: freedom of movement and human dignity

- [75]. Beyond specific fundamental rights identified in the guidelines, freedom of movement and human dignity also deserve a mention because they may also become relevant as regards persons with mental disorder and persons with intellectual disability.

- [76]. *Freedom of movement* is enshrined in Section 9 of the Constitution of Finland as follows: ‘Finnish citizens and foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence. Everyone has the right to leave the country. Limitations on this right may be provided by an Act, if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence. Finnish citizens shall not be prevented from entering Finland or deported or extradited or transferred from Finland to another country against their will. However, it may be laid down by an Act that due to a criminal act, for the purpose of legal proceedings, or in order to enforce a decision concerning the custody or care of a child, a Finnish citizen can be extradited or transferred to a country in which his or her human rights and legal protection are guaranteed (802/2007). The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.’

- [77]. More precise rules on freedom of movement are laid down by Acts of Parliament. For present purposes, the most significant legislation is the Act on Services and Assistance for the Disabled. There exists a host of judgments by Finnish administrative courts on transport services for disabled persons.

- [78]. *Human dignity* is not mentioned as a distinct fundamental right in Chapter 2 that includes the catalogue of fundamental rights in the Constitution of Finland. However, human dignity is included in several fundamental rights and the domestic system for the protection of fundamental rights as a whole. In addition, human dignity is explicitly mentioned in the fundamental provisions of the Constitution. According to Section 1, subsection 2, ‘The constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society’. This fundamental provision of the Constitution shapes the interpretation and application of various constitutional provisions on fundamental rights, including those specific fundamental rights discussed above.

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<sup>55</sup> An unofficial translation of the Election Act, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/1998/en19980714.pdf> (15.10.2009).

## 4. Involuntary placement and Involuntary Treatment

- [79]. In its fourth periodic report on Finland, in 2005, the Committee against Torture listed as a positive aspect the recent amendment of the Mental Health Act as taking into account human rights conventions binding on Finland hence strengthening the rights of the patients and staff.<sup>56</sup> The Committee's considerations of the Finnish reports have not included any recommendations with regard to persons with mental disorder or intellectual disability. Also, the Committee's list of issues concerning Finland from 2009 contains no specific references to these issues. Specific information has been asked by the Committee, *inter alia*, on the measures taken to enact legislation criminalising torture.<sup>57</sup>
- [80]. The first report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1993 was based on visits in police establishments and prisons, and discussed psychiatric services in prisons only. With regard to the Turku Prison Mental Hospital the Committee's recommendation concerned especially practices of isolation and need of external control.<sup>58</sup>
- [81]. The Committee's second visit to Finland in 1998 covered also Muurola's Psychiatric Hospital, and in its report the Committee recommended the use of electro-convulsive therapy (ECT) to be recorded in a specific register. The Committee also recommended every instance of the physical restraint of a patient (manual control, use of instruments of physical restraint, seclusion) to be recorded in a specific register giving specifications as to what such register entries should include (such as the time of the measure).<sup>59</sup>
- [82]. In its third report on Finland in 2004, the Committee recommended the Finnish authorities to review the procedure by which the continuation of involuntary treatment was decided. The Committee noted that the appeals of the patients of the Niuvanniemi Hospital were rarely successful. The patients had rarely a lawyer to assist them in the procedure. The Committee also noted that a second independent medical opinion (in addition to that of the hospital) was not required in the appeals procedure. Another recommendation with regard to the Niuvanniemi Hospital concerned the practice and conditions of visits of the patients. The Committee recommended also that patients who had been subject to seclusion or other means of restraint should receive a debriefing after these measures.<sup>60</sup>
- [83]. The Committee made its fourth periodic visit to Finland in 2008. The delegation visited, for example, a psychiatric hospital and a psychiatric unit for adolescent intensive care. At the Vanha Vaasa Hospital, the delegation's main concern was the excessive reliance on seclusion.<sup>61</sup> The delegation was concerned also with juvenile patients' possibility of daily

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<sup>56</sup> Considerations of Reports submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture (Finland), 21 June 2005 CAT/C/CR/34/FIN.

<sup>57</sup> List of Issues prior to the submission of the combined fifth and sixth periodic reports of Finland, July 2009, CAT/C/FIN/Q/5-6.

<sup>58</sup> Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 20 May 1992, CPT/Inf (93)8.

<sup>59</sup> Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 17 June 1998, CPT/Inf (99)9.

<sup>60</sup> Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 17 September 2003, CPT/Inf (2004)20.

<sup>61</sup> The delegation was informed that during 2007 seclusion had been applied to over one third of all patients. Report to the Finnish Government on the Visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2009)5. However, in the response of the Finnish Government it is noted that according to information provided by Vanha Vaasa Hospital, the number of secluded patients reported by

outdoor exercise and the frequency of clinical review of the patients. The Committee recommended setting up a specific register in all psychiatric establishments in which recourse to electroconvulsive therapy (ECT) was made. The Committee also stressed that patients' informed consent for ECT should be sought. The Committee recommended that the existing legal provisions should be amended so as to provide for a psychiatric opinion (independent of the hospital in which the patient is placed) when initiating and reviewing involuntary hospitalization, and to ensure that there is always a meaningful and expedient court review. The Committee also stressed the need to ensure effective legal assistance, brochures setting patients' rights to be distributed, regular independent outside professionals' visits to hospitals. Earlier, the Committee had recommended, for example, recording of mechanical restraints and seclusion of patients, and a provision on this has been included in the Mental Health Act. In its latest report, the Committee recommended recording and reporting also with regard to chemical restraint mats and chemical restraints. The Finnish authorities informed the CPT that the procedures and methods used in all psychiatric facilities would be subject to review and legislative reforms.<sup>62</sup>

## 4.1. Legal Framework

- [84]. The involuntary treatment in psychiatric hospitals is governed by the Mental Health Act, adopted on 14.12.1990. One of the conditions of the involuntary treatment which have to be fulfilled is that a person is diagnosed as mentally ill. However, in case of minors, the threshold is a serious mental disorder, instead of mental illness.
- [85]. Involuntary care of persons with intellectual disability is governed by the Act on Special Care for the Mentally Handicapped, adopted on 23.06.1977.
- [86]. The Mental Health Act has been amended in 2001 with Chapter 4a on limitations on patients' fundamental rights during involuntary treatment. In spite of amendments, there seems to be need for changes. According to the recent government report to Parliament on the human rights policy of Finland, psychiatric treatment is still today heavily hospitalized which slows down organising outpatient treatment.<sup>63</sup> In 2006, one third of psychiatric patients were in treatment against their will. The number of limitations to self-determination, such as seclusion, have remained the same in the 2000s. There is an attempt to decrease both involuntary treatment and limitations to self-determination by developing attitudes and treatment culture. Limitations to self-determination of both patients in health care as well as customers of social welfare will be assessed and the need for legislative reforms will be considered.<sup>64</sup> A general legal reform concerning health care is currently underway in Finland, and changes to the Mental Health Act will be assessed in this context.<sup>65</sup>

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the CPT was 2.5 times higher than the number reported by Vanha Vaasa Hospital, Response of the Finnish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Finland from 20 to 30 April 2008, CPT/Inf (2009) 19.

<sup>62</sup> Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 30 April 2008, CPT/Inf (2009)5. See also Response of the Finnish Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Finland from 20 to 30 April 2008, CPT/Inf (2009)19.

<sup>63</sup> This (hospitalization) has also been subject to criticism by the Chairman of the Finnish Central Association for Mental Health, Pekka Sauri, <http://www.mtkl.fi/uutiset/?x348592=541143> (15.10.2009).

<sup>64</sup> Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta, pp. 127–128. Available in Finnish and Swedish at: <http://formin.finland.fi/public/default.aspx?nodeid=34787> (15.10.2009).

<sup>65</sup> The Finnish Association for Mental Health has welcomed the proposal of Minister Paula Risikko to bring together social and health services,

- [87]. The process of bringing together the Act on Special Care for the Mentally Handicapped and the Act on Services and Assistance for the Disabled is underway. Section 4, which came with the latest amendment on the Act on Services and Assistance for the Disabled, coming into force on 01.09.2009, stipulates on the primacy of this Act with regard to the Act on Special Care for the Mentally Handicapped.
- [88]. Chapter 2 of the Mental Health Act governs the involuntary treatment in psychiatric hospitals. Thus, although the Act only refers to treatment, the scope of the chapter includes also involuntary placement. Section 2 of the Mental Health Decree [*mielenterveysasetus/mentalvårdsförordning* (1247/1990)] defines that involuntary treatment can be given only in a hospital unit providing psychiatric treatment that has the facilities to provide such care. Section 32 of the Act on Special Care for the Mentally Handicapped stipulates on involuntary special care for persons with intellectual disability. The regulations on persons with mental disorder and persons with intellectual disability provide only for involuntary treatment and care, and do not stipulate on involuntary placement without treatment or care.
- [89]. In Finland, the aims pursued by the legislation concerning involuntary treatment under the Mental Health Act are treatment of the illness and safeguarding the health or security of the patient and others.
- [90]. The aims of special care under the Act on Special Care for the Mentally Handicapped are to support a person with intellectual disability so that he or she can keep up with daily tasks, advance livelihood on his or her own, as well as integration of the person in the society and securing the care and treatment needed by the person. The aims of the involuntary special care under the Act on Special Care for the Mentally Handicapped are similar to those under the Mental Health Act in emphasizing the need of special care in relation to the risks of health and security of a person with intellectual disability or others. It should be stressed that intellectual disability cannot be ‘cured’ like an illness which shifts the emphasis on the conditions of safety of the person with intellectual disability and others.<sup>66</sup>
- [91]. The Mental Health Act does not contain specific provisions on aftercare, although general provisions on responsibility to organise mental health services could apply. According to Riittakerttu Kaltiala-Heino, the topic of compulsory aftercare has been discussed but has not led any further.<sup>67</sup> When Minister of Health and Social Services Paula Risikko was asked about the aftercare of mental health services in November 2008, she referred, on side of the Mental Health Act, to the Act on Services and Assistance for the Disabled which could apply to persons with mental disorders<sup>68</sup> (or to persons with intellectual disability, for that matter).
- [92]. Chapter 2 of the Mental Health Act includes a specific provision on the involuntary treatment of a minor for a serious mental disorder in a psychiatric hospital. The Act provides that a minor shall be treated separately from adults unless it would be in the interest of the minor to be treated otherwise. The Act contains also other provisions on minors, for instance, on hearings and reviews and appeals by a court.

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[http://www.mielenterveysseura.fi/tiedotus\\_ja\\_julkaisut/tiedotteet/sosiaali- ja\\_terveyspalvelut\\_saatava\\_yhteen\\_-\\_mielenterveysseura\\_tukee\\_peruspalveluministeri\\_risikon\\_esitysta.html](http://www.mielenterveysseura.fi/tiedotus_ja_julkaisut/tiedotteet/sosiaali- ja_terveyspalvelut_saatava_yhteen_-_mielenterveysseura_tukee_peruspalveluministeri_risikon_esitysta.html) (15.10.2009).

<sup>66</sup> J. Kumpuvuori (2006) *Perusoikeuksien rajoittamisesta kehitysvamma palveluiden toteuttamisessa*, Helsinki: Sosiaali- ja terveysministeriön selvityksiä 2006:45, pp. 29–30. Available in Finnish (with an English summary) at: [http://www.stm.fi/c/document\\_library/get\\_file?folderId=28707&name=DLFE-3631.pdf](http://www.stm.fi/c/document_library/get_file?folderId=28707&name=DLFE-3631.pdf) (15.10.2009).

<sup>67</sup> R. Kaltiala-Heino (2008) *Comparative Study on the Legal Systems of the Protection of Adults Lacking Legal Capacity*, Brussels: European Parliament, p. 70. Available at: <http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23687> (15.10.2009).

<sup>68</sup> Kirjallinen kysymys 792/2008 vp, [http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/kk\\_792\\_2008\\_p.shtml](http://www.eduskunta.fi/faktatmp/utatmp/akxtmp/kk_792_2008_p.shtml) (15.10.2009).

- [93]. The Act on Special Care for the Mentally Handicapped does not include specific provisions on minors other than Section 32 of the Act, concerning involuntary special care, which makes an express reference to the Child Welfare Act [*lastensuojelulaki/barnskyddslag* (417/2007)] noting that special care may be given unless otherwise provided by the Child Welfare Act.
- [94]. The Mental Health Act includes specific provisions on mental examination of a person accused of a crime and of involuntary treatment after the examination under Chapter 3, and also on the involuntary treatment of a person whose sentence has been waived under Chapter 4. The National Supervisory Authority for Welfare and Health (which contains also the former National Authority for Medicolegal Affairs) has a special role in these cases. Section 19 of the Mental Health Act stipulates also on involuntary special care of a mentally handicapped person accused of a crime. There is a separate Act for substance abusers with provisions on involuntary treatment, namely the Act on Welfare for Substance Abusers [*päihdehuoltolaki/lag om missbrukarvård* (41/1986)].

## 4.2. Criteria and Definitions

- [95]. The conditions for involuntary treatment in a psychiatric hospital are laid down in the Mental Health Act. According to Section 8, a person can be ordered to involuntary treatment if he or she is diagnosed as mentally ill, and in need of treatment for the illness which would, if not treated, become considerably worse or severely endanger the person's health or safety or the health and safety of others. All other mental health services need also to be either inapplicable or inadequate.
- [96]. According to the Mental Health Act, a minor can be ordered to involuntary treatment if he or she needs treatment for a serious mental disorder, which would, if not treated, become considerably worse or severely endanger the person's health or safety or the health and safety of others. Also other mental health services need to be inapplicable.
- [97]. The Act on Special Care for the Mentally Handicapped stipulates that involuntary special care can be given, unless otherwise provided in the Child Welfare Act, to a person whose care cannot be arranged in any other manner and whose health and safety would be severely endangered without special care, or if a person due to the intellectual disability would endanger another person's safety and be in need of immediate special care.
- [98]. The criteria for involuntary treatment on the basis of the Mental Health Act is thus that a person is diagnosed to be mentally ill (or has a serious mental disorder, in the case of minors) and is in need of treatment. In addition, the need for treatment must be based on either the risk of considerable deterioration of the illness (or a serious mental disorder, in the case of minors) or endangering the health or safety of the person in question or safety of others.
- [99]. One further requirement for involuntary treatment according to the Mental Health Act is that all other mental health services are either inapplicable or inadequate when the treatment of a mental illness is concerned. This means that other means of treatment have to be considered but not necessarily applied. Also the Act on Special Care for the Mentally Handicapped makes it explicit that involuntary care is possible only if the care cannot be arranged in any other manner.
- [100]. Before a person can be ordered to involuntary treatment based on the Mental Health Act, his or her opinion must be found out. 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 must also be given an opportunity to be heard either orally or in writing as far as this is possible.

- [101]. In the Act on Special Care for the Mentally Handicapped the need of finding out the person's will is mentioned in relation to the programme of special care which needs to be drafted individually for all persons provided with special care. In this regard Section 34 of the Act notes that the special programme should be prepared in co-operation with the person subject to the programme and his or her guardian or caretaker, and the social welfare board, to the extent that this is possible.
- [102]. The risk level of the danger to the health or safety of the patient or of others is not defined in detail in the Mental Health Act or in the Act on Special Care for the Mentally Handicapped. The Government Bill for the Mental Health Act mentions some exemplary situations. For instance, some symptoms of the mental illness, such as confusion and hallucination, may prevent a person from seeking voluntarily treatment. Health or safety can be considered to be endangered also when a person is incapable of taking care of his or her basic necessities, or if a person puts himself/herself in risk with attempts of suicide. Health or safety of others may be endangered in situations in which the health or mental balance of the persons close to the mentally ill are seriously threatened, or when the development of his or her children is impaired.<sup>69</sup>

### 4.3. Assessment, Decision Procedures and Duration

- [103]. The procedure of ordering a person to treatment in a psychiatric hospital against his or her will is governed by the Mental Health Act. According to Section 9 of the Mental Health Act, a person may be admitted to a hospital for observation for the determination of whether or not the conditions for ordering him or her to involuntary treatment are full-filled. A physician must examine the patient before he or she can be sent to a hospital. If the physician considers treatment necessary he or she draws up a referral for observation. The patient can then be placed to observation for a maximum of four days at the end of which a physician responsible for his or her ward (or, if this is not possible, another physician of the same hospital) gives his or her statement on the need for involuntary treatment. After this, the physician in charge of the psychiatric care (or if this is not possible, another physician of the hospital, preferably specialized in psychiatry) decides whether or not the patient is detained in involuntary treatment. This final decision is made on the basis of the case history, including the patient's opinion. Thus, in the decision procedure, the referral, statement and decision can be given by physicians. The final decision should be made by a physician in charge of the psychiatric care, or preferably another physician with psychiatric expertise.
- [104]. The procedure for involuntary special care, governed by the Act on Special Care for the Mentally Handicapped, starts by an application to the directors of special care (*erityishuollon johtoryhmä*). Application can be filed by the guardian or other custodian of the person with intellectual disability. The application can also be filed by the local social welfare board or an official ordered by the board should the person with intellectual disability have no guardian or custodian or should these persons not be willing to file an application.
- [105]. If the directors of special care consider that the conditions for involuntary care are manifestly met, the directors can order the person for observation. Once observation has been finished, the directors will decide on the involuntary care. According to Section 23 of

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<sup>69</sup> Government Bill HE 201/1989 vp mielensterveyslaiksi/RP 201/1989 rd med förslag till mentalvårdslag (not available online).

the Act on Special Care for the Mentally Handicapped, the directors of special care must include at least three leading officials so that there is expertise from the fields of medicine, pedagogies and social welfare. After that the decision must be submitted to an administrative court.

- [106]. In the process of ordering a person to involuntary treatment on the basis of the Mental Health Act, opinions of three independent physicians are decisive: the referring physician, the physician in the hospital giving the statement and the physician in charge of the hospital. Section 23 of the Mental Health Act, stipulating on disqualification, states that the same physician cannot decide on more than one of these phases. It could be added that when a person has been referred to observation, and before the observation has begun, a physician considers whether the requirements for involuntary treatment are likely to be met. This phase is referred to in Section 9(3) but not emphasized.
- [107]. For ordering a person with intellectual disability to involuntary care, first, the directors of special care have to decide on ordering a person to observation. After the observation the board will decide on involuntary care, and the decision will then be referred to an administrative court. The Act on Special Care for the Mentally Handicapped does not include more detailed provisions on the procedure.
- [108]. According to the Mental Health Act, the final decision on involuntary treatment is made by the psychiatrist in charge of the hospital. The final decision on the basis of the Act on Special Care for the Mentally Handicapped is made by the directors of special care but needs still to be confirmed by an administrative court.
- [109]. The decision on involuntary treatment on the basis of the Mental Health Act is valid for three months. If involuntary treatment is considered likely to be needed for extended time, a new observation is ordered, statement on the need for involuntary treatment and a new decision on the involuntary treatment made, following the above described procedure. This second decision is, however, immediately subjected to confirmation by an administrative court. This decision is valid for six months,<sup>70</sup> after which time the procedure can be repeated.
- [110]. According to Section 14 of the Mental Health Act, if during any point of involuntary treatment it appears that the conditions for involuntary treatment are no longer met, the treatment must be discontinued immediately and the patient must be discharged if he or she so wishes. According to Section 10, the patient must also be discharged from observation if during this time it appears that the conditions for involuntary treatment are not met.
- [111]. On the basis of the Act on Special Care for the Mentally Handicapped, a person can be treated against his or her will for a maximum period of six months after which the person must be ordered for a new observation unless it is manifest that the conditions for involuntary care are no longer fulfilled. The procedure of ordering a person to involuntary special care will then be repeated. According to Section 37 of the Act, a person must be discharged from special care if at any point it appears that the conditions for involuntary care are not met, and he or she, or any of the persons who could have applied for involuntary special care so requests.
- [112]. Section 13 of the Mental Health Act regulates ordering of involuntary treatment of patients admitted to a hospital voluntarily. If a patient who has voluntarily been admitted to a

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<sup>70</sup> The Supreme Administrative Court affirmed that the decision on the continuation of treatment must be made within six months counting in full months, so that when the first decision was made on 23.08.2005 it was sufficient to make the decision on continuation on 23.02.2006 at any time of the day. Finland/korkein hallinto-oikeus/högsta förvaltningsdomstolen/ KHO:2006:86 (03.11.2006). Available in Finnish at: <http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2006/200602973> (15.10.2009).

hospital wants to leave the hospital and the physician responsible for making the decision on the discontinuation of the treatment considers that the conditions of the involuntary treatment are met, the patient can be taken to observation. The observation and possible decision on the involuntary treatment follow the normal procedure as described above. The Act on Special Care for the Mentally Handicapped does not contain separate provisions for voluntary care turning into involuntary care.

- [113]. According to Section 9 of the Mental Health Act, a patient can be sent to hospital for observation on the basis of a referral for observation that is based on examination undertaken no more than three days earlier. According to Sections 10 and 11, the statement on observation must be written and the decision on involuntary treatment must be made no later than four days after the admission of the patient to the hospital.
- [114]. The Act on Special Care for the Mentally Handicapped provides that the observation must be carried out without any delay and within five days unless the County Administrative Board prolongs the time. The decision on involuntary special care must be submitted to an administrative court immediately and within two weeks, and the court must handle the case urgently.
- [115]. The Mental Health Act and the Act on Special Care for the Mentally Handicapped do not include separate provisions on emergency situations.
- [116]. The maximum duration of an initial placement in a psychiatric hospital based on the Mental Health Act is three months, after which time the whole procedure starting from the observation needs to be retaken if the treatment is considered likely to be needed. The maximum duration of an initial placement under the Act on Special Care for the Mentally Handicapped is six months, and like in the Mental Health Act, the whole procedure needs to be retaken, starting from observation.
- [117]. The Act on Special Care for the Mentally Handicapped includes only a very general provision on the use of coercion with Section 42 of the Act stating that coercion can be applied only to the extent that provision of special care or safety of others require. The Parliamentary Ombudsman has already in 1996, and also in 2007, considered that the Act should be amended so that the conditions for limitations of basic rights would be defined more precisely.<sup>71</sup>
- [118]. Also the Mental Health Act used to include only a general provision but in 2001 the Act was amended with more detailed provisions included under Chapter 4a (amendment of 21.12.2001/1423) concerning limitations on patients' fundamental rights during involuntary treatment and examination.
- [119]. Section 22a under Chapter 4a stipulates that a patient's right of self-determination, and other fundamental rights may be limited in virtue of the provisions of the Chapter only to the extent necessary for the treatment of illness or for the person's safety or for the safety of others or for safeguarding some other interests laid down in the Chapter. It is further provided that the measures shall be undertaken as safely as possible and with respect of the patient's dignity. When choosing and determining the extent of a limitation on the right of self-determination special attention shall be paid to the criteria for the patient's hospitalisation.
- [120]. Section 22b of the Mental Health Act stipulates on treatment of mental illness emphasizing the importance of mutual understanding with the patient in care as far as this is possible. Still in somewhat general terms, the section provides that 'only such medically acceptable

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<sup>71</sup> EOA 121/2/95 and 2632/5/07.

methods of examination and treatment may be used the failure to use of which would seriously jeopardise the health and safety of the patient and others'. The section limits the use of psychosurgical or other treatments that seriously or irreversibly would affect the patient's integrity with the requirement of a written consent of an adult patient, unless it is a question of a measure that is necessary to avert a danger to the patient's life.

- [121]. The section does not explicitly mention specific interventions, other than psychosurgery. In the Government Bill for this section, injections and forced feeding are mentioned as examples of involuntary treatment covered by this section. Psychosurgery is mentioned, although it is noted, that this form of treatment has not been used. Electro-convulsive therapy (ECT) is mentioned in the Government Bill but its use is not further specified.<sup>72</sup> In the European Commission Study from 2001, Riittakerttu Kaltiala-Heino noted that in Finland electro-convulsive therapy would not be given compulsorily if the patient was able to disagree.<sup>73</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has made recommendations with regard to ECT in its reports on Finland. In its response in 2009, the Finnish Government noted that patients are asked for consent before such therapy is administered.<sup>74</sup>
- [122]. The Act on Special Care for the Mentally Handicapped includes only a very general provision on the use of coercion, namely Section 42 stating that coercion can be applied only to the extent that provision of special care or the safety of others require.
- [123]. The coercive measures such as physical restraint and seclusion are regulated in the Mental Health Act under Chapter 4a. Section 22b provides that the attending physician decides on holding and tying down of the patient and comparable measures for the period of a treatment or on other short-time limitation measures that are necessary to give treatment. Section 22d governs limitation to the freedom of movement, Section 22e governs special limitations such as isolation and Section 22f governs their duration and supervision of the enforcement. Other measures regulated under the Chapter are taking possession of personal property (Section 22g), checking a patient's possessions and consignments to the patient (Section 22h), frisk and bodily search (Section 22i), and limitations of contacts (Section 22j).
- [124]. In accordance with Section 22e, a patient may be isolated if the patient would probably harm himself/herself or others, the patient's behaviour seriously hampers the treatment of other patients or seriously jeopardizes his or her own safety or would probably cause significant damage to property, or if it is necessary to isolate the patient for other, especially weighty therapeutic reasons.
- [125]. The section also contains provisions on holding the patient to isolate him, or for therapeutic reasons. If a patient would probably harm himself or herself or others, he or she may also be tied down by belts or comparable if the other measures are not sufficient.
- [126]. Section 22f, governing the duration of special limitations and supervision of their enforcement, stipulates that all of the above measures have to be terminated once they are no longer necessary. The attending physician must assess the state of health of the patient that

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<sup>72</sup> Government Bill HE 113/2001 vp laeiksi mielenterveyslain ja hallinto-oikeuslain 7 §:n muuttamisesta/RP 113/2001 rd med förslag till lagar om ändring av mentalvårdslagen och 7 § lagen om förvaltningsdomstolarna. Available in Finnish and Swedish at:

<http://www.finlex.fi/fi/esitykset/he/2001/20010113.pdf> (15.10.2009).

<sup>73</sup> R. Kaltiala-Heino (2008) *Comparative Study on the Legal Systems of the Protection of Adults Lacking Legal Capacity*, Brussels: European Parliament, p. 66. Available at:

<http://www.europarl.europa.eu/activities/committees/studies/download.do?file=23687> (15.10.2009).

<sup>74</sup> Response of the Finnish Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Finland from 20 to 30 April 2008, CPT/Inf (2009)19.

has been put under these measures as often as necessary with regard to the patient's state of health and decide on continuation or termination of the measure.

- [127]. There are further provisions under Chapter 4a also on, for instance, monitoring of isolated patients and notifications with regard to isolation or tying down of patients.
- [128]. Section 24 of the Mental Health Act governs the appeals procedure under the Act. An appeal may be lodged with an 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. The appeal must be lodged within 14 days of the notification of the decision. These appeals can also be submitted to the chief physicians in charge of psychiatric treatment in the hospital. The decision on involuntary treatment can thus be appealed in the sense of Article 25 of Rec(2004)10. Also, as explained above, the continuation of involuntary treatment is always subject to confirmation by an administrative court, and should an involuntary treatment continue for a long time, the person subject to involuntary treatment should be reserved an opportunity to be heard before an administrative court if he or she so requests. In accordance with Article 25 of Rec(2004)10, a legal counsel could be appointed to a person who has been ordered to involuntary treatment. It is, however, less clear how effectively this happens in practice.<sup>75</sup> A decision of an administrative court can be appealed to the Supreme Administrative Court.
- [129]. According to Section 81 of the Act on Special Care for the Mentally Handicapped, decisions on involuntary special care can be appealed to an administrative court. The appeal must be lodged within 30 days of the notification of the decision. These appeals can also be given to the directors of special care.
- [130]. Section 27 of the Mental Health Act governs the assistance in an administrative court and the Supreme Administrative Court for a person ordered for treatment. According to the section, an administrative court or the Supreme Administrative Court can appoint a legal counsel to a person who has been ordered to involuntary treatment if the person asks for it or if it is considered necessary. The Legal Aid Act [*oikeusapulaki/rättshjälpslag (257/2002)*]<sup>76</sup> governs the legal assistance. It is further provided in the Mental Health Act that if a court appoints a legal counsel without the person asking for one, the fees and reimbursement are subject to the Legal Aid Act irrespective of whether the person will be granted legal aid. The Act on Special Care for the Mentally Handicapped does not contain provisions on legal aid, but the Legal Aid Act could apply.

## 5. Competence, Capacity and Guardianship

- [131]. In Finland, the Guardianship Services Act [*laki holhoustoimesta/lag om förmyndarverksamhet (442/1999)*]<sup>77</sup> governs the management of affairs of persons who cannot themselves take care of their financial affairs owing to incompetency, illness, absence or another reason. The Act governs to some extent also non-financial affairs. In the Government Bill for the Act, the needs of persons with intellectual disabilities were

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<sup>75</sup> See paragraph 82.

<sup>76</sup> An unofficial translation of the Legal Aid Act, by the Ministry of Justice, is available at: <http://www.finlex.fi/fi/laki/kaannokset/2002/en20020257.pdf> (15.10.2009).

<sup>77</sup> An unofficial translation of the Guardianship Services Act is available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990442.pdf> (15.10.2009).

specifically mentioned as one reason for extending the Act to cover also some non-financial affairs.<sup>78</sup>

- [132]. According to Section 8 of the Guardianship Services Act, if an adult, owing to illness, disturbed mental faculties, diminished health or some comparable reason, is incapable of looking after his or her interest or taking care of personal or financial affairs in need of management, a court may appoint a guardian for him or her. According to Section 12, also a guardianship authority may appoint a guardian under Section 8.
- [133]. If appointment of a guardian is not sufficient, a court may, on the basis of Section 18 of the Act, restrict a person's competency by ordering that he or she may enter given transactions or administer given property only in conjunction with the guardian; he or she is not competent to enter into given transactions or to administer given property; or if these are not sufficient to safeguard his or her interest the court can declare a person incompetent.
- [134]. It has been emphasized in the Government Bill for the Act that, for instance, disturbed mental faculties do not form a sufficient basis for restricting a person's competency. Restrictions are needed only when it is known that a person acts in detriment of his or her interests by taking, for example, debt or giving out his or her property.<sup>79</sup>
- [135]. In Section 2 of the Guardianship Services Act, an incompetent person is defined as a person under 18 years of age or a person who has been declared incompetent. The Act does not define capacity as such but the wording of Section 8(1) on conditions for appointing a guardian lists situations in the following terms: 'If an adult, owing to illness, disturbed mental faculties, diminished health or another comparable reason, is incapable of looking after his/her interests or taking care of personal or financial affairs in need of management'. It is noted in the Government Bill for the Act that Section 8 refers to statutory representation. Should a person need assistance with only practical matters, this would belong to the sphere of social welfare and not to guardianship.<sup>80</sup> The recent amendments of the Act on Services and Assistance for the Disabled provide for personal assistance in cases in which the person is able to define the need for assistance and its realization.<sup>81</sup>
- [136]. As noted above, the conditions for appointing a guardian on the basis of Section 8(1) are enlisted in somewhat broad way referring to illness, disturbed mental faculties, diminished health or other comparable reasons. It should be repeated here that fulfilment of these conditions is not enough for ordering a guardian but only if the person's interests are endangered in a way described above may a guardian be appointed.
- [137]. Primarily, a person who is not capable of looking after his or her interests and taking care of personal or financial affairs should be appointed a guardian. The status and tasks of the guardian depend on the content of the order. Unless otherwise ordered, the guardian shall be competent to represent the ward in transactions pertaining the ward's property and financial affairs. If the court so orders, the guardian shall be competent to represent the ward also in matters pertaining his or her person if the ward cannot understand the significance of the matter. The Guardianship Services Act includes a list of matters on which the guardian is not competent to give consent on behalf of the ward. These include marriage, adoption,

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<sup>78</sup> Government Bill HE 146/1998 vp holhouslainsäädännön uudistamiseksi/RP 146/1998 rd med förslag till ny förmynderskaplagstiftning. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1998/19980146> (15.10.2009).

<sup>79</sup> Government Bill HE 146/1998 vp holhouslainsäädännön uudistamiseksi/RP 146/1998 rd med förslag till ny förmynderskaplagstiftning. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1998/19980146> (15.10.2009).

<sup>80</sup> Government Bill HE 146/1998 vp holhouslainsäädännön uudistamiseksi/RP 146/1998 rd med förslag till ny förmynderskaplagstiftning. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1998/19980146> (15.10.2009).

<sup>81</sup> For a general overview on the amendment, see the website of the Ministry for Social Affairs and Health (in Finnish): <http://www.stm.fi/tiedotteet/kuntainfot/kuntainfo/view/1418362> (15.10.2009).

acknowledgement of paternity (or consent to it), making or revoking a will or representing the ward in other matters of a comparably personal and individual nature.

- [138]. Only if appointment of a guardian is not sufficient, can an adult's competency be restricted. A court may restrict the competency so that the person may enter into given transactions or administer given property only in conjunction with the guardian; or so that the person is restricted from entering into given transactions or to administer given property altogether, or, if these are not sufficient, declare the person incompetent. In principle, restrictions should not be extended to transactions which an incompetent person is entitled to enter into.
- [139]. The objective of guardianship is, as defined in Section 1 of the Guardianship Services Act, to look after the rights and interests of persons who cannot themselves take care of their financial affairs owing to incompetency, illness, absence or another reason. Guardianship may be also extended to some non-financial matters.
- [140]. The appointment of a guardian is valid for the time being, or for a period set in the appointment, or for the time required for performing the given task.
- [141]. According to Section 72 of the Guardianship Services Act, a petition for the appointment of a guardian or the restriction of someone's competency may be filed by a guardianship authority, the person whose interest is to be looked after, the guardian, parent, spouse, child or other person close to him or her. A matter pertaining a minor may also be brought by the custodian or a certain social welfare body.
- [142]. In Finland, only a court (a district court as the first instance) has jurisdiction to restrict competence of a person either by restricting his or her competence with regard to only certain transactions or administration, or by declaring him or her incompetent. Both district courts and guardianship authority may appoint a guardian for a person who is in need of a guardian under Section 8 of the Act.
- [143]. According to Section 80, everyone who has the right to bring the matter before a court under Section 72 has also standing to appeal against a court order on the appointment of a guardian or the restriction of someone's competency. The decisions of a district court can be appealed to an appeals court.
- [144]. The appeal procedure against the decisions of a guardianship authority is stipulated in Sections 87 and 87a of the Guardianship Services Act.<sup>82</sup> Most of the decision of the guardianship authority may be appealed in an administrative court. However, decisions on the appointment of a guardian on the basis of Section 12, alterations to the tasks of the guardian under Section 15(3), dismissal of a guardian under Section 16(3) or termination of the guardianship under Section 17(4) are subject to appeal in a district court.
- [145]. The Guardianship Services Act stipulates on appointment of a guardian. Chapter 2 of the Act stipulates on the eligibility of a guardian noting also that several guardians may be appointed. According to Section 5 of the Act, a suitable person who consents to the appointment shall be eligible as a guardian. The skill and experience of the nominee and the nature and extent of the tasks are mentioned in the section as determinant factors for the eligibility of a guardian.
- [146]. The status and tasks of the guardian are governed by Chapter 5 of the Guardianship Services Act. The status and tasks of the guardian depend on the content of the order. Unless otherwise ordered, the guardian shall be competent to represent the ward in transactions pertaining the ward's property and financial affairs. If the court so orders, the guardian shall

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<sup>82</sup> Amendment 25.05.2007/649 (not included in the unofficial translation of the Act).

be competent to represent the ward also in matters pertaining to his or her person, if the ward cannot understand the significance of the matter. The Guardianship Services Act includes a list of matters on which the guardian is not competent to give consent on behalf of the ward. These include marriage, adoption, acknowledgement of paternity (or consent to it), making or revoking a will or representing the ward in other matters of a comparably personal and individual nature.

- [147]. According to Section 80, everyone who has the right to bring the matter before a court under Section 72 has also standing to appeal against a court order on the appointment of a guardian or the restriction of someone's competency. The decisions of a district court can be appealed to an appeals court.
- [148]. The appeal procedure against the decisions of a guardianship authority is stipulated in Sections 87 and 87a of the Guardianship Services Act.<sup>83</sup> Most of the decisions of the guardianship authority may be appealed in an administrative court. However, the decisions on the appointment of a guardian on the basis of Section 12, alterations to the tasks of the guardian under Section 15(3), dismissal of a guardian under Section 16(3) or termination of the guardianship under Section 17(4) are subject to appeal in a district court.
- [149]. A court order on the restriction of someone's competence can be valid for the time being or for a period set in the order. According to the Government Bill for the Guardianship Services Act, it is normally suitable to order a restriction for the time being if it is manifest that there are not going to be changes in the condition of the ward.<sup>84</sup>
- [150]. The guardianship authority shall on its own initiative, during the fourth calendar year after the restriction of competence, inquire as to the continued need for the restriction, and where necessary file a petition with a district court for the termination of the restriction.
- [151]. If a guardian has been appointed on the basis of Section 8, the guardianship authority shall on its own initiative, during the fourth calendar year after the appointment of the guardian, inquire as to the continued need for guardianship, and where necessary file a petition with a district court for the termination of the task of the guardian.

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<sup>83</sup> Amendment 25.05.2007/649 (not included in the unofficial translation of the Act).

<sup>84</sup> Government Bill HE 146/1998 vp holhouslainsäädännön uudistamiseksi/RP 146/1998 rd med förslag till ny förmynderskaplagstiftning. Available in Finnish at: <http://www.finlex.fi/fi/esitykset/he/1998/19980146> (15.10.2009).

# Annexes-Case Law

In different Sections of the Guidelines, experts have been asked to refer to case law. Please present the case law reference in the format below

<b>Case title</b>	KHO:2002:70
<b>Decision date</b>	4 November 2002
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO:2002:70, Diaarinumero: 2577/3/01, Decision of the Supreme Administrative Court, available online (in Finnish) <a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2002/200202802">http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2002/200202802</a> (15.10.2009)
<b>Key facts of the case</b> (max. 500 chars)	A had been ordered to mental examination by a district court as a person accused of a crime. The hospital responsible for the mental examination had found that A was mentally ill. A was later found guilty of the crime but his punishment was waived because of his mental condition. The National Authority for Medicolegal Affairs (TEO) ordered A to involuntary treatment first by a decision of 04.01.2001, and after the judgment of the district court, by a decision of 29.03.2001 transferring him to another hospital. On 02.07.2007, the physician responsible for psychiatric treatment at that hospital had decided on discontinuation of the involuntary treatment finding that the conditions for involuntary treatment were no longer met. The decision was submitted to TEO which requested the physician for a further clarification statement. The physician discussed at length A's condition but concluded that it could not indisputably be confirmed that A was mentally ill. TEO did not confirm the decision of the physician on the discontinuation of the involuntary treatment, and A requested the Supreme Administrative Court to overrule TEO's decision.

<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Court referred to Section 7 of the Constitution of Finland on personal integrity, quoting ‘The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.’ The Court then discussed the conditions for ordering a person to involuntary treatment on the basis of the Mental Health Act, and then continued by quoting the Government Bill concerned with basic rights (HE 309/1993) and also the case law of the European Court of Human Rights. The Court concluded that the key issue of the case was whether A could have been regarded to be mentally ill. After discussing the evidence of the case, including oral hearings, and noting that involuntary treatment under the Mental Health Act is a limitation to personal integrity protected by the Constitution which as such should be interpreted literally and in accordance with the legislative history of the Act, the Court concluded that it has not been shown that A was mentally ill at the time of the decision. The National Authority for Medicolegal Affairs should have affirmed the decision of the physician on discontinuation of A’s involuntary treatment.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Fulfilment of the conditions for involuntary treatment on the basis of the Mental Health Act and the definition of mental illness.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court overruled the decision of the National Authority for Medicolegal Affairs (TEO) and returned the case to TEO.</p>

<b>Proposal of key words for data base</b>	
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

<b>Case title</b>	KHO:2005:32
<b>Decision date</b>	2 June 2005
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO:2005:32, Diaarinumero: 198/3/04, Decision of the Supreme Administrative Court, available online (in Finnish) <a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2005/200501311">http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2005/200501311</a> (15.10.2009)

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>A, who was minor, had been ordered to involuntary treatment on the basis of the Mental Health Act. The decision on involuntary treatment had been submitted to the Administrative Court of Helsinki for affirmation. The Court had affirmed the decision. A's parent B appealed the decision of the Administrative Court to the Supreme Administrative Court. B argued that other forms of mental health services could have been applicable. B argued also that Tourette's syndrome, anxiety and other symptoms did not form a mental illness. The Supreme Administrative Court requested statements from several physicians and also the National Authority for Medicolegal Affairs (TEO). TEO gave its statement finding that A had a serious mental disorder in the sense of Section 8 of the Mental Health Act.</p>
<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The National Authority for Medicolegal Affairs (TEO) considered it manifest that A's normal growth and development would have been endangered without proper care and active interference. TEO noted that A had been diagnosed with Tourette's syndrome and anxiety, and that A had had a number of problems both at school and at home, and that A's symptoms had also worsened in the course of time. TEO concluded that outpatient treatment could not safeguard A's growth and development. The Supreme Administrative Court withheld the decision of the Administrative Court referring to the statement given by TEO.</p>

<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Fulfilment of the conditions for involuntary treatment on the basis of the Mental Health Act for a minor.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Supreme Administrative Court rejected B's appeal and confirmed the decision on involuntary treatment.
<b>Proposal of key words for data base</b>	

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

<b>Case title</b>	KHO:2008:80
<b>Decision date</b>	4 November 2008
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO:2008:80, Diaarinumero 449/3/08, Decision of the Supreme Administrative Court, available online (in Finnish) <a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2008/200802758">http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2008/200802758</a> (15.10.2009).
<b>Key facts of the case</b> (max. 500 chars)	A had been ordered to involuntary treatment on the basis of the Mental Health Act. His involuntary treatment had been continued with a decision on 29.11.2007, and the Administrative Court of Hämeenlinna had confirmed this decision. A appealed on the decision to the Supreme Administrative Court. A had suffered from memory disorder, depression and shaking of his left hand. A had been diagnosed with Parkinson's disease on 12.12.2007, and his medication was changed. A noted in his appeal that the physician at the hospital had noted that some other, more homelike placement, would fit better A's needs. B, the physician who had decided on the continuation of the involuntary treatment gave a statement to the Court noting that A had been often out of reach of speech and beyond control. A's behaviour had also been from time to time restless, aggressive and confused, and he had suffered from delusions. B noted also that when A had been diagnosed with Parkinson's disease he had been sent from the hospital to a nursing home on 15.01.2008 but since A had started to wander out of the nursing home he had been sent back to the psychiatric department on 18.01.2008. B noted that in spite of the fact that A had been diagnosed with Parkinson's disease which could explain his dementia, his symptoms had been at the level of a mental illness. A considered that the symptoms had resulted from wrong medication given to him before being diagnosed with the Parkinson's disease, and that the symptoms had disappeared when the medication had been changed.

<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court referred to the definition of a mental illness in the Government Bill (HE 201/1989) according to which mental illness is a serious mental disorder which includes disturbances of the sense of reality and which can be considered a psychosis. As examples of psychotic condition can be mentioned some forms of dementia, delusions based on organic reasons and others, schizophrenia, serious depression, bi-polar disorder, and other forms of psychosis.</p> <p>The Court cited various statements of the physicians and concluded that A's symptoms at the time of the decision on the continuation of involuntary treatment had evidenced that he had at that time such a serious mental disorder which could be considered a mental illness. The Court added that also a psychosis of organic basis could be considered a mental illness in the sense of the Mental Health Act.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Fulfilment of the conditions for involuntary treatment on the basis of the Mental Health Act and the definition of mental illness.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court rejected A's appeal and confirmed the decision on involuntary treatment</p>

<b>Proposal of key words for data base</b>	
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

<b>Case title</b>	KHO 1593/3/02
<b>Decision date</b>	18 January 2005
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO, Diaarinumero 1593/3/02, Decision of the Supreme Administrative Court, summary in English on the webpage of the Åbo Akademi, <a href="http://trip.abo.fi/cgi-bin/thw?%24%7Bfreetext%7D=st%24%7Bbase%7D=dombase&amp;%24%7Bhtml%7D=postliste&amp;%24%7Bmaxpage%7D=21&amp;%24%7Bsort%7D=rd+des">http://trip.abo.fi/cgi-bin/thw?%24%7Bfreetext%7D=st%24%7Bbase%7D=dombase&amp;%24%7Bhtml%7D=postliste&amp;%24%7Bmaxpage%7D=21&amp;%24%7Bsort%7D=rd+des</a> (15.10.2009).

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>A municipal social welfare board had in its budget proposal suggested the allocation of funds for the purpose of granting certain allowances under the Act on services for persons with disabilities. The municipal executive board had decided to delete these funds from the budget proposal. The municipal council adopted the budget as proposed by the executive board. As a consequence, during that budget year no funds could be allocated under the Act on services for persons with disabilities for the reimbursement of a car needed for the transportation of a disabled person. The administrative court took note of the Constitution Act and the duty of public authorities to guarantee adequate social, health and medical services for everyone (Section 19(3)) and the observance of basic rights and liberties and human rights (Section 22). It also referred to the Municipal Act which prescribes the duty of local authorities to perform the functions laid down for them by law as well as their duty to compile a budget which safeguards the preconditions for performing these functions. Under the Act on services for persons with disabilities, the local authorities have a duty to find out as to what extent services are needed. The administrative court ruled that by adopting the budget the municipal council had agreed to budgetary goals and funds which did not safeguard, as required by the Municipal Act, the preconditions for performing the functions assigned to the municipality under the Act on services for persons with disabilities. The decision of the municipal council was therefore contrary to law.</p>
<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The majority of the Supreme Administrative Court agreed with the administrative court. In its decision, the Court also referred to the principle of equality in Section 6 of the Constitution Act. Within the framework of the funds allocated in the budget, a municipal social welfare board must be able to consider each individual need for services for the disabled and to provide services in a priority order which is in accordance with the constitutional requirement that no one shall, without an acceptable reason, be treated differently on the ground of health, disability or other reason that concerns his or her person.</p>

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Principle of equality with regard to services for the disabled.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court affirmed the decision of the administrative court concerning allocation of funds for the services for the disabled in the budget.</p>
<p><b>Proposal of key words for data base</b></p>	

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

<b>Case title</b>	KHO 2004:4
<b>Decision date</b>	23 January 2004
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO 2004:4, Reference: Report No. 93 <a href="http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2004/200400093">http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2004/200400093</a> (15.10.2009)
<b>Key facts of the case</b> (max. 500 chars)	A had been ordered to treatment in a psychiatric hospital against her will by the decision of a doctor. A appealed against the decision to an administrative court. She claimed that the doctor's decision did not give the facts nor the legal rules upon which it was based and that the reasoning of the decision was therefore contrary to law. The administrative court rejected A's appeal. A appealed further to the Supreme Administrative Court.

<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court pointed out that the doctor's decision had been made in accordance with the Mental Health Act on the basis of, among other things, A's case history and a written medical statement on observation concerning A, including an opinion on whether the conditions for ordering A to treatment against her will were met. A had also been given the opportunity to tell her opinion on the treatment. The Supreme Administrative Court noted that according to the patient's medical file, A had been given information about her health, the purpose of the treatment and the grounds for ordering her to treatment. A also had a right of access to the contents of her medical file, except when this right was restricted by law. In seeking this information A had the possibility of receiving assistance from a patient ombudsman. The Court concluded that the doctor's decision on ordering A to treatment against her will could not be overruled on the grounds that the reasoning in the decision was brief and referred to the relevant patient documents. The Supreme Administrative Court rejected A's appeal. When discussing the right of a patient to receive information the Supreme Administrative Court referred not only to the Act on the Status and Rights of Patients but also to Article 5(2) of the ECHR.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The right of a patient to receive information, and the conditions for a decision on involuntary treatment.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court rejected A's appeal.</p>

<b>Proposal of key words for data base</b>	
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

<b>Case title</b>	KHO 25.9.2009/2339
<b>Decision date</b>	25 September 2009
<b>Reference details</b> (reference number; type and title of court/body; in original language and English [official translation, if available])	KHO 25.9.2009, Diaarinumero 1801/2/09, Decision of the Supreme Administrative Court, summary of the decision is available online (in Finnish) <a href="http://www.kho.fi/paatokset/48037.htm">http://www.kho.fi/paatokset/48037.htm</a> (15.10.2009).

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>The Administrative Court had considered it manifestly unnecessary to hear orally a person in a case concerning continuation of his involuntary treatment based on Section 17 of the Mental Health Act. The person had been in involuntary treatment for a long time. The Administrative Court had based its decision on the health of the patient at the time of the decision (by the physician) on the continuation of treatment. In his appeal the claimant emphasized personal freedom and the right to fair trial.</p>
<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court stated that the right to a fair trial in accordance with Section 21 of the Constitution interpreted in the light of Article 5(4) of the ECHR requires an administrative court to provide for oral hearing in reasonable intervals when involuntary treatment had lasted for a long time. Since, however, the claimant had brought the case before the Administrative Court on different grounds than the ones presented at the Supreme Administrative Court, the Administrative Court could have rejected the request on oral hearing.</p>

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Obligation to provide for oral hearing in reasonable intervals at administrative courts when involuntary treatment has been going on for a long period.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Supreme Administrative Court rejected the appeal but only because the claimant had based his claim on different grounds than at the previous stage before the Administrative Court.</p>
<p><b>Proposal of key words for data base</b></p>	