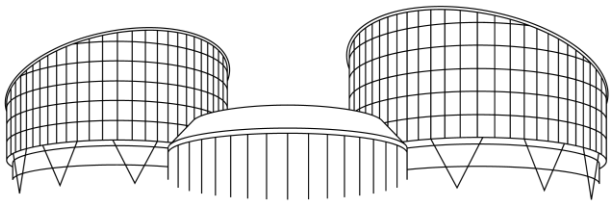

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF X v. FINLAND

(Application no. 34806/04)

JUDGMENT

STRASBOURG

3 July 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of X v. Finland**,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
Matti Mikkola, ad hoc *judge,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 12 June 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34806/04) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Finnish national, Ms X. ("the applicant"), on 30 September 2004. The President of the Fourth Section of the Court decided, *ex officio*, that the applicant's name should not be disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms Helena Molander, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, under Article 6 of the Convention that she did not receive a fair hearing in the criminal proceedings against her in that she was not given an opportunity to be heard at an oral hearing on the need to appoint a trustee for her for the purpose of those proceedings and that she was not given an opportunity to examine witnesses on her behalf. She also alleged under Articles 5 and 8 of the Convention that she was unnecessarily and unlawfully subjected to involuntary care in a mental institution and to forced administration of medication. She further claimed under Article 13 of the Convention that she did not have an effective remedy to challenge the forced administration of medication.

4. On 11 May 2009 the President of the Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. Having consulted the parties, the Chamber decided that no hearing on the merits was required (Rule 54 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

Background and events giving rise to the criminal proceedings

6. The applicant is a paediatrician, born in 1943, who after her retirement continued working in her own practice.

7. On 30 November 1995 a mother brought her daughter, V., born in 1993, to the applicant's practice for examination, suspecting that the girl had been sexually abused by her father. The applicant examined her and took photographs.

8. On 13 June 2000 the girl was taken into public care because of her mother's mental health and was placed in a family support centre.

9. The events now in issue began on 16 December 2000 when the mother failed to return V. to the family support centre after having spent time with her. It appears that the centre was going to close during the Christmas holidays and it was alleged during the domestic proceedings that the girl had indicated to her mother her unwillingness to go to her father's home for the holidays.

10. V. having fallen ill, she was taken to the applicant's practice by her mother on 26 December 2000. Having left the practice, V. remained with her mother until she was found by the authorities on 22 April 2001.

Use of coercive measures

11. On 18 April 2001 the applicant was arrested as a suspect in the deprivation of V.'s liberty, which had allegedly begun on 16 December 2000 in [town A]. The applicant's home and practice were searched the same day. On 20 April 2001 the District Court (*käräjäoikeus, tingsrätten*), having heard the applicant in person, ordered her detention considering it likely that she would otherwise complicate the clearing up of the case and continue criminal activity.

12. By five separate decisions between May and September 2001, given at the request of the police, the District Court granted permission to obtain information about calls to and from telephones used by V.'s mother and a third suspect during different periods between 15 December 2000 and 22 April 2001. The information gathered showed that calls had also been made from and to a telephone in the applicant's possession.

13. V. was found on 22 April 2001. On 25 April 2001 the applicant was released. Following her release, the applicant, *inter alia*, complained on

several occasions about the District Court's decision of 20 April 2001 ordering her detention, and requested an investigation into, *inter alia*, the actions of a number of police officers during her arrest and related events.

Restraining order

14. On 11 May 2001 the police issued the applicant with an interim restraining order according to which she was not allowed to visit certain places frequented by V. and specified in the decision.

15. On 1 June 2001 the District Court found that it was unlikely that the applicant would or could continue to harass the girl or commit an offence directed at her. Therefore, it annulled the police's decision.

Criminal proceedings

16. On 18 April 2002 the public prosecutor preferred charges against V.'s mother, the applicant and a third person. The applicant was charged with having grossly deprived V. of her liberty during the period from 16 December 2000 to 22 April 2001 or, in the alternative, aiding and abetting the same offence. The applicant had allegedly through her opinions, advice and actions contributed to the mother's decision to abduct her child on 16 December 2000 in [town A] and, after the mother had commenced the deprivation of her daughter's liberty and taken her at Christmas 2000 at the latest to [town B], with the mother's consent, unlawfully isolated her. As the deprivation of liberty had lasted a long time, had been planned and was premeditated and had endangered the girl's mental development, the offence was considered aggravated.

17. In her written reply to the charge, the applicant contested that she had in any way had an impact on the mother's actions. She had only provided medical treatment for V. It had not been shown that the suspicions concerning sexual abuse were unfounded.

18. On 17 July 2002 and 22 January 2003 the applicant unsuccessfully petitioned the Office of the Prosecutor General (*valtakunnansyyttäjä, högsta åklagaren*), requesting that the public prosecutor be replaced by an impartial one and alleging a number of irregularities in the performance of his duties.

19. On 21 August 2002 the District Court appointed for the applicant a public defender, Ms M.K., member of the Bar, as the representative chosen by the applicant, Mr J.R., a civil engineer, was not considered capable of representing her, given the gravity of the alleged offence. The applicant contested the appointment of Ms M.K. in a written procedure without, however, naming a lawyer of her choosing although so invited. On 21 October 2002 the Court of Appeal (*hovioikeus, hovrätten*) rejected the applicant's procedural complaint.

20. At a preliminary hearing on 19 September 2002 the District Court ordered, against the applicant's wishes, that the case be examined *in camera* as it concerned delicate issues relating to a child's life. It also held that the applicant was unable to defend herself given the nature of the case. The applicant unsuccessfully complained about the decision to the higher courts.

21. The case was heard over four days beginning on 22 October 2002. The applicant informed the court that she considered that her public defender, Ms M.K., who was present at the hearing, was not entitled to plead on her behalf. The applicant declared that she would defend herself.

22. The District Court received testimony from the applicant and the two other defendants. It also heard V.'s father as her representative and ten witnesses. On 24 October 2002 the court rejected as irrelevant the applicant's request that V., Mr J.R., a police inspector and two lawyers be heard as witnesses regarding the deprivation of the applicant's liberty and the allegedly criminal altering of the charge by the public prosecutor. The applicant then renewed her request, stating that the above witnesses should testify about the background to the offence with which she was charged. The District Court also rejected that request, noting that she had not given any reasons which would have justified the hearing of the proposed witnesses.

23. On 25 October 2002 the District Court ordered the applicant and V.'s mother to undergo a psychiatric examination under Chapter 17, Article 45, of the Code of Judicial Procedure (*oikeudenkäymiskaari, Rättegångs Balk*) and section 16(1) of the Mental Health Act (*mielenterveyslaki, mentalvårdslagen*) and adjourned the proceedings until the completion of the examination. After that decision the applicant went into hiding.

Events which took place while the applicant was hiding

24. Dr K.A., a psychiatrist, noted in a written medical opinion of 30 December 2002 that he had met the applicant twice, on 14 November and 30 December 2002, and that in the light of those discussions he had not noticed any signs of mental disorder and, in his opinion, she was not in need of involuntary care. He emphasised, however, that he had not carried out a psychiatric examination as such an examination could only take place in a hospital and not in a private practice.

25. The Niuvanniemi hospital, one of the two State mental hospitals, informed the applicant that it was ready to receive her from 2 January 2003. On the applicant's request, the start of the examination was postponed first to 20 January 2003 and then to 12 March 2003. The applicant failed, however, to appear at the hospital.

26. In her letter of 8 January 2003 the applicant proposed Mr P.S. for her new representative. On 13 January 2003 the District Court assigned Mr P.S., member of the Bar, as the applicant's new public defender.

27. On 25 March 2003 the District Court ordered the applicant's arrest and detention *in absentia* on the ground that she was seeking to evade trial as she had not appeared at the Niuvanniemi hospital. At the hearing, the applicant was represented by Mr P.S. The applicant filed a complaint alleging insufficient grounds for detention and procedural errors. On 28 April 2003 the Court of Appeal dismissed the complaint as unfounded. On 16 June 2003 the Court of Appeal dismissed the applicant's additional complaint without considering its merits. The applicant later filed a third complaint which the Court of Appeal, on 18 March 2004, dismissed as unfounded. The Supreme Court refused the applicant's requests for leave to appeal.

28. On 9 October 2003 the Court of Appeal rejected the applicant's complaint relating to the order to undergo a psychiatric examination, finding the applicant's allegations about procedural errors in the District Court proceedings unsubstantiated. On 30 March 2004 the Supreme Court refused leave to appeal.

29. After having received Mr P.S.'s request to withdraw, on 5 May 2004 the District Court, having given the applicant an opportunity to be heard in writing, assigned Mr M.S., member of the Bar, as her new public defender. On 23 June 2004 the Court of Appeal rejected the applicant's complaint against this decision, finding that she was unable to defend herself and that the public defender appointed, Mr M.S., was not biased as alleged by the applicant. It also rejected the applicant's request for an oral hearing as manifestly unnecessary. On 27 June 2005 the Supreme Court refused leave to appeal.

30. On 15 June 2004 the Court of Appeal rejected the applicant's complaint according to which, *inter alia*, the District Court Judge ordering her psychiatric examination had been biased. The applicant's request that its decision be supplemented was rejected by the Court of Appeal on 12 July 2004. On 27 June 2005 the Supreme Court refused leave to appeal.

31. By letter dated 2 September 2004 the District Court informed the applicant that it would hold an oral hearing on 20 September 2004 concerning her detention. The applicant was informed that other aspects of the criminal charges against her would not be dealt with at that hearing and no evidence in that respect would be taken.

32. On 20 September 2004 the District Court ordered the applicant's further arrest and detention, finding that she was still seeking to evade trial. At the hearing she was represented by her public defender Mr M.S. On 9 November 2004 the Court of Appeal dismissed the applicant's complaint concerning the decision of 20 September 2004 without considering its merits as it had been drawn up by Mr J.R., who did not fulfil the

requirements laid down by Chapter 15, Article 2, of the Code of Judicial Procedure. It was noted that a public defender had been appointed to represent the applicant. Her further complaint was dismissed by the Supreme Court on 29 September 2005 without consideration on the merits.

Arrest and detention

33. On 12 October 2004 the applicant was arrested.

34. On 15 October 2004, having heard the applicant in person, the District Court ordered her detention, finding that she had been aware of the psychiatric examination to be conducted and the subsequent arrest orders. The court stated that the applicant had been evading the trial, of which the examination formed a part. The applicant was ordered into police custody and from there to a mental institution to be designated by the National Authority for Medico-legal Affairs (*terveydenhuollon oikeusturvakeskus, rättsskyddscentralen för hälsovården*).

Psychiatric examination in a mental institution

35. On 11 November 2004 the applicant was taken to the Vanha Vaasa hospital, the other State mental hospital, for a psychiatric examination the duration of which was initially two months. The examination was carried out by Dr A.K. a specialist in psychiatry, adolescent psychiatry and forensic psychiatry. During the examination the applicant was interviewed by Dr A.K. on ten occasions. She also saw two psychologists, G.W-H. and A.K-V. She refused to undergo somatic and neurological examinations and special examinations, such as magnetic resonance imaging of the brain. She also refused laboratory tests and psychological tests.

36. On 3 January 2005 Dr A.K. gave his written opinion to the National Authority for Medico-legal Affairs on the basis of the examination conducted between 11 November 2004 and 3 January 2005. His conclusions were that the applicant suffered from a delusional disorder and she had not been criminally responsible at the time of the alleged offence. Dr A.K. also found that the criteria for involuntary confinement, set out in section 8 of the Mental Health Act, were met and that the applicant could not be heard at the trial. Her capacity to attend to her interests was diminished due to her mental illness, and she was thus in need of a trustee for the criminal proceedings.

37. On that same date the applicant asked the National Authority for Medico-legal Affairs for a second opinion. On 5 January 2005 that authority informed the applicant that ordering a psychiatric examination of a defendant in a criminal case was not within its competence and she should therefore direct her request to the court.

38. By an interlocutory decision of 20 January 2005 the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs (*terveydenhuollon oikeusturvakeskuksen oikeuspsykiatristen asioiden lautakunta, nämnden för rättspsykiatriska ärenden vid rättsskyddscentralen för hälsovården*) requested Dr A.K. to supplement his opinion, as far as possible, by giving the applicant psychological tests and by submitting such background information as to enable the consideration of the applicant's ability to cope in her earlier life in comparison with the current situation and that of the alleged criminal events. Dr A.K. was also invited to provide detailed reasons why he considered that the criteria for involuntary care were met and why outpatient treatment was not considered sufficient. The results of the supplementary examination were to be submitted to the National Authority for Medico-legal Affairs as soon as possible.

39. The supplementary examination was completed on 4 February 2005. The applicant again refused psychological tests by the hospital staff, doubting their impartiality. In his report of the above-mentioned date Dr A.K. found that the applicant suffered from psychotic delusional disorder and her condition had developed already prior to the events leading to the criminal charges. The applicant had observed indicators concerning incest which other experts had not been able to detect. In Dr A.K.'s opinion, the applicant was in need of involuntary psychiatric treatment in order to recover from her disorder, which mainly related to judicial matters, but also to a delusion of grandeur as to the correctness of her own actions. Further, as a doctor she was endangering other people's well-being by prescribing them treatment which put their health at risk. Because the applicant had for a long time evaded psychiatric examination, and as she opposed treatment, outpatient treatment would not be sufficient. In conclusion, Dr A.K. considered that the applicant was paranoid, making accusations against various authorities about continued abuse of office. She became entangled with her own pernickety details without being able to perceive the real entirety of the matter. He considered that her delusional disorder had reached the level of psychosis, which distorted her conception of reality. Due to her illness she did not understand the unlawfulness and repercussions of her actions and she had been psychotically deluded when she had taken part in the deprivation of a child's liberty. Moreover, she was in denial of her illness.

40. The applicant sent to the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs a number of letters in which she, *inter alia*, criticised the psychiatric examination conducted by Dr A.K. She also submitted to the Board Dr K.A.'s divergent medical opinion of 30 December 2002 (see paragraph 24 above).

41. On 17 February 2005 the National Authority for Medico-legal Affairs submitted its opinion under section 16(3) of the Mental Health Act

to the District Court on the psychiatric examination, finding that the applicant had not been responsible for her actions at the time of the offence.

42. On 23 February 2005, the psychiatric examination having been carried out, the District Court ordered the applicant's release from detention. She was, however, to remain in hospital for treatment, as ordered on 17 February 2005 by the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs.

Involuntary care

43. On 17 February 2005 the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs ordered, on the basis of Dr A.K.'s proposal, that the applicant receive involuntary treatment in the Vanha Vaasa hospital. It considered that she was suffering from a delusional disorder, which had affected her for years and which made her incapable of seeing a matter from a viewpoint other than her own and of questioning the correctness of her own conclusions. She suspected that the authorities had ganged up against her. During the psychiatric examination she tried, as a medical doctor, to take a stand regarding the treatment of other patients on the ward. The delusional disorder, if not treated, would considerably worsen her mental illness or seriously endanger her health and the health of others. No other mental health services were considered sufficient having regard to the fact that the applicant did not consider herself to be mentally ill. The decision referred to sections 8, 17(1) and 17a of the Mental Health Act.

44. The applicant considered that she was not in need of mental care and wished to obtain a second opinion on her need for treatment. However, at the beginning of February 2005 the hospital refused to allow a Dr M-P.H. to visit her during the ongoing psychiatric examination.

45. The initiation of medication was discussed with the applicant on 21 March 2005. She was given the opportunity to take medication orally, but she repeatedly refused to do so. Due to the applicant's resistance, the administration of medication began with involuntary injections of *Zyprexa*. As the applicant had made it clear that she would not co-operate, it was decided to continue her medication by giving long-acting injections of *Risperdal Consta* once every two weeks as of 31 March 2005. The basis of the decision was explained to the applicant and she was also given information about the drug. The issue of medication was discussed with the applicant on several occasions after that. She was encouraged to take it orally, but she consistently refused.

46. As the applicant's core symptoms persisted after two and a half months of medication, it was decided on 22 June 2005 to increase the dosage of *Risperdal Consta* from 25 milligrams to 37.5 milligrams. It was again set at 25 milligrams as of 16 November 2005.

47. The applicant alleges that when questioning the forced administration of medication, she was informed that it was intended to cure her telephone surveillance delusion. The applicant argues that the surveillance did take place and there had been no delusion on her part.

48. On 7 July 2005 the applicant claimed to have been assaulted in connection with the administering of forced medication. She had resisted as she considered the medication unnecessary, whereupon she had been dragged by her arms and legs to her room. When she was put on the bed her thigh had hit the edge of the bed. She reported the incident to the police, who requested a medical doctor, Dr S.Ö., to examine her, which he did on 28 July 2005. In his medical opinion of 5 August 2005 he noted that the applicant had a 10 cm bruise on her thigh, which could have been caused in the manner described by the applicant.

49. On 22 July 2005 the head physician of the hospital decided to continue the applicant's involuntary treatment.

50. In his written statement of 17 August 2005 to the Administrative Court the head physician of the Vanha Vaasa hospital, M.E., noted that the applicant was still in denial of her illness and very strongly opposed medical treatment. She was literally fighting back and this had resulted in several difficult situations when trying to proceed with the administration of medication in a manner which would be safe for both the applicant and the hospital staff.

51. Apparently in August 2005 an inquiry was made about a possible transfer of the applicant to a different hospital in her home town. However, that hospital did not consider itself able at that point to accept responsibility for the applicant's care.

52. The applicant alleges that she suffered side effects from the medication. According to the applicant's patient records the side effects alleged by her could not be objectively verified. The applicant refused when offered further medical examinations whereby any side effects could be detected.

53. On 3 October 2005 the applicant was visited by Dr E.P., a general practitioner at an occupational health care centre. In his opinion of 5 October 2005 Dr E.P. emphasised that he did not specialise in psychiatry and he could not therefore take a stand as to the diagnosed delusion based on one visit. He noted, however, that the applicant had been lucid and well-oriented. During the discussions he had not seen any signs of psychosis or delusion. In his capacity as a general practitioner, he considered that the conditions for involuntary treatment were not met.

54. On 22 October 2005 the applicant was visited by a psychiatrist, Dr M-P.H., who in his written medical opinion of 25 October 2005 considered, as an outsider, that the choice of the applicant's medication (37.5 milligrams of *Risperdal Consta* injected in the muscle every two weeks) seemed excessive given the patient's age and condition.

Furthermore, he considered that the involuntary and forced medication fulfilled the constitutive elements of assault. In conclusion, he considered that open-care measures were possible and that the applicant's dangerousness to herself and others had been considerably exaggerated and, accordingly, the criteria for involuntary care were not met.

55. In the light of the applicant's patient records it appears that as of November 2005 at the latest she no longer physically resisted the injections, although she still verbally opposed her medication.

56. On 19 November 2005 the hospital decided to move the applicant from the closed ward to an open one.

57. On 24 November 2005 the applicant agreed to blood tests.

58. On 21 December 2005 the applicant again saw Dr M-P.H., who in his written medical opinion of 21 December 2005 considered that the conditions for involuntary care were not met.

59. The applicant spent Christmas at home. She had with her a dose of *Risperdal Consta*, which she injected during her holiday assisted by a nurse.

60. On 9 January 2006 it was decided, in mutual agreement with the applicant, that the administration of medication be terminated as she was not at all motivated to take it.

61. On 20 January 2006 the head physician of the hospital took another decision to continue the applicant's involuntary care.

62. On 27 January 2006 the applicant was discharged from hospital.

63. On 30 May 2006 Dr M.E. considered that grounds for continuing the involuntary care under section 8 of the Mental Health Act no longer existed, whereupon the treatment was officially terminated by the National Authority for Medico-legal Affairs' decision of 22 June 2006.

Proceedings before the Supreme Administrative Court concerning the initial confinement to involuntary care

64. On 23 February 2005 the applicant appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltnings-domstolen*) against the decision of 17 February 2005 by the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs, arguing that there was no legal basis for the involuntary care. She alleged that Dr A.K. had erred in his assessment. She relied, *inter alia*, on the above-mentioned medical opinion of Dr K.A., who had seen her twice, in November and December 2002 and who, based on those discussions, had not found any signs of mental illness. She alleged that there was no other reason for the forced medication than the hospital doctors' attempt to conceal their incorrect diagnosis.

65. On 4 March 2005 the Supreme Administrative Court found no reason to stay execution pending its proceedings.

66. On 30 June 2005 the Supreme Administrative Court prohibited Mr J.R. from acting as the applicant's representative. Under Chapter 15, Article 10a(2), of the Code of Judicial Procedure the applicant was invited to inform the court of her choice of competent counsel. Subsequently, the applicant was represented by Ms H.M., counsel chosen by her. She was granted free legal aid.

67. On 30 August 2005 the Supreme Administrative Court decided to hold an oral hearing in the case.

68. On 29 and 30 September 2005 the applicant requested the court to postpone the oral hearing until she had obtained an impartial medical opinion and until she had recovered from the side effects of her medication. On 3 October 2005 she informed the court that she had fallen ill and again requested that the hearing be postponed.

69. On 4 October 2005 the Supreme Administrative Court held an oral hearing and received the testimony of, *inter alia*, the applicant and six witnesses proposed by her. The applicant was represented by Ms H.M.

70. The court refused the applicant's request for a stay of the proceedings in order to await the submission of fresh medical opinions. The court considered this unnecessary given the fact that the issue to be decided was whether the applicant had been in need of involuntary care at the turn of the year 2004 to 2005. The validity of the impugned decision had already expired as more than six months had elapsed since it had been given. It was difficult to see how a fresh examination could affect the court's assessment.

71. On 7 October 2005 the applicant submitted to the court the medical opinion of 5 October 2005 by Dr E.P.

72. On 13 October 2005 the Supreme Administrative Court rejected the applicant's appeal. Having first noted that the impugned decision met the formal requirements and that the applicant's complaint about alleged partiality on the part of Dr A.K. and the members of the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs could not be upheld, it went on to note that the question to be decided was whether the criteria for involuntary care under section 8 of the Mental Health Act had been met on 17 February 2005 when the Board had given its decision. The question of whether a person was mentally ill was a factual question to be decided on the basis of medical materials, having due regard to the correctness of the decision-making procedure applied.

73. The court considered that Dr A.K., a specialist in psychiatry since 1990, was an experienced psychiatrist. His opinion and the opinion of the Board were based on a professionally qualified and reliable medical assessment.

74. As to the subject matter the court reasoned, *inter alia*:

"...

Dr A.K. interviewed the applicant on ten occasions and was then able to make observations on her. Drs A.K. and M.E. explained at the oral hearing that the delusional diagnosis was affected by the absoluteness of the applicant's views on incest. They highlighted that incest diagnoses required examinations by doctors specialising in gynaecology and also child psychiatry examinations. The applicant is specialised in paediatrics. In particular, M.E. gave evidence that in his several discussions with the applicant, she refused to take into account the possibility that there had been no incest although she admitted in general that doctors could also be mistaken. The fact that witnesses J. and S. gave evidence that the applicant had explained her situation in a pertinent manner did not undermine the view of Drs A.K. and M.E. Both doctors gave evidence concordantly that the discussions with the applicant were pertinent as long as her view about the incest was not disputed. At the oral hearing it became evident that witnesses J. and S. had not disputed the applicant's views but had mostly listened to what she had to say. S. indeed gave evidence that she had checked with other sources the information provided by the applicant but, as she had concluded that the views of the applicant were tenable, she had naturally not come into conflict with her. Witness P. had not taken a stand as to whether or not the applicant had a delusional disorder. He had only judged whether or not open-care measures were possible.

According to Dr A.K. the diagnosis of delusion had also been affected by the applicant's continuous suspicion of authorities and of medical and psychological examinations. Also Dr M.E. gave evidence about the numerous appeals made by the applicant and how her world centred around them. The applicant had refused a somatic and neurological examination, magnetic imaging and psychological tests on the ground that she considered the performers of the examinations disqualified and prejudiced.

As such the applicant has had the right to refuse examination of her mental health. On the other hand, it has been justified to question the basis for the absolute refusal of the examinations offered and whether the refusal has possibly been based precisely on thinking typical of a delusional disorder. Having regard to these considerations it cannot be said that the diagnosis of delusional disorder would be based on improper or arbitrary facts, albeit the applicant has explained her refusal of examinations by her right to do so and the writing of legal submissions by their necessity. At the oral hearing the applicant admitted that a deluded person would probably not be aware of her own illness.

At the oral hearing the applicant's son, Dr E., specialising in general practice, gave evidence stating that he understood, given his mother's absolute and angular behaviour, that she had been diagnosed as delusional. He could not, however, be certain of the correctness of the diagnosis since he had seen his mother only a few times during recent years.

Based on the documents in the file and the information received at the oral hearing, and on the above grounds, the Supreme Administrative Court finds that the diagnosis of delusional disorder in the decision of the Medico-legal Authority has been reliably evidenced.

A delusional disorder diagnosis as such does not, however, suffice to warrant involuntary treatment. In addition, its effects on the person concerned and other persons must be assessed.

According to the decision of the National Authority for Medico-legal Affairs the applicant has been in need of involuntary treatment and if not treated her mental illness would have considerably worsened and seriously endangered her health and the health of others.

According to information received, when the decision on treatment was taken, the repercussions for the applicant's life if her conflicts with the authorities and the bringing up of corresponding issues were to continue, were taken into account. At the time it was considered that the applicant was not able to think through all she could undertake and that ordering treatment could help her to continue her life in a calmer way.

These considerations must be held to be pertinent reasons for the assessment of the necessity of the involuntary treatment for reasons of the applicant's own health. The fact that after about six months of treatment and medication the head physician, Dr M.E., in his explanation of 17 August 2005 and the witnesses put forward by the applicant in their testimonies have expressed diverging conclusions does not give reason to call into question the assessment of the National Authority for Medico-legal Affairs regarding the necessity of treatment on 17 February 2005 for the applicant's health.

The National Authority for Medico-legal Affairs did not consider that, if not treated, the applicant would seriously endanger the safety of others. However, it held that the health of others would be seriously endangered. As for endangering the health of others it has to be taken into account that the applicant can have an influence on other people owing to the authority which she enjoys by reason of her status as a paediatrician. She can engender in other people such suspicions lacking real basis that they act hastily, inappropriately or even criminally. This possibility of influence is not lessened by the fact that the applicant is retired. The possibility of influence is also not hindered by the mere withdrawal of the applicant's licence to practise medicine because the influencing takes place on a spiritual level also in contexts other than at the doctor's.

The nurse allocated to the applicant, P., gave evidence to the effect that the applicant is not dangerous to other people. Although in his witness statement he also discussed whether the applicant had given other patients dangerous advice, it can be assessed that P.'s testimony concerned a common judgment of a person's dangerousness such as violence or the like. This is not the case when it comes to the applicant. On the contrary, all the witnesses have concordantly testified that she tries to do good things and she tries to help others. The treating doctors have also so testified. This intention does not, however, prevent the fact that the actions of the person could cause harm to others. In this case there are sufficient grounds for holding that, if not treated, the applicant would have seriously endangered the health of others.

Other mental health services are insufficient having regard to the fact that the applicant is in denial of her illness. That being the case, it can be held that the applicant would try to avoid treatment and refuse examinations.

Conclusion

The Supreme Administrative Court finds on the basis of the documents in the file and the information received at the oral hearing that it has been reliably and objectively shown that the applicant was, at the time of the decision of the National

Authority for Medico-legal Affairs, mentally ill within the meaning of section 8 of the Mental Health Act. Owing to her mental illness she has been in need of treatment and, if not treated, her mental illness would considerably have worsened or seriously endangered her health and the health of others. Other mental health services have been insufficient. The conditions for ordering the applicant to undergo involuntary hospital treatment have thus been at hand. The decision of the National Authority for Medico-legal Affairs ordering treatment has been based on the Mental Health Act and it has been made in accordance with the procedure laid down by law. Nor is the decision unlawful."

Proceedings relating to the first decision to continue involuntary care

75. On 22 July 2005, based on a medical observation statement by the treating physician and the applicant's medical records, the head physician of the Vanha Vaasa hospital decided to continue her treatment. It was noted that the applicant had, *inter alia*, criticised the treatment given in the hospital and tried to take a position in other patients' treatment in her capacity as a doctor. She had also given them instructions concerning medication even after having been forbidden to do so. Open-care measures were considered insufficient because the applicant was in denial of her illness and lacked any motivation in respect of her treatment.

76. The decision of 22 July 2005 was submitted for confirmation to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*). The applicant also appealed against that decision to the same court, requesting an oral hearing to be held.

77. On 31 October 2005, having obtained a statement from the head physician of the Vanha Vaasa hospital and the applicant's comments thereto, the Administrative Court dismissed the applicant's appeal. It observed that the applicant's condition had improved during treatment and there had been discussions about her possible transfer to a psychiatric hospital in her home town. The court noted that the applicant was not suicidal and thus not endangering her own health, nor was she violent towards others. She was able to discuss daily matters in a pertinent and polite manner as long as no-one contested her views. However, she still denied her illness, which manifested itself in her opposition to medical treatment and all further medical examinations proposed to her. The denial of illness and lack of motivation in respect of treatment led the court to the conclusion that the applicant would most likely neglect treatment outside the hospital, which would severely aggravate her illness and endanger her health. As her delusion was related to her medical profession and her patients, lack of treatment would also put the health of others at serious risk. The Administrative Court also dismissed the applicant's request for an oral hearing as manifestly unnecessary, making reference to the hearing held by the Supreme Administrative Court on 4 October 2005. Moreover, the court considered that the main issue, whether the applicant's condition had

improved to the extent that grounds for involuntary treatment no longer existed, could be adequately resolved on the basis of the case file alone.

78. The applicant appealed further to the Supreme Administrative Court invoking, *inter alia*, the medical opinion of 30 December 2002 by Dr K.A., the medical opinion of 5 October 2005 by Dr E.P. and those of 25 October 2005 and 21 December 2005 by Dr M-P.H.

79. On 16 May 2006 the Supreme Administrative Court, having obtained a fresh statement from the head physician of the Vanha Vaasa hospital and the applicant's comments thereto, upheld the lower court's decision mainly on the same grounds. It rejected the applicant's request for an oral hearing, finding oral evidence about circumstances which prevailed after the adoption of the impugned decision of 22 July 2005 irrelevant.

Proceedings relating to the second decision to continue involuntary care

80. On 20 January 2006 the head physician of the Vanha Vaasa hospital took another decision to continue the applicant's involuntary care, based on a medical observations statement by another hospital physician. It was noted that the applicant's condition had improved and she currently co-operated with the hospital staff. While her sense of reality still failed her as far as the criminal charge against her was concerned, she was able to discuss the matter pertinently and without agitation. She was no longer regarded as dangerous to herself or others and planning for her future transfer to outpatient care was considered justified.

81. The decision of 20 January 2006 was submitted to the Administrative Court for confirmation. The applicant also appealed against it.

82. On 20 April 2006, having held an oral hearing, the Administrative Court found that the applicant was still suffering from psychotic delusions and that her illness was of a chronic nature. According to the court the discontinuation of her treatment would thus have significantly aggravated her illness. The court also took into account the marked improvement in the applicant's condition which had made it possible to plan her gradual transfer to outpatient care. It was noted that the applicant's medication by injections had been terminated at the beginning of January. The court considered that it had been important and safe to observe the effects of the withdrawal of medication in the hospital and, therefore, other forms of care had been insufficient at the time.

83. It is not known whether the applicant lodged a further appeal with the Supreme Administrative Court.

Other measures taken by the applicant in respect of involuntary care

84. During her stay in the Vanha Vaasa hospital the applicant petitioned the National Authority for Medico-legal Affairs, which in its letter of 15 July 2005 noted that it had commenced an investigation into the actions of the medical personnel involved in the applicant's treatment. It was, however, not competent to monitor health-care units. It informed the applicant that such competence lay with the branch for social and health affairs of the relevant State Provincial Office (*lääninhallitus, länsstyrelse*). Nor was the National Authority for Medico-legal Affairs competent to interfere with the administering of medication or to order that administering of medication be discontinued. It could, however, in retrospect assess the appropriateness of a doctor's professional activity.

85. Between January and July 2005 the applicant lodged a number of other petitions with the National Authority for Medico-legal Affairs concerning, *inter alia*, her psychiatric examination and treatment in the Vanha Vaasa hospital. On 12 January 2007 the National Authority for Medico-legal Affairs gave its decision in respect of those complaints. It relied on the judgment of 13 October 2005 by the Supreme Administrative Court in finding that the confinement of the applicant to involuntary care had been justified. As a general remark it was noted that the primary and sometimes only symptom of a delusional disorder was an untrue belief which the patient holds on to and attempts to act upon. The delusion was continuous, clear and systematic, and it could be very persistent and steadfast. It was common that a patient suffering from a delusional disorder did not manifest any other anomalous behaviour. A special form of delusion was a so-called querulous delusion, which is characterised by continuous claims for rectification, complaints and legal proceedings driven by psychotic thinking for the purpose of restoration of one's injured self-esteem. A delusional disorder was treated with conversation therapy and antipsychotic medicines. Lack of motivation for treatment and inadequate response thereto were essential risks for successful medical treatment. As to the applicant's treatment, and the forced administration of medication in particular, the National Authority for Medico-legal Affairs found no indication of conduct deviating from appropriate and commonly accepted medical practice, which could therefore be considered erroneous. The decision was not subject to appeal.

86. By letters dated 8, 11, 25 and 26 July 2005 Ms H.M. approached the Chancellor of Justice on the applicant's behalf, requesting him to take action concerning the involuntary treatment of the applicant. Having regard to the provisions concerning the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman, those letters were transmitted to the latter authority. By letter dated 27 September 2005 Ms H.M. was informed of the Ombudsman's decision not to deal with the case, as it was

already pending before other authorities, namely the Supreme Administrative Court, the National Authority for Medico-legal Affairs and the police.

87. The applicant reported three doctors of the Vanha Vaasa hospital to the police alleging, *inter alia*, gross deprivation of liberty. On 27 January 2006, having obtained written statements from the National Authority for Medico-legal Affairs, the police found that no offence had been committed and closed the investigation.

88. The applicant also petitioned the State Provincial Office which sent the regional physician and the health care inspector to the Vanha Vaasa hospital to interview the applicant and the personnel involved in her treatment. The regional physician also met with the applicant's representative. Furthermore, the authority acquainted itself with the applicant's medical records and other documents related to the case and obtained written statements from the hospital staff and the applicant's comments thereto. In its decision of 26 June 2006 the State Provincial Office noted that the issues raised by the applicant had previously been thoroughly examined by the National Authority for Medico-legal Affairs, which had found no irregularities. In the light of its own examination of the case, the State Provincial Office did not find reason to take further measures. The decision was not subject to appeal.

Appointment of a trustee for the criminal proceedings

89. In its decision of 17 February 2005 the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs found that the applicant's capability to attend to her interests in the criminal proceedings was reduced due to mental illness and that she was therefore in need of a trustee. The applicant contested this, arguing that she was well.

90. On 23 February 2005, referring to the above statement by the National Authority for Medico-legal Affairs, the District Court informed the applicant by letter that it had decided under Chapter 12, Article 4a of the Code of Judicial Procedure to appoint for her a trustee in respect of the ongoing proceedings. It was noted that counsel M.S., who was considered to be suitable for the task, had given his consent. The applicant was provided with the opportunity to give her opinion on the matter by 3 March 2005. She was also informed that the court would hold a continued oral hearing on 14 March 2005 and that her presence at that hearing was not obligatory.

91. By letter dated 24 February 2005 the applicant opposed the appointment of a trustee without giving further reasons. She demanded that all documents concerning that matter be faxed to Mr J.R. and sent to her by post.

92. On 2 March 2005 the District Court appointed the applicant's public defender, Mr M.S., trustee. It was noted in the decision that the applicant was against the appointment of a trustee.

93. On 20 June 2005 the Court of Appeal rejected the appeal signed by the applicant, noting that she was, according to the above finding by the National Authority for Medico-legal Affairs, in need of a trustee owing to her mental illness. The court did not find reason to hold otherwise. Nor did it hold an oral hearing as requested by the applicant. The court did not examine a writ of appeal signed by Mr J.R. as he did not fulfil the requirements under Chapter 15, Article 2(1), of the Code of Judicial Procedure. Nor did it examine the appeal of the applicant's daughter as she had failed to give notice of her intention to appeal as required by Chapter 25, Article 5(1), of the said Code.

94. The applicant, represented by Ms H.M., sought leave to appeal, requesting an oral hearing. She argued that Mr M.S., whom she had never met, had not acted in her best interests. For instance, he had failed to request an oral hearing in the Court of Appeal although the applicant had asked him to submit a request to that effect. Nor had he questioned the correctness of the psychiatric examination. She also submitted that she was in good health and not in need of a trustee.

95. On 30 September 2005 the Supreme Court refused leave to appeal.

Continuation of the criminal proceedings

96. On 10 March 2005 the applicant submitted to the District Court a list of 18 witnesses whom she wished to examine before the court concerning, *inter alia*, the events in December 2000 and the alleged gross deprivation of liberty. She also wanted to hear Drs H.L. and M-P.H. as medical experts. She further identified a number of documents to be adduced as written evidence.

97. On 14 March 2005 the District Court held the final hearing in the criminal case. The applicant arrived at the court house but left before the hearing began. According to the applicant she did so because Mr J.R., whom she wished to hear as a witness, had been removed by force from the premises.

98. The District Court proceeded with the hearing, in which the applicant was represented by her trustee Mr M.S. The latter did not contest the accuracy of the medical opinion on the applicant's psychiatric examination. Nor did he refer to other medical opinions on the applicant's mental health. He pleaded on the applicant's behalf that she could only be regarded as an accessory to the offence in her capacity as a doctor. He did not find it necessary to hear witnesses.

99. In its judgment of 8 April 2005 the District Court found V.'s mother responsible for gross deprivation of liberty between 16 December 2000 and

22 April 2001. The applicant was found responsible for aiding and abetting that offence between 26 December 2000 and 22 April 2001 as criminally unaccountable. The court did not pass sentence on them as they had not been responsible for their actions at the material time. However, it ordered them to pay damages and legal costs.

100. As to the background of the case, the court noted the following. V. had been examined from 1995 onwards on her mother's suspicions that she had been sexually abused. The public prosecutor L.K. had decided on 19 April 1999 not to prefer charges against the father as there was no evidence of an alleged offence having taken place during the period from 1994 to March 1996. On 21 April 1998 the public prosecutor M.P. waived charges against another person as there was no evidence of an alleged offence having taken place in July 1997. On 4 June 2001 the public prosecutor L.K. waived charges against the father as there was no evidence of an alleged offence having taken place during the period from September 1998 to June 2000. In June 2000 the mother took V. to a university hospital for examination. Those examinations did not support her suspicions of sexual abuse. On 13 June 2000 the girl was taken into emergency public care because of her mother's mental health and was placed in a family support centre. An ordinary care order was made in July 2000. Meanwhile, on 26 June 2000 the mother removed the girl from the centre without permission and they were found later that day in a town some 100 km away, whereupon the girl was returned to the centre by the police. On 3 April 2001 the Court of Appeal granted the father sole custody of the girl, who was to see her mother during supervised visits three times a week.

101. As to the applicant's actions, the court noted that she had issued a number of opinions which could not be regarded as medical opinions. She had predominantly functioned as an aid to the girl's mother and made proposals on what measures to take. The applicant had been aware of the fact that the girl had been taken into public care and on 18 December 2000 the police had told her that the girl was missing. The court found it established that V. and her mother had come to meet the applicant on 26 December 2000. Since that date the applicant had found accommodation for them and transported them in her car. The applicant had allowed the mother's mail to be redirected to her address. The court noted that it had not even been suggested that the applicant had on 16 December 2000 been in [town A].

102. By letter dated 12 April 2005 Mr M.S. approached the applicant informing her that, as her trustee, he had notified the District Court of the applicant's intention to appeal against its judgment. He asked the applicant to state her opinion on the judgment in writing and informed her that he would be in Vaasa on 26 April 2005, should the applicant wish to meet him in person. It appears that no meeting took place.

103. Mr M.S. subsequently appealed on the applicant's behalf, arguing that the charge should be rejected due to lack of intent. In her capacity as a doctor, the applicant had only wished to protect the mother and the child following her firm conviction that the girl had been sexually abused. The trustee took the view that the case could be examined by the appellate court in a written procedure. On 9 May 2005 Mr M.S. sent a copy of the writ of appeal to the applicant for information noting that it corresponded, in the main part, to the draft he had sent her earlier on 2 May 2005. He also noted that the applicant had not made any comments on that draft.

104. In her own writ of appeal the applicant requested an oral hearing at which she wished the court to hear the same 18 witnesses whom she had proposed in the proceedings before the District Court. She also questioned the motives of the public prosecutor in bringing charges for an aggravated offence. The applicant had acquired a copy of his notes to the proceedings, wherein it was implied that a psychiatric examination was the only means of treatment, which, in turn, was the only means of stopping the terrorising of the father and the child and the misuse of justice. The applicant later filed a number of additional submissions with the appellate court.

105. On 31 August 2005, relying on Chapter 26, Article 14(2), point 4, of the Code of Judicial Procedure the Court of Appeal refused the applicant's request for an oral hearing as manifestly unnecessary. As to the subject matter, the court upheld the lower court's judgment, finding no reason to deviate from it**.** Under Chapter 25, Article 12(2) of the Code the court dismissed the applicant's own belated representations without examining their merits.

106. The applicant, represented by counsel of her choosing, Ms H.M., requested the Supreme Court leave to appeal.

107. On 14 February 2006 the Supreme Court refused such leave.

Restriction on the exercise of the medical profession

108. On 24 October 2005 the National Authority for Medico-legal Affairs decided that the applicant's ability to work as a doctor and her health should be examined.

109. By an interim decision of 17 March 2006 the National Authority for Medico-legal Affairs prohibited the applicant from practising her profession during 2006.

110. The applicant was examined in an open ward of the psychiatric clinic at Helsinki University Hospital from 6 September to 6 October 2006.

111. The resultant medical opinion of 10 October 2006 did not note any topical psychiatric disorder in the applicant. It was noted, however, that a full examination could not be conducted because the applicant refused to surrender documents from the Vanha Vaasa hospital concerning her medical history. It was considered that the fact that she had suffered from a narrow

delusional disorder would hamper her ability to function as a good expert in sexual abuse cases. She should thus concentrate on general paediatrics.

112. On 29 January 2007 the National Authority for Medico-legal Affairs annulled its decision of 17 March 2006 but ordered that the applicant should not deal with suspected child abuse cases in her private practice. The applicant's appeals against that decision were dismissed by the Administrative Court and the Supreme Administrative Court on 24 September 2008 and 24 August 2009 respectively.

113. According to the applicant, she is again seeing patients in her practice.

II. RELEVANT DOMESTIC LAW

Basic rights

114. The Constitution (*Suomen perustuslaki, Finlands grundlag*; Act no. 731/1999) provides in relevant parts:

> "Section 7 - *The right to life, personal liberty and integrity*
>
> 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.
>
> 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.
>
> ...
>
> Section 10 - *The right to privacy*
>
> Everyone's private life, honour and the sanctity of the home are guaranteed. ..."

Criminal irresponsibility and psychiatric examination

115. Chapter 3, Article 4, paragraphs 1 and 2, of the Penal Code (*rikoslaki, strafflagen*, Act no. 515/2003) provide:

> "Prerequisites for criminal liability are that the perpetrator had reached the age of fifteen years at the time of the act and is criminally responsible.

> The perpetrator is not criminally responsible if at the time of the act, due to mental illness, severe mental deficiency or a serious mental disturbance or a serious disturbance of consciousness, he or she is not able to understand the factual nature or unlawfulness of his or her act or his or her ability to control his or her behaviour is decisively weakened due to such a reason (*criminal irresponsibility*)."

116. At the relevant time Chapter 17, Article 45, of the Code of Judicial Procedure (*oikeudenkäymiskaari, Rättegångs Balk*, Act no. 571/1948) read:

> "The court may, where it is deemed necessary, order a psychiatric examination of the defendant. Such an examination may not be ordered against the defendant's will save in cases where he or she had been remanded for trial or where the maximum punishment for the offence of which he or she is being accused is imprisonment for more than one year. (494/1969)
>
> Separate provisions apply to the psychiatric examination and admission into a mental institution for such an examination."

117. That provision was amended by Act no. 244/2006, which took effect on 1 October 2006. According to the amended provision, a psychiatric examination of the defendant may be ordered if the court has in an interim judgment found the defendant guilty as charged, such an examination is justified, and the defendant agrees to the examination or he or she has been remanded for trial or has been charged with an offence punishable by more than one year of imprisonment. At the request of the prosecutor, the defendant or his or her trustee the court may order a psychiatric examination already during the pre-trial investigation or prior to the main hearing, if the defendant has pleaded guilty to the charge or if the need for such an examination is otherwise clear.

Mental Health Act

118. The Mental Health Act (*mielenterveyslaki, mentalvårdslagen*, Act no. 1116/1990), as in force at the material time, provided in relevant parts:

> "Chapter 1
>
> ...
>
> Section 2 - *Direction and supervision*
>
> ...
>
> In the territory of a province, the planning, direction and supervision of mental health work is the responsibility of the State Provincial Office. The State Provincial Office shall, in particular, supervise the use of the limitations on the right of self-determination referred to in Chapter 4 a of this Act. (1423/2001)
>
> ...
>
> Section 6 - *Treatment given in State mental hospitals*

Psychiatric examinations referred to in section 15 are conducted in State mental hospitals. On the recommendation of a hospital in a hospital district, persons who are mentally ill or suffering from other mental disorders and whose treatment is particularly dangerous or difficult can be admitted to a State mental hospital.

On the recommendation of a hospital in a hospital district, persons other than the mentally ill or persons suffering from other mental disorders referred to in subsection 1 may also be treated in a State mental hospital if it is not appropriate to treat them in a hospital within the hospital district from the point of view of the organisation of the treatment.

Decisions on admitting a person accused of a crime or a person whose sentence has been waived because of his or her mental condition to a State mental hospital are made by the National Authority for Medico-legal Affairs as provided in section 17. In other cases decisions on admitting a patient to a State mental hospital, discontinuing the treatment and discharging the patient are made by the head physician of the State mental hospital. (1504/1999)

...

Chapter 2

Section 8 - *Conditions for ordering treatment*

A person can be ordered to undergo treatment in a psychiatric hospital against his or her will only (1) if the person is diagnosed as mentally ill; (2) if the person needs treatment for a mental illness which, if not treated, would become considerably worse or seriously endanger the person's health or safety or the health or safety of others; and (3) if all other mental health services are inapplicable or inadequate.

...

Chapter 3

Section 15 - *Admission to hospital for psychiatric examination*

If the court orders a person accused of a crime to undergo a psychiatric examination under section 45 of Chapter 17 of the Code of Judicial Procedure, the person accused of the crime may be admitted to a hospital for psychiatric examination and detained there against his or her will notwithstanding Chapter 2 of this Act.

Section 16 (1086/1992) - *Psychiatric examination*

After ordering a person who is accused of a crime to undergo a psychiatric examination, the court must forward the documents to the National Authority for Medico-legal Affairs without delay. The National Authority for Medico-legal Affairs shall decide where the psychiatric examination will be carried out and, if it is to be carried out outside hospital, by whom.

The psychiatric examination shall be completed and a statement on the mental condition of the person accused of a crime shall be submitted to the National Authority for Medico-legal Affairs not later than two months after the start of the

psychiatric examination. If there are reasonable grounds for so doing, the National Authority for Medico-legal Affairs may extend the period of examination by a maximum of two months.

Having received the said statement, the National Authority for Medico-legal Affairs shall issue its own statement concerning the mental condition of the person accused of a crime to the court.

Section 17 - *Involuntary treatment after psychiatric examination*

If the conditions for ordering a person accused of a crime to treatment against his or her will are met on completion of the psychiatric examination, the National Authority for Medico-legal Affairs shall order the person to treatment against the person's will. (1086/1992)

The person may be detained for treatment against his or her will on the basis of the decision of the National Authority for Medico-legal Affairs for six months at most. Before the end of this period a statement on observation of the patient shall be produced indicating whether or not the conditions for referring the person for treatment against his or her will are still met. A decision on whether treatment should be continued or discontinued shall be made in writing by [the head physician in charge of the psychiatric care or, if that physician is disqualified or unavailable, by another physician appointed to the task, preferably one specialising in psychiatry] before the treatment has continued for six months. A decision to continue the treatment shall be made known to the patient without delay and be immediately submitted for approval of the [court], and the [court] shall assess whether the conditions for ordering treatment against the patient's will still exist. Also a decision to discontinue the treatment shall be made known to the patient without delay and be immediately submitted for approval to the National Authority for Medico-legal Affairs. The National Authority for Medico-legal Affairs shall either confirm the decision to discontinue the treatment or, if the conditions for treatment against the patient's will still exist, order the patient to undergo treatment. (1504/1994)

On the basis of the decision to continue treatment the patient may be detained for treatment against his or her will for a maximum of six months. If it seems probable at the end of this period that continuing the treatment is still necessary, measures in accordance with subsection 2 shall be taken. (1504/1994)

If it appears during the treatment of a person ordered to undergo treatment that the conditions for ordering the patient to undergo treatment against his or her will do not exist, measures in accordance with subsection 2 shall be taken. (1504/1994)

Section 17 a (383/1997) - *Psychiatric hospital treatment at the specialised level*

The National Authority for Medico-legal Affairs shall decide on initiating the involuntary treatment of a person accused of a crime at a hospital which has the facilities and special expertise required for the treatment of the patient.

When the patient's need for treatment changes the physician referred to in section 11 shall immediately take measures to transfer the patient to such a hospital as the patient's treatment requires.

The need for treatment at a State mental hospital shall, however, be assessed within six months from the beginning of the treatment in collaboration with the hospital district in whose area the patient's home municipality is located.

Chapter 4a

Section 22 a (1423/2001) - ... *general conditions for limiting fundamental rights*

....

A patient's right of self-determination and other fundamental rights may be limited by virtue of the provisions of this Chapter only to the extent necessary for the treatment of the illness or for the person's safety or the safety of others or for safeguarding some other interest laid down in this Chapter. The measures shall be undertaken as safely as possible and with respect for 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.

...

Section 22 b (1423/2001) - *Treatment of mental illness*

A patient must be treated, as far as possible, in mutual understanding with the patient. A care plan must be drawn up in the context of giving treatment.

In treating a patient's mental illness only such medically acceptable methods of examination and treatment may be used, of which the failure to use would seriously jeopardise the health and safety of the patient or others.

The physician attending to the patient decides on the treatment and examinations that are given regardless of the patient's will. The attending physician also decides on holding or tying down the patient and on comparable measures for the period of a treatment or on other short-time limitation measures that are necessary to give treatment.

...

Chapter 5

...

Section 24 (1504/1994) – *Appeal*

An appeal may be lodged with the [court] against the decision of a hospital physician to order a person to treatment or to continue treatment against the person's will...

Section 25 - *Enforcement and interruption of enforcement*

A decision to order a patient to undergo treatment against his or her will or to continue such treatment, or to take possession of personal property or to limit contacts

shall be enforced immediately irrespective of whether the decision has been submitted to another authority for confirmation or an appeal has been lodged or not. (1423/2001)

After a decision has been submitted to another authority or an appeal lodged against it, the submission or appellate authority may forbid the enforcement of the decision or order it to be interrupted.

Section 26 - *Urgency of the proceedings*

Submission and appeal relating to treatment given against the patient's will, and matters relating to mental examination must be dealt with urgently.

..."

119. According to the preparatory works of section 22b of the Mental Health Act (Government proposal HE 113/2001 vp), a care order issued for an involuntary hospitalisation of a psychiatric patient is understood to contain also an automatic authorisation to treat the patient, even against his or her will. Even though the doctors may seek to obtain a person's consent prior to the treatment, there is no obligation to have such consent in written form or to seek such consent from the patient's relatives or guardian/trustee. If a patient refuses to give his or her consent or withdraws previous consent, the provision allows forced administration of medication. This is in the interest of the patient in order to secure his or her constitutional right to necessary care in a situation in which the patient is not personally able to make a decision about the treatment due to his or her illness.

Other provisions concerning health care

120. Section 7(3) of the Act on Administrative Courts (*hallinto-oikeuslaki, lagen om förvaltningsdomstolarna*, Act no 1424/2001) provides that in administrative courts an expert member participates in the consideration of and decision on a matter concerning ordering to care and continuing involuntary care of a person referred to in the Mental Health Act.

121. The relevant provisions of the Act on Health Care Professionals (*laki terveydenhuollon ammattihenkilöistä, lagen om yrkesutbildade personer inom hälso- och sjukvården*, Act no. 559/1994), as in force at the material time, read as follows:

"...

Section 15 - *Obligations related to professional ethics*

The aim of the professional activities of health care professionals is to promote and maintain health, to prevent illness, to cure those who are ill and to alleviate their suffering. In their professional activities, health care professionals must employ generally accepted, empirically justified methods, in accordance with their training, which should be continually supplemented. Each health care professional must weigh the benefits of their professional activity to the patient and its possible hazards.

...

Section 24 - *Guidance and supervision*

The general guidance of health care professionals belongs to the Ministry of Social Affairs and Health.

The National Authority for Medico-legal Affairs is responsible for the guidance and supervision of health care professionals.

...

In the territory of a province the activities of health care professionals are guided and supervised by the competent State Provincial Office.

...

Specific authorities

122. The Decree on the National Authority for Medico-legal Affairs (*asetus terveydenhuollon oikeusturvakeskuksesta, förordningen om rättskyddscentralen för hälsovården*, Act no. 1121/1992 with later amendments) contains provisions concerning, *inter alia*, the Board for Forensic Psychiatry within that authority. Section 12 of the Decree, as amended by Act no. 432/1997 and in force at the relevant time, provided that the Board dealt with and decided on matters that concerned the mental state of a person charged with an offence, or matters related to the ordering of such a person, or a person not sentenced to a punishment due to his or her mental state, to psychiatric hospital care and the discontinuation of such treatment. The Board was composed of a chairman, who was to be an official with the National Authority for Medico-legal Affairs, and three other members. One of the members was to be an expert in the field of law and two members in the field of psychiatry, one of whom should also be a representative of municipal health care.

123. Since 1 January 2010 the State Provincial Offices no longer exist and their tasks have been transferred to various other authorities. Prior to that rearrangement in the administration, the provisions regulating the tasks of the State Provincial Offices were found in some 130 different statutes. General information about the tasks and competences of that authority may be found in the Government proposal HE 154/2005 vp concerning, *inter alia*, certain amendments to the Mental Health Act. According to that document the State Provincial Offices were to exercise guidance and supervision of the State mental hospitals, among a number of other institutions and services. This was implemented, *inter alia*, by way of distribution of information, on-site inspections and dealing with complaints. In 63% of the decisions given by State Provincial Offices in 2004, in their

capacity of supervising authority, no appearance was found of such inappropriateness which would have justified their measures. 18% of the cases dealt with resulted in drawing the attention of the health care professional. An admonition was given in 5% of the cases.

Legal representation before the courts

124. Chapter 2, section 1, of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa, lagen om rättegång i brottmål*, Act no. 689/1997) provides in relevant parts:

> "A person suspected of an offence has the right to self take care of his/her defence in the pre-trial investigations and in the trial.
>
> ...
>
> A public defender is to be appointed to the suspect *ex officio*, when: (1) the suspect is incapable of defending himself/herself; (2) the suspect, who has not retained a public defender, is under 18 years of age, unless it is obvious that he/she has no need of one; (3) the public defender retained by the suspect does not meet the qualifications required of a public defender or is incapable of defending the suspect; or (4) there is another special reason for the same." (107/1998)

Chapter 2, section 2(1) reads:

> "A person appointed under section 1 ... as public defender ... must be a public legal aid attorney or an advocate. If there is no suitable public legal aid attorney or advocate available or there is another special reason for it, also another person with the degree of [Master of Laws] who by law is competent to act as an attorney may be appointed as public defender ... The person to be appointed as public defender ... is to be reserved an opportunity to be heard on the appointment." (260/2002)

125. Chapter 12, Article 4a, of the Code of Judicial Procedure (Act no. 444/1999) reads:

> "If a party is incapable of looking after his or her interests in court proceedings owing to illness, disturbance of mental function, ill health or other comparable reason, the court where the case is pending may of its own motion appoint a trustee for that party for purposes of the proceedings. The provisions of the Guardianship Services Act apply to such a trustee.
>
> Unless the court decides otherwise, the appointment of the trustee shall remain in effect also in an appellate instance where the matter becomes pending on appeal."

126. Section 5 of the Guardianship Services Act (*laki holhoustoimesta, lagen om förmyndarverksamhet*, Act no. 442/1999) provides that a suitable person who consents to the appointment is eligible as a guardian/trustee. In the assessment of the suitability the skills and experience of that person, among other things, and the nature and extent of the task shall be taken into account.

Oral hearing and related provisions

127. Chapter 8 of the Code of Judicial Procedure (Act. no 768/2002) lays down provisions concerning the procedure to be followed in dealing with petitionary matters in the District Court. Those provisions apply also to such petitionary matters which the court may take under consideration *ex officio* (Article 1(2)). A petitionary matter shall be examined in chambers or in a hearing. If a party, a witness or another person is to be heard in person, a hearing must be held. A hearing must also be held if the matter has been contested and a party requests a hearing or if the court considers it necessary for clearing up the matter (Article 3). If a party is to be reserved an opportunity to be heard in a petitionary matter, the court must invite him or her to submit a written statement (Article 5). A petitionary matter may be dealt with in connection with related criminal proceedings, if that is possible without impeding the proceedings (Article 9(2)).

128. Chapter 26 of the Code regulates appeal procedure at the Court of Appeal. Article 14 of that Chapter (Act no. 165/1998) reads as follows:

> "An oral hearing shall be held in the Court of Appeal if a party to a civil case or the injured party or the defendant in a criminal case so requests.
>
> However, an oral hearing need not be held for the reason referred to in subsection 1, if: (1) in a civil case amenable to settlement, the opposing party has admitted the appellant's request for a change; (2) in a criminal case only the appellant has requested a main hearing and the case is decided in accordance with the appeal; (3) the person requesting a main hearing has been satisfied with the decision of the District Court and the decision is not changed to his or her detriment; (4) the appeal is manifestly ill-founded; (5) only a procedural matter is to be decided in the case; or (6) the holding of a main hearing is for another reason manifestly unnecessary.
>
> The provisions in paragraph 1 and in paragraphs 2(1) and 2(3)—(6) apply, in so far as appropriate, also when hearing an appeal lodged in a petitionary matter."

129. According to the relevant Government proposal (HE 33/1997 vp) the term ill-founded in Chapter 26, Article 14(2), point 4, of the Code refers to a situation where the grounds presented in the appeal could not lead to the changes requested. An appeal is also ill-founded where the grounds for it do not correspond to the generally known facts. The provision may also be applied in criminal cases where, *inter alia*, the defendant requests acquittal relying on circumstances which he or she would establish in the oral hearing but which could not have any impact in deciding the case. No consideration is to be given to the gravity of the offence or the sentence imposed in the application of that provision.

130. Chapter 26, Article 15(1), of the Code (Act no. 165/1998) reads:

> "The Court of Appeal shall hold a main hearing regardless of whether one has been requested, if a decision on the matter turns on the credibility of the testimony admitted in the District Court or the findings of the District Court in a judicial inspection, or on new testimony to be admitted in the Court of Appeal. In this event, the evidence

admitted in the District Court shall be readmitted and the inspection carried out again in the main hearing, unless there is an impediment to this."

131. Chapter 6, section 5(2), of the Criminal Procedure Act stipulates, *inter alia*, that it is the court's task to see to it that a case is dealt with in a coherent and orderly manner. It shall also see to the appropriateness of the proceedings and that no irrelevant issues will be introduced.

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

The 8th General Report [CPT/Inf (98) 12]

132. Paragraph 41 of the CPT report concerns the consent of a patient to treatment given in a mental hospital. It reads as follows:

"Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed; to describe ECT as "sleep therapy" is an example of less than full and accurate information about the treatment concerned. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment."

Visits to the State mental hospitals in Finland

133. The CPT visited Finland from 7 to 17 September 2003, the Niuvanniemi State mental hospital being among the establishments visited. In paragraph 144 of its report, published on 14 June 2004, the CPT made the following remark:

"As regards safeguards, the procedures concerning the mental examination of persons accused of a crime and the initial placement of such persons offered, overall, adequate guarantees of independence and impartiality as well as objective medical expertise. By contrast, the manner in which an order for treatment in respect of both civil and forensic patients was being renewed would merit a reassessment. The CPT considers that the periodic review of an order to treat a patient against his/her will in a

psychiatric hospital should involve a psychiatric opinion which is independent of the hospital in which the patient is detained."

134. On its next visit to Finland, between 20 and 30 April 2008, the CPT visited, *inter alia*, the Vanha Vaasa State mental hospital and another psychiatric establishment. In its report, published on 20 January 2009, the CPT made, *inter alia*, the following remarks and recommendations:

"...

126 - In both establishments, the use of psychiatric medication appeared appropriate. As regards the Vanha Vaasa Hospital, the current rhythm of formal multidisciplinary clinical review (twice a year) is not sufficient. Staff representing different specialties (psychiatrists, nurses, psychologists, occupational and work therapists, social workers) should all meet and discuss each patient's condition and progress on a more frequent basis. The CPT recommends that steps be taken in the light of these remarks.

...

140 - Involuntary hospitalisation of a psychiatric patient continued to be construed as automatically authorising treatment without his/her consent. In practice, doctors in the two psychiatric establishments visited sought to obtain patients' *verbal* consent to treatment, but there was no *written* proof that such informed consent had been given. Further, a patient's refusal or subsequent withdrawal of consent to treatment did not result in an external independent psychiatric review as to whether treatment could be provided against the patient's will. In addition, patients could not appeal against such decisions to a court.

The CPT recommends that a special form relating to informed consent to treatment, signed by the patient and (if he is incompetent) by his legal representative, be introduced at the ... and the Vanha Vaasa Hospital (as well as in all other psychiatric establishments in Finland). The relevant legislation should be amended so as to require an external psychiatric opinion in any case where a patient does not agree with the treatment proposed by the establishment's doctors; further, patients should be able to appeal against a compulsory treatment decision to the court.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION CONCERNING INVOLUNTARY CONFINEMENT

135. The applicant complained that her right to liberty had been breached in that as from 17 February 2005 she had been unlawfully confined to a mental hospital, though she had not been in need of involuntary care. She also complained that her detention in the hospital for

the purpose of conducting a psychiatric examination prior to that confinement had been unlawful. She invoked Article 5 of the Convention, which reads in relevant parts:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ..."

136. The Government contested the argument concerning the applicant's involuntary confinement as from 17 February 2005. No observations were requested from the Government in respect of the other periods.

A. Admissibility

1. The submissions of the parties

(a) The applicant

137. The applicant argued that she had been held in the mental hospital without a legitimate reason. Her psychiatric examination had not been ordered for the purpose of determining her mental state at the time of the alleged offence, as required by law, but in accordance with the public prosecutor's plan to lock her up. In ordering her psychiatric examination, and in maintaining that order, the national courts had ignored the medical opinion issued in December 2002 by Dr K.A., which clearly showed that there was no need for such an examination as the applicant was healthy.

138. The confinement for involuntary treatment which followed had also been unlawful and unnecessary. Dr K.A., Drs E.P. and M-P.H. in October 2005 and the doctors in the Helsinki University Hospital in October 2006 had confirmed that the applicant did not suffer from any psychiatric disorder and that there was no need for involuntary care. Dr A.K., who had conducted the psychiatric examination leading to the applicant's confinement, had erred in his assessment and in his understanding of the background to the case. Dr A.K. was not an

experienced physician. He had only obtained his degree in forensic psychiatry on 5 July 2004, that was, some three months prior to examining the applicant. Moreover, the applicant had not been heard in person before the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs prior to confirming Dr A.K.'s opinion regarding the applicant's need for involuntary care.

139. The applicant had not been given the opportunity to obtain a second opinion until October 2005. Such practice had been criticised by the CPT. Dr M-P.H. had agreed to conduct an examination of the applicant in the Vanha Vaasa hospital in February 2005, but the hospital had not allowed that. According to the applicant she had been refused visits by outside doctors for the sole purpose of protecting the hospital doctors who had made a wrong diagnosis. Very soon after the visit of two independent doctors to the Vanha Vaasa hospital the applicant had been moved to an open ward and granted permission to leave the hospital.

140. The applicant argued that taking into account her age, her profession and her family relations, the decision to confine her to involuntary care had been disproportionate. The applicant had been placed in a closed ward with seriously ill patients with criminal backgrounds. The applicant herself was an experienced doctor who had, *inter alia*, been the head physician in a mental hospital and a member of the Board for Social and Health Affairs in her home town. Not a single complaint had been lodged by her patients about her work.

(b) The Government

141. The Government submitted firstly that a delusional disorder is a serious psychosis and very often necessitates hospital care.

142. The Government argued that the fact that the applicant had been of unsound mind and in need of involuntary care had been established conclusively by the authorities and upheld on appeal. A failure to commit her to care would have significantly aggravated her illness and seriously endangered her health and the health of others. Other health care services had not been considered sufficient. The requirements set out in the Mental Health Act for involuntary care had thus been met and the measures taken by the authorities had been lawful. There had been no arbitrariness in the decision-making leading to the applicant's confinement. The matter fell within the margin of appreciation accorded to the State. The applicant's involuntary confinement had been proportionate and in accordance with Article 5 § 1 (e) of the Convention.

143. As to Dr K.A.'s medical opinion of 30 January 2002, the Government stressed that, according to the doctor himself, the opinion had been given on the basis of two meetings with the applicant and without trying to conduct a thorough psychiatric examination. Such an examination would have been necessary in order to make an evaluation of the applicant's

mental condition. In any case, the applicant had brought the medical opinion of Dr K.A. to the attention of the National Authority for Medico-legal Affairs and its Board for Issues of Forensic Psychiatry, which had been able to take it into account in their decision-making. The examination of the applicant conducted at Helsinki University Hospital in 2006 could not be given much weight as the adequacy of the findings was affected by the applicant's refusal to have her previous medical records transferred from the Vanha Vaasa hospital.

2. The Court's assessment

(a) Recapitulation of the relevant principles

144. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33, *Wassink v. the Netherlands*, 27 September 1990, § 24, Series A no. 185-A, and more recently, *Bik v. Russia*, no. 26321/03, § 30, 22 April 2010).

145. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can, and should, exercise a certain power of review of such compliance (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III, and *Bik v. Russia*, cited above, § 31).

146. While the Court has not previously formulated a global definition of what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is moreover clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (*Saadi v. the United Kingdom* [GC], no. 13229/03, § 68, ECHR 2008-...).

147. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities. The condition that there be no arbitrariness further demands that both the order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1. There must in addition be some relationship

between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (*ibid*, § 69 with further references).

148. The requirement of lawfulness laid down by Article 5 § 1 (e) ("lawful detention" ordered "in accordance with a procedure prescribed by law") is not satisfied merely by compliance with the relevant domestic law; domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it, particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention. The notion underlying the expression "in accordance with a procedure prescribed by law" requires the existence in domestic law of adequate legal protections and "fair and proper procedures" (see, among other authorities, *Winterwerp v. the Netherlands*, cited above, § 45).

149. Moreover, the Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, cited above, § 39; *Johnson v. the United Kingdom*, 24 October 1997, § 60, *Reports of Judgments and Decisions* 1997-VII; and more recently, *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, 17 January 2012).

150. In deciding whether an individual should be detained as a "person of unsound mind", the national authorities have a certain margin of appreciation regarding the merits of clinical diagnoses since it is in the first place for them to evaluate the evidence in a particular case: the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp v. the Netherlands*, cited above, § 40, *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75, and more recently, *Witek v. Poland*, no. 13453/07, § 39, 21 December 2010).

151. The detention of an individual is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III; *Varbanov v. Bulgaria*, no. 31365/96, § 46, ECHR 2000-X; and *Stanev v. Bulgaria*, cited above, § 143).

(b) Application of those principles to the psychiatric examination

152. The Court observes that the domestic law in force at the time, like the provisions currently in force, contained provisions empowering the courts to commit a person for compulsory confinement for the purpose of effecting a psychiatric examination (see paragraphs 116 and 117 above; compare and contrast, *Varbanov v. Bulgaria*, cited above, § 50). In this part,

the applicant's complaint falls to be examined under Article 5 § 1 (b) of the Convention, which allows the Contracting States to order the arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.

153. It is the applicant's firm view that she was ordered to undergo a psychiatric examination in accordance with the public prosecutor's plan to lock her up. The Court cannot, however, uphold the applicant's allegation of bad faith on the part of the authorities. Firstly, the decision was taken independently by the District Court, which was in no way bound by the prosecutor's opinion on the need to conduct a psychiatric examination of a person. Secondly, the Court accepts that the purpose of the court order of 25 October 2002 requiring the applicant to undergo a psychiatric examination was intended to determine whether she had been capable of being criminally responsible at the time of committing the offence with which she was charged and was in conformity with the need to ensure the proper conduct of the criminal proceedings against the applicant. Indeed, having found the applicant responsible for the alternative charge, the District Court refrained from passing sentence on her on the ground of her lack of criminal responsibility as established on the basis of her psychiatric examination.

154. As to Dr K.A.'s medical opinion of December 2002, submitted to the District Court after it had given the order, the Court notes that according to the doctor himself he had only met the applicant twice and had not carried out a full psychiatric examination of her. The Court cannot therefore agree that Dr K.A.'s medical opinion should have resulted in the domestic courts' revocation of the order requiring the applicant to undergo a proper psychiatric examination, as the applicant seems to suggest.

155. The Court observes that the psychiatric examination was conducted in a hospital in accordance with section 15 of the Mental Health Act.

156. The Court further observes that section 16(2) of the Mental Health Act provides for a time-limit of two months for the completion of the psychiatric examination of a person accused of a crime. An additional two months' extension may be granted by the National Authority for Medico-legal Affairs if reasonable grounds for doing so exist. In this case, that authority requested Dr A.K. to continue the psychiatric examination of the applicant beyond the initial two months period, being of the view that further tests should be conducted and more information obtained before a decision in the matter could be taken. The Court notes that although the time spent by the applicant against her will in the Vanha Vaasa hospital for the purpose of conducting the psychiatric examination may seem lengthy, from 11 November 2004 to 17 February 2005, it was covered by the court order of 25 October 2002 and it did not exceed the maximum period defined in the law. The continuation of her detention for that purpose was at all

times under the supervision of the National Authority for Medico-legal Affairs.

157. Having regard to the above, the Court cannot uphold the applicant's allegation that her detention in the Vanha Vaasa hospital between 11 November 2004 and 17 February 2005 for the purpose of conducting a psychiatric examination was unlawful. It follows that this complaint must be declared inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(c) Application of those principles to the confinement to involuntary care

158. The Court considers that the question whether the applicant's confinement to involuntary care as of 17 February 2005 complies with the requirements of Article 5 § 1 of the Convention is not manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits of the complaint concerning the applicant's confinement to involuntary care

159. Having found inadmissible the applicant's complaint concerning her detention in the Vanha Vaasa hospital between 11 November 2004 and 17 February 2005, effected for the purpose of conducting a psychiatric examination, the Court will now restrict its examination, under Article 5 § 1 (e) of the Convention, to the time spent by the applicant in that hospital for the purpose of providing her with involuntary treatment.

160. The Court notes that the decision of 17 February 2005 to place the applicant in involuntary hospital care was not taken by the District Court, but by a different independent authority, namely the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs. The Court will first examine whether the deprivation of the applicant's liberty in that part was in accordance with the domestic provisions and the procedure prescribed by domestic law.

161. The Court notes that the decision-making power of the National Authority for Medico-legal Affairs derives from sections 8 and 17(1) of the Mental Health Act.

162. The Court notes that the Board based its assessment in the present case on the need for the applicant's confinement to involuntary care on the psychiatric examination of the applicant and the recommendation made by Dr A.K., who had conducted that examination. The Board considered that the applicant was suffering from a delusional disorder, which had motivated her for years and which made her incapable of seeing a matter from a viewpoint other than her own and of questioning the correctness of her own conclusions. The delusional disorder, if not treated, would have

considerably aggravated her mental illness or seriously endangered her health and the health of others. In the view of the Board, no other mental health services were sufficient as the applicant did not consider herself to be mentally ill. That decision was, after an oral hearing, affirmed by the Supreme Administrative Court on 13 October 2005 (see paragraph 72 above).

163. The Court further notes that the applicant's involuntary confinement was continued for about five months after the initial care order was implemented. The decision of 22 July 2005 to continue the applicant's care was made, in compliance with the national law, by the head physician of the Vanha Vaasa hospital after having obtained a medical observation statement by another physician of that establishment. That decision was both confirmed and upheld on appeal by the Administrative Court on 31 October 2005 and appealed further to the Supreme Administrative Court.

164. The Court notes that another decision to continue the applicant's involuntary care was taken on 20 January 2006 by the head physician of the Vanha Vaasa hospital. The applicant appealed also against this decision to the Administrative Court even though she was in fact discharged from the hospital on 27 January 2006.

165. Having regard to the events set out above, the Court observes that the decision to confine the applicant into involuntary care was made by an independent administrative body with both legal and medical expertise (see paragraph 122 above) and that it was based on a thorough psychiatric examination carried out in a mental hospital by a physician, Dr A.K., who did not take part in the actual decision-making. The Court is satisfied that the decision-making at the national level also followed the procedure prescribed by domestic law at all times and takes note of the domestic courts' findings that the applicant's confinement, and the continuations thereof, were lawful.

166. However, as stated above, the Court must review the compliance of domestic decisions with Article 5 § 1 (e) of the Convention, in particular with whether the notion "in accordance with a procedure prescribed by law" meets the "quality" requirements of the legal rules applicable in the instant case.

167. The Court considers it clear that the domestic legal basis for the applicant's detention from 17 February 2005 onwards was section 17 of the Mental Health Act. As to the quality of the law, the Court notes that the requirements of the accessibility and the foreseeability of the law do not raise any problems in the instant case. However, the Court reiterates that the law in question must also be "compatible with the rule of law". In the context of deprivation of liberty, the domestic law must provide some protection to the individual against arbitrary interference with his or her rights under Article 5.

168. The Court recalls that where the decision to deprive an individual of his liberty is one taken by an administrative body, that individual is entitled to have the lawfulness of the decision reviewed by a court (see *mutatis mutandis Luberti v. Italy*, cited above, § 31). The Court finds that the initial confinement of a "forensic" patient, after a psychiatric examination, to an involuntary treatment in a mental hospital by the Board for Forensic Psychiatry of the National Authority for Medico-legal Affairs, whose decision is subject to independent judicial review, does not appear to be problematic from the point of view of the rule of law. However, as concerns the continuation of such treatment, there were no adequate safeguards against arbitrariness.

169. The Court first draws attention to the fact that, in the present case, the decisions to continue the applicant's involuntary confinement after the initial care order were made by the head physician of the Vanha Vaasa hospital after having obtained a medical observation statement by another physician of that establishment. In the Finnish system the medical evaluation is thus made by two physicians of the same mental hospital in which the patient is detained. The patients do not therefore have a possibility to benefit from a second, independent psychiatric opinion. The Court finds such a possibility to be an important safeguard against possible arbitrariness in the decision-making when the continuation of confinement to involuntary care is concerned. In this respect the Court also refers to the CPT's recommendation that the periodic review of an order to treat a patient against his or her will in a psychiatric hospital should involve a psychiatric opinion which is independent of the hospital in which the patient is detained (see paragraph 133 above). This covers all of the criteria in section 8 of the Mental Health Act.

170. Secondly, the Court notes that the periodic review of the need to continue a person's involuntary treatment in Finnish mental hospitals takes place every six months. Leaving aside the question whether a period of six months can be considered as a reasonable interval or not, the Court draws attention to the fact that, according to section 17(2) of the Mental Health Act, this renewal is initiated by the domestic authorities. A patient who is detained in a mental hospital does not appear to have any possibilities of initiating any proceedings in which the issue of whether the conditions for his or her confinement to an involuntary treatment are still met could be examined. The Court has found in its earlier case-law that a system of periodic review in which the initiative lay solely with the authorities was not sufficient on its own (see *mutatis mutandis Rakevich v. Russia*, no. 58973/00, §§ 43-44, 28 October 2003; and *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005). In the present case this situation is aggravated by the fact that in Finland a care order issued for an involuntary hospitalisation of a psychiatric patient is understood to contain also an

automatic authorisation to treat the patient, even against his or her will. A patient cannot invoke any immediate remedy in that respect either.

171. The Court considers, in the light of the above considerations, that the procedure prescribed by national law did not provide in the present case adequate safeguards against arbitrariness. The domestic law was thus not in conformity with the requirements imposed by Article 5 § 1 (e) of the Convention and, accordingly, there has been a violation of the applicant's rights under that Article in respect of her initial confinement to involuntary care in a mental hospital.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION CONCERNING THE APPOINTMENT OF A TRUSTEE

172. The applicant also complained of a violation of her right to a fair hearing in that she had not been given an opportunity to be heard in person on the need for the appointment of a trustee in the criminal proceedings against her. She had not been allowed to choose her own representative and in consequence her defence had suffered. She had lost both her right to plead and her right of self-determination. The trustee had not requested the District Court to hear the applicant in person about the erroneous medical opinion by Dr A.K., nor had he contested before the court the correctness thereof. The trustee had not referred to the second opinions by medical experts. He had not requested an oral hearing in the Court of Appeal, nor the hearing before the trial courts of witnesses proposed by the applicant. The applicant had never met the trustee appointed for her and he had not returned her calls or agreed to co-operate with her family and friends.

173. The applicant relied on Article 6 of the Convention, which reads in relevant parts:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing...;
>
> ..."

174. The Government contested the applicant's argument concerning the lack of an oral hearing in appointing the trustee. No observations were requested from the Government as regards the other complaints under this heading.

Admissibility

1. The submissions of the parties

(a) The applicant

175. The applicant argued that she had not been in need of a trustee, as she was healthy. This had been evident from the medical opinion given by Dr K.A., which the applicant had submitted to the District Court. That court should have exercised caution in taking decisions based on the psychiatric examination by Dr A.K., as it contained an erroneous description of the suspected offence and was merely his own opinion. The applicant had informed the District Court that the psychiatric examination had, in the first place, been conducted according to the prosecutor's plan to place her in involuntary care.

176. As to the person and conduct of the trustee appointed, the applicant submitted that Mr M.S. was known as a business lawyer and was by no means the right person to take on a case concerning suspicion of sexual abuse of a child. He had not requested to hear any witnesses, nor referred to divergent expert medical evidence on the applicant's behalf. He had not contested the psychiatric examination conducted by Dr A.K. either. In effect, Mr M.S. had not acted in her defence, but, rather, had worsened her position. Having regard to the nature of the case and the consequences to the applicant it would have been particularly important to hear her as to the correctness of the psychiatric examination and the need to appoint a trustee.

(b) The Government

177. The Government argued firstly that the appointment of a trustee did not involve a determination of the applicant's civil rights and obligations or of any criminal charge against her. It followed that Article 6 was not applicable in that part. Were the Court to take a different view on the matter, the applicant's complaint about the lack of an opportunity to be heard in person on the need for the appointment of a trustee was, nevertheless, manifestly ill-founded for the reasons set out below.

178. The Government submitted that the District Court had taken the matter into consideration of its own initiative following the procedure in the matter of petitions, as provided by the Code of Judicial Procedure. Such matters were examined in a written procedure or at a hearing. An oral hearing must be held if a party to the case so requests or the District Court considers it necessary. The documents available to the Government did not suggest that the applicant had requested a hearing before the District Court. The applicant had been provided with the opportunity to give her comments in writing, and she had done so. Having regard to the opinion on the need to appoint a trustee expressed by the National Authority for Medico-legal

Affairs and the applicant's written comments, holding an oral hearing had not, in the Government's view, been necessary. Moreover, the applicant had, at the detention hearing of 15 October 2004, and on a number of occasions during the criminal proceedings, argued before the court, in person, that she was in good health. She had thus had several opportunities to express orally before the District Court her opinion on the need to appoint a trustee, and she had also taken advantage of those opportunities. Having regard to the fact that appointing a trustee for the purposes of criminal proceedings was a subordinate decision in the context of otherwise oral proceedings, the procedure followed by the District Court had satisfied the requirements of a fair trial.

179. The Government further submitted that in her submissions to the Court of Appeal the applicant had requested an oral hearing failing, however, to give any reasons for that request or to state her opinion on the persons to be heard before the court. The Court of Appeal had examined the applicant's appeal in written proceedings without giving a separate ruling concerning her request for an oral hearing, as there had been no grounds for holding one. The Government argued that the obligation under Article 6 § 1 to hold an oral hearing was not absolute and, in the exceptional circumstances of the present case, dispensing with an oral hearing had been justified, as it could not have provided any relevant information for the determination of the issue at hand.

2. The Court's assessment

180. The Court does not consider it necessary to examine the Government's preliminary objection concerning the admissibility of this complaint on grounds of alleged incompatibility *ratione materiae* with the provisions of the Convention, as it finds it, in any case, inadmissible for the reasons set out below.

(a) Recapitulation of the relevant principles

181. The Court first notes that the guarantees in Article 6 § 3 are specific aspects of the right to a fair trial in criminal proceedings set forth in Article 6 § 1. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom*, cited above, § 52).

182. The Court reiterates that the decision to allow an accused to defend himself or herself in person or to assign him or her a lawyer falls within the margin of appreciation of the Contracting States, which are better placed than the Court to choose the appropriate means by which to enable their judicial system to guarantee the rights of the defence. The compulsory assignment of a lawyer is a measure taken in the interests of the accused designed to ensure the proper defence of his interests. The domestic courts are therefore entitled to consider that the interests of justice require the

compulsory appointment of a lawyer (see *Correia de Matos v. Portugal* (dec.), no. 48188/99, ECHR 2001-XII; see also *Croissant v. Germany*, 25 September 1992, § 27, Series A no. 237-B).

183. Notwithstanding the importance of a relationship of confidence between a lawyer and his client, the right to choose one's own counsel cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (see *Croissant v. Germany*, cited above, § 29).

184. However, the appointment of defence counsel does not necessarily settle the issue of compliance with the requirements of Article 6 § 3 (c). Although the conduct of the defence is essentially a matter between the accused and his counsel, the competent national authorities are required to intervene if a failure by public defence counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see, among other authorities, *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168).

(b) Application of those principles to the present case

185. The Court observes that the decision of the District Court to appoint the applicant a trustee for the criminal proceedings was made *ex proprio motu* and in accordance with Chapter 12, Article 4a, of the Code of Judicial Procedure. The court's decision was based on the statement of the National Authority for Medico-legal affairs, where it was indicated that the applicant's capability to attend to her interests in the ongoing criminal proceedings was reduced due to her mental illness. That statement, in turn, was based on the full psychiatric examination of the applicant carried out by Dr A.K. As stated above, the domestic courts are entitled to consider that the interests of justice require the compulsory appointment of a lawyer. Having regard, in particular, to the fact that the National Authority for Medico-legal Affairs is an independent body with medical expertise, the Court finds no reason to doubt that, in following that authority's recommendation to appoint the applicant a trustee, the District Court aimed to act in the best interests of the applicant and for the purpose of guaranteeing her a competent and effective defence.

186. The Court also observes that prior to the appointment of the trustee, the District Court provided the applicant with an opportunity to give her opinion, both as regards the need for the appointment of a trustee and the person whom the court considered suitable for the task. In her written submission the applicant merely stated her opposition, without giving any

reasons. In that statement, the applicant did not request the District Court to hold an oral hearing, nor has any other document containing such a request been submitted to the Court.

187. The Court further observes that the applicant appealed against the District Court's decision and requested that the Court of Appeal hold an oral hearing. However, as pointed out by the Government, and not contested by the applicant, she failed to give any reasons for that request; nor did she name any persons to be heard before the appellate court. It has been established in the Court's case-law that Article 6 § 1 does not guarantee an absolute right to an oral hearing and that the nature of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court (see, *inter alia*, *Jussila v. Finland* [GC], no. 73053/01, § 41-43, ECHR 2006-XIII). The Court notes that Finnish law allows the Court of Appeal to dispense with an oral hearing where, *inter alia*, only a procedural matter is to be decided or the hearing is for another reason considered manifestly unnecessary. The Court notes that at this stage of the proceedings, the Court of Appeal was merely called upon to examine whether the applicant was in need of a trustee for the criminal proceedings. The Court observes that the appellate court examined the applicant's appeal based on her own submissions and that she was thus not prevented from putting forward any argument she wished to make to that court, even regarding her views concerning the correctness of the psychiatric examination and her state of health. It is difficult to see how an oral hearing would have shed any more light on the matter having regard, in particular, to the fact that the applicant did not name any witnesses to be heard before the court.

188. Having regard to the clear finding of the National Authority for Medico-legal Affairs that the applicant was in need of legal assistance due to her mental illness, and the fact that the applicant was given the opportunity to express her view on the matter in writing, the Court finds that neither the District Court nor the Court of Appeal were required to hear the applicant in person concerning the appointment of a trustee.

189. As to the choice of Mr M.S. as the applicant's trustee, the Court firstly observes that he was, at the time, the applicant's court-appointed public defender and was thus already familiar with the case. The applicant failed to name any other person whom she considered suitable to be appointed trustee. Although the District Court did not reason Mr M.S.'s suitability in detail, the Court observes, at the outset, that he was a lawyer and an experienced member of the Finnish Bar. While the applicant claims before the Court that Mr M.S. was known as a business lawyer, it has not been alleged that he had no experience in other fields of law. Moreover, the Court appreciates that the domestic courts, which have better knowledge of the national system and the representatives available, are better placed to

assess whether a particular person meets the formal criteria set out in the law.

190. The Court notes that the applicant is critical of her defence provided by Mr M.S. The Court notes, firstly, that as the applicant's trustee Mr M.S. was solely responsible for ensuring that the applicant received the best possible defence in the circumstances of the case. Having regard to the clear finding of the National Authority for Medico-legal Affairs that the applicant was unable to take care of her defence due to her mental condition, it is the Court's view that Mr M.S. had not been obliged to follow her advice as to the procedural measures to be taken in her defence. Moreover, there is no evidence to suggest that the applicant's defence was so insufficient that the domestic authorities should have intervened. The Court will revert to that matter in further detail below.

191. To summarise, the Court finds that the appointment to the applicant of a trustee, albeit against her will, was not in contravention of the requirements of a fair trial. Neither the appointment of Mr M.S. for that task, nor the fact that the applicant could only comment in writing when the trustee was appointed, disclose a breach of Article 6 § 1 of the Convention, assuming the applicability of that provision. It follows that, in this part, the application must be declared inadmissible as manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION CONCERNING EXAMINATION OF WITNESSES IN THE CRIMINAL PROCEEDINGS

192. The applicant also complained that she had been deprived of the right to have witnesses examined on her behalf, as the District Court had refused to receive testimony from witnesses proposed by her and the Court of Appeal had dispensed with an oral hearing altogether. The relevant part of Article 6 of the Convention reads:

> "...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

Admissibility

1. The submissions of the parties

(a) The applicant

193. The applicant submitted that she had been deprived of the right to organise her defence properly against false charges and to prove her innocence. None of the witnesses proposed by her was heard before the trial courts. The applicant's public defender Ms M.K., appointed against her wishes, had not contested the court's decision not to hear five witnesses proposed by her in the main hearing in October 2002. The appointment on 2 March 2005 of Mr M.S. as her trustee had the consequence that no witness testimony was received after that date, even though the applicant had submitted to both trial courts a list of 18 witnesses whom she wished to have heard. On the basis of that oral evidence the applicant could have proved that there had been a valid reason to believe that sexual abuse of the child had taken place and, in fact, several experts had suspected such. Witness testimony would also have shown that the applicant had not participated in the alleged kidnapping of V. in [town A] on 16 December 2000 and that she had not transported the child and her mother in her car on that day. By hearing her witnesses the applicant would also have proved that she and V.'s mother were healthy and that the allegations that she had been suffering from delusions made by the prosecutor and Dr A.K. had been false. The applicant had not been present at the District Court's hearing of 14 March 2005 because Mr J.R., whom she had wanted to hear as a witness, had been removed by force from the court premises on the orders of the presiding judge. After that incident the applicant had been so shocked that she had felt unable to participate in the hearing, having in mind the District Court's announcement that her presence was not required.

(b) The Government

194. The Government noted that at its main hearing on 24 October 2002 the District Court had refused to receive testimony from the five witnesses proposed by the applicant as it had considered their evidence irrelevant. The Government pointed out that, according to Chapter 6, section 5(2), of the Criminal Procedure Act, the court had to ensure that a case was dealt with in an appropriate manner and that no irrelevant issues were brought before it. As to the hearing of 14 March 2005, the applicant had submitted to the court a list of 18 witnesses she wished to examine. The applicant had been represented at that hearing by Mr M.S. who had, in his capacity as a court-appointed trustee, withdrawn the request to hear those witnesses. The applicant herself had voluntarily left the court after Mr J.R. had been asked to leave the premises.

195. As to the appeal proceedings, the Government submitted that the Court of Appeal had, in conformity with Chapter 26, Article 14(2)(4), of the Code of Judicial Procedure rejected the applicant's request for an oral hearing as manifestly unnecessary. In the Government's view there was no need to hear a party or receive other evidence where an appeal had no prospects of success. A hearing could be dispensed with in a case where, for example, a party wished to produce evidence concerning a fact which would not have a bearing on the court's decision. The Government stressed that under Finnish law the Court of Appeal was obliged to hold an oral hearing only in cases where the appeal raised questions of credibility of witness testimony or the findings of a judicial inspection, or where fresh evidence was to be admitted. In this case the applicant had merely challenged the conclusions drawn by the District Court on the basis of undisputed evidence.

2. The Court's assessment

196. The Court will again examine the applicant's complaint under Articles 6 §§ 1 and 3 taken together (see paragraph 181 above).

197. The Court firstly observes that at its main hearing, held in October 2002, the District Court received testimony from the applicant, the other defendants, V.'s father, and ten witnesses. It has not been alleged by the applicant that she was refused the opportunity to put questions to all those persons in the course of that adversarial hearing, at least through Ms M.K., her public defender at the time. The District Court rejected the testimony of the five witnesses proposed by the applicant, finding their evidence irrelevant. The applicant's public defender, Ms M.K., an independent member of the Bar, did not object to the court's decision.

198. The Court reiterates that while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports* 1998-IV; *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX; and *Bykov v. Russia* [GC], no. 4378/02, § 88, ECHR 2009-...). Furthermore, it is not sufficient for a defendant to complain that he has not been allowed to question certain witnesses; he must, in addition, support his request by explaining why it is important for the witnesses concerned to be heard and their evidence must be necessary for the establishment of the truth (see *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). The Court further takes note of the obligation of the Finnish courts, as pointed out by the Government, to ensure that no irrelevant issues are introduced into the proceedings. Having regard to the above-mentioned circumstances, and in the absence of convincing reasons given by the applicant for the necessity of receiving the testimony of the five witnesses in question, the Court accepts

that the District Court cannot be regarded as having exceeded its discretionary powers in refusing the oral evidence proposed by the applicant at the main hearing.

199. The Court next observes that later in March 2005, after the completion of the psychiatric examination of the applicant and the appointment of Mr M.S. as her trustee, the applicant submitted to the District Court a list of 18 witnesses to be heard at the final hearing before that court to be held on 14 March 2005. No witnesses were heard at that hearing, as the applicant's trustee did not find it necessary to call witnesses. The applicant, whose presence was no longer obligatory at that stage, had left the court before the hearing began. No formal decision on the applicant's request was taken by the District Court. The Court has already found that it had been justified for the District Court to appoint a trustee for the applicant due to her mental condition. The Court emphasises that by virtue of that decision the applicant's defence had been entrusted solely to Mr M.S., an independent member of the Bar, and it was for him to choose the best defence strategy without being constrained by the applicant's own views on the hearing of witnesses. The Court also recalls its previous finding that there is no evidence that Mr M.S.'s conduct of the applicant's defence was manifestly deficient.

200. As to the proceedings before the Court of Appeal, the applicant's trustee Mr M.S. had taken the view that the appeal could be examined in written proceedings. The Court finds that also in the appellate proceedings, as in the proceedings before the District Court, it had been for Mr M.S. to choose the best course of action for organising the applicant's defence. There is nothing to indicate that his conduct of the appeal proceedings had been in any way deficient.

201. In the light of the above observations, the Court cannot conclude that the domestic courts acted in breach of Articles 6 §§ 1 and 3(d) in refusing to hear the witnesses proposed by the applicant and finds that also this complaint must be declared inadmissible as manifestly ill-founded. It must therefore be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION CONCERNING FORCED ADMINISTRATION OF MEDICATION

202. The applicant further complained that she had been subjected to forced administration of medication in breach of Article 3 of the Convention.

203. The Government contested that argument.

204. The Court considers that, having regard to all the circumstances of the case, the current complaint concerns the applicant's private life and

should be examined under Article 8 of the Convention, which reads in relevant parts:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

205. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

206. The applicant argued that she was healthy and had not been in need of medication. She had been 62 years old at the time and the forced medication had caused her serious harm and health problems, which had persisted for a year after she had returned home. The manner in which the medication was administered had been very violent. The applicant had long and wide-ranging experience in the field of medicine and was thus able to identify the errors made by the doctors in the Vanha Vaasa hospital. This had further added to her suffering. Also, in his medical opinion of 25 October 2005 Dr M-P.H. expressed his view that the forced medication of the applicant constituted assault. Only in November 2005, after the visit to the hospital by two independent doctors, had the dosage of medication been reduced. The only comfort the applicant had in the hospital was the knowledge of the upcoming visits of those doctors and of the possibility of obtaining a second opinion. The forced medication had affected the applicant's possibilities to have a fresh psychiatric examination conducted, as she had to wait until the side effects of the medication had gone, and that was in September 2006.

(b) The Government

207. The Government accepted that the forced medication of the applicant had interfered with her right to respect for her private life. It had, however, pursued the legitimate aim of protection of health and the rights and freedoms of others. The impugned measure had been based on law, namely section 8 of the Mental Health Act, which had been both accessible and foreseeable. The Government also contended that the impugned measure had been necessary in a democratic society and it fell, in any case, within the margin of appreciation accorded to the State.

208. The Government referred to section 15 of the Act on Health Care Professionals in submitting that efforts should be made to help a person suffering from a mental illness even if he or she did not understand the need for care. Each health care professional had to weigh the benefits of their professional activity to the patient and its possible hazards.

209. The Government also submitted that, according to the applicant's patient records, she had opposed possible medical treatment even before the commencement of involuntary care. After the applicant's confinement, administration of medication by injections had been started due to her persistent refusal to take medication orally. Efforts were made by the hospital staff to provide care in mutual understanding with the applicant but, due to her opposition, those efforts had been unsuccessful. In time the applicant's attitude towards medication had become more flexible and, starting from November 2005, she had no longer physically resisted the administration of medication, although she had still objected to it verbally. At the end of the year she had also agreed to blood tests and during the Christmas holiday she had given herself an injection with the assistance of a nurse.

210. In the Government's view the applicant's treatment had been medically justified. The recommended dose of *Risperdal Consta*, which was used, *inter alia*, in the treatment of delusional disorder along with discussion therapy, was 25 milligrams injected into the muscle every two weeks, but some patients might benefit from larger doses of 37.5 or 50 milligrams. The Government argued that failure to give the applicant medication would have seriously endangered her health.

211. The Government further referred to a statement given on 7 July 2009 by the head physician of the Vanha Vaasa hospital, Dr M.E., in which the latter submitted that the applicant's health had improved little by little after medication had been started. She could, among other things, think more clearly about routine matters in her daily life instead of concentrating on drawing up extensive appeals or repeating time after time her view on the events leading to the criminal charges against her (document not submitted to the Court).

2. The Court's assessment

212. The Court reiterates that a medical intervention in defiance of the subject's will gives rise to an interference with respect for his or her private life, and in particular his or her right to physical integrity (see *Glass v. the United Kingdom*, no. 61827/00, § 70, ECHR 2004-II).

213. The Court also reiterates that any interference with an individual's right to respect for his or her private life will constitute a breach of Article 8, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" (see, *inter alia*, *Elsholz v. Germany* [GC], no. 25735/94, § 45, ECHR 2000-VIII). The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was "necessary in a democratic society" the Court will take into account that a margin of appreciation is left to the Contracting States. Furthermore, the Court cannot confine itself to considering the impugned facts in isolation, but must apply an objective standard and look at them in the light of the case as a whole (see, *inter alia*, *Matter v. Slovakia*, no. 31534/96, § 66, 5 July 1999).

214. The Court notes that in the case in hand it has not been disputed by the Government that the forced administration of medication constituted an interference with the applicant's right to respect for her physical integrity within the meaning of the first paragraph of Article 8. It thus remains to be determined whether the interference was justified under the second paragraph of that Article, namely whether it was in accordance with the law, whether it pursued a legitimate aim, and whether it could be regarded as necessary in a democratic society.

215. The Court notes that the expression "in accordance with the law", within the meaning of Article 8 § 2 requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see e.g. *Herczegfalvy v. Austria*, 24 September 1992, § 88, Series A no. 244).

216. As to whether there was a legal basis in Finnish law, the Court reiterates that in accordance with the case-law of the Convention institutions, in relation to Article 8 § 2 of the Convention, the term "law" is to be understood in its "substantive" sense, not its "formal" one. In a sphere covered by written law, the "law" is the enactment in force as the competent courts have interpreted it (see, *inter alia*, *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III). In this respect, the Court reiterates that its power to review compliance with domestic law is limited, it being in the first place for the national authorities, notably the courts, to interpret and apply that law (see, *inter alia*, *Chappell v. the United*

Kingdom, 30 March 1989, § 54, Series A no. 152-A). As submitted by the Government, section 8 of the Mental Health Act lays down the criteria for ordering the confinement of a person to involuntary care in a mental hospital. The Court would also observe that section 22b of that Act contains more detailed provisions on the treatment of mental illness. Its sub-section 3 stipulates that it is for the physician attending to the patient to decide on the treatment to be given, regardless of the patient's will. The Court is thus satisfied that the interference complained of had a legal basis in Finnish law.

217. As to the quality of the law, the Court notes that the requirements of the accessibility and the foreseeability of the law do not raise any problems in the instant case. However, the Court reiterates that Article 8 § 2 also requires the law in question to be "compatible with the rule of law". In the context of forced administration of medication, the domestic law must provide some protection to the individual against arbitrary interference with his or her rights under Article 8. The Court must thus examine the "quality" of the legal rules applicable to the applicant in the instant case.

218. The Court notes in the first place that section 22b of the Mental Health Act contains detailed provisions on the treatment of mental illness, and in particular, that it is for the physician attending to the patient to decide on the treatment to be given, regardless of the patient's will. According to the preparatory works of that provision (see the Government proposal HE 113/2001 vp), a care order issued for an involuntary hospitalisation of a psychiatric patient is understood to contain also an automatic authorisation to treat the patient, even against his or her will. Even though the doctors may seek to obtain a person's consent prior to the treatment, there is no obligation to have such consent in written form or to seek such consent from the patient's relatives or guardian/trustee. If a patient refuses to give his or her consent or withdraws previous consent, the provision allows forced administration of medication. This is, according to the preparatory works, in the interest of the patient in order to secure his or her constitutional right to necessary care in a situation in which the patient is not personally able to make a decision about the treatment due to his or her illness.

219. The Court also notes that the decisions taken by the treating doctor under section 22 b, subsection 3, of the Mental Health Act concerning medication of a patient are not subject to appeal. The applicant made a number of complaints to that effect to the National Authority for Medico-legal Affairs and the Chancellor of Justice. However, neither could intervene in the case. The latter transferred the complaints to the Parliamentary Ombudsman, who took the position that she could not intervene in a case which was already being examined by the National Authority for Medico-legal Affairs. That authority, in turn, confirmed in its reply of 15 July 2005, that it was not competent to interfere directly with the administration of medication or to order it to be discontinued as the power

of decision-making in such matters lay with the treating doctors. It seems that the State Provincial Office did not have such competence either.

220. The Court considers that forced administration of medication represents a serious interference with a person's physical integrity and must accordingly be based on a "law" that guarantees proper safeguards against arbitrariness. In the present case such safeguards were missing. The decision to confine the applicant to involuntary treatment included an automatic authorisation to proceed to forced administration of medication when the applicant refused the treatment. The decision-making was solely in the hands of the treating doctors who could take even quite radical measures regardless of the applicant's will. Moreover, their decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could require a court to rule on the lawfulness, including proportionality, of the forced administration of medication and to have it discontinued.

221. On these grounds the Court finds that the forced administration of medication in the present case was implemented without proper legal safeguards. The Court concludes that, even if there could be said to be a general legal basis for the measures provided for in Finnish law, the absence of sufficient safeguards against forced medication by the treating doctors deprived the applicant of the minimum degree of protection to which she was entitled under the rule of law in a democratic society (see *Herczegfalvy v. Austria*, cited above, § 91; and, *mutatis mutandis*, *Narinen v. Finland*, no. 45027/98, § 36, 1 June 2004).

222. The Court finds that in these circumstances it cannot be said that the interference in question was "in accordance with the law" as required by Article 8 § 2 of the Convention. There has therefore been a violation of Article 8 of the Convention.

223. Having regard to the above conclusion, the Court does not consider it necessary to review compliance with the other requirements of Article 8 § 2 in this case.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF FORCED MEDICATION

224. The applicant further complained under Article 13 of the Convention that she had not had an effective remedy to challenge the forced administration of medication. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

225. The Government contested that argument.

A. Admissibility

226. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

227. The applicant argued that she had used all the legal remedies available to her but they had proved ineffective. She had made a number of complaints to the National Authority for Medico-legal Affairs and the Chancellor of Justice. The latter had transferred them to the Parliamentary Ombudsman, who took the position that she could not intervene in a case which was already being examined by the National Authority for Medico-legal Affairs. That authority, in turn, had confirmed that it was unable to supervise forced medication and that the power of decision-making in such matters lay with the treating doctors. When the applicant filed a criminal complaint with the police, the National Authority for Medico-legal Affairs had prevented the opening of an independent investigation by submitting its statement to that authority. The forced medication had only been terminated after the visit by two doctors from outside the Vanha Vaasa hospital.

(b) The Government

228. The Government submitted that under Finnish law, decisions concerning the treatment of a patient, such as administration of medication, are considered factual administrative measures and cannot be appealed against. An appeal is possible where the law requires a separate decision to be made, for instance, if a person is ordered to be confined to involuntary psychiatric care. The Government submitted, however, that the applicant had access to a number of other legal remedies. She had the possibility to file an objection concerning her treatment with the director in charge of the health care unit or a complaint with the State Provincial Office, the National Authority for Medico-legal Affairs, the Parliamentary Ombudsman or the Chancellor of Justice. She also had the possibility to claim compensation under the Patient Compensation Act or the Tort Liability Act or to report her concerns to the police with a view to bringing charges. The Government pointed out that the applicant had had recourse to at least some of those legal remedies and her grievances had been examined by a number of

authorities. Moreover, the applicant had the right to appeal against the decision concerning her involuntary confinement and she had also availed herself of that opportunity. The administrative courts had assessed the matter carefully. The Government considered that the aggregate of all the remedies available to the applicant had been sufficient to satisfy the requirements of Article 13 of the Convention.

2. The Court's assessment

229. The Court reiterates that the applicant complained in essence about the lack of an effective remedy to challenge the forced administration of medication.

230. In view of the submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 8 of the Convention, the Court considers that there is no need to examine separately the complaint under Article 13 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

231. The Court notes at the outset that the applicant also made various other complaints under several Articles in numerous letters submitted to the Court between 2004 and 2008.

232. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

233. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

234. The applicant claimed 129,058.99 euros (EUR) in respect of pecuniary and EUR 1,000,000 in respect of non-pecuniary damage.

235. The Government noted that, as far as the pecuniary damage was concerned, the applicant had not specified her claims at all or provided any clarifications to support her claims, and that it was thus not possible to

verify that the alleged damage resulted from the alleged violations. The applicant had not submitted any proof of the payment of certain costs. Her claims should therefore be rejected. Should the Court find otherwise, the Government maintained that, in any event, there was no causal link between the damage claimed and the alleged violations. As concerned the non-pecuniary damage, the Government found the applicant's claim excessive as to quantum and considered that the award for non-pecuniary damage should not exceed the amount of EUR 5,000.

236. The Court finds that there is no causal link between the violations found and the alleged pecuniary damage. Consequently, the Court rejects the claim under this head. However, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

237. The applicant also claimed EUR 10,593 for the costs and expenses incurred before the domestic courts and EUR 46,555 for those incurred before the Court.

238. The Government noted that the applicant had not submitted any specifications of the measures performed or the hours used for each measure and that her claims should therefore be rejected. The fact that only a few of the applicant's complaints had been communicated to the Government should be taken into account in a reduction of costs and expenses to be reimbursed. In any event, the Government considered the applicant's claims excessive as to quantum and maintained that the award for costs and expenses should not exceed EUR 4,000 (inclusive of value-added tax) in respect of domestic proceedings and EUR 3,500 (inclusive of value-added tax) for those before the Court.

239. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,000 covering costs under all heads.

C. Default interest

240. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints concerning the applicant's confinement to involuntary care, forced administration of medication while in the hospital and the lack of an effective remedy in that respect admissible;

2. *Declares*, by a majority, the complaint concerning the alleged unlawfulness of the applicant's involuntary psychiatric examination inadmissible;

3. *Declares* unanimously the remainder of the application inadmissible;

4. *Holds* unanimously that there has been a violation of Article 5 § 1 of the Convention only in respect of the applicant's confinement to involuntary care after the initial six-month period;

5. *Holds* unanimously that there has been a violation of Article 8 of the Convention in respect of forced medication;

6. *Holds* unanimously that there is no need to examine the complaint under Article 13 of the Convention;

7. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President