Involuntary Medication and the Right to an Effective Remedy: Commentary on the Supreme Court Ruling KKO 2023:93

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ABSTRACT

Denna kommentar granskar rättsskyddet för patienter som utsätts för tvångsmedicinering inom psykiatrisk vård i Finland, med fokus på tillgången till och effektiviteten i efterhandsrättsmedel. Den lyfter fram att den finska lagstiftningen saknar materiella kriterier för tvångsmedicinering, vilket väcker oro både för det föregripande och det efterhandsbaserade rättsskyddet. Med utgångspunkt i Högsta domstolens avgörande KKO 2023:93 ifrågasätter analysen om den nya rättigheten att överklaga tvångsmedicinering – som trädde i kraft 2024 – ger ett verkningsfullt skydd i praktiken. Kommentaren jämför även den finska och svenska modellen och visar att båda systemen står inför olika men allvarliga utmaningar när det gäller att säkerställa patienters grundläggande rättigheter i psykiatrisk tvångsvård.

1. Introduction

This commentary examines a landmark Finnish Supreme Court case KKO 2023:93[1] concerning involuntary psychiatric medication and the availability of legal remedies to challenge such treatment. The central legal question was whether Finnish law provided adequate means for a patient to contest being medicated against their will, and if after-the-fact complaints (ex post remedies) were sufficient to protect the patient's rights. In Finland, involuntary medication is addressed only through fragmented regulation rather than a dedicated special law. The principal provisions are contained in the Mental Health Act,[2] which authorises involuntary treatment in general terms, and the Act on the Status and Rights of Patients[3] which establishes a patient's right to refuse treatment. However, neither statute explicitly defines the specific conditions under which forced medication may be administered. A recent legislative amendment, Section 22 b (4) of the Mental Health Act[4] requires that an administrative decision be issued if a patient opposes involuntary medication, thereby enabling an appeal to the administrative courts. Nevertheless, the substantive criteria concerning the necessity, proportionality, and permissibility of involuntary medication remain insufficiently defined, creating significant ambiguity in both clinical and legal practice.

Prior to the case of KHO 2023:93, a patient in involuntary psychiatric care could appeal the overall commitment decision being hospitalized involuntarily but not individual coercive measures like forced medication. This gap meant that once a patient was committed, doctors could administer medication without the patient's consent and without any immediate independent review. The case raised fundamental issues about patient autonomy vs. medical authority and how to ensure effective legal protection for patients subjected to coercive treatment.

1 The Supreme Court's decision KKO 2023:93 was preceded by the Vaasa Court of Appeal ruling of 11 May 2022, No. 191 (Vaaho 2022:8), which laid important groundwork for the case.

2 1116/1990.

3 785/1992.

4 Entered into force on 1 January 2024.

On 29 November 2023, the Finnish Supreme Court (KKO) issued a landmark judgment in case KKO 2023:93, addressing the legality and adequacy of legal remedies available to individuals subjected to involuntary psychiatric medication. The case concerned a person (A) who, during a period of involuntary hospitalisation, was administered psychotropic medication against their will. The central legal question before the Court was whether the Finnish legal framework provided A with sufficient access to justice, particularly whether there existed a possibility to contest the necessity and proportionality of the involuntary medication before an independent legal body.

The Court concluded that A's rights under Section 21 of the Finnish Constitution and Article 8 of the European Convention on Human Rights had been violated. The judgment reaffirms and operationalises the principles established in the European Court of Human Rights' decision in X v. Finland (2012), thereby offering significant insights into the interplay between national mental health law and human rights standards. This commentary examines the decision in light of domestic and international legal principles, reflecting on its implications for the Finnish legal system and for the broader Nordic legal context.

2. Legal and factual background

In June 2020, the applicant (A) was placed under involuntary psychiatric hospitalisation pursuant to the Finnish Mental Health Act. During this period, A was administered psychotropic medication without consent. The hospitalisation lasted until September 2020. In an effort to challenge the involuntary medication, A pursued multiple avenues of redress, including appeals to the administrative courts, and complaints to both Valvira (the National Supervisory Authority for Welfare and Health) and the Regional State Administrative Agency. However, none of these mechanisms offered a legal forum capable of reviewing or terminating the involuntary medication while it was ongoing.

Initially, the District Court rejected A's claim for compensation, reasoning that the existing complaint mechanisms were sufficient. On appeal, however, the Vaasa Court of Appeal found that A's fundamental rights had been violated due to the absence of an effective remedy. The

appellate court held that this constituted a breach of both Article 13 of the European Convention on Human Rights[5] and Section 21 of the Finnish Constitution. It awarded A €5,000 in compensation. The Supreme Court, while upholding the finding of a rights violation, reduced the compensation to €3,000. Its reasoning was grounded in Finnish constitutional doctrine and relevant jurisprudence of the European Court of Human Rights.[6]

Both European and Finnish human rights provisions were central to the case. Article 8 of the ECHR protects the right to respect for private life, including bodily integrity and personal autonomy. The ECtHR had already addressed the issue in *X v. Finland* (2012), a pivotal case which found that involuntary psychiatric medication amounts to a serious interference with personal integrity. In that judgment, the Court ruled that Finnish law, as it then stood, lacked sufficient safeguards. Specifically, an involuntary hospitalisation order automatically authorised forced medication without the need for separate legal justification. No mechanism existed for the patient to seek an immediate judicial review of the medication's legality or necessity. As a result, the ECtHR found a violation of Article 8, noting that the interference had not been "prescribed by law" in a manner compatible with Convention standards. The Court further observed that the patient's only option was to file complaints with authorities who lacked the power to stop or reverse the treatment.

In addition to Article 8, Article 13 of the ECHR requires states to provide an effective remedy for rights violations. Correspondingly, Section 21 of the Finnish Constitution guarantees everyone the right to have their case heard by a court or other independent tribunal and to receive legal protection when fundamental rights are at stake. Together, these provisions demand that individuals subjected to coercive medical measures must have access to timely and effective legal procedures to challenge those actions. The *X v. Finland* ruling made it clear that Fin-

5 The European Convention on Human Rights will hereafter be referred to by its standard abbreviation, *ECHR*.

6 The European Court of Human Rights will hereafter be referred to by its standard abbreviation, *ECtHR*.

land needed to establish a mechanism—judicial or independent—through which patients could contest forced medication decisions in real time.

3. From *X v. Finland* to Finnish courts: Developing the case

Despite the ECtHR's clear guidance in 2012, which urged Finland to remedy the deficiencies "without delay,"[7] legislative progress was slow. By 2020, when A was subjected to forced medication for over two months, no such legal mechanism had been established. As a result, A had no access to an independent judicial review to assess the lawfulness and proportionality of the treatment. He experienced adverse side effects and significant psychological distress, which was further compounded by the inability to legally challenge the ongoing intervention.

After being discharged from the hospital in September 2020, A initiated a claim for damages against the State of Finland, arguing that the lack of an effective legal remedy had violated his fundamental and human rights, as later confirmed by the 2022 judgment of the Vaasa Court of Appeal.[8] The case progressed through the Finnish judicial system, exposing conflicting views on what constitutes an "effective remedy." In the District Court, the state argued that A had several resources available, such as filing a written complaint to the chief medical officer[9] and lodging supervisory complaints with authorities like Valvira or the Parliamentary Ombudsman.[10] The court accepted this reasoning and dismissed A's claim, concluding that these channels satisfied the requirement for legal remedies.[11]

7 *X v. Finland*, ECtHR 2012, No. 34806/04, Judgment of 3 July 2012, paragraphs 220–223.

8 Judgment of the Vaasa Court of Appeal of 11 May 2022, No. 191 (Vaaho 2022:8).

9 Section 10 of the Act on the Status and Rights of Patients (785/1992).

10 This is governed in Section 10a of the Act on the Status and Rights of Patients, which governs a patient's right to file a complaint with a health care supervisory authority (e.g. Valvira or the Regional State Administrative Agency), and Chapter 8a of the Administrative Procedure Act.

11 District Court of Southern Ostrobothnia judgment of 15 July 2021, No. 899.

The Court of Appeal, in its 2022 judgment[12], took a markedly different view. It acknowledged that *X v. Finland* did not explicitly require the possibility of judicial appeal against involuntary medication decisions. However, it emphasised that the judgment imposed a clear obligation to provide adequate safeguards against arbitrary interference. The appellate court found that Finland had not introduced any new remedy since 2012; rather, the government had only clarified the operation of pre-existing complaint mechanisms, which still failed to offer patients any real-time protection from coercive treatment.

Given the seriousness of involuntary medication as an infringement on bodily integrity, the Court of Appeal concluded that post hoc complaints were insufficient. It determined that A's right to an effective remedy had been violated under Article 13 ECHR and Section 21 of the Constitution. Consequently, the Court of Appeal ordered the State to pay A compensation of €5,000 for the violation of his fundamental and human rights, as stated in its judgment of 11 May 2022 of Vaasa Court of Appeal. However, the Supreme Court later reduced the amount of compensation from €5,000 to €3,000. In all other respects, the decision of the Court of Appeal remained in force, meaning that the violation of A's rights was found to be contrary to both Article 13 of the European Convention on Human Rights and Section 21 of the Constitution of Finland.[13]

4. Preceding case law and Supreme's court reasoning

The Supreme Court decision KKO 2023:93 did not arise in isolation. It was preceded by significant rulings, most notably the landmark judgment of the European Court of Human Rights in *X v. Finland* (2012) and the decision of the Vaasa Court of Appeal in *Vaaho 2022:8*. In KKO 2023:93, the Supreme Court held that the Finnish Mental Health Act, as it stood at the time of A's psychiatric hospitalisation, failed to provide a legal mechanism by which a patient could obtain judicial review of decisions on involuntary medication. Although patients could lodge administra-

12 Judgment of the Vaasa Court of Appeal of 11 May 2022, No. 191 (Vaaho 2022:8).

13 KKO 2023:93, paragraphs 5–6 and 29.

tive complaints or pursue internal hospital reviews, such avenues did not constitute effective remedies within the meaning of Article 13 of the European Convention on Human Rights.

The Court made explicit reference to *X v. Finland* (Application no. 34806/04, 3 July 2012), in which the ECtHR found that the absence of an ex-ante legal remedy to challenge forced medication constituted a human rights violation. The Supreme Court noted that, while patients could submit complaints to health care supervisory authorities or file written objections within the institution, these measures lacked independence and did not offer binding legal oversight. Moreover, temporary legal remedies, such as interim orders, were not considered viable alternatives, as they could not result in a final ruling on the lawfulness or proportionality of the medication.

In reaching its conclusion, the Court applied a harmonised interpretation of Section 21 of the Finnish Constitution and Articles 8 and 13 of the ECHR. Section 21 guarantees everyone the right to have their legal matters heard by a court of law or another impartial authority. The Court thus found that the absence of such a forum in A's case amounted to a violation of his fundamental rights.

In *Vaaho 2022:8*, the Court of Appeal similarly emphasised that the lack of real-time judicial oversight of involuntary medication during psychiatric hospitalisation revealed a structural deficiency in the Finnish legal protection framework. These rulings prompted both legal and legislative responses. Most notably, under pressure from the European Court of Human Rights and in response to domestic court decisions, the Finnish Government introduced Government Proposal HE 14/2023, which led to a reform of the Mental Health Act. The reform included, among other changes, the addition of a new Section 22b (4), which entered into force on 12 January 2024.

4.1 Legislative reform and decisions of Finnish Administrative Courts on involuntary medication in 2024: What does the data reveal?

Under the revised Section 22 b (4), a formal administrative decision must now be issued whenever involuntary medication is administered to a patient who either objects to treatment or whose will cannot be

reliably ascertained. This decision grants the patient the right to appeal to an administrative court during the course of hospitalisation. Thus, the reform addresses one of the core deficiencies highlighted in both domestic and European rulings. Despite these advances, the actual implementation of the new appeal mechanism has revealed further concerns as can be seen above: In 2024, Finnish administrative courts received a significant number of appeals concerning involuntary psychiatric medication. The statistics show, additionally, that the vast majority of these appeals were rejected.

As can be seen in Table 1 (p. 127), in the Helsinki, Turku, and Vaasa Administrative Courts, the dismissal rates for appeals concerning involuntary medication were exceptionally high, with Turku and Vaasa reaching 95.7% and 95.0%, respectively. In Hämeenlinna, although the number of cases was small, half of the appeals were dismissed. Only the Northern Finland Administrative Court demonstrated a comparatively greater willingness to intervene, approving approximately 14.2% of appeals.[14] Eastern Finland and Helsinki also recorded modest approval rates of 7.4% and 7.7%, respectively. Overall, the data show that across six administrative courts and a total of 108 appeals, only six decisions resulted in the original treatment decision being modified or overturned. The vast majority of appeals were either rejected, dismissed, or not admitted, underscoring the considerable obstacles individuals face in accessing effective legal remedies in cases involving involuntary psychiatric medication.

14 Notably, the number of appeals concerning involuntary medication in the Northern Finland Administrative Court—where one out of seven appeals was accepted—together with those in the Hämeenlinna Administrative Court was considerably smaller than in most other administrative courts. In Finland, the state-run psychiatric hospitals are located in Vaasa and Kuopio, the latter falling under the jurisdiction of the Eastern Finland Administrative Court. The relatively high case numbers in these two administrative courts are likely reflected in the statistics (see Table 1, p. 127).

Administrative Court	Total Appeals	Decisions Issued	Dismissed	Approved	Pending	Returned/ Not Admitted	Dismissal Rate %	Approval Rate %
Eastern Finland	30	27	24	2	0	1	88,9	7,4
Hämeenlinna	1	1	1	0	0	0	100,0	0,0
Helsinki	26	26	20	2	0	4	76,9	7,7
Northern Finland	7	7	5	1	0	1	71,4	14,2
Turku	23	23	22	1	0	0	95,7	4,3
Vaasa	20	20	19	0	1	0	95	0,0

Table 1: Administrative Court decisions on involuntary medication in 2024.

The figures *table 1* raise specific concerns about the level of judicial scrutiny applied to medical decision-making in the context of involuntary treatment. The extremely high rejection rates suggest that the newly established right to appeal against forced medication decisions may remain largely formal, without providing effective legal protection in practice.

5. Critical reflections: A Comparative look at Sweden and Finland

The KKO 2023:93 decision provides a critical opportunity to examine the architecture of legal protection for individuals under involuntary psychiatric care. It highlights structural issues in the Finnish mental health system, particularly the lack of judicial oversight over treatment decisions involving severe bodily interventions such as forced medication. From a normative perspective, the decision underscores the importance of embedding procedural safeguards into mental health legislation. Judicial or independent legal review of forced treatment decisions serves not only to protect individual autonomy but also to prevent arbitrary and potentially abusive practices. The ruling suggests that legal systems must ensure real-time legal remedies, not merely post hoc reviews, to comply with constitutional and human rights standards. However, the process in administrative court procedure has been critized by CPT.

The European Committee for the Prevention of Torture (CPT) has raised serious concerns regarding the effectiveness of judicial oversight mechanisms for involuntary psychiatric hospitalisation in Finland. In its 2015 report, the CPT noted that decisions on involuntary treatment were often reviewed by administrative courts in a highly routine manner, based solely on written materials without hearings or direct contact with the patients[15]. Furthermore, it observed that courts almost systematically approved physicians' proposals to prolong hospitalisation, giving rise to the impression of a mere "rubber-stamping" process.[16]

These concerns were further underscored by the relatively high proportion of involuntary admissions in Finland and the notably long average duration of hospitalisation, typically between three and four months. The CPT emphasized that, particularly in a context where involuntary care affects a significant number of patients for extended periods, judicial oversight must be both substantive and genuinely effective. Finland's previous system, as described by the CPT, failed to meet these standards, illustrating broader systemic shortcomings in safeguarding the rights of psychiatric patients.

The ruling is also significant from a Nordic comparative law perspective, particularly when comparing the legal remedies available to psychiatric patients subjected to coercive medication in Finland and Sweden. In Sweden, while individuals may appeal decisions concerning involuntary admission and deprivation of liberty to the administrative courts under the Law on Psychiatric Care, there is no separate legal remedy available to challenge coercive measures such as forced medication.[17] The Göta Court of Appeal's ruling in Eriksson v. Sweden (T 1551-23) also concluded that the ECtHR's judgment in X v. Finland (2012) was not applicable. In that

15 Council of Europe. (2015) *Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 2 October 2014*, CPT/Inf(2015) 25, para 111.

16 A direct reference from the CPT-report (2015) states: "This gave the court procedure the appearance of 'rubber-stamping', which is all the more of concern given the relatively high percentage of involuntary hospitalisations in Finland and the long average periods of involuntary hospitalisation (i.e., 3–4 months)."

17 Göta Court of Appeal. (2024). *Eriksson v. Sweden*, Case T 1551-23 (Unpublished decision, cited with permission); Council of Europe, CPT/Inf (2021) 4.

ECtHR case, the Court had found a violation because the applicant had no legal avenue to challenge involuntary medication at all. In Sweden, however, the applicant could have appealed the detention but did not do so, and the court found that the overall structure of legal safeguards was sufficient. Thus, while Finland was found to have had no remedy, Sweden's remedy was deemed indirect but available.

In its decision HFD 2021 ref. 20, the Swedish Supreme Administrative Court underscored the significance of substantive legal safeguards as an essential component of judicial oversight in the context of psychiatric compulsory care.[18] The Court ruled that a coordinated care plan (*samordnad vårdplan*) must always accompany the chief physician's application for continued outpatient compulsory psychiatric care, even when no social services are involved or the patient opposes them. The absence of such a plan impedes the court's ability to conduct a fair substantive assessment of the necessity for compulsory care. Therefore, if the plan is missing or incomplete, the administrative court must instruct the chief physician to provide it; failing that, the application should be dismissed. This decision underscores that in Sweden, substantive legal safeguards—such as detailed care plans—are crucial for protecting patients' rights, ensuring that courts assess the actual need for compulsory care beyond mere procedural compliance.

Table 2 presents a comparative overview of the legal frameworks governing coercive psychiatric medication in Finland and Sweden, focusing on both procedural and substantive dimensions of judicial oversight.

18 Högsta förvaltningsdomstolen. (2021). *HFD 2021 ref. 20*.

Jurisdiction	Key points
Finland	**Since 2024**, patients can appeal specific coercive measures (including involuntary medication). Courts focus mainly on **procedural legality** (e.g., hearings) rather than **substantive justification**. 2024 data: Most appeals still rejected — risk of **superficial review** (CPT 2015). KKO 2023:93 — absence of effective remedy = **fundamental/ human rights violation**. Ruling did not explicitly assess **necessity/proportionality**, but compensation reflects substantive justice.
Sweden	Appeals possible for **deprivation of liberty** (e.g., admission) but not for specific coercive measures (e.g., medication). HFD 2021 ref. 20 — requires **coordinated care plan** for involuntary care applications, else dismissal. Creates **substantive legal safeguard** ensuring compliance even in formal matters. No direct appeal for specific coercive measures, but substantive requirements (**necessity, proportionality**) still apply.

Table 2: Comparative legal approaches to coercive psychiatric medication in Finland and Sweden. The table summarises the key differences in legal frameworks and safeguards regarding coercive psychiatric medication in Finland and Sweden. Key terms are highlighted for emphasis.

Another issue in Finland relates to the fragmentation of legal protection mechanisms. As A's attempts show, navigating multiple complaint routes[19] can be confusing, burdensome, and ultimately ineffective. The Court's finding reinforces the need for a clear and accessible legal pathway for individuals to challenge coercive medical treatment. This is particularly urgent in psychiatric contexts where the individual's capacity to advocate for themselves may be impaired. The case underscores a broader challenge for welfare states: how to reconcile care-based interventions with rights-based legal standards. The Finnish system, like many in Europe, has long relied on the assumption that medical authority ensures patients' best interests. However, human rights law demands more: respect for individual autonomy, procedural fairness, and legal accountability.

6. Discussion

While *KKO 2023:93* represents a significant advancement in recognising the procedural rights of individuals subjected to involuntary psychiatric medication, its practical effect will depend on the consistent implementation of its principles beyond mere legislative reform. The ruling affirms that access to legal remedies must not only exist in theory but also function effectively in practice. In particular, the continued reluctance of Finnish administrative courts to overturn medical decisions raises concerns about the level of judicial scrutiny applied in this sensitive area. Genuine oversight requires that courts engage substantively with medical assessments, including the necessity, proportionality, and human rights implications of coercive treatment.

Although the 2024 legislative amendment introduced a formal right to appeal involuntary medication decisions during hospitalisation, early empirical data from Finnish administrative courts show that this reform may not provide meaningful protection in practice. Rejection rates in most jurisdictions have remained extremely high, with acceptance rates falling below 10%. These findings echo longstanding concerns expressed by the European Committee for the Prevention of Torture (CPT), which

19 Valvira, administrative courts, hospital management.

in its 2015 report criticised Finnish administrative courts for formalistic and largely deferential reviews of psychiatric treatment decisions, giving the impression of "rubber-stamping" rather than independent judicial scrutiny.

The comparison between Finland and Sweden reveals two structurally different legal approaches to the review of coercive psychiatric care. Finland's system has historically focused on procedural guarantees—such as proper documentation, timelines, and internal complaint mechanisms—rather than on the material justifications of the interventions themselves. In contrast, the Swedish system, although it does not provide a separate legal remedy against forced medication, allows for judicial review of coercive measures as part of appeals concerning involuntary admission. This has been interpreted by Swedish courts as sufficient to meet human rights standards, as in the Göta Court of Appeal's ruling in *Eriksson v. Sweden*. As such, Sweden's approach may be viewed as more substantively oriented in assessing the legitimacy of coercive care measures, even if indirectly.

Nevertheless, both systems face important challenges. While Finland has now introduced a direct appeal mechanism, its implementation has raised questions about effectiveness. Sweden, on the other hand, lacks a dedicated legal channel for contesting forced medication decisions, which may leave individuals without a clear procedural path to challenge such measures in real time.

The case of *KKO 2023:93* also raises important questions about the role of compensatory justice in responding to fundamental rights violations. The trajectory established demands ongoing scrutiny. Legislative amendments alone will not ensure compliance with human rights obligations unless they are accompanied by a shift in legal and institutional culture. Strengthening independent oversight, ensuring substantive judicial review, and promoting a rights-based approach to psychiatric care remain essential to realising the values of human dignity, autonomy, and justice in practice.

This commentary focused primarily on ex post legal protection in cases of involuntary psychiatric medication. While Finland has introduced a formal right to appeal, the lack of clear statutory criteria for when forced medication may be used remains a significant concern. In

practice, this assessment is left to the discretion of the treating physician. Recent administrative court decisions raise important questions about whether the current appeals mechanism provides adequate protection or whether greater emphasis should be placed on substantive review. It is therefore recommended that the legislation be amended to include clear and specific criteria governing the use of involuntary medication, as one essential element of strengthening anticipatory and pre-emptive legal safeguards.