Cultural Accommodation in Health Services and European Human Rights

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1 Introduction
Cultural diversity has various consequences in the context of health services. The question of how to deal with these has only recently found its way into legal discourses. Aart Hendricks has pointed out that the problems arising mainly relate to two issues. Firstly, there is a demonstrable link between cultural or ethnic origin and the morbidity and mortality rates for certain diseases. This may call for appropriate attention to the relevance of ethnic origin and cultural heritage for diagnosis and treatment.2 Secondly, it is clear that cultural diversity may impact on communication during the delivery of health services. On the one hand, the language skills of the patient in question can raise difficulties during diagnosis and when obtaining informed consent. On the other hand, the potential lack of 'cultural sensitivity' on the part of the health service provider may also present difficulties as this can impact on his or her understanding of the patient and the premises behind the patient's communication or decision-making and, consequently, on the diagnosis and treatment offered.3 The issues arising from cultural diversity in health services are, thus, complex and varied but the question of how to deal with them legally is still relatively underdeveloped. Although Iceland, perhaps along with Finland, is a fairly homogenous society which is not facing cultural diversity on the same scale as Denmark, Norway and Sweden, the issues arising are the same from the legal perspective and need to be taken seriously across the Nordic countries. This article, however, cannot purport to deal with the matter in any definitive manner. Instead, it only has the more modest aim of casting some light on the basic normative foundations of the claim to cultural

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3 Ibid., p. 292.
accommodation in health services and of discussing the limits of cultural accommodation from a European human rights perspective, with reference to selected examples from Iceland. Before entering into that discussion, however, some explanation of the term 'cultural accommodation', as applied in the present context, is needed.

2 Cultural accommodation

2.1. Culture

The term 'culture' has many meanings, depending on the context. According to Oxford Dictionaries online, one of these meanings refers to "the ideas, customs, and social behaviour of a particular people or society". Similarly the Merriam Webster online dictionary contains the definition that culture can refer to "the customary beliefs, social forms, and material traits of a racial, religious, or social group". As applied in the present context, the term 'culture' focuses on commonalities in values, beliefs and practices among particular social groups. It is emphasised that the relevant groups cannot be any loosely-defined social group such as for example 'teenagers' or 'academics.' Instead, the focus is on relatively clearly-defined social groups that share a common heritage and identity that is characterised by these shared values, beliefs and practices. Such groups have been made relevant in human rights law, most clearly through the concepts of minorities or ethnic and/or religious groups.

The European Court of Human Rights has defined ethnicity and race in the following terms: "Ethnicity and race are related and overlapping concepts. Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies according to morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked by common nationality, tribal affiliation, religious faith, shared language, or cultural and traditional origins and backgrounds." Further, the Court approaches biologically-defined race and socially-defined ethnicity on equal terms legally and has concluded that "[d]iscrimination on account of one's actual or perceived ethnicity is a form of racial discrimination." This coincides with the approach of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), under which the concept of racial discrimination reaches discrimination based on race, colour, descent or national or ethnic origin, cf. Article 1. Similarly, in the context of EU Directive 2000/43/EC implementing the principle of equal treatment between

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4 <oxforddictionaries.com/view/entry/m_en_gb0196870> en_gb0196870, visited on 4 April 2011.
6 Tusha v Russia, 13 December 2005, ECHR, no.55762/00 and 55974/00, Reports of Judgments and Decisions 2005 S-XII, para. 55.
7 Ibid., para. 56.