

The issue of giving treatment to patients on an involuntary basis was discussed in a recent case of the HSE –V- NX (a person of unsound mind not so found). The case involved an involuntary patient in the Central Mental Hospital. The doctors who were looking after the patient wanted to have blood tests taken as part of her treatment. She objected to this. The doctors felt that she did not have the capacity to make decisions regarding her own welfare.

In December 2010 the matter came before Judge John McMenamin in the High Court and he granted an interim and interlocutory order to allow permission for the treatment. This was on the basis of expert medical advice that it was entirely appropriate and in the patient's welfare. The case then proceeded to a full hearing.

When the matter came before Judge McMenamin at a full hearing he looked at the provisions of the relevant legislation namely the Mental Health Act 2001 and felt that the rights that were at stake in the case were of health and of life itself. He relied to a large extent on Section 57 of the 2001 Act which provides "the consent of a patient shall be required for treatment except where, in the opinion of the Consultant Psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore his / her health, to alleviate his / her condition, or to relieve his / her suffering...(when) the patient concerned is incapable of giving such consent".

The Judge then looked at the intent of the Act. He felt that the intent was to give priority to the constitutional values of health and life. He felt that this meant that a member of the medical profession could administer treatment regardless of capacity or incapacity where it was at stake and it was necessary.

In concluding his decision the Judge decided that it was in the Defendant's i.e. patient's best interests to allow for the medical procedure. He conceded that it was invasive but felt that it was ancillary to and part of the procedures which were necessary to remedy a mental illness or its consequences.

There was a submission made by the patient's barrister that the 2001 Act fails to adequately safeguard the Defendant's rights under the constitution and the European Convention on Human Rights. However the Judge held that because there was no formal challenge to the constitutionality of the Act nor a declaration that it was incompatible with the Convention he was not prepared to consider this for the purpose of his judgement.

In essence the Mental Health Act allows clinicians to administer treatment where it is regarded as being in the best interests of the patient and is necessary for safeguarding the health and life of the patient.