



Mariya Riekkinen

Inclusion of the Elderly in Social and Cultural Life: Experiences from Service Institutions

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Key messages

- The evolving international legal standards covering ageing support the argument that social inclusion of the elderly in assisted care homes should be approached from the perspective of the state's legal obligations.
- There are many serious impediments regarding the inclusion of the elderly in the socio-cultural life of the institution. Those individuals who are confined to 24h residential care are in stronger need of support in order to participate in socio-cultural activities, in comparison with those who live in serviced apartments.
- Nonetheless, interviews with 59 elderly people in residential care demonstrated a high degree of client satisfaction with how the Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons (regarding access to socio-cultural activities) is being implemented inside the studied institutions in Turku, Raisio, and Helsinki.

Introduction

Based on a human-rights approach to the topic of social inclusion of the elderly, this study concentrates, in particular, on the rights of the elderly in assisted care homes to participate in socio-cultural life within the institutions. I examine how existing international human rights provisions can answer those specific participatory challenges that elderly persons face in their everyday lives. For the purposes of this project, inclusion in social and cultural life implies the access, participation, and contribution (insofar as it is possible) of the elderly in the local community, that is, in institutions for the elderly, as well as in socio-cultural events organized both inside the respective institution and outside the institutional walls.

The elderly who have resorted to 24-hour residential care are bound to spend the most of their time inside the institutional walls, facing difficulties in daily communication and finding like-minded companions. Nonetheless, the theme of social inclusion of the elderly residing in assisted care homes has not yet received sufficient academic attention, either in Finland or worldwide. In effect, the socio-cultural dimension of the elderly in residential care is not conceptualized by legal scholars as being an integral part of elder law. Black's Law Dictionary defines elder law as the field of law 'dealing with the elderly, including such issues as estate planning, retirement benefits, social security, age discrimination, and health care'.¹ Similarly, modern legal research on the elderly in residential care is preoccupied with the issues of non-discrimination;² the rights to housing, social security, and medical care;³ the rights to human dignity and pri-

vacy;⁴ prevention of elder abuse;⁵ or even more specifically, the prevention of financial abuse of the elderly.⁶

The objectives of this study have been to examine how the rights of the elderly in 24-hour residential care to participate in socio-cultural life are implemented in my three Finnish cases, located in Turku, Raisio, and Helsinki, and to identify the best participatory practices in the assisted care homes. Our hypotheses are two-fold, meaning that they relate to both the theoretical issue of an inclusive society for all age groups, as well as to the practical issues of implementing the rights to participation in socio-cultural life inside the assisted care homes. I assume that the socio-cultural dimension of the rights of the elderly, especially with respect to those who are in 24-hour residential care, should be included in the paradigm of elderly law in respect of issues of health, social security, housing rights, non-discrimination, and prevention of abuse of the elderly. I also assume that elderly persons residing in assisted care homes have a strong interest in participating in social and cultural activities, and that the municipalities of Finland are obligated to provide assistance to ensure such participation.

This study is a part of a wider human rights discussion of the inclusive society for all age groups. Older age and retirement cause feelings of loneliness resulting from the loss of daily social contacts at work.⁷ This is why the international community opened an official discussion about the inclusive society for the elderly. This discussion, perhaps, culminated in the late 1990s during the preparatory activities for the 1999 International Year of Older Persons. Striving ‘towards a society for all ages’ was the focus of the conceptual framework for that year.⁸ The Second UN Universal Assembly on Ageing in 2002 again prioritized the goal of enhancing opportunities for the elderly to realize their potential in order to participate in all spheres of life.⁹

In order to establish whether there is a distinct international legal obligation to ensure socio-cultural inclusion of the elderly inside the institutions, I examined academic and legal sources in the field of international human rights law. This research also entailed an empirical legal studies method when observing how the Act on Support-

ing the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons – *Laki ikääntyneen väestön toimintakyvyn tukemisesta sekä iäkkäiden sosiaali- ja terveystalvveluista* (98/2012) is implemented in selected assisted care homes. Data collection was partly based on interview studies. In total, 59 elderly residents in the selected assisted care homes in Turku, Raisio, and Helsinki were interviewed. In order to conduct these interviews, a positive statement was obtained from the Turku University Central Hospital Ethical Committee. Research permission was obtained from the Raisio and Helsinki municipalities. I interviewed the elderly also in Villa Hirvensalo – a privately run assisted care home in Turku, for which a research permit was not required.

Legal obligation to ensure social inclusion inside the institution?

I maintain that ensuring socio-cultural inclusion of the elderly inside assisted care homes is a clear-cut legal obligation imposed on the states by article 23 of the Revised European Social Charter. Evolving human rights standards in the area of social inclusion dictate that old age should not be only financially secure, safe, and warm; it should also be *socially and culturally of an acceptable standard*. According to the article, the state parties need to adopt measures enabling the elderly to play an active part in public, social, and cultural life, in order for them to remain “full members of society”. Pursuant to the Explanatory Report to the 1988 Additional Protocol to the European Social Charter, the expression “full members of society” implies that the elderly must not be restricted in their access to societal activities and functions, even if an elderly person is retired or restricted in legal capacity. More particularly, according to paragraph 45 of this Explanatory Report, elderly persons should not be ostracized on account of their age, as the right to take part in society’s various fields of activity is not granted or refused depending on whether an elderly person is still of full legal capacity or subject to some restrictions in this respect (*diminutio capitis*).¹⁰ According to paragraph 58 of the explanation provided by the 1998 Additional Protocol to the European Social Charter, the measures necessary to implement the rights of the elderly **are also**

applicable to persons living in institutions ‘but only insofar as this mode of life does not render their implementation impossible or manifestly irrelevant.’¹¹

Hence, the sociocultural rights of the elderly in residential care should be duly implemented without any discrimination on the grounds of age, unless under the following cases: (i) implementation is impossible under the institutional conditions, or (ii) implementation is manifestly irrelevant. Since there are no clear rules for implementing these two clauses, namely “impossibility” and “manifest irrelevance”, general principles regarding limitations of human rights should be applicable.¹² Any limitation of human rights should be reasonable and based on law. In particular, prohibitions of unreasonable limitations of sociocultural rights of the elderly in residential care are emphasized by the CoE Recommendation CM/Rec(2014)2 on the promotion of human rights of older persons, according to which member states should protect older persons “from violence, abuse, and intentional or unintentional neglect. Such protection should be granted *irrespective of whether this occurs at home, within an institution or elsewhere.*”¹³ Paragraph 10 of this recommendation emphasizes that: “Older persons should have *the possibility to interact with others and to fully participate in social, cultural and education and training activities, as well as in public life*”. Interestingly, this recommendation takes special account of experiences in Germany, where some nursing homes and specific institutions have developed special units to enable older migrants to receive care “in an environment that respects their cultural and social way of life”.

Hence, ensuring socio-cultural inclusion of the elderly in assisted care homes is *a state obligation under international law*. Respectively, the European Court of Human Rights has already arrived at an interpretation, according to which, in cases when social exclusion of individuals amounts to inhuman or degrading treatment, the state is responsible for ensuring that individuals within their jurisdiction are not subject to such treatment, including ill-treatment administered by private individuals, including institutions.¹⁴

An illustration from the interviews becomes relevant at this point. A man, aged 82, replying to the questions

regarding socio-cultural programmes inside one institution, claimed that he had been abandoned in his own home for two months, unable to move by himself. After he had remained dirty, cold, and almost starving, a clean bed and regular meals comprise the limit of his desires; he could not ask for more. Such statements appear to be insufficient under international human rights law, which promotes an equal and inclusive society.

Situation in Finland

The theme of socio-cultural inclusion of the elderly inside assisted care homes is widely discussed in Finland, where many older people require residential care. At the end of 2013, ordinary sheltered housing for older people and sheltered housing with 24-hour assistance had a total of 46,720 residents.¹⁵ Promoting participation of the elderly in socio-cultural life is one of the top priorities for the Ministry of Social Affairs and Health of Finland.¹⁶ Nonetheless, unlike Sweden, Norway, and Iceland, Finland is not included in the top 10 of the 2014 Global AgeWatch Index. Being the first quantitative measure focusing on the well-being of older people on a worldwide scale, this global index focuses on older people’s income security, health status, employment and education capabilities, and the enabling environment of the societies in which they live. Finland ranked 15th in both 2013 and 2014, while, for example, Denmark improved its ranking from 17th to 12th place.¹⁷ The ranking of Finland remained stable even though the state has undertaken significant measures to fully implement the rights of the elderly in residential care. For instance, within the above-mentioned Recommendation CM/Rec(2014)2 on the promotion of the human rights of older persons, the Council of Europe acknowledged two “good practices” from Finland. These are, first, the “Occupy your own age” movement, which is a network for good ageing run by eight NGOs. Launched in the frame of the European Year for Active Ageing and Solidarity between Generations, the initiative challenges both citizens and municipal decision-makers to see age from a new perspective; and second, establishing a project to actively engage older people who suffer from loneliness, and in particular those who are in hospitals, adult day-care centres, or residential care institutions.

When it comes to *legal measures* targeted at the full implementation of the rights of the elderly in assisted care homes, the adoption of the 2012 Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons should be mentioned. This act emphasizes the issues of participation of the elderly in residential care in socio-cultural life within the institutions. In particular, Section 2 of this act lays down provisions on local authorities' responsibility for supporting the well-being, health, functional capacity, and independent living of the older population, and for securing the social and health-care services needed by older persons. Section 14 of this document stipulates that services securing long-term care should ensure that the older persons ... "can *maintain social contacts and participate in meaningful activities* promoting and maintaining his or her wellbeing". This act came into force on 1 July 2013. The same day, quality recommendations to guarantee a good quality of life and improved services for older persons were published, which also emphasized the meaning of social inclusion of the elderly.¹⁸ The aim of these recommendations is to assist the implementation of the Act on Supporting the Functional Capacity of the Ageing Population and on Social and Health Care Services for Older Persons. Hence, legal measures on socio-cultural participation of the elderly in assisted care homes are sufficiently significant for Finland to pursue improving the well-being of the elderly population. This is why my study aimed to examine how the right to take part in socio-cultural life is implemented within selected assisted care homes in Turku, Raisio, and Helsinki.

Interviews with the rights-holders

In order to monitor the implementation of the 2012 Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons, we conducted a series of interviews with the elderly residents of the assisted care homes *Villa Hirvensalo* in Turku, *Jokitupa* and *Hulvela* in Raisio, and *Puistolän palvelutalo* in Helsinki. The first, *Villa Hirvensalo*, is privately run; the other three are publicly run institutions.

The questions aimed to explore individual attitudes and wishes of the elderly towards participation in social, cultural, sport, and recreational activities inside the institution. The goal of the questions was to find out *how much interest* the elderly have in communication and socio-cultural activities; whether there are *enough socio-cultural events* organized in their institution; whether relatives take an active role in providing opportunities for the elderly to take part in socio-cultural activities; how exactly the service institutions assist the elderly in participating in such events; and how much contact the elderly still have with the outside world by being capable of, for example, communicating over the telephone.

Altogether, 59 elderly people were interviewed. The criteria for selecting the interviewed were that they were willing and able to communicate, and that they had resided in the assisted care homes for a minimum of one month before the interview. The interviews were not always easy to conduct because of the weak physical condition of the interviewed – for example, 10% of the interviewed were bed-bound. Each interview lasted 20-25 minutes. The questions were the following: How often do your relatives or friends visit you? How interested are you in communicating, spending time, or doing something together with other people? Do you feel that the service institution organizes enough social activities? How does the service institution help you to participate in such events? How do you communicate with others (phone, letters, other)? Do you follow the news? The questions were asked in Finnish by a native speaker. Nearly all the respondents had relatives. 52 of the 59 interviewed felt that their relatives visited them rarely; in reality they visited once a week on average. 50 of the 59 interviewed revealed a strong interest in communication with other people. When asked "how interested are you in communicating with others?" we heard most often: "perhaps even too much" – a modest answer, conveyed with a smile. The majority of the respondents were eager to follow the news. Those in better physical condition used a telephone to call their relatives. Only one person out of 59 reported using a computer for communication. 60% of the respondents answered that there are enough socio-cultural activities in their institution.

Interestingly, nearly all the individuals from the 24-hour care units who were able to communicate volunteered to take part in our study. In contrast, only 15 of 60 persons from serviced apartments responded to our request for an interview. These findings would at first sight suggest that the first category of the elderly is in need of stronger support from the institutions, in order to maintain daily socio-cultural contacts. However, after a more detailed examination, I can conclude that this is not necessarily so. After I conducted similar interviews in Eastern Finland, I discovered that the elderly living in service apartments can be in such a weak condition that it prevents them from leaving their room without external help, which makes their situation comparable with the elderly living under 24/7 assisted care. The Social welfare act (1301/2014) of Finland entails that the placement of the elderly in institutions is based on an evaluation of needs performed by social services staff.¹⁹ Such an evaluation usually follows a request by the elderly or their relatives. There is no legal definition of what “the need for institutional care” actually is. The Ministry of Social Affairs and Health has elaborated guidelines summarizing good practice in needs assessment.²⁰ Nevertheless, since the thresholds of such needs assessment are approximate, the possibility of under-evaluation cannot be excluded. Hence, the problem of providing the elderly living in service apartments with viable opportunities to maintain daily social contacts culminates in the issue of accessibility for those whose condition does not allow them to maintain such contacts on their own.

It is noteworthy that the most vivid memories of socio-cultural events among the elderly were associated with the visits of students or other volunteers who talked to them, played games, took them out, or gave some artistic performance. The elderly in *Hulvela* also mentioned that the church parish organizes certain activities for them, such as taking them out.

Main outcomes

International law does not introduce any limitations on the implementation of socio-cultural rights on the basis of age or legal capability. This implies that the elderly in institutions should be, as a general rule, entitled to

access to socio-cultural life. Participatory rights with respect to socio-cultural inclusion of the elderly in residential care should play an important role in the body of legal norms related to the rights of the elderly. Accordingly, a distinct international legal obligation has evolved: to implement the right to participation in socio-cultural life with respect to the elderly in residential care.

The interviews with residents of the assisted care homes in the Turku, Raisio, and Helsinki municipalities have shown that there are many *serious impediments* regarding the inclusion of the elderly in the socio-cultural life of the institution.

Firstly, being confined to an intensive care unit for 24 hours restricts opportunities for social communication.

Secondly, it is difficult for the elderly to get to know each other and find like-minded companions. A lot of those interviewed admitted that not every resident of the assisted care home is willing to communicate with others.

Thirdly, many of those interviewed required special assistance with simple activities, such as the use of the TV. For example, all TV programmes for adults are aired in Finland in the original language with text subtitles. The elderly who are unable to understand English, or who cannot read the text subtitles due to impaired vision, cannot watch TV. At the same time, television is often the only available leisure activity for the elderly in residential care.

Fourthly, some of the interviewed remarked that the staff to whom they could talk on a daily basis are, mainly, too young to share their concerns. Neither reaching a certain age nor possessing significant life experience is a prerequisite for being a qualified nurse in an assisted care home. Nevertheless, it appears to be important to train the staff in such a way that would enable them to make socializing activities for the elderly *meaningful* within the scope of Section 14 of the Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons.

Fifthly, some of the elderly shared with us their slight frustration with the fact that they could not participate in

handicraft classes due to their physical condition. These and other difficulties suggest that the elderly need special assistance in fulfilling their participatory and socio-cultural rights under institutional conditions.

Assisted care homes and the municipalities charged with providing long-term care for the elderly have a special responsibility to ensure that the said rights are implemented in good faith. An important role in implementing the right to participation in socio-cultural life is played by non-public actors on an *ad-hoc* basis.

Conclusions on the *avenues of participation* in social and cultural life, which are typically practised in selected assisted care homes, are the following. Social communication inside the assisted care homes was mostly practised via *everyday routines* in the institution, such as daily conversations and more broadly communication with the staff, and peripherally with other elderly inhabitants. Local socializing activities, such as coffee breaks, discussions, or reading circles are also practised on a daily basis. All the assisted care homes visited have also developed a weekly programme of socializing and leisure activities. One observation was that the smaller the unit, the more successful such inclusive practices tend to be. In particular, *Jokitupa* in Raisio stood out for its heart-warming home-like atmosphere. Rare participatory opportunities occurring inside the institutions regard artistic performances, various exhibitions, and so on.

I would also like to acknowledge the practice inside *Puistolän palvelutalo* in Helsinki, where the staff has regularly organized reading of newspapers for the elderly. The majority of those interviewed revealed a strong interest in following the news. Due to impairment of vision or hearing, not all of the elderly are able to either read newspapers or follow the news on TV or radio. Hence,

regular reading and discussion of the newspapers appears to be a good way of maintaining both social and political interests.

Hence, the set of difficulties that the elderly in residential care can encounter while pursuing everyday activities is foreseeable. The interviews with residents of assisted care homes in the Turku and Raisio municipalities, undertaken in 2013-2014, have shown that there are many serious impediments regarding the inclusion of the elderly in the socio-cultural life of the institution. Being confined to 24-hour intensive care units restricts opportunities for social communication. These and other difficulties suggest that the elderly need special assistance in fulfilling their participatory and socio-cultural rights under institutional conditions. This is also the case with respect to the physically impaired elderly living in serviced apartments. The participatory provisions of the 2012 Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons (98/2012) were complied with in all the reviewed institutions. There is a weekly programme of socio-cultural activities about which all the inhabitants are informed. The institutions conducted a questionnaire of interests in order to draft individual care programmes for the elderly, including a socio-cultural programme.

Hence, the realities in the assisted care homes that I visited meet the ideas of enhanced participation of the elderly in socio-cultural life. Substantive legal commitments of Finland to human rights, and inclusive practices inside the institutions for the elderly, at least in the context of these institutions, match the procedural obligations of municipalities to provide social services for the population, in accordance with the standards set forth by international law.

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Dr **Mariya Riekkinen** works as researcher at the Åbo Akademi University's Department of Law. She received the Turku Urban Research Programme's research grant in 2013. Other results of this research project are published in the Journal of Public Affairs, as well as another article under review in a legal periodical.

Editor:

Sampo Ruoppila, Research Director
sampo.ruoppila@turku.fi

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