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**RESTRICTIONS ON FUNDAMENTAL RIGHTS IMPOSED BY
THE FINNISH GOVERNMENT DURING COVID-19**

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I hereby declare that I have compiled the thesis independently and all works, important standpoints, and data by other authors have been properly referenced, and the same paper has not been previously presented for grading.

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ABSTRACT

In order to secure public interests by preventing the spread of Covid-19, individuals' fundamental rights have had to be restricted. However, fundamental rights can be limited according to law. The legal problem is that the interest to secure public health interferes with the rights of individuals. The research aims to examine the restrictive measures to fundamental rights and find the legal justification of the restrictions.

This thesis aims to examine the Finnish Government's actions to prevent the spread of Covid-19 in the light of the protection of fundamental rights and freedoms. The research aims to discover what actual legal measures can be imposed to limit the fundamental rights in a global pandemic and what limitations have been enforced in Finland. Furthermore, the aim is to find if the Finnish legislation provides sufficient measures for the restrictions.

The hypothesis is that the restrictions on fundamental rights and freedoms in Finland are legally enforced. On the other hand, the hypothesis is that the Finnish legislation is not currently sufficient enough.

The research methodology is qualitative, the primary sources being EU and Finnish legislation, literature, and research on fundamental rights. The research will be analyzing both EU and Finnish legislation, focusing on the Finnish Government's legal action.

The main results of the research were that the fundamental rights had been restricted in necessary and proportionate means. The Finnish legislation is sufficient but needs amending to provide adequate measures for the management of pandemics.

Keywords: Fundamental rights and freedoms, Finland, Covid-19, Pandemic, Time of Emergency

INTRODUCTION

On 11 March in 2020, the World Health Organization (WHO) declared Covid-19 a pandemic in its assessment¹ and delivered guidance for countries to take action against the new virus. WHO characterizes a pandemic as “the worldwide spread of a new disease”². The spread of the virus has had countries worldwide, including Finland, enforce preventative measures to secure public health. While writing this thesis, there have been more than 133 million confirmed cases of Covid-19 and more than 2,8 million deaths globally.³ In Europe, there have been more than 46 million confirmed cases, including almost one million deaths.⁴ In Finland, the number of the confirmed cases is over 80 000, including over 800 deaths.⁵

Due to the global pandemic of Covid-19, there have been restrictions on fundamental rights to prevent the virus from spreading. The safety measures have impacted individuals' freedom by restricting the freedom of movement and liberty, which are among the most fundamental rights of individuals in a democratic society. Securing the fulfillment of fundamental rights is the basis of national and international legislation. Every limitation of the rights should be based on the law, with proportional methods related to the general interests and only when necessary.⁶

The pandemic has changed society's everyday life by restricting social gatherings, the free movement within the States' territories, and restricting traveling. Finland has had relatively mild restrictions compared to many other EU Member States for the past year. While writing this thesis, the Finnish Government has taken more strict measures into use and has prepared for possible restrictions on free movement in Finland's epidemic centers.

As the Finnish Emergency Powers Act has not been used before, there have not been any legal precedents to use in the decision-making. Therefore, the Government's proposal for the Emergency Powers Act has been used to clarify the law's intended interpretation. The unprecedented situation has forced the Government of Finland, alongside the rest of the world, to find the proper measures in preventing the spread of the disease.

¹ World Health Organisation (2021).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Terveysten ja hyvinvoinnin laitos (2021).

⁶ Charter of Fundamental Rights of the European Union, 2000/C 364/1.

To impose preventative actions towards the spreading of the Covid-19, individuals' liberty and freedom have been restricted. The fundamental rights and freedoms of individuals are protected from the intervening of the public authorities. However, the pandemic has forced the public authorities to intervene in the individual's rights in order to protect public health. The legal problem arises from the public authorities' action against the freedom of individuals and the collision of fundamental rights. Therefore the research problem is whether the restrictions of fundamental rights have been justified according to the law.

This thesis aims to examine the federal restrictions imposed in Finland in the light of the protection of fundamental rights and freedoms. The research aims to answer how fundamental rights have been fulfilled during the global pandemic in Finland and the legal grounds to justify the restrictions. However, the aim is not to examine and analyze every restriction made by the Finnish Government. The focus will be on the restrictions of freedom of movement and their relation to other fundamental rights and legal grounds. Finally, the thesis aims to analyze the Finnish legislation's effectiveness in an emergency situation and find if there is a need to improve the relevant legislation regarding the management of a communicable disease crisis.

This thesis' topic was chosen because the Covid-19 affects every individual and the pandemic is still a current emergency situation around the world. The pandemic has given an unprecedented status regarding fundamental rights and freedoms and protection, and today's actions will provide legal practice for the future. While writing this thesis, the pandemic has lasted over one year; thus, the research can be made efficiently by examining the current situation and the past year.

The research for the thesis was made with qualitative measures, as the research problem is a theoretical one that cannot be justified or examined by numerical data or statistics. The primary sources are EU and national legislation, literature, and researches. The preparatory work of the legislation has been used in order to understand the interpretation of the legislation. Other sources are national and international authorities' guidelines and assessments, news, and authoritative websites.

While writing this thesis, I concluded that there are much existing research and literature about fundamental rights and their restrictions but not so much of the current situation regarding Covid-19. It was predictable as the topic is so present, and the effects of the pandemic on the legislation will be developing more in the years to come. However, it is essential to examine the current situation and legislation during the pandemic to compare the changes and development in the future, especially

after the pandemic. Therefore, the emphasis was on examining the legislation used in the restrictions and the existing literature regarding fundamental rights and freedoms.

In order to examine the limitations of fundamental rights and freedoms, the legal aspect of the rights concerned must be examined in general and the relative legislation to be introduced. In the first chapter, the thesis will show the main international Treaties regarding the protection and restriction of fundamental rights and freedoms. The second chapter will cover the legal aspects of Fundamental rights in Finland, including the necessary legislation. In the third chapter, I will assess the fulfillment of fundamental rights and the general restrictions imposed by the Finnish Government. The focus will be on how the imposed restrictions have been legally justified. I will also assess Finnish case law, and the aim is to show what actions the law allows to use to restrict fundamental rights and freedoms in the current pandemic. Chapter four will analyze and discuss the findings and outcomes and demonstrate solutions. Lastly, the thesis will present the conclusion of the research and a list of references.

1. LEGAL ASPECTS OF FUNDAMENTAL RIGHTS IN EU

In order to examine the legal aspects of restricting Fundamental Rights, it is necessary to understand the legal grounds of the rights. Fundamental rights and freedoms are protected by international treaties, which are binding to the Member States. The rights are also secured on a constitutional level of the States. This thesis will cover the European Convention on Human Rights and the EU Charter of Fundamental Rights briefly and the legal status of the fundamental rights in Finland.

1.1. European Convention on Human Rights

The European Convention on Human Rights (ECHR) was first opened by the Council of Europe to signatures in the 1950s after World War II had emphasized the importance of unifying Europe to remain in peace. The Convention came into force in its original form in 1953 and is signed by all 47 Member States of the Council of Europe. These States are obliged to secure the Convention's rights and freedoms to every individual within their jurisdiction.⁷ The accession to the ECHR reinforced the protection of human rights and fundamental freedoms in the European Union by integrating European systems⁸ within the Member States.

The Convention of Human Rights secures the human rights and fundamental freedoms of individuals. The European Court of Human Rights is the supervising body that controls the human rights violations within the Member States and functions as the human rights protection mechanism.⁹ The Court's rulings are legally binding towards every Contracting Party that has ratified the Convention. This is relevant in the matter of the current pandemic, as those Member States are obliged to follow the Convention, and therefore are bound to secure the rights and freedoms accordingly to the regulations of the Convention in managing the Covid-19.

Article 15 of the Convention lays down the derogation clause "(1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under the international

⁷ CE, 04.11.1950

⁸ Piris, J. (2010). *The Lisbon Treaty: A Legal and Political Analysis*. New York, USA: Cambridge University Press.

⁹ Cristinel Murzea. (2012). The European Court of Human Rights and its theories of interpreting the European Convention of Human Rights. *Bulletin of the Transilvania University of Braşov. Series VII, Social Sciences, Law*, 5(1), 141-148.

law.”¹⁰ The Contracting Parties are obliged to inform the Secretary-General of the Council of Europe of the measures taken and the reasoning for them. In addition, the Secretary-General must be notified when the measures have ceased to operate, and the Convention’s provision is again being fully executed, according to article 15 of the Convention. Derogation will be assessed more in detail later in the chapter 1.3.

As Finland is one of the High Contracting Parties, the Government of Finland is obliged to inform if any of the federal measures in force regarding the management of the pandemic are derogating any rights of the Convention. Therefore, the Government cannot enforce measures that are in contradiction with the Convention. Finland is obliged to secure the rights of the Treaty while imposing restrictions within its national jurisdiction.

1.2. EU Charter of Fundamental Rights

Before the Lisbon Treaty, the European Union lacked a legally binding legislative act of the Fundamental Rights, even though they were recognized as the EU law’s general principles.¹¹ After enforcement, the Lisbon Treaty recognized “the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union ..., which shall have the same legal value as the Treaties” in article 6(1) of the Treaty on European Union (TEU)¹².

As the legal status of the fundamental rights has been confirmed clearly in the Lisbon Treaty¹³, placing the fundamental rights and freedoms in the European Charter of Fundamental Rights (Charter) has made them more visible as well as increased their protection.¹⁴ Furthermore, the legal validity of the Charter puts it above the EU regulations conducted by the Treaties, and it must be taken into account while preparing EU legislation.¹⁵ However, article 6 of TEU emphasizes that “The provisions of charter shall not extend in any way the competences of the Union as defined in the Treaties.” The

¹⁰ Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms, 4.11.1950, Rome.

¹¹ Brittain, S. (2015). The Relationship Between the EU Charter of Fundamental Rights and the European Convention on Human Rights: An Originalist Analysis. 11(3), 482-511. Retrieved from: <https://heinonline.org/HOL/Page?handle=hein.journals/euroclv11&collection=journals&id=496&startid=&endid=525> 10 April 2021.

¹² OJ C 326, 26.10.2012.

¹³ Piris, J. *supra nota* 2010.

¹⁴ Eeckhout, P. (2002). The EU Charter of fundamental rights and the federal question. *Common Market Law Review*, 39(5), 945-994. Retrieved from: <https://heinonline.org/HOL/Page?handle=hein.kluwer/cmlr0039&collection=kluwer&id=953&startid=&endid=1002>, 19 March 2021.

¹⁵ Finlex julkaisut. Retrieved from: <http://lainsirkjoittaja.finlex.fi/4-perusoikeudet/4-1/> 1.3.2021.

Member States are also obliged to respect the Charter only when Union legislation is being implemented to national law¹⁶. Any federal legislation within the scope of EU jurisdiction must be interpreted in the light of the Charter. In addition, any legal measures taken within the area of the EU legislation must be compatible with the Charter, for example, any restrictions on fundamental rights.

The primary purpose of the Charter is to strengthen the protection of fundamental rights in the policies and acts of the EU institutions¹⁷ and within the Member States. The Charter's values are commonly shared with the Member States, and placing them in the Charter makes the protection of the rights more visible.¹⁸ As the Charter has equal legal value to TEU and the Treaty on the Functioning of the European Union (TFEU) and, therefore, is the primary law of the European Union, it has multiple functions.

The European Court of Justice (ECJ) has already in 1969 in its statement interpreted the fundamental human rights as general principles that are protected by the Court by stating that “respect for human rights is a condition of the lawfulness of Community acts.”¹⁹ Along with general principles of EU law, the Charter may also be used to interpret, as national law within the scope of EU law and EU secondary law must be interpreted following the Charter.²⁰ On the contrary, the Charter provides juridical reviews; federal law within the area of EU law or EU legislation breaching the Charter must be void.²¹ In situations where the EU has no competence, and the Charter will not apply. The EU Member States have constitutional protection of fundamental rights and freedoms²², which shall guarantee the security of the rights and liberties in situations falling outside the scope of EU jurisdiction.

1.3. Derogations and limitations in time of emergency

The Fundamental Rights and Freedoms are generally not that absolute that they cannot be limited in any way, with few exceptions. The Charter states in its article 52, “Any limitation on the exercise of the rights and freedoms recognized by this Charter must be provided for by law and respect the

¹⁶ Piris, J. *supra nota* 2010.

¹⁷ Eeckhout, P. *supra nota* 2002.

¹⁸ *Ibid.*

¹⁹ Piris, J. *supra nota* 2010.

²⁰ Lenaerts, K. A., & Gutierrez-Fons, J. (2010). The constitutional allocation of powers and general principles of EU law. *Common Market Law Review*, 47(6), 1629-1669.

²¹ *Ibid.*

²² European Commission; Directorate-General for Justice. (2011). EU:n perusoikeuskirjan soveltamista koskeva kertomus vuodelta 2010. Luxembourg: Publications Office.

essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others”.²³

The ECHR allows derogation from the Convention’s obligations under the declaration of a state of emergency.²⁴ The ECHR has a derogation clause, article 15, which states, “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.”²⁵ However, derogations and exceptions cannot be applied if they violate fundamental rights.²⁶ Thus, this concludes that the rights and freedoms can be restricted, but the exceptions must be strictly justified and based on the law, respecting the rights at issue and be proportionate towards the objectives of general interest.²⁷

The European Court of Justice case law states that “whereby Member States are bound to respect fundamental rights whenever they act within the scope of the Treaties for either implementing Community (or EU) legislation or derogating from it.”²⁸ Consequently, the protection of the rights must be maintained even while derogating from them. To secure the nation's life, declaring a state of emergency is necessary to enforce the additional emergency powers granted by the Constitution of a state.²⁹

²³ Charter of Fundamental Rights of the European Union, 2000/C 364/1.

²⁴ Greene, A. (2011). Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights. *German Law Journal*, 12(10), 1764-1785. Retrieved from: <https://www.cambridge.org/core/journals/german-law-journal/article/separating-normalcy-from-emergency-the-jurisprudence-of-article-15-of-the-european-convention-on-human-rights/69FC23C08C89B473A1294F63A03AA656> 10 April 2021.

²⁵ Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms, 4.11.1950, Rome.

²⁶ Eeckhout, P. *supra nota* 2002.

²⁷ Horsley, Thomas. (2015). 'The Court Hereby Rules...' - Legal Developments in EU Fundamental Rights Protection. *Journal of Common Market Studies*, 53(S1), 108-127. Retrieved from: <https://onlinelibrary.wiley.com/doi/full/10.1111/jcms.12265> 10.3.2021.

²⁸ Eeckhout, P. *supra nota* 2002.

²⁹ Bjørnskov, C., & Voigt, S. (2018). Why do governments call a state of emergency? On the determinants of using emergency constitutions. *European Journal of Political Economy*, 54, 110-123. Retrieved from: <https://www.sciencedirect.com/science/article/pii/S0176268017304779> 10 April 2021.

Some of the articles of the ECHR contain a limitation clause under the text of the provision, such as articles 8-11, which provides more comprehensive measures to limit the fundamental rights in times of public emergency than when derogating from the rights.³⁰

Although the pandemic has set unprecedented emergency situation, the Member States of the Council of Europe must not act in contradiction with the human rights obligations laid down in the Treaties. The Member States must constantly evaluate the relation between the imposed restrictions and the current situation in the light of human rights. Therefore, it is for the domestic courts of the Member States to ensure that the protection of human rights is in line with the case-law of the European Court of Human Rights.³¹ Furthermore, if emergency conditions continue for an extended period, there must be an evaluation of the effectiveness of the imposed measures.³² Consequently, if the measures appear ineffective, continuing to derogate from the Convention could not be longer justified.³³

³⁰ Harris, D.J., O'Boyle, M., Bates, E.P., Buckley, C.M.: Law of the European Convention on Human Rights, 2nd edn. Oxford University Press, Oxford (2009).

³¹ Jovičić, S. (2020). COVID-19 restrictions on human rights in the light of the case law of the European Court of Human Rights. *ERA Forum*, 21(4), 1-16. Retrieved from: <https://link.springer.com/article/10.1007/s12027-020-00630-w> 3 April 2021.

³² Macdonald, R. S. (1997). Derogations under Article 15 of the European Convention on Human Rights. *Columbia Journal of Transnational Law*, 36, XXI. Retrieved from: [https://1.next.westlaw.com/Document/14b2c311123e211dbbab99dfb880c57ae/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/14b2c311123e211dbbab99dfb880c57ae/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default)) 4 April 2021.

³³ *Ibid.*

2. FUNDAMENTAL RIGHTS IN FINLAND

Fundamental rights refer to the rights of an individual stated in the Constitution of Finland and international treaties signed by Finland. Therefore, fundamental rights are characterized by their special stability and legal aspect because of their constitutional nature.³⁴ Furthermore, they are considered fundamental and equal to every individual within the judicature district of Finland. The international Treaties also bind Finland on fundamental rights. As a Member State of the European Union, Finland must take the EU legislation and international Treaties regarding the fundamental rights into account while interpreting any legislation within the coverage of the EU jurisdiction.

Fundamental rights primarily obligate and bind the Government and public authorities. Moreover, the regulations of fundamental rights protect the individual's freedom from state and public authorities interference.³⁵ The fundamental rights also affect the legislator's action, as the rules limit the Parliament's competence, but they can also lead to active obligations towards the preparation of the legislation.³⁶ In other words, the protection of fundamental rights must be taken into account in preparing legislative proposals. The Government has no competence to implement acts or measures that are in contradiction with the rights.

Article 22 of the Constitution of Finland provides the obligation of the Government to secure all of the fundamental rights and human rights by, for instance, adopting legislation that specifies the exercise of fundamental rights. The fulfillment of these rights requires active proceedings of the public authorities. Article 23 of the Finnish Constitution regulates the basic rights and liberties in situations of emergency. According to article 23, any exceptions of fundamental rights made in emergency situations must be laid down by an Act and be necessary with a precisely circumscribed scope of application while maintaining compatibleness with Finland's international human rights obligations.³⁷

³⁴ Kotivuori, HM, Uotila S., (2012), *Lainlaatijan EU-opas: Kansallisen säädösten valmistelua koskevat ohjeet*. (3rd ed.) Helsinki, Finland: Oikeusministeriö.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Suomen perustuslaki 11.6.1999/731.

2.1. Restriction on Fundamental Rights in Finland

The restrictions on Fundamental Rights mean narrowing one's rights by the interference of public authorities.³⁸ The possibility to interfere with a fundamental right defines the exercise of the right, as precise completion of the right is defined by the possible use of its limitation.³⁹ Although fundamental rights secured in the Constitution of Finland are harder to amend and restrict than regular laws, they are not generally utterly unlimitable except for some absolute prohibitions.⁴⁰ Some provisions are stated with strict measures and absolute prohibition to limit the right, such as under article 9 of the Finnish Constitution, to prevent Finnish citizens from entering Finland. Thus, a Finnish citizen shall always come back to Finland.

Some fundamental rights may need more protection than others in times of emergency, such as the right to life in a pandemic of communicable disease. Consequently, the interest to secure the public health may require restricting individual rights, such as free movement. The Finnish Constitutional Law committee, in its report PeVM 25/1994 vp, describes the requirements for limiting fundamental rights, which are to be taken into account while imposing restrictions accordingly to the law. The list of the requirements will be covered in chapter 2.2.

At the start of the pandemic, 2020 Finnish Government imposed a strategy including recommendations and restrictions based on regular and emergency legislation.⁴¹ In the current pandemic, the legislators and public authorities have to consider the fundamental rights and aim to secure the rights as far as possible while imposing measures to prevent the spreading of the disease, according to the strategy. The fundamental rights can be restricted only based on the law. Thus, the justification of the restrictions on fundamental rights cannot be based on subordinate legislation or administrative or institutional regulations.

In Finland, the Covid-19 pandemic has been managed with different legislative measures. The aim has been to adopt such actions that are interfering with fundamental rights as little as possible. The restrictive measures of fundamental rights have been based on the regulations of the Emergency

³⁸ HE 13/2016, draft legislation, retrieved from:

https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/HE_13+2016.pdf 10 April 2021.

³⁹ Triantafyllou, Dimitris. (2002). The European Charter of Fundamental Rights and the "Rule of Law": Restricting Fundamental Rights by Reference. *Common Market Law Review*, 39(1), 53-64. Retrieved from: https://heinonline.org/HOL/Page?lname=&public=false&collection=kluwer&handle=hein.kluwer/cmlr0039&men_hide=false&men_tab=toc&kind=&page=53 9.5.2021.

⁴⁰ Hallberg, P., Karapuu, H., Ojanen, T., Scheinin, M., Tuori, M., Viljanen, VP. (2011) *Perusoikeudet*. (2nd ed.) Helsinki, Finland.

⁴¹ HE 147/2021.

Powers Act and temporary legislations applied on the grounds of section 23 of the Constitution of Finland and new and existing regular legislation.⁴² Some existing legislation, for instance, the Communicable Disease Act, has also been under reform, as the regulations of the Act were not effective enough to manage the crisis of a communicable disease.

The Finnish Government has used a hybrid strategy to prevent the spread of the virus and secure the capacity of the healthcare and the persons more at risk due to an existing medical condition. The strategy has developed within the past year due to more knowledge and research of and developing the virus. Still, the main “test, trace, isolate and treat” policy has been the alternative measure to the extensive restrictions. The hybrid strategy has aimed to curb the epidemic, which enables restriction within society and the people's fundamental rights.⁴³

2.2. Emergency Powers Act in Finland

The purpose of the Finnish Emergency Powers Act 1080/1991 is to “secure the livelihood of the population and the national economy, to maintain legal order and constitutional and human rights, and to safeguard the territorial integrity and independence of Finland in emergency conditions.”⁴⁴ The relevant definition of the emergency, regarding the Covid-19 pandemic, is the Chapter 1, section 2, subsection 5 “a catastrophe, provided the authorities cannot control the situation with regular powers.”⁴⁵ In the Act, the same subsection defines an emergency as a widespread dangerous contagious disease similar to a severe catastrophe, such as the pandemic caused by the virus of Covid-19.

According to chapter 2, section 3, subsection 1 of the Emergency Powers Act, “In emergency conditions, the Government may be authorized by the Presidential Decree to use emergency powers provided ...”⁴⁶. In other words, the Government may declare a national emergency according to the Emergency Powers Act with the President of Finland if the crisis falls within the scope of the definitions in the Act. After declaring the national emergency situation, the Fundamental Rights

⁴² HE 245/2020 vp, draft legislation, retrieved from:

https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/HE_245+2020.pdf 8 April 2021.

⁴³ Valtioneuvosto (2021).

⁴⁴ Valmiuslaki 29.12.2011/1552.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

may be subject to limitations with regular legislation acts, without having to enact derogation, accordingly to the Constitution of Finland, if the following preconditions are met:

- The exceptions must be based on the Act provided by the Government.
- Restrictions must be definite and rigorously defined. The law must state the relevant content of the limitations.
- The grounds for the restrictions must be acceptable and required by the overriding social need.
- An ordinary act cannot restrict the core value of a right.
- Restrictions must be necessary to achieve the objective and be proportionate to the legal interest protected by the fundamental rights and the social need for the limitation.
- Due process must be ensured while restricting fundamental rights.
- The restrictions must comply with international treaties and cannot be in contradiction with them.

The list is based on the draft legislation of the Constitution of Finland⁴⁷, but it is not exhaustive. Therefore, other circumstances may be considered, but the list has been used as a general guideline for adapting restrictions.⁴⁸

The Finnish Government, alongside the President of Finland, declared an emergency situation because of the pandemic accordingly to the Emergency Powers Act, first time 11.3.2020 and the second time 1.3.2021. The Act has not been used before in Finland, making the declaration a very exceptional decision in Finnish legal history. Since the Act has not been used before the year 2020, there is not much research or legal practice concerning the national threat caused by a pandemic. The Government's preparatory work of the legislation has been used in interpreting the legislation. Additionally, EU and international legislation must be taken into account even while applying the Emergency Powers Act.

⁴⁷ PeVM 25, HE 309/1993 vp.

⁴⁸ Laaka, M. (2020). *Tartuntataudin leviämisen ehkäisemisen vaikutukset perusoikeuksien toteutumiseen*. (Bachelor's thesis), The Faculty of Law, Turku University.

The use of emergency powers can be justified if the ordinary procedures are not effective enough. The emergency powers used to secure public health puts tension between the public and individual's interests, which requires that the restrictions of individual's rights and freedoms are necessary and proportionate towards the public health objective's in the matter.⁴⁹ The pandemic of Covid-19 is a severe respiratory syndrome, which can be fatal to humans.⁵⁰ Therefore, the public interests are very substantial concerning restricting the individual's rights temporarily.

2.3. Constitution of Finland

Article 22 of the Constitution of Finland obliges the public authorities to “guarantee the observance of basic rights and liberties and human rights.”⁵¹ Consequently, the Finnish Government has an obligation to secure the fulfillment of the rights and freedoms of the people, even in a time of emergency.

Article 23 of the Constitution of Finland regulates the fundamental rights and liberties in situations of emergency followingly: “Such provisional exceptions to basic rights and liberties that are compatible with Finland's international human rights obligations and that are deemed necessary in the case of an armed attack against Finland or in the event of other situations of emergency, as provided by an Act, which poses a serious threat to the nation may be provided by an Act or by a Government Decree to be issued on the basis of authorization given in an Act for a special reason and subject to a precisely circumscribed scope of application. The grounds for provisional exceptions shall be laid down by an Act, however.”⁵²

Consequently, the exceptions to the fundamental rights and freedoms must be justified and be only to a point where the exceptions are necessary. The article also obliges the imposed restrictions to be compatible with the requirements laid down in the ratified Treaties that bind Finland. Furthermore, any exceptions to fundamental rights can be made only by following strict requirements, and those restrictions must be interpreted concisely.⁵³ The list of the conditions in restricting fundamental

⁴⁹ Thomson, S., Ip, E. (2020). COVID-19 emergency measures and the impending authoritarian pandemic. *Journal of Law and the Biosciences*, 7(1). Retrieved from: <https://academic.oup.com/jlb/article/7/1/Isaa064/5912724> 1 April 2021.

⁵⁰ *Ibid.*

⁵¹ Suomen Perustuslaki 11.6.1999/731

⁵² Suomen perustuslaki 11.6.1999/731.

⁵³ Weatherill, S. (2014). *Cases and materials on EU law*. Oxford University Press, USA.

rights in chapter 2.2. must be taken into account while imposing any restrictions according to section 23 of the Finnish Constitution.

2.4. Communicable Diseases Act

The Communicable Diseases Act's objective is to “prevent communicable diseases and their spread, as well as to prevent harmful effects caused by these diseases to people and the society.”⁵⁴ The new amendment came into force 22.2.2021, which includes some temporary provisions regarding the Covid-19.

The Communicable disease act is a regular legislative act, which can be used without declaring the use of emergency powers. The Emergency Powers Act can be applied only when the Government, alongside the President, has declared the emergency conditions. Additionally, the application of section 23 of the Constitution of Finland about the restriction on fundamental rights in emergency conditions requires the declaration of emergency conditions. Consequently, there is a need for incorporating regulations of the management measures of an epidemic into regular legislation. Especially in a current pandemic situation, the management of the emergency situation should not be dependent only on emergency laws. Thus, the Communicable Disease Act has a significant role in the legislative procedure outside the emergency conditions, as the management of the virus continues according to the Act after the emergency conditions are no longer in force.

The Finnish Communicable Disease Act has been used alongside the Emergency Powers Act to apply measures and restrictions to manage the pandemic. The Communicable Disease Act was amended in February 2021 by increasing the authorities' competence to impose regional limits on business and leisure activities if it is necessary for the prevention of the spread of an epidemic. The purpose of any imposed restriction or obligation made within the scope of the Act is to avoid any physical contact between people. Some amendments are temporarily in force until the end of June 2021 in order to have efficient regulations to manage the current pandemic. Other modifications are permanent, such as the regulation on isolation which can now take place in a person's home rather than only in a health care unit, according to the Act.

⁵⁴ Tartuntatautilaki 21.12.2016/1227.

3. FULFILMENT OF FUNDAMENTAL RIGHTS IN FINLAND DURING COVID-19

As mentioned earlier, some emergency situations may require restricting the fundamental rights in order to secure public interests or other rights of the people. This can lead to the contradiction between the rights and their protection, where the aim is to find a solution that secures the fulfillment of the rights as efficiently as possible.⁵⁵ In the weighting between the rights, protecting section 7 of the Constitution of Finland, the right to life, and the right to personal security has great importance.⁵⁶ In a pandemic caused by a communicable disease that spreads within human contact, the right to life and personal security has more interests to secure than, for example, free movement of persons. Hence, the freedom of movement could and have been subject to restrictions in Finland as well as the rest of the world. However, the limits have to be made in strictly necessary measures.

The interest to protect the fundamental rights can collide between the rights, as some right may have more appeal to protect than other in, for instance, emergency conditions. As section 22 of the Finnish Constitution obligates the public authorities to secure the fundamental rights and freedoms, there may arise a situation where two fundamental rights collide and, therefore, both of the rights cannot be fulfilled in whole.⁵⁷ This leads to a problem where the protection of one fundamental right is used as the basis of justification to restrict another fundamental right. For instance, during the pandemic, the protection of the right to life has collided with the freedom of movement. The protection of the life of the people holds a significant social necessity⁵⁸ which has justified the need to restrict the free movement of people temporarily.

3.1. Finnish Government's epidemic management strategy

The Finnish Government has made different scenarios of the epidemic's progression and its relation to the restrictions.⁵⁹ There are three scenarios that describe the different outcomes of the epidemic's progression. The restrictions have been made within the scale of the virus' progression in other areas of Finland.

⁵⁵ HE 13/2017.

⁵⁶ HE 13/2016.

⁵⁷ Viljanen, VP. (2001) *Perusoikeuksien rajoitusedellytykset*. Helsinki, Finland: WSOY lakitieto.

⁵⁸ *Ibid.*

⁵⁹ Valtioneuvosto, (2021). *Covid-19-epidemia kehittyminen Suomessa*. Retrieved from: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162858/VN_2021_10.pdf?sequence=1 1 May 2021.

The first scenario is that the restrictions are adequate enough for about 3-4 weeks at a time, which leads to the decline of the infection rate. In this scenario, the restrictions are removed after the infection rate is no longer a threat to the health care system. According to this scenario, removing the limits will increase again the infection rate, after which the restrictions will have to be imposed again. According to the Government's report, the second scenario illustrates a situation where the imposed restrictions only slow down the epidemic but does not stop the spread of the virus. The restrictions are targeted to the regional level. The third scenario describes the infection rate's intensive increase, where the limits are imposed too late. In this scenario, the restrictions have to be comprehensive to be effective enough to slow the spread of the virus. The third scenario is the most difficult one, which should be avoided in order to maintain an effective health care system.

All of the scenarios are simplified. The pandemic can take unpredictable turns, which require real-time actions. Furthermore, the uncertainty of people's behavior has a significant impact on the effectiveness of the restrictions. The Government's report suggested that the progression of the epidemic will be some kind of combination of the three scenarios, where the preventative limitations should be emphasized in order to avoid the third scenario. However, as the uncertainty of the peoples' behavior together with the possibility of the epidemic's unpredictable progress must be taken into account and therefore, the thread of the third scenario cannot be excluded.

The most severe scenario requires the use of emergency powers in order to impose restrictions effective enough to manage the virus. In other words, regular legislation would no longer provide effective measures. The use of emergency powers provides the possibility to restrict fundamental rights, which have been necessary to enforce to slow down epidemic progression. In Finland, the restrictions of fundamental rights have been focusing on the free movement of people.

3.1.1. National and regional restrictions in Finland

The Finnish Government has imposed restrictions and recommendations aiming to decrease the social interaction between humans in order to prevent the spreading of the virus. The Government has mainly used the Communicable Diseases Act for imposing restrictions. The restrictions vary between regions in Finland, depending on the regions' epidemic progress and the scenario model.⁶⁰ The epidemic center of the Covid-19 has geographically concentrated in the Uusimaa region, but the

⁶⁰ Valtioneuvosto (2021).

imposed measures to prevent the spread of Covid-19 have affected the whole state territory,⁶¹ depending on the development of the virus in relation to the strategic plan of the Government. Uusimaa has been most affected by the epidemic, which has led to the most restrictive measures.

Many of the imposed measures against the spread of the virus has been recommendations from the Government and the competent public authorities, rather than being legally binding restrictions. These recommendations have been, for instance, the recommendation to work from home, which has been the guideline throughout this past year. However, the recommendation is not legally binding. Also, the use of a face mask has been recommended by the Finnish Institute for health and welfare, but so far, it has not been made legally binding by the law. However, as this thesis focuses on the imposed restrictions on fundamental rights specifically and the legislation used for the limits, this thesis will not further analyze other general restrictions and recommendations imposed in Finland.

3.1.2. Restrictions on Freedom of Movement

At the beginning of the pandemic 2020, European Union closed its external and many internal borders in order to prevent the spread of the Covid-19.⁶² As freedom of movement is one of the core values and fundamental rights of individuals in the European Union, the decision to restrict the movement between borders was historic.⁶³

In Finland, there has not been made curfew to manage the free movement during the pandemic. However, in March 2020, at the beginning of the pandemic, the Finnish Government enacted restrictions on movement to and from the Uusimaa Region in Finland to prevent the spread of the Covid-19 to other regions of Finland. The decision was made after the emergency situation had been declared in accordance with the Finnish Emergency Powers Act. The Finnish Government declared the temporary restriction of free movement to and from Uusimaa in accordance with section 118 of the Emergency Powers Act. The section lays down the requirement for restricting the free movement temporarily for three months at a time by limiting the right to reside and move in a particular region if it is necessary to secure the health and lives of the people. The restriction was made for three weeks, and during that time, the residents of Uusimaa were restricted to move freely from that region, and other region's residents were restricted from entering the area. However, if the movement was

⁶¹ Moisis, S. (2020). State power and the COVID-19 pandemic: The case of Finland. *Eurasian Geography and Economics*, 61(4-5), 598-605. Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/15387216.2020.1782241> 4 April 2021. 19 March 2021.

⁶² Linka, K., Peirlinck, M., Sahli Costabal, F., & Kuhl, E. (2020). Outbreak dynamics of COVID-19 in Europe and the effect of travel restrictions. *Computer Methods in Biomechanics and Biomedical Engineering*, 23(11), 710-717. Retrieved from: <https://www.tandfonline.com/doi/full/10.1080/10255842.2020.1759560> 11 April 2021.

⁶³ *Ibid.*

necessary for official activities, travel for work or military services or the need to for care, risk of death or death in the family member, the right of access to a child, or for any other similar compelling reasons, the restrictions did not apply.⁶⁴

In the memo made by the Government in regards to the decision to enact restrictions of free movement, the region of Uusimaa had shown faster development and spread of the virus than in the other areas of Finland. The Government assessed that other measures, such as closing down public places and restaurants, did not have enough effect on controlling the spread of the virus. The aim was to prevent the virus from spreading from Uusimaa to the rest of Finland, and therefore the restriction of free movement was an adequate measure to enforce. As other regions of Finland did not have as high an infection rate as the region of Uusimaa did at the time, it was not necessary to restrict the free movement in other regions at the same time.

Restricting the movement between Uusimaa and the rest of Finland in accordance with section 118 of the Emergency Powers Act was a necessary measure to flatten the curb of the epidemic and secure public health and safety in other regions of Finland. In conclusion, the restriction to free movement met the criteria listed in chapter 2.2. of this thesis.

In March 2021 the, Finnish Government, alongside the President of Finland, declared the emergency conditions accordingly to the Emergency Powers Act. The Government, in its legislative proposal, proposed to enforce temporary restrictions on freedom of movement and close contacts and a mask mandate to the epidemic centers of Finland.⁶⁵ Different from the year 2020 Uusimaa restrictions, the proposal was made by section 23 of the Constitution of Finland as a provisional exception to a fundamental right of free movement. The proposed restrictions would have prevented people from leaving their homes or places of residence unless for a necessary reason to do so, for instance, to purchase food and drink. However, the Government later withdrew the proposal since the Constitutional Law Committee had declared in its statement that prohibiting the movement “in its entirety is contrary to the requirement of proportionality.”⁶⁶

⁶⁴Valtioneuvosto. (2020) Liikkumisrajoitukset Uudellemaalle voimaan 28. maaliskuuta 2020. Retrieved from: https://valtioneuvosto.fi/-/10616/liikkumisrajoitukset-uudellemaalle-voimaan-28-maaliskuuta-2020-klo-00-00?languageId=fi_FI 11 April 2021.

⁶⁵HE 39/2021. Retrieved from: <https://valtioneuvosto.fi/paatokset/paatos?decisionId=0900908f8071ab99> 10 April 2021.

⁶⁶Eduskunta (2021) Perustuslakivaliokunnan lausunto liikkumisrajoituksista on valmistunut. Retrieved from: <https://www.eduskunta.fi/FI/tiedotteet/Sivut/Perustuslakivaliokunnan-lausunto-liikkumisrajoituksista-on-valmistunut.aspx> 10 April 2021.

The Government's legislative proposal was ambiguous, and the restrictions were not rigorously defined, which would have resulted in different interpretations of the restrictions. The Constitutional Law Committee stated that the proposal to restrict free movement in its entirety would have affected the core value of a fundamental right and would not have been a proportional measure against the virus and would have therefore been against the Constitution.⁶⁷ The Committee also determined that the objectives were possible to achieve within the measures already in use based on the Communicable Disease Act, and therefore, the proposed restrictions on free movement were not necessary to enforce.

The limitation of the freedom of movement may have had interfered with the individual's right to family life if the person's family have lived outside the region of Uusimaa during the restrictions imposed. However, in Finland, the restriction on free movement to and from the area of Uusimaa was in force only for a short period of time and was removed immediately by the Finnish Government in the repealing decree "Government Decree repealing the Government Decree on the use of powers laid down in section 118 of the Emergency Powers an on temporary restriction on movement for the protection of the population"⁶⁸ when there were no longer necessarily need to restrict free movement. Therefore, the restriction of free movement has not interfered with the core value of the right to family life. In addition, the interest to secure the life and health of the people had more interest to protect by restricting the movement to other regions.

The Finnish Government emphasized the importance of securing the functioning of the health care system and the severe threats to human life and health. Section 22 of the Constitution obligates the public authorities to secure the right to life and to protect the health of the population. By securing the functioning of the health care system and ensuring adequate health care for everyone, the Government was fulfilling the protection of the life and health of the people. In order to protect the right, free movement was subject to restrictions.

3.2. Case law

According to a decision⁶⁹ of the Finnish Supreme Administrative Court of Finland, the municipal disability service manager had prohibited visiting the housing units of the disability services to protect

⁶⁷*Ibid.*

⁶⁸ Valtioneuvosto (2020).

⁶⁹ Korkein Hallinto-Oikeus KHO 21505/2020, 7.1.2021.

the residents and the staff from Covid-19. The Service Manager justified the decision by section 17 of the Finnish Communicable Diseases Act, which obligates to prevent the spread of infections in a health care unit. One of the residents and their father had complained about the decision, but the Administrative Court had dismissed the complaint. The Supreme Administrative Court abolished the decision made in Administrative Court and removed the visiting prohibition. According to the Supreme Administrative Court, the prohibition of visitations had effectively restricted residents' right to private and family life.

According to the Supreme Administrative Court, the imposed prohibition to visit the housing unit residents is a far-reaching restriction of the right to private and family life. Section 17 of the Communicable Diseases Act does not provide legal measures to restrict fundamental rights. Therefore the prohibition to visit the housing units residents is not a measure to prevent the spreading of the Covid-19 within the section's meaning. Consequently, the Head of Disability Services did not have the legal competence to impose a ban on visits.

This decision supports the high level of protection of fundamental rights and freedoms of the individual. The housing unit had no legal competence to restrict the right to visit the residents and interfere with the right of private and family life.

In another similar Administrative Court case,⁷⁰ the visitations to a care unit had been restricted. The visitations were allowed outside one time per week, 30 minutes at a time, while maintaining two meters distance with each other under the supervisor of a nurse. Later on, in the updated guideline, the nurse's attendance was not mentioned. The Administrative Court viewed that it was possible to make general guidelines regarding visitations to the care unit in order to secure the residents and the staff from the Covid-19 under the regulations of the Communicable Diseases Act. However, the guidelines could not be used to restrict the communication and visitations of the residents. Restricting fundamental rights could be possible to impose, but those restrictions must be based on the law. The Communicable Diseases Act does not provide regulations towards restricting an individual's fundamental rights, except in the sections regarding closing a care unit or quarantine and isolation and the restrictions on visitations during quarantine and isolation.⁷¹ Section 17 of the Act did not provide competence to impose restrictions to visitation rights. By imposing the mentioned restrictions

⁷⁰ Itä-Suomen Hallinto-Oikeus HAO 20/1059/1, 16.10.2020.

⁷¹ See §58, §60 and §69.

to the visitations, the measures interfered with the residents' right to private and family life without legal grounds.

Based on a decision⁷² of the Supreme Administrative Court of Finland, a Regional State Administrative Agency had imposed a prohibition on public events or meetings for over 50 persons. The appellant had demanded the prohibition to be removed, claiming that the Agency did not have the competence to restrict “the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them” according to chapter 2, section 13, subsection 1 of the Finnish Constitution, the freedom of assembly and association.⁷³ However, section 58 of the Communicable Diseases Act provides the competence for the Regional State Administrative Agency to prohibit general meetings and public events. The decision to restrict public events and meetings for only less than 50 persons was left in force. In conclusion, in this case, the Communicable Disease Act provided the competence to impose restrictions on the fundamental freedom to assembly and association.

To conclude these three court cases regarding fundamental rights and their restriction, the Communicable Disease Act does not provide enough competence to impose restrictions on the right to private and family life in order to protect the residents and staff of a health care unit. Consequently, imposing restrictions on those rights would require the use of emergency powers. However, the Act does provide competence for the Regional State Administrative Agency to protect public health by restricting public events and meetings.

⁷² Korkein Hallinto-Oikeus KHO 21228/2020, 23.10.2020.

⁷³ Suomen Perustuslaki 11.6.1999/731

4. ANALYZING THE FINDINGS

In a time of emergency, the rule of law, fundamental rights, and democracy are under tension as the public interest is against the rights and freedoms of the individual. The individual's rights and freedoms may have to be limited in order to secure public health. Consequently, the fundamental rights and freedoms may collide as other rights may require more security on the grounds of the others. For instance, in a collision of rights, the right to life and freedom secured in section 7 of the Finnish Constitution has shown significant status to protect. In conclusion, in a time of emergency, the right to life could be secured by restricting other rights and liberties.

The emergency legislation is somewhat indistinguishable in normal situations, yet a crucial part of the legislation for securing the society.⁷⁴ The average life of a community is based on regular legislation, but in a time of emergency, emergency legislation is needed alongside regular legislation.⁷⁵ However, as declaring a time of emergency should maintain as an exceptional measure, there is a need to include the measures required into the regular legislation to manage the emergency situations when the emergency conditions are not met. In conclusion, the Finnish legislation would have to provide efficient measures to handle emergency situations without enforcing the emergency powers.

The Finnish Government has mainly used the Communicable Diseases Act, which has been renewed during the pandemic. The pandemic has shown gaps in the existing legislation, which has required amending the legislation. However, the amendments of the Communicable Diseases Act showed a lack of efficiency to impose effective restrictions. This indicates that the legislation changes in the middle of the pandemic do not necessarily provide efficiency, as the legal procedure is under a time limit.

The emergency powers are used in a situation where legislative actions generally require faster procedures than in normal conditions, leading to weak scrutiny and justification for the legislative process.⁷⁶ This has happened in the Finnish legislative procedure during the Covid-19 crisis. The first example is the updated Communicable Disease Act that came into force in February 2021. The legislative process still took months, but the Act turned out to have slight effectiveness to manage

⁷⁴ Aine, A., Nurmi, VP., Ossa, J., Penttilä, T., Salmi, I., Virtanen, V. (2011). *Moderni Kriisilainsäädäntö*. Finland: Sanoma Pro Oy.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

and impose restrictions to prevent the spread of the Covid-19.⁷⁷ Therefore, the Finnish Government had to declare emergency conditions again in March 2021 to use emergency powers to impose necessary and proportionate measures against the virus. In conclusion, the Finnish Government tried to update the Act in the middle of a crisis, without enough time to scrutinize the actual effect of the amendments.

The amendment of the Communicable Disease Act is an essential change for the possible future communicable diseases, as the Act allows to isolate infected persons to their homes to prevent the spread of a virus. However, the Act may be under new amendments after the pandemic. The legislator will have to examine what measures the legislation is still lacking in relation to communicable diseases.

The global problem is that the interpretation of the state of emergency varies between states. The emergency conditions in Finnish legislation are described in the Finnish Emergency Powers Act section 2. To declare the emergency usage, the declaration of emergency conditions must be made according to the Act. The emergency conditions generally mean that the regular legislation does not grant enough powers to manage the emergency. However, to recognize the emergency conditions, there must be normal and steady conditions in society. The emergency should be temporary and exceptional. Furthermore, article 15 ECHR emphasizes the temporary and necessary means in times of emergency.⁷⁸

The European Parliament has initiated the coordinated actions within the EU, in its joint motion for a resolution, to combat the Covid-19 pandemic by emphasizing the importance of the Charter of Fundamental Rights and the compliance with the rule of law.⁷⁹ The European Parliament “emphasizes that all measures are taken at national and/or EU level must be in line with the rule of law, strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subject to regular scrutiny.”⁸⁰ Therefore, the Parliament’s motion has defined clear borderlines to emergency measures to be limited, within a limited time frame, proportionate, and to

⁷⁷ Mutanen, A. (2021, February 2) Tartuntatauti-lain muutos ei riitä, poikkeus-olot ovat käsillä – Miten kuukausia kestäneessä lain-säädäntö-työssä on saatu aikaan näin vähän? *Helsingin sanomat*.

⁷⁸ Council of Europe (CoE) Convention for the Protection of Human Rights and Fundamental Freedoms, 4.11.1950, Rome.

⁷⁹ Resolution on EU coordinated action to combat the COVID-19 pandemic and its consequence. Retrieved from: https://www.europarl.europa.eu/doceo/document/RC-9-2020-0143_EN.html 3 March 2021

⁸⁰ *Ibid.*

be used only for the imposed purposes.⁸¹ The Finnish Government is bound to respect those borderlines.

In some countries, the time of emergency has become the new normal, where the emergency powers are no longer used in exceptional measures. In those countries, the normal society no longer exists.⁸² However, in Finland, the emergency conditions have never been declared before, nor has the Emergency Powers Act been used. Thus, the use of the Emergency Powers Act has been very exceptional in Finland. Consequently, there is no existing legal practice in applying the Emergency Powers, especially in the context of a pandemic. Thus, the Government has relied on regular legislation as long as it has provided the necessary means to manage the virus. In the future, Finland will most certainly continue to use the emergency powers only when it's strictly required to keep the emergency powers separated from the normal conditions' legislation procedures. However, this requires effective regular legislation which provides measures to manage crisis outside the emergency conditions.

The Government's proposal to restrict free movement in May 2021 faced plenty of criticism in Finland, as the legislative proposal had a significant deficiency in legal grounds. As stated earlier, the proposal did not meet the criteria of restricting the fundamental right of free movement. In this case, the legal procedure was done in a short period in the middle of a public health crisis, which most certainly affects the legal scrutiny and justification process. Although many EU Member State has applied similar restrictions in their jurisdictional area allowing only necessary movement within specified regions, the Finnish Constitutional Law Committee interpreted the Government's proposal against section 23 of the Finnish Constitution. In conclusion, the fundamental right of free movement remained far protected right in Finnish legislation. This has now created a legal practice for possible similar crises' concerning the restrictions of free movement. Finnish legislation does not allow to restrict the free movement in its entirety by preventing people from moving from their homes if not necessary, even though many other EU countries have imposed these kinds of measures.

The court cases showed that the Communicable Diseases Act does not provide many regulations on restricting fundamental rights, except in sections 58, 60, and 69. Therefore, the Act cannot be used in

⁸¹ Cormacain, R. (2020). Keeping Covid-19 emergency legislation socially distant from ordinary legislation: Principles for the structure of emergency legislation. *Theory and Practice of Legislation (Oxford, England)*, 8(3), 245-265. Retrieved from: <http://web.a.ebscohost.com/ehost/detail/detail?vid=0&sid=4dfbac3e-84b5-49bd-a14a-aa54dfa9914c%40sdc-v-sessmgr03&bdata=JnNpdGU9ZWZWhvc3QtbGl2ZSZzY29wZT1zaXRl#AN=147102027&db=a9h> 1 April 2021

⁸² Honko, K. (2017). Kansallinen turvallisuus, ihmisoikeusvelvoitteista poikkeaminen sekä velvoitteiden rajoittaminen Euroopan muuttuvassa turvallisuusyhteisössä. *Oikeudtiede- Jurisprudentia*.

limiting fundamental rights, such as the right to private and family life, as the court cases concluded. This leads most of the time to the need to use emergency powers, which on the other hand, has been taken into use only two times at this point of the pandemic. The Finnish Government has tried to avoid emergency powers, which emphasizes the importance of effective legislation outside the emergency conditions.

The fulfillment of the fundamental rights in a pandemic and emergency conditions in Finland have been protected by imposing the restrictions strictly by law. The Finnish Government has followed the Constitutional Law Committee's list of restrictions on fundamental rights requirements. Furthermore, the decision to withdraw the proposal on the limits of free movement in March 2021 emphasized that the restrictions have to be following the Constitution. The emergency conditions do not allow the public authorities to impose any restrictions, without proper legal justification. This has highlighted the borderlines of fundamental rights' restrictions. The Government's imposed restrictions on the free movement were justified by the substantial reason to protect the right to life.

4.1. Solutions

As stated earlier, the Finnish Communicable Disease Act does not allow to impose effective restrictions on fundamental rights. The restrictions on fundamental rights in emergency conditions, such as in a pandemic, can be enacted by a specific Act accordingly to article 23 of the Finnish Constitution or by using the Emergency Powers Act regulations. However, both of the mentioned ways require that the emergency conditions have been declared and that the authorities cannot control the situation with regular powers.

The current pandemic of Covid-19 will not be the last virus to threaten the life of the people. To effectively manage similar communicable disease crises, the legislation must be developed once the normal conditions of society have returned. The normal conditions enable the legal procedure to be under the necessary scrutiny, and the legislators have the time to legislate effectively. In addition, the research, data, and legal practice from the pandemic of Covid-19 will be analyzed for years to come so that the Governments can form effective strategies for similar emergencies. The legislation must be able to provide effective regulations towards the management of a pandemic. However, the future is unpredictable. Hence the legal preparation for the future will not be comprehensive.

CONCLUSION

This thesis aimed to examine the restrictions imposed by the Finnish Government in the light of fundamental rights and their protection. Furthermore, the aim was to examine how the fundamental rights were fulfilled in Finland during the pandemic while imposing restrictions on them. The thesis aimed to discover the legal grounds for the restrictions imposed and the Finnish Government's legal powers to impose them. Additionally, the aim was to examine the effects of the restrictions on the future. Finally, the thesis aims to analyze the effectiveness of the Finnish legislation and if there is a need for improvement of the legislation. The research focused on the freedom of movement and the right to life. The case law presented the Court's decisions on restrictions on the right to private and family life and the freedom to assembly and association.

The hypothesis was that the restrictions on fundamental rights and freedoms in Finland had been legally enforced. The research concluded the first hypothesis to be correct regarding restrictions on fundamental rights imposed by the Finnish Government. According to the Emergency Powers Act, the Finnish Government imposed restrictions of free movement in 2020 to prevent the spread of the virus from securing the health care system. The restrictions were proportionate and necessary to fulfill the aim. The restrictions were made following the requirements described in section 2.2. The restrictions of free movement proposed in 2021 were withdrawn for being against the Constitution of Finland. The withdrawal of the proposal confirmed the strict requirement for the legality of the restrictions and therefore supported the first hypothesis. In conclusion, the Finnish legislation secures the fundamental right of free movement extensively and aims to use other measures that does not interfere with the right. Free movement was restricted only when the restrictions was necessary to use in order to secure the public health and life of the people.

The case law showed that some restrictions on the right to private and family life were made on an administrative level in health care units relying on the regulations of the Communicable Diseases Act. However, the Court ruled that the health care units did not have the competence to restrict such rights. Therefore, the restrictions were not legally binding. This conclusion does not support the hypothesis that all restrictions have been legally enforced. The Court's rulings on the right to private and family life emphasize the requirement to base any restriction of a fundamental right to law.

The case law regarding the restriction to freedom of assembly and association was made accordingly to the law and supported the first hypothesis. In that case, the public authority has the legal competence to impose such restrictions. In conclusion, most of the restrictions on fundamental rights

have been enforced legally in Finland. Those restrictions that the Court showed to lack legal validity were legally revoked.

As the analysis of this research examined, the freedom of movement was restricted due to the substantial need to protect the life and health of the people. The research proposed that the fundamental rights may collide, at which time the other right would not be fulfilled completely. As the Finnish Government justified the restrictions of free movement, the legal reasoning for the restrictions must have substantial social necessity to be valid. The protection of the health care system holds a significant role in the society and the protection of the life and health of the people; hence the free movement shall be liable to restrictions.

The second hypothesis was that the Finnish legislation is not currently sufficient enough. The research shows that there has been a need to develop the existing legislation to meet the challenges of the current pandemic, as the pandemic is a very unprecedented situation. The timeframe for the legal changes has been minimum as the pandemic is progressing. That resulted in inefficient amendments to the Communicable Diseases Act. After the pandemic has slowed down or entirely stopped, the legislation changes can be made by reflecting the time of the crisis. In conclusion, the Finnish legislation is sufficient to impose efficient restrictions at the moment, but the regular legislation has already been amended and may need further development.

The research shows that the regular legislation does not provide extensive restrictions on fundamental rights outside emergency conditions. Therefore, the regular legislation may need modification to provide efficient measures to manage similar health crises. However, the Finnish Government is not quick to enforce the emergency powers to maintain the normal conditions as far as possible. As the emergency powers provide the regulations to use temporary measures to restrict fundamental rights in emergency conditions, the Finnish Government does not easily restrict the fundamental rights.

The research concludes that fundamental rights are being restricted according to law and only by necessary and proportionate means. According to this research, the necessary and proportionate measures mean that a fundamental right cannot be restricted in its entirety. The core value of the right is always protected. In addition, fundamental rights, such as free movement, can be restricted to secure another fundamental right if there is a significant reason for it, such as ensuring the lives of the people.

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