

TALLINN UNIVERSITY OF TECHNOLOGY

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**Access to Emergency Medical Services in Sparsely Populated Areas:**

**Perspective of International Human Rights Law**

Master Thesis

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## Declaration

I hereby solemnly declare that I have written this thesis by myself and without support from any other person or source, that I have used only the materials and sources indicated in the footnotes and in the bibliography, that I have actually used all materials listed therein, that I have cited all sources from which I have drawn intellectual input in any form whatsoever, and placed in “quotation marks” all words, phrases or passages taken from such sources verbatim which are not in common use and that neither I myself nor any other person has submitted this paper in the present or a similar version to any other institution for a degree or for publication.

Tallinn, 1 May 2014

Jenna Yliruusi

# OUTLINE

## Abbreviations

<b>1. Introduction</b>	1
<b>2. Basics of Human Rights Law</b>	6
2.1. Principles of Human Rights	6
2.2. History and Developmet of Human Rights Law	7
2.2.1. Human Rights prior WWII	7
2.2.2. Human Rights after WWII	9
2.3.Scope of Protection	10
<b>3. ICCPR and ICESCR</b>	13
3.1.Relationship	13
3.1.1. Core Differencies	13
3.1.2. Categorization	15
3.2.Human Rights in Finland	16
3.3. Applicable articles	18
3.3.1. ICCPR articles	18
3.3.2. ICESCR articles	20
3.3.3. Property and Discrimination	23
<b>4. Access to Emergency Medical Services in Oulu</b>	25
4.1. Region of Oulu	25
4.2. Basics of Emergency Medical Services	27
4.2.1. Responsibility on Arranging EMS	27
4.2.2. Terminology and Definitions	28
4.2.3. Risk Analysis	29
4.3.Current Situation in Oulu	31

<b>5. Analysis: Does the New Legislation Violate Human Rights?</b>	34
5.1. General Obligations under the the Human Rights Covenants	34
5.2. Violation of Right to Health and Access to Emergency Medical Services?	37
5.3. Restriction on Freedom to Choose Residence?	40
5.4. Justifications for Violations?	43
5.4.1. Strict Interpretation	43
5.4.2. Milder Interpretation	46
<b>6. Analysis: Further Problems of ESC Rights and Their effect to Emergency Medical Service</b>	48
6.1. Economic Aspects of Emergency Medical Service	48
6.2. Enforcement of the ESC Rights	54
6.3. Hierarchy of the ESC Rights?	57
6.4. Right to Health and Access to Emergency Medical Service as Customary Norms?	60
<b>7. Conclusion</b>	64
<b>Summary</b>	70
<b>Bibliography</b>	71
<b>Annex 1</b>	81
<b>Annex 2A</b>	82
<b>Annex 2B</b>	83

## **ABBREVIATIONS**

In alphabetical order

ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EMS	Emergency Medical Service
ESC Rights	Economic, Social and Cultural Rights
EU	European Union
FRU	First Response Unit
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
UN	United Nations
UDHR	Universal Declaration of Human Rights
WW II	World War II

## 1. Introduction

In May 2011 reformed Health Care Act entered into force in Finland. The legislation was updated primarily to guarantee the harmonized and unified standards on medical care, to improve the care and the access to medical services on equal basis to every citizen.<sup>1</sup> From the perspective of emergency medical services (EMS) the most significant change occurred in relation to the instance which is responsible for providing such services. While the previous legislation imposed the obligation of arranging and maintaining ambulances to local municipals, the article 39 in the reformed Act shifted the responsibility to the hospital districts. According to the article 79(1) of the Act, deadline for the transition in that matter was prescribed to be January 2013.

At the first glance the changes and improvements appeared reasonable and justifiable. Purposes and aims behind the reforms seemed to rely on the constitutional provisions requiring the public authorities to guarantee for everyone the access to adequate medical services and to promote the health of the population without discrimination.<sup>2</sup> However, despite the judicious reasons of the updated legislation, the implementation and execution of the article 39 appeared problematic especially in one region.

Located approximately 600 kilometers from Helsinki, Oulu is the largest city in northern Finland. The municipal has nearly 200.000 inhabitants. Moreover, the territory of the region is quite large as the surface area contains almost 4000 square kilometers. In addition to the main city area, numerous smaller towns as well as sparsely populated areas are located within the region.<sup>3</sup>

After the reformed Health Care Act came into force, the hospital district of Oulu region adopted a completely new approach on arranging the emergency medical services. While under the previous legislation the ambulances were located according to the needs of the population to guarantee the equal access to the services, following the adoption of the new

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<sup>1</sup> Art. 2 of Health Care Act (Terveystieteidenhuoltolaki, 30.12.2010/1326)

<sup>2</sup> Art. 19 of the Constitution of Finland (Suomen Perustuslaki 11.6.1999/731)

<sup>3</sup> City of Oulu Web side, "Information about Oulu", Last Accessed 19 March 2014, <http://www.ouka.fi/oulu/english/information-about-oulu>

provisions, the hospital district abolished previous, effectively worked system and replaced it with the creation of paramedic service center.<sup>4</sup> Currently the center and the ambulances operate from the Central Hospital which is located in the main city area. Considering that Oulu has a relatively large territory, the problem with the present system derives in the areas that are located far from the city center. As those regions do not have permanent ambulances anymore but the paramedics would be sent from the city center, access to urgent health care services within a reasonable time appears questionable. Already in January 2013 there occurred an incident where a patient living in sparsely populated area had a heart attack and needed to wait EMS to arrive almost an hour.<sup>5</sup> Luckily, in that specific situation the delay was not fatal but it provided an example of the weakness of the current system. In the worst case scenario, due to the long distances the ambulance may not reach the patient in time and the loss of lives may become inevitable.

The situation appears alarming not only from the viewpoint of Finnish legislation but it also seems to violate the International Human Rights Covenants which Finland has signed and ratified. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) guarantees a person the right to liberty of movement and freedom to choose his residence. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), on the other hand, obliges the State to recognize the right of everyone to enjoy the highest attainable standard of mental and physical health *inter alia* by creating the conditions which would assure all medical service and medical attention in the event of sickness. Furthermore, while article 2(1) of ICCPR simply requires the States to respect and ensure the rights recognized by the Covenant, article 2 of ICESCR obliges the States to take steps to progressively achieve the realization of the rights by all appropriate means without discrimination.

In addition to freedom to choose the residence, according to the article 11(1) of ICESCR the individuals should also have a right to the continuous improvement of their living conditions. However, these rights and freedoms may be undermined if the State fails to comply with its obligations to provide adequate services under the ICESCR. Therefore, in

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<sup>4</sup> Pohjois-Pohjanmaan Sairaanhoidopiiri, *Pohjois-Pohjanmaan Sairaanhoidopiirin Ensihoitopalvelun Palvelupäätös 1.1.2013 alkaen*, (Hospital District of Oulu Region, *Decision on Service Level in Prehospital Emergency Care in Oulu Region from January 2013*), 6, Last Accessed 19 March 2014, [http://www.ppshp.fi/instancedata/prime\\_product\\_julkaisu/npp/embeds/28251\\_palv\\_tasop\\_versio\\_13.pdf](http://www.ppshp.fi/instancedata/prime_product_julkaisu/npp/embeds/28251_palv_tasop_versio_13.pdf)

<sup>5</sup> See Chapter 4 below; Especially Chapter 4.3

the light of the present circumstances, it seems that the implementation of the current health care legislation in Oulu region conflicts with the right to health care and have a potential to endanger and restrict the enjoyment and exercise of other human rights as well. Thus, the questions could be raised whether, how and to what extent the situation in Oulu *de facto* violates the Human Rights Covenants.

This thesis is written for the purpose to analyze the present conditions on access to EMS in Oulu region from the perspective of the international human rights law. Answers are sought to the questions whether and how the existing situation does violate the international human rights as well as whether any justifications to such situation can be found. Furthermore, this thesis discusses the relationship between the ICCPR and ICESCR and analyses whether these two Covenants should be treated separately or whether interdependence and simultaneous application could be more reasonable approach. Additionally, the further problems relating to the realization and application of the economic, social and cultural rights (ESC rights) and their effect on access to EMS will be evaluated.

The writer of the thesis recognizes that the regional human rights protection mechanisms would also provide certain aspects to the present research. However, in order to achieve more centralized, comprehensive and detailed analysis, the study is done primarily based on the United Nations (UN) Covenants. Therefore, human rights instruments under Council of Europe as well as the socio-economic protection provided by the European Union are largely disregarded and excluded from the analysis.<sup>6</sup>

Simultaneously, while the thesis engages in an elaborate evaluation of the specific situation occurring in the specific state, it should be noted that the international human rights impose responsibilities on States beyond their own jurisdictions and traditional State sovereignties to provide international assistance and cooperation in order to guarantee the principle of

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<sup>6</sup> Regional human rights mechanisms in relations to the scope of the present thesis are in fact relatively limited. European Convention on Human Rights deals only with the civil and political rights and does not include any provisions concerning EMS. European Social Charter, on the other hand, is dedicated to the protection on ESC rights. However, the Charter does not protect the access to EMS as the article 11 is mostly directed to protection of health through the preventative methods and education. Finally, EU is not a human rights organization *per se*. Although EU has the Charter of the Fundamental Rights, according to the article 51, the scope of the Charter has been narrowed to concern solely the EU institutions and the Member States when they are implementing the EU law.



human dignity in the universal level.<sup>7</sup> Requirements for the international cooperation can be found *inter alia* from the articles 55 and 56 of the Charter of the United Nations as well as in the article 2(1) of ICESCR. Therefore, this thesis seeks to analyze the specific problem for the wider purpose with the aim to find certain common patterns or principles which could be applied in the similar situations in a global level.

Furthermore, according to the general international view, Finland has often been perceived as one of the leading nations in promotion and protection of human rights and welfare. Therefore, to analyze the problems of how to achieve the full realization ESC rights and to guarantee the access to EMS without discrimination and on equal basis also in sparsely populated areas, would not only serve the interests of Finland and Finnish citizens but could also be utilized in the international cooperation and assistance.

This thesis consists of seven chapters. The chapter one is dedicated to the present introduction. Chapter two explains the basics of international human rights law. The subsections in the chapter two cover the fundamental principles of human rights, brief history and development as well as the scope of the protection. Chapter three analyzes ICCPR and ICESCR in more detailed. Section 3.1 researches the relationship of the Covenants and explains their different natures. Section 3.2, on the other hand, provides the overview of the status of ICCPR and ICESCR in Finland. Section 3.3 introduces briefly the main articles of the Covenants that are applicable to the specific situation on access to EMS.

Chapter four covers the factual background on access to EMS in Oulu region. Section 4.1 gives a brief introduction to the territory of Oulu covering both geographical and administrative aspects. Section 4.2 explains the substantive provisions of Finnish paramedic legislation. Section 4.3 is dedicated to the present situation in Oulu providing the factual overview of the changes which the renewed health care legislation and its implementation brought.

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<sup>7</sup> Coomans, Fons, "Application of the International Covenant on Economic, Social and Cultural Rights in the Framework of International Organizations", *Max Planck Yearbook of United Nations Law*, Vol 11, 2007, 359-390, 361; Hunt, Paul, Gillian MacNaughton, "A Human Rights –Based Approach to Health Indicators", *Economic, Social and Cultural Rights in Action*, Oxford University Press, New York, 1<sup>st</sup> ed., 2007, 303-330, 309-310

The main analysis of the thesis is found in the Chapters five and six. Chapter five forms the analysis on the specific situation in Oulu from the perspective of the possible human rights violations whereas chapter six engages in evaluation of the further problems of ESC rights in a more universal level. Section 5.1 examines the general obligations under the ICESCR and the specific aspects of the duties that the articles impose to the States. Section 5.2 analyzes whether Finland violates its obligations under the article 12 of ICESCR. Section 5.3 studies the questions of property and the possible restriction on freedom of movement and improvement of living conditions. Section 5.4, on the other hand, seeks to find justification for possible violations and analyzes whether such justification comply with the further requirements such as principle of proportionality.

In the chapter six, section 6.1 is dedicated to the economic aspect of ESC rights evaluating *inter alia* the questions of who should provide the EMS and how should them be financed. Section 6.2 explains the problems relating to the enforcement of ESC rights and section 6.3 discusses on the issue whether there exists hierarchy between the different rights guaranteed in the ICESCR. Section 6.4, on the other hand, seeks to answer whether the socio-economic rights could be regarded as customary norms under the international law. Finally, chapter seven summarizes and concludes the thesis. Answers are provided to the specific situation in Oulu region and certain guidelines for international application of how to guarantee access to EMS in sparsely populated areas are established.

Finally, the writer of the thesis would like to note that as the specific analysis concentrates mainly on the situation in Finland, large number of the sources is established in Finnish without official translations being available. Therefore, the translations from Finnish legislations and other sources are done by the writer herself. Simultaneously, the hospital district to which Oulu belong, is officially called Hospital District of Pohjois-Pohjanmaa and does *de facto* cover larger area than simply the municipal of Oulu. However, in other parts of the hospital district the implementation and execution of the reformed legislation has not seemed to cause such major and urgent problems. Thus, this thesis focuses on the alarming situation in Oulu region.

## 2. Basics of International Human Rights Law

### 2.1 Principles of Human Rights

Human Rights are universally recognized system of values that provide minimum standards and procedural rules of human relations.<sup>8</sup> Although the conducts of human beings are guided by other value systems such as religion as well, the distinctiveness of human rights derives from the fact that the basic, universally accepted standard of human rights have been codified in the international treaties and implemented in the national level.<sup>9</sup> Thus, in comparison to other value systems, human rights have legally binding force upon all state authorities.

Human rights are constructed upon the ideology that recognition of inherent dignity and the equal and inalienable rights of all human beings form the foundation for freedom, justice and peace.<sup>10</sup> Thus, the essential assumption behind the human rights relies on the cognition that the stable society can be created through the protection of human rights and guaranteeing the equal treatment.

Therefore, human rights are indispensable and they should belong to every person without exceptions and to an equal extent.<sup>11</sup> Furthermore, in addition to the obligation of the states to ensure and guarantee the human rights within their own jurisdictions, the principle of universality requires the states also to promote and protect the human rights in the international level as well in order to ensure the inherent dignity for all members of the human race.<sup>12</sup> Moreover, all human rights are regarded to be indivisible, interdependent and interrelated with the meaning that they possess the same emphasis

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<sup>8</sup> Nowak, Manfred, *Introduction to International Human Rights Regime*, Brill Academic Publishers, Leiden, The Netherlands, 1<sup>st</sup> ed., 2003, 1

<sup>9</sup> Nowak, Manfred, *Introduction to International Human Rights Regime*, 2003, 2-3

<sup>10</sup> Preambles of *inter alia* ICCPR, ICESCR and UDHR

<sup>11</sup> Craven, Matthew, *International Covenant on Economic, Social and Cultural Rights: a Perspective on its Development*, Oxford University Press, New York, 1<sup>st</sup> ed., 1994, 153-154

<sup>12</sup> Art. 1 and 4, "Vienna Declaration and Programme for Action", World Conference on Human Rights, 14-25 June 1993

and importance.<sup>13</sup> Thus, it can be interpreted that no hierarchy between the various human rights should exist but that all rights have equal importance. Interdependent and interrelation, on the other hand, would imply that, although having different natures and scopes of protection, all human rights would *de facto* work in conjunction with each other ensuring and guaranteeing the fundamental enjoyment of life and dignity of human beings.

It should also be noted that the human rights are recognized to guarantee the minimum standards of rights and freedoms which every state should respect and provide. However, nothing in the international human rights law restrains the states from assuring better protection and higher standards through the national legislations.<sup>14</sup>

## **2.2 History and Development of Human Rights Law**

### **2.2.1 Human Rights prior WWII**

Considering that the most important human rights treaties have been established only after the Second World War (WWII), human rights as a branch of the international law is relatively new. However, human rights as an ideology have a much longer history. For example Ancient Greek and Rome emphasized the tolerance and the religions such as Christianity relied on the principles of equal treatment and non-discrimination.<sup>15</sup> Further developments occurred through the philosophical thinkers such as John Locke who engaged in analysis of civil rights and the role of the state to protect and promote the common good.<sup>16</sup>

The Age of Enlightenment in the 17<sup>th</sup> and 18<sup>th</sup> centuries highlighted the individual rights against the society and imposed the influence of ideas of individual rights to the national

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<sup>13</sup> Art. 5 of Vienna Declaration and Programme for Action

<sup>14</sup> F. ex. such notion is recognized in the art. 5(2) of both ICCPR and ICESCR stating that “No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent. “

<sup>15</sup> Zanghi, Claudio, “Human Rights and Tolerance”, *Human Rights: New Dimensions and Challenges*, Ashgate Publishing Limited, England, ed. Symonides, Janusz, 1<sup>st</sup> ed., 1998, 199-217, 200-201

<sup>16</sup> *Ibid.*, 202

constitutional laws.<sup>17</sup> The Age of Enlightenment also generated key historic documents, including the Constitution of the United States of America and the French Declaration of the Rights of Man, recognizing the political and civil rights of the individuals as well as the obligation of the public authority to secure those rights.<sup>18</sup> Thus, despite the long absence of the international recognition, the human right protection has been a subject to the national legislation for centuries.

Largely based on the philosophical thinking and ideological promotion of individual rights in the 17<sup>th</sup> and 18<sup>th</sup> centuries, the civil and political rights have been regarded to form the essence of the traditional human rights. However, in the beginning of the 20<sup>th</sup> century the socialistic ideology responded to challenge the traditional liberalistic thinking by concentrating to promote the material rights which the state must provide to individuals.<sup>19</sup> For the socialism, the sole obligation of the state to refrain from interfering with civil and political rights of the individuals appeared insufficient but the states needed to ensure the well-being of its citizens through socio-economic rights.<sup>20</sup>

The codification of the human rights in the international level started in fact in the 18<sup>th</sup> and 19<sup>th</sup> centuries. The human rights provisions were mostly included to the various peace treaties for the purpose to protect the national minorities which were replaced within the territory of neighboring state as a result of the rearrangements of the borders.<sup>21</sup> Simultaneously, the slave trade was abolished by the establishment of the international treaty in the 19<sup>th</sup> century and the International Labor Organization (ILO) was created in the 20<sup>th</sup> century to promote and protect the rights of the workers.<sup>22</sup>

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<sup>17</sup> Tomuschat, Christian, *Human Rights: Between Idealism and Realism*, Oxford University Press, New York, 1<sup>st</sup> ed., 2003, 27; Nowak, Manfred, *Introduction to the International Human Rights Regime*, 3

<sup>18</sup> Karns, Margaret P., Karen A. Mingst, *International Organizations: The Political Processes of Global Governance*, Lynne Rienne Publisher, London, 1<sup>st</sup> ed., 2004, 417

<sup>19</sup> Nowak, Manfred, *Introduction to the International Human Rights Regime*, 2003, 10-11; Karns, Margaret P., Karen A. Mingst, *International Organizations: The Political Processes of Global Governance*, 2004, 417

<sup>20</sup> Tomuschat, Christian, *Human Rights: Between Idealism and Realism*, 2003, 28-29

<sup>21</sup> Steiner, Henry J., Philip Aston et al., *International Human Rights in Context*, Oxford University Press, New York, 3<sup>rd</sup> ed., 2008, 96

<sup>22</sup> *Ibid.*, 131

## 2.2.2 Human Rights after the WWII

Generally, the international treaties have primarily perceived as an expression of international law to respond and to regulate the contemporary problems.<sup>23</sup> Therefore, it does not appear surprising that the major efforts to develop and codify the modern human rights norms and standards occurred after the WWII to prevent the horrible acts of human beings and to ensure the inherent dignity of all human beings.<sup>24</sup> The Charter of the UN appeared as the first international document recognizing the universal respect and observance of human rights and fundamental freedoms for all without discrimination in its article 55.<sup>25</sup> Article 56, on the other hand, obliged all member states of UN to take joint and separate actions in cooperation with UN to achieve the purposes set out in the article 55.<sup>26</sup>

However, as the provisions in those articles appear relatively vague, the more detailed protection was needed. Thus, UDHR was adopted to expand the protection and to establish the common standards that should be guaranteed for all peoples and nations.<sup>27</sup> UDHR provides the recognition and protection mutually for all sorts of aspects that are necessary to guarantee the inherent dignity of human life drawing no distinction between civil and political rights and ESC rights.

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<sup>23</sup> Ibid., 107

<sup>24</sup> Karns, Margaret P., Karen A. Mingst, *International Organizations: The Political Processes of Global Governance*, 2004, 415

<sup>25</sup> Art. 55 of the UN Charter:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

<sup>26</sup> Article 56 of the UN Charter: All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

<sup>27</sup> Rehman, Javaid, *International Human Rights Law: a Practical Approach*, Pearson Education Limited, Essex, UK, 1<sup>st</sup> ed., 2003, 54

UDHR has been perceived to launch the international human rights protection in the wide universal scale as the provisions of the Declaration have been utilized as grounds *inter alia* for several human right documents, national constitutions and domestic courts.<sup>28</sup> However, despite the remarkableness of the UDHR and its significant recognition of human dignity and inalienable rights, the weakness of the document derived from its status being solely a Declaration without legally binding force. Therefore, the international community recognized the need for the additional human right documents to expand the protection.

In order to achieve more comprehensive guarantees and recognition for human rights, in 1966 the international community established the ICCPR and ICESCR as legally binding treaties. Both Covenants include the provisions which were already recognized in the UDHR. However, due to the differentiating characteristics, state obligations and natures of the rights, the international community advocated the adoption of two Treaties instead of one.<sup>29</sup> Both of these Covenants provide specific scope of the protection to the particular rights and freedoms.

### **2.3 Scope of Protection**

ICCPR and ICESCR are international treaties with a legally binding force. Therefore the state parties to the Covenants are obliged to perform them in a good faith.<sup>30</sup> Furthermore, according to the article 27 of the Vienna Convention on the Law of the Treaties, domestic law cannot be invoked as a justification for the failure to perform the international treaties. Additionally, the obligations of the Covenants are binding on every state party as a whole including public and governmental authorities in every level and all administrative authorities shall take the requirements of the Covenants into account in their decision-making process.<sup>31</sup>

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<sup>28</sup> Cancado Tridade, Antonio Augusto, "Universal Declaration of Human Rights", *United Nations Audiovisual Library of International Law*, 2008, 1-2, Last Accessed 9 July 2013, [http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr\\_e.pdf](http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr_e.pdf)

<sup>29</sup> Joseph, Sarah, Jenny Schultz et al., *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, Oxford University Press, New York, 1<sup>st</sup> ed., 2004, 7

<sup>30</sup> Article 26 of the Vienna Convnetion of the Law of the Treaties (1969)

<sup>31</sup> Human Rights Committee, *CCPR General Comment no 31: The Nature of the General Legal Obligation Imposed on the State Parties to the Covenant*, 29 March 2004, CCPR/C/21/Rev.1/Add.13, para 4; Economic

According to the article 2(1) of the ICCPR and article 2(2) of the ICESCR, the states must respect, ensure and apply the rights and freedoms of the Covenants without discrimination of any kind. The states should guarantee that the rights are available to everyone within the state jurisdiction irrespectively to the nationality of an individual.<sup>32</sup> Furthermore, the states are also required to ensure that every person claiming that his rights or freedoms have been violated, has a possibility to challenge such violations before competent judicial, administrative or legislative authority.<sup>33</sup> Therefore, the international human right treaties impose the primarily human rights protection to be vested in the domestic legal systems.

Both ICCPR and ICESCR allow certain limitations to the rights and freedoms. However, in order to avoid undermining the general protection of the human rights, the states should not impose limitations without sufficiently good reasons.<sup>34</sup> Thus, the grounds for the limitations are expressly mentioned in the Covenants. In ICCPR the limitations are codified within the specific articles to respond to the specific right or freedom, for example the freedom of expression covered by the article 18(1) of ICCPR can be limited by the means established in the article 18(3). ESC rights, on the other hand, can only be limited as such limitations are determined by the law only in so far as the limitation can be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.<sup>35</sup>

In addition to the limitations, article 4 in the ICCPR allows the state parties to derogate certain rights in the time of public emergency which threatens the life of the nation. Nevertheless, the derogations should be applied in non-discriminatory manner and only

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and Social Council, *Draft General Comment no 9: Domestic Application of the Covenant*, 3 Dec 1998, E/C.12/1998/24, para 9

<sup>32</sup> Human Rights Committee, *CCPR General Comment no 31: The Nature of the General Legal Obligation Imposed on the State Parties to the Covenant*, para 10

<sup>33</sup> Article 2(3) of the ICCPR; Economic and Social Council, *Draft General Comment no 9: Domestic Application of the Covenant*, para 10

<sup>34</sup> Smith, Rhona K.M., *Texts and Materials on International Human Rights*, Routledge-Cavendish, New York, 1<sup>st</sup> ed. 2007, 51

<sup>35</sup> Article 4 of ICESCR stating that "The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."



in relations to those provisions that are not covered by the article 4(2). ICESCR does not include provisions relating to derogations but in the general comments to the Covenant it is acknowledged that Covenant contains a broad and flexible approach to the realization of the rights and freedoms using all available means.<sup>36</sup> Thus, it can be interpreted that in the time of emergency the application of the ICESCR could be derogated if the means for the realization are limited. Furthermore, the article 5(1) in both Covenants contains the prohibition to misuse the rights to destroy the enjoyment of other rights.

It should also be noted that in addition to the treaty law, nowadays certain human rights are subject to the rules of the customary international law as well. As defined *inter alia* in the article 38(1)(b) in the Statute of the International Court of Justice (ICJ), international customs appear as evidence of general practice accepted as law. Customary law is based on the equality of the members as in the absence of a centralized legislator in the international level, customary law is regarded as a supreme source for the state conduct.<sup>37</sup> Although customary law is based state practice, treaty provisions can also be regarded as customary norms as they form the basis of general rule of law.<sup>38</sup> Furthermore, customary law is subject to developments during the time and the effect should be given to such changes.<sup>39</sup>

In the light of the state practice, the majority of the rights established in the UDHR can be nowadays treated as customary norms.<sup>40</sup> However, although the rules concerning the basic rights of the human persons are perceived as *erga omnes* obligations,<sup>41</sup> it remains vague whether the state practice in relation to ESC rights has reached such a legal value that provisions of ICESCR could constitute customary law even to some extent. Therefore, in order to provide the comprehensive protection of human rights and to ensure the inherent dignity of human life, the implementation of ICESCR is still needed.

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<sup>36</sup> Economic and Social Council, *General Comment no 9: Domestic Application of the Covenant*, para 1-2

<sup>37</sup> Kolb, Robert, "Selected Problems in the Theory of Customary International Law", *Netherlands International Law Review*, 2003, 119-150, 123

<sup>38</sup> *North Sea Continental Shelf Case*, Federal Republic of Germany vs. Netherlands, International Court of Justice, Judgment of 20 Feb 1969, para 41-41 and 72

<sup>39</sup> *Regina v. Bartle and the Commissioner of Police for the Metropolis and others EX Parte Pinochet*, House of Lords, 25 Nov 1998

<sup>40</sup> Rehman, Javaid, *International Human Rights Law: a Practical Approach*, 2003, 59

<sup>41</sup> Human Rights Committee, *CCPR General Comment no 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, para 2

Thus, the following Chapter explains and analyzes the ICCPR and ICESCR in more detailed matters.

### 3. ICCPR and ICESCR

#### 3.1 Relationship

##### 3.1.1 Core differences

According to the preambles of the Covenants, both ICCPR and ICESCR have been enacted for the equivalent purposes *inter alia* to promote and protect the inherent dignity of human persons, to ensure the idea of free human beings enjoying freedom from fear and to oblige the states to promote the universal respect of human rights and fundamental freedoms. However, substantial natures and the obligations of what are required from the states differ significantly in these two Covenants.

Civil and Political rights have traditionally been perceived as basic rights which are only needed to be implemented into the national laws in order to be enforceable in the national courts, whereas ECS rights have been understood to be more political in nature and requiring the state to contribute to the welfare of the people.<sup>42</sup> ESC rights are *de facto* designed to provide human beings certain standards of living and dignity for basics of healthy life as well as to promote social integration, solidarity and equality.<sup>43</sup> ESC rights are considered rather goals to be achieved progressively through varying methods of implementation in both public and private sectors and therefore, they are frequently described to be more demanding than Civil and Political rights.<sup>44</sup>

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<sup>42</sup> Eide, Asbjorn, "Economic, Social and Cultural Rights s Human Rights", *Economic, Social and Cultural Rights*, Kluwer Law International, The Hague, The Netherlands, ed. Eide, Asbjorn, Catarina Krause et al., 2<sup>nd</sup> ed., 2001, 9-28, 10

<sup>43</sup> Baderin, Mashood A., Robert McCorquodale, "The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development", *Economic, Social and Cultural Rights in Action*, Oxford University Press, New York, ed. Baderin, Mashood A., Robert McCorquodale, 1<sup>st</sup> ed., 2007, 1-24, 9; Eide, Asbjorn, Allan Rosas, "Economic, Social and Cultural Rights: a Universal Challenge", *Economic, Social and Cultural Rights*, Kluwer Law International, The Hague, The Netherlands, ed. Eide, Asbjorn, Catarina Krause et al., 2<sup>nd</sup> ed., 2001, 3-8, 5

<sup>44</sup> Baderin, Mashood A., Robert McCorquodale, "The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development", *Economic, Social and Cultural Rights in Action*, 2007, 6 and 12

The best illustration for the different obligations and natures between ICCPR and ICESCR can be found in the articles 2 of the Covenants. Article 2(1) of ICCPR obliges the states to respect and ensure the rights recognized in the Covenant without discrimination. Unless the legislative or other measures do not already provide the recognition of the rights, under the article 2(2) the states are required to take necessary steps to give the effect to the Covenant.

In comparison to the article 2 of ICCPR which merely requires the state to recognize the existence of civil and political rights and to refrain from interference, article 2(1) of ICESCR obliges the state to take steps to progressively achieve the realization of the rights by all appropriate means and using all the available resources. Article 2(2) prohibits the discrimination while the states are exercising their obligations under the Covenant but article 2(3) do grant the exception to developing countries, with due regard to human rights and their national economy, as those states may determine to what extent they would guarantee the economic rights to non-nationals.

It is not surprising that ESC rights have obtained disputable nature and are occasionally claimed to be rather political tool than real rights.<sup>45</sup> Indeed, ESC rights require more resources and involvement from the state. Full realization of ESC rights cannot be achieved within a short period but progressive realization occurs over time and generally requires the state to refrain from taking deliberately retrogressive measures.<sup>46</sup> Simultaneously, the states are obliged to ensure the widest possible enjoyment of the rights in the prevailing circumstances and to guarantee at least the minimum essential levels of each right with every effort taken and using all available resources.<sup>47</sup> However, the Covenant itself does not stipulate how the implementation should be executed but according to the General Comments, legislative measures themselves are not exhaustive

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<sup>45</sup> For Example, Eide, Asbjorn, Allan Rosas, "Economic, Social and Cultural Rights: a Universal Challenge", *Economic, Social and Cultural Rights*, 2001, 5; Eide, Asbjorn, "Economic, Social and Cultural Rights", *Economic, Social and Cultural Rights*, 2001, 10

<sup>46</sup> Retrogressive measures are allowed only after most careful consideration and would need full justification by reference to totality of the rights and in the context of full use of the maximum available resources; Economic and Social Council, *CESCR General Comment no 3: The Nature of State Parties Obligations (Art. 2, Para 1)*, 14 Dec 1990, para 9

<sup>47</sup> Economic and Social Council, *CESCR General Comment no 3: The Nature of State Parties Obligations (Art. 2, Para 1)*, para 10-11

as other appropriate measures may include administrative, financial, educational and social measures.<sup>48</sup>

### 3.1.2 Categorization

Due to the different natures of the obligations, ICCPR and ICESCR have traditionally been categorized into first and second generation rights. Civil and Political rights have formed the first generation as they have been perceived negative rights requiring the state merely to refrain from interference. ESC rights, on the other hand, consist of positive rights obliging the states to actively engage in process of realization of the rights.<sup>49</sup> As civil and political rights had been regarded to form the core of the classical human rights already during the Age of Enlightenment and considering the state obligation simply to recognize the existence of such rights, according to the traditional understanding, the first generation of human rights needed to be guaranteed first after which the state should move to the realization of ESC rights.

However, especially after the Cold War academic discussion and debate have increasingly questioned whether such traditional distinction between two sets of rights appears justified.<sup>50</sup> It is claimed that in democratic societies the well-being of the individuals should be the main concern and therefore socio-economic rights need to be given greater attention as civil and political rights themselves do not fully embrace the human experience or improve the human dignity and development.<sup>51</sup> Even from the process of drafting the Covenants, ICCPR and ICESCR were aimed to form united, interconnected and interdependent set of rights.<sup>52</sup>

Indeed, the traditional understanding dividing the human rights into two categories and requiring the civil and political rights to be guaranteed first seems nowadays slightly

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<sup>48</sup> Ibid., para 4 and 7; Economic and Social Council, *Draft General Comment no 9: Domestic Application of the Covenant*, para 5

<sup>49</sup> Tomuschat, Christian, *Human Rights: Between Idealism and Realism*, 2003, 25

<sup>50</sup> De Schutter, Oliver, *International Human Rights Law*, Cambridge University Press, Cambridge, UK, 1<sup>st</sup> ed., 2010, 17

<sup>51</sup> Burchill, Richard, "Democracy and the Promotion and Protection of Socio-Economic Rights", *Economic, Social and Cultural Rights in Action*, Oxford University Press, New York, 1<sup>st</sup> ed., 2007, 361-387, 361-366

<sup>52</sup> UN General Assembly, "Preparation of Two Draft International Covenant on Human Rights", GA res.543 (VI), 5 Feb 1952

unconscionable. For example the importance of right to life without any basic standards of living such as access to medical services, could be questioned. Furthermore, the inherent dignity of human being could be undermined if no ESC rights needed to be provided to the individuals. Thus, this thesis approaches the human rights questions rather from the modern perspective relying on the doctrine of coexistence of the different rights.

### **3.2 Human Rights in Finland**

Before engaging in the main analysis of the specific problems of the present thesis, the general human rights situation in Finland should be evaluated. Finland is a state party to both Covenants. ICESCR has been ratified without reservation as Finland has only raised objections regarding the declarations and reservations done by other states.<sup>53</sup> Regarding ICCPR, Finland has declared inapplicability to the articles concerning the juvenile prisoners, sentences of the detriment persons and propaganda of war.<sup>54</sup>

Both ICCPR and ICESCR have been transferred into Finnish legislation by implementing them to the national Constitution and into the substantive laws. In fact, the Chapter two in Finnish Constitution is dedicated to the basic rights and liberties including provision from both Covenants. However, the Constitution itself merely lists the protected rights and freedoms in a general level whereas the substantive laws establish the more comprehensive protection.

According to the international perception, Finland has high standards for and effective engagement in human rights protection. Especially the strong respect towards the rule

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<sup>53</sup> United Nations Treaty Collection, "International Covenant on Economic, Social and Cultural Rights", 10 July 2013, Last Accessed 19 March 2014, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec)

<sup>54</sup> The reservations concern the articles 10(2)(b), 10(3), 14(7) and 20(1) of ICCPR; United Nations Treaty Collection, "International Covenant on Civil and Political Rights", 10 July 2013, Last Accessed 19 March 2014, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec)

of law and promotion of women's rights in the international level have granted all the Nordic countries excellent image in human rights matters.<sup>55</sup> Simultaneously, Finland was ranked *inter alia* as the best country in the world in relation to the well-being of the mothers and newborn babies as well as the leading country respecting the freedom of expression and independent media.<sup>56</sup>

UN human rights treaty bodies have also acknowledged the progressive human rights protection and promotion in Finland. For example, in Universal Periodic Review in 2012 Finland received praises for its good human rights situation. The main concerns related to the treatment of Roma and indigenous people living in Lapland. Simultaneously, the unequal payment between men and women was noticed as well as xenophobia, racism and intolerance were perceived as challenges<sup>57</sup> but no major human rights violations occurred. Simultaneously, the Economic and Social Council stated in its report, that no significant factors or difficulties preventing the effective implementation of ICESCR in Finland was found.<sup>58</sup>

Based on the international observations and reports, it could be noted that human rights violations in Finland tend to occur in minor levels. Unfortunately though, violations do appear. Therefore, in order to fulfill the obligations under the international Covenants, the state should constantly engage in evaluation of the effectiveness of the human rights protection.

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<sup>55</sup> IPI (International Peace Institute), *Taking Stock, Moving Forward: Report to Foreign Ministry of Finland on the 2012 Elections to the United Nations Security Council*, April 2013, 20

<sup>56</sup> Save the Children, *Surviving the First Day: State of World's Mothers 2013*, May 2013, pp. 7; Reporters Without Borders, *Press Freedom Index 2013*, Last Accessed 19 March 2014, [http://en.rsf.org/press-freedom-index-2013\\_1054.html](http://en.rsf.org/press-freedom-index-2013_1054.html)

<sup>57</sup> Human Rights Council, *Finland: Report of the Working Group on the Universal Periodic Review*, A/HRC/21/8, 5 July 2012, para 19-23 and 35

<sup>58</sup> Economic and Social Council noted the property issues of indigenous people, de facto discrimination against Roma, foreigners, ethnic and racial minorities, salary gap between men and women and high level of domestic violence together with drug and alcohol abuse; Economic and Social Council, *Consideration of Reports Submitted by State Parties Under Articles 16 and 17 of the Covenant*, E/C.12/CO/FIN/5, 18 May 2007, para 10-18

### 3.3 Applicable Articles

#### 3.3.1 ICCPR Articles

In addition to the general articles defining the scope of the ICCPR and ICESCR, both Covenants also include the material parts. In order to achieve a comprehensive analysis on whether the freedom to choose the residence restricts the access to EMS, the short introduction to the content and the scope of these relevant and substantive provisions of the Covenants shall be presented.

To start with the ICCPR, the main article concerning the present matter is unambiguously article 12. While articles 12(2) and 12(4) appear relatively dispensable for the current analysis as they regulates the right to freedom to leave the country and right to enter in it, article 12(1) establishes the fundamental rule stating that

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

According to the common view, citizens are in principle always lawfully within the territory of the state and their right to move freely relates to the whole territory.<sup>59</sup> As the liberty of movements has been regarded as an indispensable condition for the free development of a person, the enjoyment of this right shall not be made dependable on any particular purpose or reason nor shall any restrictions be unlawful.<sup>60</sup> Thus, the grounds for the limitations of the freedoms guaranteed in the article 12(1) can only be done according to the article 12(3) expressing that

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security,

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<sup>59</sup> Human Rights Council, *CCPR General Comment no 27: Freedom of Movement (Art. 12)*, 2 Nov 1999, CCPR/C/21/Rev.1/Add.9, para 4

<sup>60</sup> *Ibid.*, para 1 and 5

public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant

Even in the situations where the liberty of movement and freedom to choose the residence has been restricted, such restriction need to be necessary in democratic society and appear proportionate to the aim.<sup>61</sup> Furthermore, such strict conditions for the restrictions of enjoyment of freedoms under the article 12(1) have connection to the right to privacy as well. Article 17 in ICCPR guarantees that

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

According to the General Comment of Human Rights Council, home is defined to be the place where a person resides or carries out usual occupation.<sup>62</sup> Thus, the state is obliged to ensure that an individual may establish his home in a place of his choice and reside there without interferences. Simultaneously, according to the article 26 of ICCPR, the state must guarantee equal protection of law and prohibit any discrimination on any grounds including race, color, religion, sex, social origin or property.<sup>63</sup>

Finally, the article 6(1) in ICCPR ensures every human being to have inherent right to life which shall be protected by law. According to the exact wording of the article 6(1), right to life would include no references to quality of life but seems merely to

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<sup>61</sup> Ibid., para 11 and 14

<sup>62</sup> Human Rights Council, *CCPR General Comment no 16: The Right to Respect Privacy, Family, Home and Correspondence and Protection of Honour and Reputation (Art. 17)*, 8 Apr 1988

<sup>63</sup> Article 26 of ICCPR: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.



mean that no one shall arbitrary deprive one's life. However, Human Rights Council has adopted wider approach stating that right to life should not be interpreted narrowly as the inherent right to life cannot be understood in such restrictive manner. According to the Council, the states need to take steps *inter alia* to reduce infant mortality and increase life expectancy.<sup>64</sup>

The view of the Council illustrates quite clearly the fundamental interconnection between the ICCPR and ESC rights. Therefore, in order to protect the inherent right to life, the state must also create the conditions where every person would access to medical care irrespectively to the place of residence.

### 3.3.2 ICESCR Articles

From the provision of ICESCR, indisputably the most important for the present analysis is the article 12 covering the right to health. Article 12(1) provides the general scope for the right stating that

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(2) lists the steps which the states are obliged to take in order to achieve full realization of the right established in the article 12(1). In addition to the requirements *inter alia* to reduce infant mortality and improve industrial and environmental hygiene, article 12(2)(d) requires the states to create the conditions which would assure to all medical service and medical attention in the event of sickness.

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<sup>64</sup> Human Rights Council, *CCPR General Comment no 6: Right to Life (Art. 6)*, 30 Apr 1982, para 5

It seems that according to the wording, the article 12(2)(d) refers to and includes all medical services in the event of sickness. Therefore, the medical care which is provided outside the immovable medical centers and is aimed to respond the immediate needs of medical attention is not excluded from the scope of the article. Thus, as health is a fundamental human right which is indispensable for the exercise of other human rights, it is the obligation of the state to provide health facilities which are accessible to everyone without discrimination, guarantee the right to treatment including the creation of urgent medical care and to guarantee equal and timely access to medical services in community and national levels.<sup>65</sup>

It is acknowledged that being ESC right, health care is subject to and dependable on available resources. Nevertheless, in order to provide certain basic conditions to protect and enhance the health of the individuals, the core content of right to health has been perceived to consist of elements that the state must guarantee under all circumstances irrespectively to the resources.<sup>66</sup> Thus, despite the general nature of ESC rights to be achieved within certain period of time, in relations to health the states have immediate obligation to ensure very least, minimum essential level of care including access to health services and to guarantee that the right will be exercised without discrimination.<sup>67</sup> In this sense, it can be argued that the EMS and sufficient amount of ambulances form an integral part of the essential protection of right to health guaranteeing the timely access to the urgent medical care.

Another relevant right guaranteed under the ICESCR is the article 11(1) referring to standards of life requiring

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including

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<sup>65</sup> Economic and Social Council, *General Comment no 14: The Right to the Highest Attainable Standard of Health (Art. 12 of ICESCR)*, E/C.12/2000/4, 11 Aug 2000, para 1, 12b, 16 and 17

<sup>66</sup> Toebes, Brigit, "The Right to Health", *Economic, Social and Cultural Rights*, Kluwer Law International, 2007, 169-190, 169 and 176

<sup>67</sup> Economic and Social Council, *General Comment no 14: The Right to the Highest Attainable Standard of Health (Art. 12 of ICESCR)*, para 30 and 43

adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Adequate housing has been understood to refer adequate standard of living which, on the other hand, has been regarded as central condition for the enjoyment of other ESC rights.<sup>68</sup> Simultaneously, while what is regarded *adequate* depends widely on cultural standards the term seems to refer to the conditions of dignity where no one should for example need to beg or engage in prostitution.<sup>69</sup>

Moreover, the article 11(1) includes the right to housing. In a strict sense, this would mean that the state must plainly provide some accommodation. However, according to the Economic and Social Council, right to housing covers the right to live somewhere in peace, security and dignity.<sup>70</sup> Furthermore, it is the obligation of the state to respect the right to housing, on one hand, by refraining from violating the integrity of the individuals to exercise the right and, on the other hand, to guarantee the access to public services such as heating, infrastructure and emergency service.<sup>71</sup>

It should also be noted that the standards of living do not simply oblige the state to provide adequate food, clothing and housing but also grants the individuals the right to improve their living conditions. Therefore, article 11(1) operates widely in conjunction with the article 12 of ICCPR giving the individuals the freedom to choose their residence in order to improve their living conditions. The state should encourage and support the right of individuals to improve the standards of living and to exercise the liberty of movement by guaranteeing the availability and accessibility to other ESC rights despite the location.

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<sup>68</sup> Economic and Social Council, *CESCR General Comment no 4: The Right to Adequate Housing (Art. 11(1))*, 13 Dec 1991, para 1

<sup>69</sup> Eide, Asbjorn, "The Right to Adequate Standard of Living Including Right to Food", *Economic, Social and Cultural Rights*, Kluwer Law International, 2007, 133-148, 133

<sup>70</sup> Economic and Social Council, *CESCR General Comment no 4: The Right to Adequate Housing (Art. 11(1))*, para 7

<sup>71</sup> Leckie, Scott, "The Human Right to Adequate Housing", *Economic, Social and Cultural Rights*, Kluwer Law International, 2007, 149-168, 150 and 155-156

Also worth of mention is the article 10(3) of ICESCR which is dedicated for the protection of the children. The state parties to the ICESCR have accepted to recognize that

10(3). Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.

Deriving from the article 10(3), the state is under the special obligation to ensure the application of ESC rights when they are subjected to the children. Importance of the article 10(3) is highlighted especially in the sparsely populated areas as the children should not be placed in danger due to their place of residence. Thus, for example the access to EMS should be guaranteed.

### **3.3.3 Property and Discrimination**

Right to property was codified in the article 17 of the UDHR where everyone's right to own property alone as well as in association with others was recognized and arbitrary deprivation of property prohibited. However, the right was excluded from both ICCPR and ICESCR. Nevertheless, the property is mentioned in the provisions prohibiting the discrimination in both Covenants.

Article 2(1) of ICCPR and article 2(2) of ICESCR both refers to the property as a prohibited ground of discrimination. Additionally article 26 of ICCPR confirms the doctrine of non-discrimination stating that

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language,

religion, political or other opinion, national or social origin, property, birth or other status.

Whereas articles 2(1) of ICCPR and article 2(2) have understood to work in conjunction with the substantive articles of the Covenants, the article 26 of ICCPR has been regarded free-standing and autonomous.<sup>72</sup> Therefore, article 26 could be invoked independently from other rights.

Discrimination based on property is perceived to constitute a broad concept which includes real property, personal property or lack of property.<sup>73</sup> In conjunction with the articles 12(1) of the ICCPR and article 11(1) of the ICESCR, discrimination based on property commonly refers to the situation where the discrimination derives from the real property and place of residence. In fact, the discrimination based on the place of residence means localities and regions do not sufficiently ensure the availability and quality of the obligations under the ICESCR. This may include *inter alia* deficiency in primary, secondary and palliative health care services.<sup>74</sup>

Finally, discrimination can be either direct or indirect. Direct discrimination happens when the individual is treated less favorable for the reasons which relates to the prohibited grounds; indirect discrimination, on the other hand, occurs even when the laws, policies and practices appear neutral but do *de facto* have disproportionate impact on exercise of the rights.<sup>75</sup>

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<sup>72</sup> Craven, Matthew, *International Covenant on Economic, Social and Cultural Rights: a Perspective on its Development*, Oxford Monographs in International Law, 1995, 177-178

<sup>73</sup> Economic and Social Council, *General Comment no 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para 2 of ICESCR)*, E/C.12/GC/20, 2 July 2009, para 25

<sup>74</sup> *Ibid.*, para 34

<sup>75</sup> *Ibid.*, para 10

## 4. Access to Emergency Medical Services in Oulu

### 4.1 Region of Oulu<sup>76</sup>

Finland is divided into several municipalities. The inherent power of the municipalities derives from the Constitution where the administrative and regional self-governmental roles have been established. As the more detailed functions and tasks are codified in the Local Government Act, it could be summarized that in general the local authorities are responsible for the promotion of the welfare of their residents and sustainable development in their areas.<sup>77</sup>

In 2007 there were 415 municipalities in Finland. However, the number was perceived too high and therefore the government initiated the project to restructure the municipalities by merging the smaller ones into the bigger entities in order to increase the efficiency and to provide better services to the residents.<sup>78</sup> In Oulu region, the first glance of the local government reform occurred in 2009 when Yli-Iiminki joined to Oulu.<sup>79</sup> In the beginning of 2013 the first larger scale merger took place when five surrounding municipalities united together making Oulu area the fifth largest city in Finland with almost 200,000 inhabitants and 4000 square meters of surface area.<sup>80</sup>

Although located 600 kilometers from Helsinki, Oulu is satisfyingly dynamic and international city. In addition to the University and its services, the region has been

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<sup>76</sup> Annex 1, 2A and 2B

<sup>77</sup> Chapter 11 of the Constitution of Finland, especially article 121; Article 1 of the Finnish Local Government Act (Kuntalaki 17.3.1995/365)

<sup>78</sup> Valtionvarainministeriö, *Kaupunkiseudut Kuntauudistuksen Keskiössä*, (Ministry of Finance, *Urban Areas in the Center of the Local Government Reforms*), 7/2013, 11; Ministry of Finance, *Trends in Number of Municipalities*, Last Accessed 19 March 2014, [http://www.vm.fi/vm/en/15\\_municipal\\_affairs/025\\_municipal\\_boundaries/04\\_trends/index.jsp](http://www.vm.fi/vm/en/15_municipal_affairs/025_municipal_boundaries/04_trends/index.jsp)

<sup>79</sup> Suomen Kuntaliitto, *Luettelo 1.1.2009 Yhdistyneistä Kunnista ja Uusien Kuntien Nimet*, (Finnish Association for Local Governments, *List of the Municipal Mergers of 1 Jan 2009 and the Names of the New Municipalities*), 9 Oct 2009, Last Accessed 21 July 2013, <http://www.kunnat.net/fi/palvelualueet/kuntaliitokset/aiemmatkuntaliitokset/Documents/Luettelo%201.1.2009%20yhdistyneist%C3%A4%20kunnista%20ja%20uusien%20kuntien%20nimet.pdf>

<sup>80</sup> City of Oulu, *The New Oulu*, Last Accessed 19 March 2014, <http://www.ouka.fi/oulu/english/new-oulu>

constructed largely upon the technological developments and improvements.<sup>81</sup> Therefore the population of the municipal appears significantly heterogeneous as, in addition to the university students and the members of the specific religious groups living in the region,<sup>82</sup> the city and its good prospects of employments especially in the technological field has also allured families with children to establish their residences in the area. In fact, the studies have shown that in addition to the families who have moved to the area from other places due to the working opportunities, the university students tend to usually obtain an employment in the city where they are studying and after the graduation it seems natural to establish a permanent residence in the region.<sup>83</sup>

However, when the families grow and the children are born, the smaller towns start to appear more fascinating places to live. Smaller towns may offer cleaner and safer environment, friendlier communities and cheaper housing opportunities. For example in Oulu it is expressly stated that the price of real property can be higher than average price if the land is located in the city center to the proximity of good transportation opportunities such as railway station, or if the land has costal line to the sea. Simultaneously, the price of the building ground decreases when the distance from the main city area increases.<sup>84</sup>

Although the families with the children gravitate to establish their homes away from the city centers, the state is under the obligation to guarantee the enjoyment of ESC rights in those sparsely populated areas as well. For example, in addition to city center hospital, in Oulu there exist 14 health care centers to guarantee the access to health services.<sup>85</sup> Outside the working hours the residents of the region are advised to contact the

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<sup>81</sup> Oulun Kaupunki, *Tietoa Oulusta*, (City of Oulu, "Information About Oulu"), 3 and 12, Last Accessed 19 March 2014, [http://www.ouka.fi/c/document\\_library/get\\_file?uuid=0fa6e22d-5113-483d-8620-c3707fc884ef&groupId=50085](http://www.ouka.fi/c/document_library/get_file?uuid=0fa6e22d-5113-483d-8620-c3707fc884ef&groupId=50085)

<sup>82</sup> Oulu region forms the biggest area in Finland concerning the Laestadianism,; Suomen Evenkelis-Luterilainen Kirkko, *lestadiolaisuus*, (Finnish Evenkelis-Lutherian Church, *Laestadianism*), Last Accessed 19 March 2014, <http://www.ev12.fi/sanasto/index.php/Lestadiolaisuus>

<sup>83</sup> Alavalkama, Satu, "Täällä Asumat Suomen Lapsiperheet" (Where lives the families with children in Finland), *Taloussanommat* (Newspaper on Economy), 5 July 2013, Last Accessed 19 March 2014, <http://www.taloussanommat.fi/asuminen/2013/07/05/taalla-asuvat-suomen-lapsiperheet/20139264/310>

<sup>84</sup> Asumisen Rahoittamis- ja Kehittämiskeskus, *Valtion tukemassa asuntotuotannossa sovellettavat enimmäistonttihinnat Oulun kaupungissa vuonna 2012*, (*The Center of Finance and Development of Housing, The maximum pricing applied in Oulu in 2012*), Document no 18361/681/12, 14 Aug 2012, para 5

<sup>85</sup> Oulun Kaupunki, *Terveysasemat*, (City of Oulu, *Health Care Centers*), Last Accessed 19 March 2014, <http://www.ouka.fi/oulu/terveyspalvelut/terveysasemat>

emergency duty service which is located in the city center hospital.<sup>86</sup> In the cases of extreme emergency, the national emergency number should be used and the ambulance sent. However, the long distances between the destinations may impose the challenges to the effective realization of the emergency medical services.

## **4.2 Basics of Emergency Medical Services**

### **4.2.1 Responsibility on Arranging Emergency Medical Services**

While ICESCR establishes the minimum standards for the health care and the article 19 in the Constitution of Finland affirms such conditions obliging public authorities to guarantee everyone adequate social, health and medical services, the more comprehensive and detailed provisions concerning the paramedic services are found in the substantive legislations. In Finland, the regulations relating to the ambulances, their functions and tasks are covered *inter alia* by Health Care Act and Regulation on Emergency Medical Services.

According to the article 10 of the Health Care Act, the obligation to provide the health care services to respond the needs of the population without discrimination is on the local municipals and hospital districts. The access to such health care services should be guaranteed within the territory as a whole on equal basis. However, according to the article 39, the responsibility on arranging and providing the EMS is solely on the hospital district. The provisions of the article give the hospital districts the right to decide whether the EMS are provided by the hospital district itself, in cooperation with the regional rescue department, with another hospital district or by purchasing the services from other service providers, in other words from private ambulance entrepreneurs.

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<sup>86</sup> Oulun Kaupunki: *Hätätilanteet ja Päivystys*, (City of Oulu, *Emergency situations and emergency duty service*), Last Accessed 19 March 2014, <http://www.ouka.fi/oulu/terveyspalvelut/hatatilanteet-ja-paivystys>



## 4.2.2 Terminology and Definitions

By definition, EMS means the immediate treatment which is provided for the injured or abruptly sick person outside the medical center to restart, maintain and to ensure the vital functions or to improve the condition of the patient with basic equipment, medicine or other actions and the transport the patient to the most suitable medical center when needed.<sup>87</sup> Additionally EMS should also include tasks such as readiness to respond to emergency calls, participation in preparation for large scale disasters and cooperation with police, rescue workers and custom officials.<sup>88</sup>

EMS Unit, on the other hand, is the vehicle which engages in operational functions of emergency medical services.<sup>89</sup> Thus, in addition to ambulances, EMS unit include *inter alia* medical helicopters. However, the primary function of the medical helicopter is to transport the medical doctor to the scene as quickly as possible. Therefore, medical helicopter always includes the medical doctor but normally helicopter itself is not used to transport the patient. Thus the medical helicopter operates invariably in cooperation with the ambulances.<sup>90</sup>

Ambulances can be divided into two categories depending on their tasks and functions. Basic unit ambulances can offer treatment and transportation of the patient with sufficient readiness to monitor and take care of the patient during the transportation and to perform simple operations to maintain the vital functions; Treatment Unit on the other hand is equipped with the readiness to start intensified treatment to secure the vital functions.<sup>91</sup> In distinction to ambulances, First Response Unit (FRU) is the unit other

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<sup>87</sup> Art. 2(1) of Regulation on Ambulance Transportation (Asetus Sairaankuljetuksesta, 1994/565) and art. 40(1) of Health Care Act

<sup>88</sup> Art. 40(2)-40(5) of the Health Care Act

<sup>89</sup> Art. 8 of Regulation on Emergency Medical Services (Sosiaali- ja Terveysministeriön Asetus Ensihoitopalveluista, 340/2011)

<sup>90</sup> Finnhems, Last Accessed 19 March 2014, <http://www.finnhems.fi/finnhems/mika-finnhems-on/>

<sup>91</sup> Art. 2(3) and 2(4) of the regulation on Ambulance Transportation; The regulation on Ambulance Transportation has been reversed as the new Health Care ACT and the Regulation on Emergency Medical Services were entered into force. However, the definitions and the categorization of the units, their functions and the tasks are still strongly applied in the daily EMS operations. For example the hospital districts still refer to the reversed legislation in their web sites; Hospital District of Pohjois-Pohjanmaa, Last Accessed 18 March 2014, <https://www.ppshp.fi/ammattilaiset/prime101/prime109.aspx>

than EMS ambulance which can nevertheless respond to the similar situation. FRU may provide general first aid until the ambulance arrives.<sup>92</sup>

The core distinctions between the FRU, Basic Unit ambulance and Treatment Unit derive from the required qualifications of the persons. FRU persons are required only to have certain general training on first aid.<sup>93</sup> Thus, for example the local Red Cross could provide training to meet such requirements.<sup>94</sup> Basic Unit ambulance, on the other hand, should consist of one person who has degree on health care with the focus on emergency medical services and one person with the general health care degree.<sup>95</sup> Finally, Treatment Unit ambulance requires one employee who has higher education on emergency medical services.<sup>96</sup> Similar to Basic Unit ambulance, also in Treatment Unit the other person is allowed to have mere general degree on health care.<sup>97</sup>

#### 4.2.3 Risk Analysis

Not all the situations where urgent medical attention is needed, are equal in ranking but the level of urgency is determined according to the provisions of the article 6 established in the Regulation on Emergency Medical Services. The need for the ambulance is decided through the risk analysis based on the emergency call. According to the article 6 of the Regulation on EMS, level A situation being the most pressing occurs when there is a high risk or immediate threat to the vital functions of the patient. Level B refers to the situations when there is no clear threat to the vital functions but the probable risk exists.<sup>98</sup> Level C, on the other hand, occurs when the vital functions are stable but the condition nevertheless requires paramedic attention.<sup>99</sup> Finally, in level D situations no

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<sup>92</sup> Art. 40(6) of the Health Care Act

<sup>93</sup> Art. 8(1) of Regulation on Emergency Medical Service

<sup>94</sup> Sosiaali- ja Terveysministeriö, *Ensihoidon Palvelutaso: Ohje Ensihoitopalveluiden Palvelutasopäätöksen Laatumiseksi Sairaanhoidopiireille*, (Ministry of Social Affairs and Health, *Service Level in Prehospital Emergency Care: Guidelines to Prepare the Decision on Service Level*), STM:n julkaisuja 2011:11, 18

<sup>95</sup> Art. 8(2) of Regulation on Emergency Medical Service

<sup>96</sup> *Ibid.*, art. 8(3)

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, art. 6

<sup>99</sup> *Ibid.*

disorders in vital functions are noticed but paramedic service is needed to evaluate the condition of the patient.<sup>100</sup>

The risk analysis according to the article 6 is required in order to determinate the time limit in which the patient need to be reached. According to the law, in A and B level situations the ambulance is needed to arrive within 8 to 15 minutes, C level patients are aimed to be reached within 30 minutes and D level patients within two hours. Furthermore, as the time limits are calculated starting from the call and ending when the first unit arrives, A and B situations have an additional requirement according to which the Treatment Unit needs to arrive within the 30 minutes from the emergency call.<sup>101</sup>

Unfortunately though, the time limits established in the article 7 of the Regulation on Emergency Medical Service are subjected to the article 5 which allows the hospital district to divide the region according to the risk calculations. The risk calculation is done by the average number of the needs for emergency medical services in a specific area. In the Region one there occurs at least one need for urgent medical service within every 24 hours; in the Region 2 needs for ambulance exists at least once a week; in Region three at least once a month and in Region 4 less than on monthly basis but the area has still permanent inhabitants or the highway crosses the region.<sup>102</sup> Finally, region 5 constitutes the areas without the permanent inhabitants.<sup>103</sup>

Thus, the time limits do not mean that every patient should be reached within the given times but rather obliges the hospital districts to establish statistics of how many will receive the treatment within those time limits. Therefore especially in sparsely populated areas far away from the city centers the patients may need to wait help much longer than their precipitously weakened health condition would allow.

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid., art. 7

<sup>102</sup> Ibid., art. 5

<sup>103</sup> Ibid.

### 4.3 Current Situation in Oulu

The Renewed Health Care Act establishing the requirement of Hospital Districts to arrange the EMS came in force initially in May 2011. However, as the new legislation shifted the responsibility of such services from local municipals to the new organizer, the Hospital Districts were allowed to have transitional period to prepare for the change. Thus, according to the article 79(1) of the Act, obligations under the article 39 reached legally binding force in January 2013.<sup>104</sup>

In Oulu region, the Hospital District made the decision that in some parts of the district the EMS are arranged in cooperation with the local rescue center and in some parts the services are provided by two big private ambulance companies HES and Med Group OY. The selection was based on the tendering of the different service providers and cost-efficiency evaluation with intend and aim to increase the access to EMS and to promote the quality and equality among the citizens.<sup>105</sup>

Finnish Ambulance Service Association raised concerns already in 2010 when the new Health Care act was still in the process of drafting. According to the Chairman of the Association, the previous system was largely constructed upon the private ambulance service entrepreneurs who had effective usage of the equipment and comprehensive governance of the territories. Thus, private entrepreneurs were able to guarantee the safety and the equal treatment of the patients irrespectively to the place of the patient's location or residence. The new legislation was feared to decrease the access to paramedic services in the sparsely populated areas and country sides if the small private ambulance entrepreneurs were abolished and the services centralized to the big companies and rescue centers.<sup>106</sup>

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<sup>104</sup> Art. 79(1) of the Health Care Act

<sup>105</sup> Yle Uutiset, *Pohjois-Pohjanmaan Ensihoidon Palveluja Jaettiin* (Yle News, *EMS in Oulu Region Dispensed*), 27 Aug 2012, Last Accessed 19 March 2014, [http://yle.fi/uutiset/pohjois-pohjanmaan\\_ensihoidon\\_palveluja\\_jaettiin/6271202](http://yle.fi/uutiset/pohjois-pohjanmaan_ensihoidon_palveluja_jaettiin/6271202); Yle is the Public Serve Broadcaster in Finland

<sup>106</sup> Kontio, Teuvo, "Laskeeko Uusi Laki SSK:n Lipun Puolitankoon?" (Does the new legislation hinder the role of the private ambulance entrepreneurs?,) *Ambulanssi; Suomen Sairaankuljetusliitto ry:n Valtakunnallinen Ammattilehti*, 1/2010, 1-2; Söderlund, Mikael, "Lopun Alku vai Nousemmeko Vielä?" (Beginning of the end or do we raise again?), *Ambulanssi*, 2/2010, 1; *Ambulanssi* is the official paper for the professional ambulance service providers in Finland

One of the reasons behind the renewed legislation was to decrease the costs of the EMS. The Health Care Act was designed to achieve such savings by shifting the responsibility of arranging EMS to the hospital districts and requiring the new organizer to establish comprehensive plan of how to meet execution and implementation of the new obligations.<sup>107</sup> Unfortunately, in Oulu the Hospital District was unable to control the costs effectively. The system which operated under the previous legislation appeared too expensive to be maintained and therefore the new system was needed to be created.

To meet the sufficient level of cost-effectiveness, the Hospital District abolished three ambulances from Oulu municipal and arranged the EMS in cooperation with the local rescue center.<sup>108</sup> One of the ambulances was abolished from the city center area but the two others had operated previously in Yli-Ii and Ylikiiminki which both are relatively sparsely populated areas located far from the city center. The Hospital District acknowledged in its Decision on Service Level in Prehospital Emergency Care that due to the geographical reasons the fully equal treatment of the residents in both urban and rural areas is difficult to achieve.<sup>109</sup>

The abolishment of two permanent ambulances from sparsely populated areas caused large criticism and concerns. For example, in January 2013 the administrative court of Oulu received a complaint in relation to the situation of Ylikiiminki. The applicant claimed that due to the loss of permanent ambulance the access to EMS within a reasonable time was compromised in Ylikiiminki as the distance from the Oulu city center to the most distant corner of region is nearly 100 kilometers.<sup>110</sup> Simultaneously,

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<sup>107</sup> Pohjois-Pohjanmaan Sairaanhoitopiiri, *Pohjois-Pohjanmaan Sairaanhoitopiirin Ensihoitopalvelun Palvelutasopäätös 1.1.2013 Alkaen* (Hospital District of Pohjois-Pohjanmaa, *Decision on Service Level in Prehospital Emergency Care in the Hospital District starting from 1 Jan 2013*), 3, Last Accessed 19 March 2014,

[http://www.ppsHP.fi/instancedata/prime\\_product\\_julkaisu/npp/embeds/28251\\_palv\\_tasop\\_versio\\_13.pdf](http://www.ppsHP.fi/instancedata/prime_product_julkaisu/npp/embeds/28251_palv_tasop_versio_13.pdf)

<sup>108</sup> The Private Ambulance Companies HES and Med Group OY operate in other parts of the Hospital District whereas the Rescue Center is responsible for the services in Oulu municipal; Pohjois-Pohjanmaan Sairaanhoitopiirin Kuntayhtymä, *Ensihoidon Palvelupäätös Vuodelle 2013* (Hospital District of Pohjois-Pohjanmaa, *Decision on Service Level in Prehospital Emergency Care for the year 2013*), Doc no DIAARI: 371 /2011, 13 Nov 2012

<sup>109</sup> Pohjois-Pohjanmaan Sairaanhoitopiiri, *Ensihoidon Palvelupäätös Vuodelle 2013*, (Hospital District of Pohjois-Pohjanmaa, *Decision on Service Level in Prehospital Emergency Care in the Hospital District starting from 1 Jan 2013*), 10

<sup>110</sup> Oulun Hallinto-Oikeus, *Valitus Pohjois-Pohjanmaan Sairaanhoitopiirin (PPSHP) Ensihoidon Palvelutasopäätöksestä 13.11.2012* (Administrative Court of Oulu, *Complaint on Decision on Service Level in*

the member of Oulu City Council argued that the decision of the Hospital District to abolish three ambulances was in conflict with the requirement of equality among the inhabitants.<sup>111</sup>

Unfortunately the practice has affirmed the concerns. Already in January 2013 a patient having a heart attack was forced to wait ambulance almost an hour in Ylikiiminki. In that specific incident the ambulance was alert from Oulu city center and due to the long distance the arrival time expanded enormously. It was argued in the media that under the previous system the help would have reached the patient within a sufficiently reasonable time as the ambulance would have been located approximately one kilometer away from the patient. It was also acknowledged that even when Ylikiiminki merged to Oulu in 2009 the town was allowed to maintain its own ambulance to ensure quick response to the urgent needs. Therefore, according to the doctor of Ylikiiminki health care center, the current system endangers the human lives.<sup>112</sup>

In May 2013 the manager of the emergency medical services in Oulu region admitted that due to the new legislation and decrease in the number of ambulances, there exists an ambulance shortage on weekly basis. According to him, every week there appear situations where the ambulance cannot respond to the emergency call immediately as all ambulances are employed and no unit is available.<sup>113</sup> By so far, the loss of lives has been preserved but the constant danger of compromising the access to health care within a reasonable time due to long distances and ineffectiveness of the operative system exists.

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*Prehospital Emergency Care of Hospital District of Pohjois-Pohjanmaa on 13 Nov 2012*), Doc no 00020/13/2299, 3 Jan 2013; Unfortunately, no further information on the complaint was available during the time when the thesis was in the process of writing

<sup>111</sup> Huttu-Hiltunen, Antti, "Ambulanssityhjiötä Kovalla Hinnalla" ("High Price for Ambulance Shortages"), *Rantapohja*, 13 Nov 2012, Last Accessed 19 March 2014,

<http://www.rantapohja.fi/lukijaposti.php?article=AMBULANSSITYHJIO-TULOSSA.html>

<sup>112</sup> Yle Uutiset, "Sydänkohtauspotilas Odotti Ambulanssia Melkein Tunnin" (Yle News, "Heart Attack Patient Waited an ambulance almost an Hour"), 29 Jan 2013, Last Accessed 19 March 2014,

[http://yle.fi/uutiset/sydankohtauspotilas\\_odotti\\_ambulanssia\\_melkein\\_tunnin/6470528](http://yle.fi/uutiset/sydankohtauspotilas_odotti_ambulanssia_melkein_tunnin/6470528); It should be acknowledged that there are no other accessible sources available concerning this specific incident. Thus, despite the fact that Yle Uutiset is relatively reliable media source, the value of the present source is rather informative as it represents one perception and interpretation of the issue.

<sup>113</sup> Koskela, Niina, "Ambulanssia Joutuu Jo Jonottamaan" ("Ambulances not Available Immediately"), *Kaleva*, 26 May 2013, Last Accessed 19 March 2014, <http://www.kaleva.fi/uutiset/oulu/ambulanssia-joutuu-jo-jonottamaan/631267/?comments=100#c2638867>; *Kaleva* is the primary newspaper in Oulu region

## 5. Analysis: Does the New Legislation Violate Human Rights?

### 5.1 General Obligations Under the Human Right Covenants

In order to achieve a comprehensive analysis whether, how and to what extent the renewed Finnish Health Care Act conflicts with the international human rights, the first phase of evaluation should evolve around the articles defining the general obligations of the state. After such analysis the potential breaches of the material articles are covered.

To start with the ICCPR, the general obligations are established primarily on the article 2(1) where the state is required to respect and ensure the rights recognized in the Covenant without discrimination. Article 2(2), on the other hand, refers to the situations where the rights have not yet been recognized and in such situations obliges the states to undertake all necessary steps in order to give effect to the rights. Thus, concerning the nature of the obligations under the ICCPR, the application of the Covenant appears relatively simple as it is only required to acknowledge that the individuals have certain rights and to refrain from interfering with them. The limitations of the rights can only be done according to the conditions which are codified into the relevant material articles.

Considering the generally advanced human rights protection in Finland, it seems that at the national level the freedom of the individuals to choose their residence and establish their homes have not been restricted. Furthermore, based on the international observations, no large scales interferences with the civil and political rights appear to exist.<sup>114</sup> Thus, it could be said that Finland is not in violation of ICCPR, at least to remarkable extent.

In relations to the ICESCR, the exact wording in the article 2(1) imposes the duty and the obligation to the states to take steps to achieve progressively the full realization of the rights recognized in the Covenant. However, the Economic and Social Council has stated that requirements established in the ICESCR do not concern only the states but are applicable also to all administrative authorities and should be acknowledged and respected in every decision making processes together with the notion that the domestic

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<sup>114</sup> Chapter 3.2 above concerning the general human rights situation in Finland

laws should in every case be interpreted in conformity with the international legal obligations of the state.<sup>115</sup> Nevertheless, based on the wording of the article 2(1) the primary responsibility to supervise the application, execution and implementation of ICESCR still relies on the states. Therefore, the delegation of the power to local municipals or other administrative entities such as Hospital Districts on decision makings does not abolish the responsibility of the state to fulfill its obligations under the Covenant.

Other interesting notions under the general obligations of the ICESCR article 2(1) are the concepts of “to take steps” and “progressive realization”. ICESCR has been adopted with the understanding that the rights of the Covenant cannot be achieved immediately but certain flexibility is needed. Thus the states are allowed to approach the realization of the rights step-by-step starting from the beginning by guaranteeing the very essential needs and proceeding constantly towards the highest attainable standards of the realization. Only in the extreme exceptional cases and after the careful consideration retrogressive measures can be allowed but even in such situations the measures need to be fully justified by reference to totality of the rights and making sure that the maximum of the available resources has been used.<sup>116</sup>

The current situation in Oulu appears exceedingly interesting. Under the previous Health Care Legislation, the municipals had been able to arrange the EMS in the way that no significant shortages occurred but the ambulances were able to govern virtually the whole territory and to guarantee the equal access to the service without discrimination. In that sense, it could be claimed that Finland had achieved the full realization on the creation of the conditions which would assure the medical care and attention in the event of urgent situations.

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<sup>115</sup> Economic and Social Council, *Draft General Comment no 9: Domestic Application of the Covenant*, para 9 and 15; The Human Rights Committee supervising the ICCPR has adopted the similar approach stating that obligations of the Covenant are binding on every state party as a whole including public and governmental authorities in any level; The Human Rights Committee, *CCPR General Comment no 31: The Nature of the General Legal Obligation Imposed to the State Parties to the Covenant*, para 4

<sup>116</sup> Economic and Social Council, *General Comment no 3: The Nature of the State Party Obligations (Art. 2, Para 1)*, para 9



However, the situation changed due to the new legislation. As the Hospital District was unable to maintain the existed system due to the high costs, three ambulances were abolished and especially two regions were left without the sufficient guarantees of access to emergency medical services. It seems that the measures taken by the Hospital District to fulfill their new obligations under the Finnish law have deteriorated the access to the EMS in Oulu region. In other words, the Hospital District has executed its obligations by adopting retrogressive measures. Retrogressive measures without full justifications constitute the violation of the general obligations under the ICESCR.

In the present situation the retrogressive measures could be justified if they would serve the realization of the other rights of the Covenant and if the all available resources had been fully used. However, it appears challenging to understand how impairing of emergency medical services could affect positively to the standards of living and right to the continuous improvement of living conditions in sparsely populated areas where the ambulances have been abolished. Simultaneously, the protection of the children under the article 10(3) of the ICESCR appears to be compromised due to the lack of ambulances.

The question concerning the usage of all available resources, on the other hand, is largely affiliated with the evaluation of the economic aspects. The arrangement of the current EMS is to large extent based on the financial calculations of the organizer. Considering that the Hospital District is responsible not only for the maintenance of the EMS but also for numerous other tasks and functions relating to the health care sector, the distribution of resources in the limited budget appear never ending debate. One could claim that more resources should be provided for the emergency services but on the other hand, it would mean that some other sector of the health care would be obliged to reduce its budget.

Furthermore, article 4 of the ICESCR establishes the conditions under which the states can subject the rights of the Covenant to the limitations. However, the limitation needs to be compatible with the nature of the rights and done solely for the purpose of promoting the general welfare in a democratic society. Thus, it seems impossible to justify the reduction of the number of the ambulances relying on the article 4 of ICESCR. Such limitation would undermine the sole nature of the right to health as well

as would not under any circumstances fulfill the requirement of promoting the general welfare when the inhabitants living in the sparsely populated areas may be without the access to the urgent medical services. Additionally, the article 2(2) requires the Covenant to be applied without discrimination on the grounds such as property.

Finally, to summarize the analysis on the general obligations under the ICESCR, it appears that the Hospital District has adopted retrogressive measures to implement its obligations under the Finnish law. While it remains vague to determine whether all available resources have been used to reach the decision which currently impairs the access to EMS in Oulu, it could be nevertheless said that the implementation and execution of the Hospital District's plan undermines the enjoyment of other rights recognized in ICESCR. Thus, the implementation and execution of the Hospital District obligations under the Finnish law have been adopted in violation to the general obligations under ICESCR.

## **5.2 Violation of Right to Health and Access to Emergency Medical Services?**

Right to health is defensibly one of the most concrete human rights to demonstrate the interconnection and dependence to other rights. Right to health does not only mean the right to obtain medical services but includes the underlying determinants to the health such as access to clean water, environmental conditions and the entitlement to the system of health protection and equal opportunity for individuals to enjoy the highest attainable level of health.<sup>117</sup> Inherently, right to health and right to access to health care operate in conjunction with the right to life as the violations in relations to health care have great potential to endanger the human lives.<sup>118</sup>

As right to health has been perceived as essential element for the inherent dignity of human life, right to health is attached with the strong presumption that retrogressive measure are not permissible but that the state needs continually move expeditiously and effectively towards the full realization of the article 12 of ICESCR for example by

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<sup>117</sup> Economic and Social Council, *General Comment no 14: The Right to the Highest Attainable Standard of Health (Art. 12 of ICESCR)*, para 3, 8 and 11

<sup>118</sup> The Human Rights Committee, *General Comment no 6: The Right to Life (Art. 6)*, para 5

guaranteeing the equal and timely access to health services both in local and national levels.<sup>119</sup> Furthermore the states are under the obligation to respect such right *inter alia* by refraining from denying or limiting equal access for all persons to health services.<sup>120</sup>

Deriving from the international obligations established in the ICESCR, Finland has codified the provisions on health care and equal access to health care both in the Constitution and substantive laws. For example, article 3 in the Patients Act guarantees everyone permanently residing in Finland right to good health and medical care without discrimination.<sup>121</sup> Health Care Act, on the other hand, is designed and aimed to promote and protect the equality and non-discrimination of the citizens to obtain equal access to health care.<sup>122</sup>

In theory, Finland has fulfilled its obligations under the ICESCR article 12 by implementing the requirements into the domestic laws. Nothing in the Finnish legislation would allude that the access to health care in Finland would be discriminatory. Furthermore, the Regional State Administrative Agency has published the decision according to which even the implementation of the Health Care Act in Oulu region was in principle compatible with the laws although the concerns were raised in relations to the plans to locate the EMS units rather in the main city area where the density is the population is higher.<sup>123</sup>

However, the violation can be found in the practice. Sufficient number of ambulances to respond to the needs of the population and to guarantee the timely access to the medical care constitutes an integral part of the right to health. Simultaneously, the state should refrain from abolishing the ambulances or reducing the number of available ambulances if such reduction would endanger the protection of health. In this sense, the abolishment of the ambulances from Yli-Ii and Ylikiiminki seems to appear incompatible with the purpose and the protection guaranteed in the article 12 of ICESCR.

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<sup>119</sup> Economic and Social Council, *General Comment no 14: The Right to the Highest Attainable Standard of Health (Art. 12 of ICESCR)*, para 17 and 31-31

<sup>120</sup> *Ibid.*, para 34

<sup>121</sup> Patient Act (Potilaslaki/ Laki Potilaan Asemasta ja Oikeuksista, 1992/785)

<sup>122</sup> Art. 2 of the Health Care Act

<sup>123</sup> Aluevalvontavirasto, *Valvontapäätös (Regional State Administrative Agency, Supervisory Decision)*, Doc no 298/160/2012, 27 Nov 2012

It should be also noted that the medical helicopter operates in Oulu region and can reach the patients also in the sparsely populated areas within a sufficiently reasonable time. However, the medical helicopter has not been designed to replace the ambulances but simply to transport the medical doctor to the patient. Thus, the medical helicopter should respond to the emergency calls only when the injury or illness requires the immediate attention and treatment from the medical doctor. Additionally, as the helicopters are subject to the changing weather conditions, the emergency helicopters cannot be relied on as being the only unit providing the emergency services in the distant corners of the municipal.

It should also be noted that Ylikiminki and Yli-Ii have health care centers in their regions. However, those centers operate only on working days and during the regular working hours. Therefore, the mere existence of certain basic type health care service cannot fill the shortage of the ambulance.

Furthermore, in order to achieve comprehensive analysis over the current problem, the previous system where ambulance services operated under the responsibility of local municipalities cannot be disregarded. However, it is crucial to acknowledge that when the responsibility on arranging the EMS shifted from the municipalities to the Hospital Districts in the beginning of the 2013, simultaneously occurred the large scale mergers in Oulu region. It is infeasible to know whether and how the merger would have changed the EMS if the responsibility had remained in the municipalities. On one hand, Oulu municipal could have reconstructed the whole system and abolish the ambulances from all those regions that joined to it but on the other hand, even when Ylikiminki unified to Oulu in 2009, the town was allowed to maintain its own ambulance. Thus, it could be assumed that the without the renewed Health Care Act the mergers themselves would have not caused the prevailing ambulance shortage in the region.

It seems that the decision of the Hospital District to reduce the number of ambulances and to locate the remaining ones in the city area appears to discriminate those who live in the sparsely populated areas. However, any discrimination with the purpose or effect to nullify or impair the equal enjoyment of rights either through direct actions of the state or by other entities which the state has insufficiently regulated is perceived to

constitute the violation of the international human rights.<sup>124</sup> Thus, the Hospital District is in violation of its obligations to comply with the requirements of international human rights to guarantee equal access to medical care by implementing the decision which places certain groups of inhabitants in less favorable situation due to their place of residence. Finland, on the other hand, violates the human right Covenants as it is the inherent obligation of the state to guarantee the effective realization and application of the rights.

### 5.3 Restriction on Freedom to Choose Residence?

To engage in deeper evaluation of the prevailing problem in Oulu region, the human rights provisions relating to the freedom of movement, living conditions and property rights are needed also to be analyzed. All such rights and freedoms are covered in the Constitution of Finland.<sup>125</sup>

As the provisions of the human rights in the national Constitutions largely derive from the international treaty law, so is the situation in Finland as well. ICCPR article 12(1) guarantees the individual's right to liberty of movement and freedom to choose their residence whereas article 17 prohibits the unlawful or arbitrary interferences with *inter alia* privacy and home. Article 26, on the other hand, prohibits the discrimination on the grounds of property. Working in conjunction with the ICCPR articles, the ICESCR article 11(1) is designed to guarantee certain standards of living and to allow individuals to improve their living conditions and the article 10(3) ensures the special protection of the children.

To start with the right to property, it should be noted that the concept has not been defined in the international Covenants. Thus, as the protection of the right is highly

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<sup>124</sup> Asbjorn, Eide, "Economic, Social and Cultural Rights as Human Rights", *Economic, Social and Cultural Rights, 2001*, 27

<sup>125</sup> Constitution of Finland, Chapter 2: Section 6 guaranteeing equality and non-discrimination, section 9 freedom of movement, section 10 right to privacy, section 15 protection of property, section 22 protection of basic rights and liberties by public authority

dependable on national legislations, the content varies in different legal systems.<sup>126</sup> In Finland, the Constitution merely acknowledges the protection of property. The rules relating to expropriation of the property has been codified into material laws. In any case, the property rights have been regarded to overlap with both political and economic rights and are generally understood to include human rights such as standard of living as well.<sup>127</sup>

Right to adequate standard of living and to continuous improvement of living conditions, on the other hand, means that individuals can afford the necessities of life including affordable housing, control over the housing resources, access to public services and emergency medical services.<sup>128</sup> Generally, it has been recognized that the housing costs are higher in the city centers due to the central locations in the proximity of amenities whereas in the rural areas and sparsely populated regions living expenses are much lower. Cheaper housing costs generally allow more money to be spent for example to food or the leisure activities which again have an effect to improve the quality of life.

The article 11(1) of ICESCR operates widely together with the article 12(1) of ICCPR which allows the individuals to move freely within the territory of the state and to choose their place of residence as they wish. As the state is under the obligation to respect such rights, generally the state should not restrain anyone from moving to sparsely populated areas if the individuals wish to do so. Furthermore, to fully respect and ensure the enjoyment of the freedom to choose the residence, the state is required to provide the access to employment, education and health care services in all areas of its territory.<sup>129</sup> Therefore, it can be claimed that when Finland has delegated the power to the local municipals to allow house building *inter alia* in Ylikiminki, Finland is also under the obligation to assure the availability of socio-economic rights under the ICESCR in that region. Failure to do so would constitute violation of international human rights.

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<sup>126</sup> Krause, Katarina, "The Right to Property", *Economic, Social and Cultural Rights*, Kluwer Law International, 2001, 191-210, 198

<sup>127</sup> *Ibid.*, 191

<sup>128</sup> Asbjorn, Eide, "The Right to an Adequate Standard of Living including Right to Food", *Economic, Social and Cultural Rights*, 2001, 134; Leckie, Scott, "The Human Right to Adequate Housing", *Economic, Social and Cultural Rights*, 2001, 150

<sup>129</sup> Economic and Social Council, *CESCR General Comment no 4: The Right to Adequate Housing (Art. 11(1))*, para 8

On the other hand, one aspect of the problem relates to those who already live in Ylikiminki or Yli-Ii and another question concerns those who wish to improve their living conditions by moving to such areas. As it is recognized that the enjoyment of the freedom of movement under the article 12(1) of ICCPR should not be made dependable on any particular purpose or reason,<sup>130</sup> it could be questioned whether the absence of permanent ambulance in the region has an effect to restrict the freedom to choose the residence.

Especially considering the families with children, the cleaner environment, cheaper real properties and peaceful atmosphere in comparison to the polluted, noisy and expensive city centers may appear more attractive to the families. However, it appears rather doubtful whether the parents are willing to take the risk to improve their living conditions by moving to the area where the access to emergency medical services within the reasonable time cannot be not fully guaranteed. Every parent would wish the ambulance to arrive as quickly as possible if the life of the child is in danger due to the serious injury or suddenly weakened health conditions. In such situations the protection of the children under the ICESCR article 10(3) should not be compromised due to the shortage of the ambulances but the state should make every effort to ensure that the access to EMS is guaranteed for the children.

In relations to article 17(1) of ICCPR, the states is prohibited to arbitrary or unlawfully interfere with the privacy, home and family of the individuals. If the concept of interference has been understood in the broader sense, it could be claimed that the state interferes with the right to home when the access to EMS is not fully guaranteed. In such situation, the interference is constructed upon the potential restriction on right to establish home in a specific region. Simultaneously, failure to provide adequate emergency services may endanger the lives of the family members which can be held as interference with the family.

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<sup>130</sup> The Human Rights Committee, *CCPR General Comment no 27: Freedom to Movement (Art 12)*, para 5

The rights of the individuals to improve their living conditions by exercising their liberty of movement and right to choose their place of residence should not be subjected to the restrictions which are caused by the failure of the state to guarantee the sufficient level of protection under the ICESCR. Adequate standard of living should not be compromised due to lack of sufficient health care or the risk of endangerment on access to EMS in sparsely populated areas. Unfortunately, such conditions seem to occur currently in Oulu region.

#### **5.4 Justifications for Violations?**

As established in the paragraphs above, the current situation relating to access to EMS in Oulu region appears discriminatory on the grounds of property as those who live in the sparsely populated areas have been placed in the less favorable conditions to obtain EMS. However, generally the states have been granted the possibility to restrict certain human rights under the specific conditions. Simultaneously, the discrimination could be accepted in certain occasions. Therefore, it should be analyzed whether and how the possible human rights violations in Oulu can be sufficiently justified. Two different interpretation of the situation are presented below.

##### **5.4.1 Strict interpretation**

According to the Economic and Social Council, different treatment can be justified if it is reasonable and objective with the legitimate aims and effects. However, the lack of the resources is not accepted as a justification unless every effort has been made to use all the available resources to eliminate the discrimination.<sup>131</sup> Furthermore, in relations to ICESCR, limitations to the rights need to be done solely with the purpose to promote the general welfare in the democratic society and only if such restrictions do not undermine the nature of the rights established in the Covenant.<sup>132</sup> Thus, as analyzed above in the

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<sup>131</sup> Economic and Social Council, *General Comment no 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para 2)*, para 13

<sup>132</sup> Art 4 of ICESCR



Chapter 5.1, the lawful limitations under the ICESCR may not be applied to the situation in Oulu as the abolishment of the ambulances does not promote general welfare.

In theory, the restrictions could relate to the freedom of movement and right to choose the residence. In such case the limitations should be compatible with the article 12(3) of ICCPR which allows the state to compromise the exercise of the rights under the article 12(1) if such restrictions are perceived necessary to protect national security, public health, public order, morals or rights and freedoms of other. Additionally, the measures taken should be consistent with the other rights of the Covenant.<sup>133</sup>

However, applying the potential ground of article 12(3) to the right to choose the residence and establish home in sparsely populated areas in Oulu region, the compatibility of the restrictions appears questionable. The restrictions can hardly be imposed to prevent individuals to move to rural areas as such decision would not constitute the threat to the national security, public order or morals. Furthermore, as the decision to establish the home in the country side is rather based on an individual thinking, such decision cannot be perceived to interfere or violate the rights and freedoms of others.

In principle, the protection of public health claim could be raised to limit the movements to sparsely populated areas. In such situation the state may appeal to the poor health services in the region and wish to restrict the movement to such areas based on the protection of public health. However, such justification would not appear particularly strong as the area is already inhabited. Furthermore, the state such as Finland is nevertheless under the obligation to fulfill the requirements of ICESCR. Therefore the restriction of individuals' liberty of movement and right to choose the residence in the sparsely populated areas on the ground of protection of public health due to the lack of sufficient health services would rather appear as politically and economically oriented motive.

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<sup>133</sup> The exact wording of the ICCPR article 12(3): "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."

Furthermore, if the restriction could be justified, it nevertheless needs to be necessary in democratic society and proportionate to achieve the aim.<sup>134</sup> Simultaneously, the articles concerning the non-discrimination such as article 2(2) of ICESCR, 2(1) and 26 of ICCPR proclaim the guarantees of equality and non-discrimination to the greatest possible extent and the interpretation of the domestic laws in conformity with the international obligations of the state.<sup>135</sup> In this sense, it may seem difficult to justify the possible restriction on ICCPR article 12(1) on any legal grounds established in the article 12(3).

Reliance on the public health claim may also appear relatively questionable, especially in relation to whether and how such restriction could be necessary in democratic society and would such limitation fulfill the requirements of the proportionality as the lack of the sufficient EMS in the sparsely populated areas is rather caused by the state's failure to provide such services. Thus, the possible restriction would not only appear unlawful on its own grounds but it would also interfere *inter alia* with the right to home guaranteed by the article 17(1) of the ICCPR.

It should also be noted that no officially claimed justifications exist to restrict the individuals on choosing their place of residence in the sparsely populated areas. Finland itself has not in any way limited the individual rights under the article 12(1) of ICCPR. However, the policy of the local authorities and the currently exercised practice in Oulu area have placed the individuals living in Yli-Ii and Ylikiiminki in the situation where their access to EMS has been compromised due to fact that they have established their homes in the rural areas. This, on the other hand, could be regarded to constitute unlawful discrimination based on the property.

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<sup>134</sup> The Human Rights Committee, *CCPR General Comment no 27: Freedom of Movement (Art. 12)*, para 11 and 14

<sup>135</sup> For example The Economic and Social Council, *Draft General Comment no 9: Domestic Application of the Covenant*, para 15; The Economic and Social Council, *General Comment no 20: Non-Discrimination in Economic, Social and Cultural Rights (Art 2, Para 2)*, para 1-2; The Human Rights Committee, *CCPR General Comment no 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*, para 10

#### 5.4.2 Milder interpretation

On the other hand, contrary to the strict interpretation, the situation could be analyzed from another angle as well. Human rights law generally acknowledges that the principle of non-discrimination is concentrated upon the prohibition of different treatment in similar situations.<sup>136</sup> This can be interpreted that the human beings under the similar circumstances should be treated without discrimination and on equal basis. However, if the circumstances vary among different groups, the individuals may be subjected to different treatments depending on which group they belong to.

In relations to the EMS in Finland, the hospital districts are required to divide their geographical area into the five categories according to the risk analysis. The region 1 consists of the areas where there is more than one need for EMS within a day whereas the region four, on the other hand, has less than one incident in a month.<sup>137</sup> Therefore, due to the unequal demand for the ambulances between these different areas, it can be objectively justified to claim that the available resources can be in fact distributed differently taking into account the actual needs of the population. In sparsely populated areas with fewer inhabitants it may mean fewer services. In such situation the state is not obliged to guarantee equal access to EMS according to the same standards in every corner of its territory but rather make sure that the inhabitants are treated equally and non-discriminatory manner within each risk area. Therefore, the access to EMS itself can vary between the different locations.

Assuming that the individual can be treated differently depending on their place of residence, the additional evaluation relates to the application of the articles 12(1) of ICCPR and 11(1) of ICESCR as well as the prohibition to adopt retrogressive measures under the article 2(1) of ICESCR. As the objective justification for the different levels of EMS in different risk areas is accepted, it appears challenging that the right to freedom of movement and the improvement of the living standards are violated merely due to the fact that the availability of EMS does not reach the same level in rural areas than in city center.

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<sup>136</sup> Craven, Matthew, *International Covenant on Economic, Social and Cultural Rights: a Perspective on its Development*, 1995, 156

<sup>137</sup> See chapter 4.2.3 above

However, it should be remembered that the present problematic situation in Oulu is primarily a result of the decision of hospital district to abolish three ambulances from the sparsely populated areas. It appears exceedingly questionable whether the hospital district could sufficiently justify such actions so that it would not constitute the breach under the article 2(1) of ICESCR. Until January 2013 Ylikiminki had its own ambulance to provide the quick response to the needs of the local inhabitants. However, after the abolishment of the permanent EMS unit the population in the area could be seen to have lost certain protection which previously guaranteed adequate standard of living for them under the article 11(1) of ICESCR.

Furthermore, although the reduction of EMS units could be justified on the grounds of the economic conditions, it appears unreasonable to locate the EMS units so far from the areas which nevertheless have permanent population. It could be questioned whether the equivalent aim could have been reached merely by relocating the ambulances closer to the rural areas. Thus the current situation in Oulu can be perceived to violate the principle of proportionality.

Therefore, based on the analysis in the Chapters, it could be said that the implementation and the execution of the renewed Health Care Act provisions relating to the EMS is done in the breach of the international human rights law. The most urgent violation exists in relation to the article 12(2)(d) together with the general obligations under the article 2(1) of the ICESCR as the Hospital District has adopted retrogressive measures in relations to the conditions which should assure the medical attention in the event of sickness. Additionally, although the human rights law do allow certain differentiating treatment among the different groups, nevertheless it could be claimed that the retrogressive measures have restrictive effect on the right to exercise and enjoy the freedom of movement and right to choose the residence under the ICCPR article 12(1) and right to improve the living standards according to the article 11(1) of ICESCR. Furthermore, the due to the abolishment of the sufficient amount of EMS units, the right to life under the article 6(1) of the ICCPR and the protection of the children according to the article 10(3) of the ICESCR are endangered.

## 6. Analysis: Further Problems of ESC Rights and Their effect to Emergency Medical Service

### 6.1 Economic Aspects of Emergency Medical Service

ESC rights enjoy generally wide constitutional recognition especially concerning the right to education and health care.<sup>138</sup> However, in comparison to the traditional civil and political human rights, socio-economic rights are largely affiliated with the financial resources and political decisions. Therefore, as the core nature of the health care services is dependable on funding and policies of the competent authorities, the implementation of the right to health need to be interpreted, analyzed and understood in the economic and political contexts.<sup>139</sup>

Furthermore, socio-economic human rights are also subject to the economic development.<sup>140</sup> On one hand, welfare and health care appear as great tools to invoke political debate and attract voters but on the other hand, to achieve long-term sustainability and to guarantee adequate health care services, the sufficient balance between the constitutional commitments of the human rights and economic and political realities should be found.<sup>141</sup> Thus, the realization of the right to health and the access to adequate EMS result from analysis of various differentiating factors including the evaluation of available financial resources, domestic economic developments and political perceptions of the state.

In Finland, the financing of the EMS appears rather multifaceted. Under the previous health care legislation, the financing was based on three-step-process where the ambulances received the payments from the local municipals that purchase the services, from the health care insurances paid by the social insurance institution KELA and from

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<sup>138</sup> Hirschl, Ran, Evan Rosevear, "Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities", *The Legal Protection of Human Rights: Skeptical Essays*, ed. Campell, Tom, K.D. Ewing et all, Oxford University Press, New York, 1<sup>st</sup> ed., 2011, 207-228, 207

<sup>139</sup> *Ibid.*, 207

<sup>140</sup> Bentham, David, "Democracy and Human Rights: Civil, Political, Economic, Social and Cultural", *Human Rights: New Dimensions and Challenges*, ed. Symonides, Janusz, Ashgate Publishing Limited, England, 1<sup>st</sup> ed., 1998, 71-93, 80-81

<sup>141</sup> Hirschl, Ran, Evan Rosevear, "Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities", *The Legal Protection of Human Rights: Skeptical Essays*, 2011, 215-217

the excess share of the patients. The payment under the health care insurances was composed of the resources from the state and from the insured persons.<sup>142</sup> However, due to the renovation of the health care legislation, the system of financing the EMS was also taken under the re-evaluation. Under the current situation where the responsibility on arranging the EMS relies on the hospital districts, the districts are entitled to receive the compensation from KELA. The compensation from the health care insurances are based on the annual applications filed by the hospital districts and paid according to the reasonable and necessary costs.<sup>143</sup> Furthermore, the patient excess shares have been increased from previous 9,25€ to 14,25€.<sup>144</sup> Acknowledging the possible challenges deriving from the changes, the new system was planned to come in force in 2013 but the transfer period was granted till 2016.<sup>145</sup>

The financial challenges relating to the EMS derive *inter alia* from the costs of the maintaining the ambulances and the compensations paid to the medical persons. As the treatment units are better equipped and the qualification requirements of the paramedics are advanced in comparison to the basic units, the costs are also higher. Therefore, the hospital districts are forced to balance between the economic aspects and human rights. The decisions are constructed upon the evaluations of the available financial resources of the health care as a whole, the sufficient amount which the districts can invest to the EMS and the possible compromises on the human rights which may result from the division of the financial resources. Increase of the excess shares of the patients reduces the investments of the state in relations to the emergency medical services and allows the state to relocate the resources to other areas of the welfare society. However, from the perspective of the hospital districts the changes in the excess shares and the state's budgetary involvements have no significant role as the expenses of the ambulances and EMS need to be still covered at first by the hospital districts and the compensation is

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<sup>142</sup> The share of the state on the financing of the health care insurances was 50% and the share of the insured another 50%; Sosiaali- ja Terveysministeriö, *Ensihoidon Rahoituksen Kehittämistyöryhmän Muistio* (Ministry of Social Affairs and Health Care, *The Report of the Development Group on the Financing of the EMS*), Doc. no STM125:00/2011, 10 May 2012, 8

<sup>143</sup> Sosiaali- ja Terveysministeriö, *Ensihoidon Rahoituksen Kehittämistyöryhmän Muistio*, 2 and 12

<sup>144</sup> Kuntaliitto, *Ensihoidon Rahoitusjärjestelmän Uudistus*, (Association of the Municipals, *Renovation of the Financing of the EMS*), Doc. no 1065/90/2012, 21 June 2012, 2

<sup>145</sup> Sosiaali- ja Terveysministeriö, *Ensihoidon Rahoituksen Kehittämistyöryhmän Muistio*, (Ministry of Social Affairs and Health Care, *The Report of the Development Group on the Financing of the EMS*), 14

given only at once according to the reasonable and necessary costs. Therefore, the initial costs and the evaluations relating to the EMS remain with the hospital districts.

In Oulu region, the hospital district adopted the approach according to which the control of the expenses prevails over the equal access to paramedic services. In Tampere region, the hospital district reached completely opposite conclusion. According to their Decision on Service Level in Prehospital Emergency Care, it was acknowledged that the primary purpose of the EMS is to serve and help the patients.<sup>146</sup> The hospital district divided its area into the regions, located the ambulances according to the health care centers and regional hospitals and ensured that every region had at least one treatment unit with immediate readiness to respond to the emergency calls.<sup>147</sup> According to the calculations such decision to increase the level of health protection through the availability of treatment units appeared 1,6 million euros more expensive than the original plan where the number of treatment level ambulances was smaller.<sup>148</sup>

The hospital district of Tampere aimed to control the costs through the assessment of the medical persons. For example, according to the Decision, no treatment unit would include two persons with the highest degree on paramedics but rather consist of one person with treatment unit qualification and one with lower degree on health care. Simultaneously, the basic units are always employed by two persons fulfilling the lowest requirements of such unit.<sup>149</sup> In such way, the hospital district is able to reduce the salary costs as they minimize the employment of the persons with higher medical degree but still comply with the laws concerning the qualification requirements of the medical persons.

In sparsely populated regions the economically affiliated questions appear more relevant than in the urban areas. City areas are generally tightly populated and thus the need for the existence of the treatment unit ambulances can be justified as such units are likely to

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<sup>146</sup> Pirkanmaan Sairaanhoitopiiri, *Pirkanmaan Sairaanhoitopiirin Ensihoidon Palvelutasopäätös*, (Hospital District of Pirkanmaa, *Decision on Service Level in Prehospital Emergency Care*), 29 Oct 2012, 3

<sup>147</sup> *Ibid.*, 9

<sup>148</sup> Pirkanmaan Sairaanhoitopiiri, *Valtuusto Nosti Ensihoidon Lähtövalmiutta Pirkanmaalla*, (Hospital District of Pirkanmaa, *The Council Increased the readiness of EMS*), 22 Nov 2012, Last Accessed 19 March 2014, <http://www.pshp.fi/default.aspx?contentid=29067>

<sup>149</sup> Pirkanmaan Sairaanhoitopiiri, *Pirkanmaan Sairaanhoitopiirin Ensihoidon Palvelutasopäätös*, (Hospital District of Pirkanmaa, *Decision on Service Level in Prehospital Emergency Care*), 9

receive significant number of emergency calls. However, in the rural areas the situation is more challenging. Indisputably it appears clear that the treatment units provide more comprehensive and intensive care due to the better equipment and more qualified persons. However, the question derives from the analysis of cost-effectiveness. In sparsely populated areas where the number of inhabitants is significantly lower than in urban regions, the needs for ambulances and urgent medical care may also appear weaken. Therefore, it would be unnecessary waste of resources to locate the treatment unit with high expenses to such area where its services would not be fully used. In this sense, it could be justified to favor basic units in sparsely populated areas. The basic unit could respond the emergency calls within a reasonable time and to secure and maintain the vital functions until the treatment unit reaches the patient. Even if the placement of the basic unit in the rural areas would be perceived too expensive, at least the FRU should be located to the regions to guarantee the least minimum care until the better equipped ambulance arrives.

Furthermore, in analysis of the EMS in Finland, the previous system under the responsibility of local municipals should not be disregarded. The municipals had arranged the services according to needs of the populations by guaranteeing the sufficient amount of the ambulances. Therefore the municipals had obtained the knowledge of how to guarantee the equal access to the EMS. In Lapland the hospital district acknowledged the value of such knowledge and was able to benefit from it. As Lapland is one of the most sparsely populated areas in Finland and constitutes numerous small municipals, the hospital district perceived it unnecessary to change the already properly working system and simply stated in its Decision that the hospital district purchases the services from local municipals that already had the contracts with the private ambulance entrepreneurs.<sup>150</sup> Thus, in Lapland the factual situation in relations to ambulances and services did not change but the previous system was maintained as the hospital district was unwilling to change properly functioned system despite its costs.

Finally, the economic aspect and evaluation of EMS is also concerned with the question of the instance providing such services. The previous system of EMS was largely built upon the small private ambulance entrepreneurs whereas the current trend especially in

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<sup>150</sup> Lapin Sairaanhoitopiiri, *Lapin Sairaanhoitopiirin Ensihoitopalvelun Palvelutasopäätös*, (Hospital District of Lapland, *Decision on Service Level in Prehospital Emergency Care*), 19 Oct 2011, 25



Oulu region seems to favor bigger entities and regional rescue centers.<sup>151</sup> From the perspective of the legislation the question of who *de facto* provides the services appears irrelevant as the medical care should in every case comply with the same standards. However, there still exist advantages and disadvantages depending on the service providers.

For example, the local rescue centers are responsible not only for the paramedic services but also engage in other rescue operations including firefighting and traffic accidents.<sup>152</sup> Although the rescue centers do need to meet the requirements of qualifications on medical persons if they are responsible for providing medical services in the region, it could be nevertheless questioned how well the rescuers can in fact engage in emergency medical services if they are needed also to act the duties of which the rescue plans require them to perform. In other words, how well the access to EMS is guaranteed if the responsibility is on the rescue centers and there occur other urgent situations such as fires as well. From the economical perspective, the rescue centers are financed by the municipals<sup>153</sup> and thus they may receive different financial resources depending on the budgetary dimensions of the local municipals.

Private ambulance entrepreneurs, on the other hand, are subject to special and detailed legislations defining *inter alia* the prerequisites for their activities and establishing the license requirements.<sup>154</sup> According to the law, the ambulance services including the transportation of the patient are subject to the licenses whereas the first aid services or emergency services without transportation are not.<sup>155</sup> Therefore, generally the FRU do not need licenses for their activities as they do not transport the patients but simply provide the first aid. Basic and Treatment Units, on the other hand, are designed to perform such functions where the license is required.

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<sup>151</sup> Chapter 4.3 above

<sup>152</sup> Oulu-Koilismaan Pelastuslaitos, *Sammutus- ja Pelastustoiminta*, (Local Rescue Center of Oulu Region), 8 May 2008, Last Accessed 19 March 2014, [http://pelastuslaitos.ouka.fi/pelastustoiminta-sammutus\\_ja\\_pelastustoiminta.php](http://pelastuslaitos.ouka.fi/pelastustoiminta-sammutus_ja_pelastustoiminta.php)

<sup>153</sup> Valtionvarainministeriö, *Valtion Talousarvioesitys 2013* (Ministry of Finance, *The State Budget 2013*), para 30

<sup>154</sup> Private Health Care Sector Act, (Laki Yksityisestä terveydenhuollosta 1990/152); Regulation on Private Health Care Sector, (Asetus Yksityisestä Terveydenhuollosta 1990/744)

<sup>155</sup> Art. 2 of the Private health Care Sector Act

Licensing requirement has been enacted primarily to ensure the sufficient medical qualifications of the service provider and to guarantee the safety of the patient.<sup>156</sup> Obligation to obtain the license demands careful consideration and evaluation from the competent authority which in a sense can be perceived to emphasize and strengthen the safety of the patient. Thus, there exists the assumption that the private ambulance service providers have high standards and compliances with the laws and that they perform their duties by providing the highest attainable standards of the services in order to avoid the revocation of their licenses.

From the perspective of the small entrepreneurs the requirements for the providing services can be regarded even higher than for the bigger private companies. The legislation on private health care sector obliges the service providers to possess sufficient and suitable equipment and employ qualified medical persons.<sup>157</sup> Small private entrepreneurs may need to finance their business by taking banking loans to be able to purchase all required instruments. Bigger companies, on the other hand, may operate as joint-stock companies.<sup>158</sup> Furthermore, the bigger EMS firms have larger capacities to provide services as they generally have comprehensive amount of ambulances and employees.<sup>159</sup> Thus, in comparison to small private entrepreneurs, the bigger companies are not that dependable on economic developments or downturns but can in fact operate with more stability.

However, the local rescue centers should not be forgotten either. In fact they may appear as a good choice in the sparsely populated areas. Financed by local municipals and having other tasks as well, the local rescue centers do exist anyway and may as well provide EMS. Private companies, on the other hand, would not find the sparsely populated areas too attractive due to the cost-effectiveness -analysis.

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<sup>156</sup> Art. 3, para 2, of the Private Health Care Sector Act

<sup>157</sup> Art. 3, para 1, of the Private Health Care Sector Act

<sup>158</sup> F.ex. Med Group OY which is owned by several share holders; Medgroup.fi, 2012, Last Accessed 19 March 2014, <http://www.medgroup.fi/en/company>

<sup>159</sup> F.ex. Med Group OY employes 400 health care professionals and 9Lives OY owns over 100 ambulances and employes 1000 persons throughout Finland; Last Accessed 19 March 2014, <http://www.medgroup.fi/en/ems>; <http://www.ninelives.fi/yritys/>

## 6.2 Enforcement of the ESC Rights

In addition to economic challenges of the ESC rights, another prevailing problem relates to the enforcement of such rights. In distinction to the international level where the protection sought need to be based on the international treaties, in the domestic level the claims can be raised against the national legislations where the international obligations of the states under the ICESCR have been implemented. Furthermore, in the properly functioning states respecting the rule of law the access to the courts should be guaranteed for the individuals.

In Finland the right to protection under the law including the right to appropriate and promptly hearing by the legally competent court of law is ensured in the Constitution article 21. In addition to the traditional criminal proceedings, under Finnish legal system the civil courts deal with the private disputes whereas the administrative courts are concerned with the promotion of justice and claims between the individuals and public sector or other administrative authorities.<sup>160</sup> Generally, the socio-economic issues such as health care belong under the competence of administrative courts and may include the obligation on exhaustion of the lower administrative procedure as a precondition for the court application.<sup>161</sup> The mechanism of judicial review has also been available in Finland after the Constitutional amendment in 2000 but the courts have not seemed enthusiastic to apply such system.<sup>162</sup>

To challenge the prevailing situation concerning the unequal access to EMS in Oulu region, the claim to the administrative court could be based for example on the article 2 of the Health Care Act where the purpose of the act to guarantee the equal access to the health care services without discrimination is stated. To support the lawsuit further, the article 10 of the Health Care act could be raised together with the article 39 to illustrate that under the law, the hospital district being responsible for the arrangement of the EMS is under the obligation to ensure and guarantee access to such services within the territory as a whole on equal basis and without discrimination. Additionally, the

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<sup>160</sup> Havansi, Erkki, *Oikeudenkäynti ja Pakkotäytäntö, (Judicial Proceedings)*, Helsingin Yliopiston Oikeustieteellisen Tiedekunnan Julkaisut, 3<sup>rd</sup> ed., 2007, 5-7

<sup>161</sup> *Ibid.*, 6-7

<sup>162</sup> Hirschl, Ran, Evan Rosevear, "Constitutional Law Meets Comparative Politics: Socio-Economic Rights and Political Realities", *The Legal Protection of Human Rights: Skeptical Essays*, 2011, 213

provisions of the Constitution of Finland obliging the public authorities *inter alia* to guarantee the access to health care and medical services and to guarantee the observance of basic rights, liberties and human rights could be relied on.<sup>163</sup> The judicial review, on the other hand, would not be available in such case as the present problem in Oulu region is not caused by the conflict between the constitution and material legislation but rather results from the insufficient implementation of the legislation. Therefore, the judicial review cannot be used to challenge the situation in Oulu but no restrictions on access to administrative court can be seen to exist.

In fact, the enforcement of the ESC rights in Finland does not appear that exceptional. For example in 1997 the Supreme Court issued a judgment concerning the right to employment. According to the ruling the failure of the local municipal to arrange employment to long-term unemployed person had a negative effect to the person's income, housing and protection of the child as well. The judgment itself relied on the Constitution of Finland and substantive laws which derived from the implementation of the ICESCR.<sup>164</sup>

On the other hand, the application and realization of the ESC rights are highly concerned and dependable on several differential aspects including economical evaluations and political decision makings. Thus, in order to successfully proceed with the claim the plaintiff is required to challenge the existing system. For example in the case of Oulu region, the hospital district could present a counter-argument claiming that by increasing the financial resources for the EMS, the other sector of health care such as maternity clinic or intensive care unit for children would be forced to cut their financing.

Nevertheless, the domestic legal systems do provide the possibility to seek enforcement for the ESC rights in the national courts. In the international level the protection appears more complicated due to the lack of the sufficiently effective enforcement mechanism. Even though the International Court of Justice (ICJ) has a jurisdiction to hear all cases

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<sup>163</sup> Art. 19 and 22 of the Constitution of Finland

<sup>164</sup> KKO: 1997/141 (Supreme Court of Finland, Case 1997/141), Doc. number S96/1327, 26 Sep 1997; Scheinin, Martin, "Economic, Social and Cultural Rights as Legal Rights", *Economic, Social and Cultural Rights*, Kluwer Law International, 2<sup>nd</sup> ed., 2001, 29-54, 52-53

which the parties refer to it, the cases can be brought only by the states.<sup>165</sup> In the regional level, the European Court of Human Rights (ECtHR) supervises only the situations concerning the European Convention on Human Rights and its protocols.<sup>166</sup> The competence of the European Court of Justice (ECJ), on the other hand, is limited to the matters of the European Union Law.<sup>167</sup>

As no international human rights court has been established, the enforcement of the rights is supervised simply by the special treaty bodies. Under the ICESCR the states are obliged to submit reports on their actions under the Covenant to the UN Secretary-General who transmits the reports to the Economic and Social Council or to the specialized agencies for the further analysis of the state compliance.<sup>168</sup> Such reporting mechanism does have positive aspects as the supervisory body observes the processes of the realization of ESC rights in the different states. However, the system where the supervision of the treaties is based solely on the state reporting procedures is attached with numerous downsides. For example, the treaty bodies have no judicial power and they may only provide recommendations without legally binding force.<sup>169</sup>

UN General Assembly has adopted the resolution on 2008 to establish the optional protocol to the ICESCR to strengthen the possibilities for the individuals to enforce their rights.<sup>170</sup> Under the protocol the individual are allowed to submit the complaints to the supervisory body in the situations where their rights under the ICESCR have been violated.<sup>171</sup> The protocol entered into force 5 May 2013 after it received 10 ratifications.<sup>172</sup> However, the protocol is not applicable in Finland as it has not been

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<sup>165</sup> Article 34(1) and 36 of the Statute of the International Court of Justice, 1945

<sup>166</sup> Art. 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; also see no 6 above

<sup>167</sup> Art. 256 of the Treaty on the Functioning of the European Union; also see no 6 above

<sup>168</sup> Art. 16 of the ICESCR

<sup>169</sup> O'Flaherty, Michael, "Towards Integration of United Nations Human Rights Treaty Body Recommendations: The Rights-Based Approach Model", *Economic, Social and Cultural Rights in Action*, Oxford University Press, New York, 1<sup>st</sup> ed., 2007, 27-44, 28

<sup>170</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, A/RES/63/117, 10 Dec 2008

<sup>171</sup> Art. 2 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

<sup>172</sup> United Nations Data Base, *Status of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 7 Aug 2013, Last Accessed 19 March 2014, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en)

ratified. Therefore the possibilities for the individuals to enforce their rights under the ICESCR in the international level appear rather non-existing.

On the other hand though, the pressure relating to the state reporting mechanism and observation of the international body should not be underestimated. Finland has traditionally been extremely concerned about its international image and had sought to comply with the international obligations to the highest possible extent. Therefore, mere acknowledgement or remark from the international community that Finland is in violation of its obligations under the ICESCR would appear sufficient to evoke the measures to fix the situation.

### **6.3 Hierarchy of the ESC Rights?**

Further problem in relations to both human rights in general and ESC rights specifically concerns the academic discussion and debate on the question whether certain hierarchy between different human rights can be found. As the human rights treaties seek to guarantee numerous differential rights by imposing various obligations to the states, it appears fascinating to evaluate whether some human rights can be regarded to have more importance and contribution to the human dignity than others.

In academic discussion, hierarchy is defined as “superior rank and elevating norm in a higher position guaranteeing primary over lower norm.”<sup>173</sup> In relations to human rights, the hierarchy could refer to the situations where some rights are perceived more fundamental than others and the states would be required to emphasize such rights prior the recognition or realization of the remaining rights. On the other hand, it is also widely acknowledged that the concept relating to the hierarchy of the human rights norms is remarkably debatable subject and no universal coherent understanding has been reached as the ideology of human rights is constructed upon the principle of indivisibility.<sup>174</sup>

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<sup>173</sup> Klein, Echart, “Establishing a Hierarchy of Human Rights: Ideal Solution or Fallacy?”, *Israel Law Review*, Vol 41, 2008, 477-488, 278

<sup>174</sup> Koji, Teraya, “Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights”, *European Journal on International Law*, Vol 12, no 5, 2001, 917-941, 918-191

According to the one perception, hierarchy of human rights derives from the non-derogable rights as all other rights are dependable on the recognition of such fundamental rights that cannot be derogated.<sup>175</sup> However, such perception is constructed upon the emphasis on civil and political rights as the non-derogable rights are defined solely in the article 4 of the ICCPR whereas the ICESCR does not include provisions which should not be subject to derogations in the time of public emergency threatening the existence of the nation.<sup>176</sup> Furthermore, the argumentation on behalf of non-derogable rights promotes the notion that the essential purpose of the human rights is to provide the sense of security for the human beings and such security is achieved by guaranteeing the rights listed in the ICCPR article 4(2).<sup>177</sup>

However, the fragility of such argumentation derives particularly in relation to right to life. Right to life is indisputably one of the most essential human rights. Still, the right to life in its narrowest understanding, merely prohibiting the arbitrary deprivation of life seems insignificantly meaningless. Considering that even the Human Rights Council supports the wider interpretation according to which the right to life should also include certain standards of living and access to health care,<sup>178</sup> the non-derogable rights fails to prevail over the other human rights.

Another view on placing the human rights in hierarchy has adopted the approach where the basic human needs are emphasized. According to such philosophical perception, no human rights can be realized if the basic needs of human life have not been fulfilled and therefore the concept of human rights should be based on the individual welfare.<sup>179</sup> The problem attached to this approach revolves around the question of what the basic needs are. In a sense, the basic needs should be understood as “minimum conditions for bearable life” including decent standards for reasonable health and active life which is

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<sup>175</sup> Farer, Tom, “The Hierarchy of Human Rights”, *American University Law Review*, Vol 8, Issue 1, 1992, 115-119, 115-116

<sup>176</sup> Under the article 4(2) of the ICCPR non-derogable rights include right to life (art. 6), prohibition of torture (art.7), prohibition of slavery (art. 8(1) and 8(2)), prohibition on imprisonment due to the mere failure to fulfill contractual obligations (art. 11), prohibition of retroactivity imprisonment (art. 15), right to recognition (art. 16) and freedom of thought (art. 18)

<sup>177</sup> Farer, Tom, “The Hierarchy of Human Rights”, *American University Law Review*, 1992, 116

<sup>178</sup> Human Rights Council, *CCPR General Comment no 6: Right to Life (Art. 6)*, para 5; Chapter 3.3.1 above

<sup>179</sup> Koji, Teraya, “Emerging Hierarchy in International Human Rights and Beyond: From the Perspective of Non-derogable Rights”, *European Journal on International Law*, 2001, 926 and 938

approximately normal length.<sup>180</sup> Therefore, it could be argued that the basic human needs to achieve the least minimum conditions of bearable life would, in addition to right to adequate food and housing, indisputably include also the right to health and the access to medical care in the event of sickness. Based on such argumentation effectively functioning system of EMS and sufficient amount of ambulances to reach the patients within the reasonable time can be seen as the core standards for the basic human needs as the access to urgent medical care guarantees and maintains the fundamental right to life as well.

On the other hand, the sole attempts to rank the human rights into hierarchy according to their differentiating importance contain extreme dangers. Irrespectively to the hierarchy itself, the creation of the system where some human rights would prevail over the others holds a potential of misuse as the states could take advantage of the situation and guarantee only the necessary human rights while disregarding the less important rights.<sup>181</sup>

However, especially in relation to the ESC rights the analysis on such potential hierarchy appears significantly relevant as the realization of the ESC rights requires the usage of the maximum of all available resources. If the state is unable to achieve the full realization of the rights under the ICESCR, the careful and comprehensive evaluation is needed to decide how the resources are divided. In the sense, ICESCR obliges the states to balance between different rights and to appraise their reciprocal importance. On one hand, the state could perceive the health care as the most valuable right and invest to the maintenance and development of the right to health widely disregarding the right to education by guaranteeing only the least minimum level of training. On the other hand, the state may compromise both rights and to realize both health care and education to the sufficient level but not accentuating one over another.

It should also be noted that the recognition and realization of the human rights are highly dependable on the level of domestic development. For example the ICESCR expressly

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<sup>180</sup> Young, Katharina G., "The Minimum Core of Economic and Social Rights: A Concept in Search of Content", *The Yale Journal of International Law*, Vol 33, 2008, 112-175, 128

<sup>181</sup> Klein, Eckart, "Establishing a Hierarchy of Human Rights: Ideal Solution or Fallacy?", *Israel Law review*, 2008, 480



recognizes the problems in the developing countries and grants them exceptions on realization of the ESC rights.<sup>182</sup> In more developed countries such as in Finland, the discussion relating to the socio-economic rights concerns completely different aspects than in developing states. Thus, as no universally accepted understanding exist to guide the practices, policies and decisions of the states to implement, realize and apply the human rights, the evaluation of the importance between different ESC rights is conducted in the national levels. In such situation the national varieties and different levels of development could be acknowledged and observed better and the focus can be given to those rights that need more attention in the specific country.

#### **6.4 Right to Health and Access to Emergency Medical Service as Customary Norms?**

The final issue concerning the problems of the ESC rights and the effect to the EMS relates to the question whether the right to health could have legally binding force upon the states even without deriving from the treaty law. Despite the fact that the ICESCR is widely ratified, the importance of the evaluation of whether the right to health amounts to customary norm appears nevertheless necessary for three reasons.

Firstly, irrespectively to the 160 ratifications of the ICESCR there still remain the states which have not accepted the obligations under the Covenant.<sup>183</sup> Secondly, the treaty law generally allows the states to revoke their participation to the treaties.<sup>184</sup> However, if the treaty itself, such as ICESCR, does not contain any expressed provision relating to termination, the withdrawal is not acceptable unless the parties intended to allow such possibility or the right to denunciation could be implied by the nature of the treaty.<sup>185</sup> According to the general understanding, human rights treaties can be denounced<sup>186</sup> although in the light of the treaty law, it appears questionable whether the states could *de*

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<sup>182</sup> Art. 2(2) of ICESCR states that “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”

<sup>183</sup> “Status of ICESCR”, 9 Aug 2013, Last Accessed 19 March 2014,

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

<sup>184</sup> Part V, especially art. 42, of the Vienna Convention on Law of the Treaties, 1969

<sup>185</sup> Art. 56(1) of Vienna Convention on Law of the Treaties, 1969

<sup>186</sup> Klein, Eckart, “Establishing a Hierarchy of Human Rights: Ideal Solution or Fallacy?”, *Israel Law Review*, 2008, 479

*facto* revoke their participation to the ICESCR. Nevertheless, for the purpose of the present analysis it should be assumed that the withdrawal would be possible.

Thirdly, the international law recognizes the succession of the states and its effect to the treaty obligations. For example, a newly independent state is not obliged to maintain in force or to become a party to any treaties which were in force in respect to the territory to which the succession relates.<sup>187</sup> Due to such situations, it is relevant to analyze whether the obligation of the state to guarantee and ensure the right to health and access to EMS could be imposed through the customary law.

Customary international law defines the permitted levels of actions and is perceived as an expression of certain commonly accepted values.<sup>188</sup> For a norm to become a part of customary law, two elements need to be fulfilled. According to the ICJ, the customary law is formed when the act concerned amounts to a settled practice and is accompanied by *opinion iuris*.<sup>189</sup> Settled practice refers to the behavior of the states whereas the *opinion iuris* derives from the subjective belief of the state to the legal obligation.<sup>190</sup> For example, nowadays most civil and political human rights are regarded as customary norms, including non-discrimination, prohibition of torture and slavery.<sup>191</sup>

However, despite the established requirements of state practice and *opinion iuris*, the concept of customary law is affiliated with certain problematic aspects. For example, international law is in continuous development and evolution especially due to the emerging of the global problems and diversity among the countries.<sup>192</sup> Therefore, it

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<sup>187</sup> Art. 16 of Vienna Convention on Succession of States in Respect of Treaties, 1978

<sup>188</sup> Shaw, Malcom N., *International Law*, Cambridge University Press, Cambridge, UK, 6<sup>th</sup> ed., 2008, 72-73

<sup>189</sup> *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, Nicaragua vs. United States of America, International Court of Justice, Judgment on 27 June 1986, para 349

<sup>190</sup> Roberts, Anthea Elizabeth, "Traditional and Modern Approaches to Customary International Law: A Reconciliation", *The American Journal of International Law*, Vol 95, 2001, 757-791, 757

<sup>191</sup> Klein, Eckart, "Establishing a Hierarchy of Human Rights: Ideal Solution or Fallacy?", *Israel Law Review*, 2008, pp. 481; Shaw, Malcom N., "International Law", 2008, 275

<sup>192</sup> August, Ray, *International Business Law*, Pearson Prentice Hall, New Jersey, 4<sup>th</sup> ed, 2004, pp. 5; Roberts, Anthea Elizabeth, "Traditional and Modern Approaches to Customary International Law: A Reconciliation", *The American Journal of International Law*, 2001, 759

appears challenging to define to what extent the general practices of the states could be accepted as legally binding norms even without the codifications. In relations to some human rights, such as prohibition of torture, the common grounds for the settled practice are generally easy to define as the states need solely to have mutual understanding of what constitutes torture and to refrain from engaging in such actions. Based on such negative obligation which is required basically in relations to almost all civil and political rights, it is not surprising that the rights under the ICCPR have a greater potential to fulfill the requirements of customary law.

The situation appears more problematic in relations to ESC rights. As it is widely acknowledged in the present thesis, the realization of the ESC rights is highly dependable on the state actions, implementations and usage of available resources. Furthermore, considering the different levels of development among the countries, it becomes extremely challenging to define such common standards of state actions that they could be perceived as settled practice in the international level. On one hand thought, the Economic and Social Council has constantly emphasized that the states are under the obligation to guarantee at least the very minimum of the ESC rights. However, even disregarding the fact that such perception is established in relations to the existing and codified treaty obligations the mere concept of ‘minimum standards’ appears problematic as the minimum standards varies from state to state and universality of common ESC rights seems impossible goal.<sup>193</sup>

Although the right to health and access to EMS would be sought to constitute customary norms based on the least minimum standards and practices of which all states provide, the situation appears nevertheless exceedingly inconvenient. Right to health as such include numerous varying aspects such as industrial hygiene, healthy development of child and prevention of epidemic.<sup>194</sup> Access to EMS, on the other hand, is affiliated *inter alia* with the questions of how many ambulances should be provided, how the units should be equipped and what level of training the medical persons should receive.

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<sup>193</sup> Young, Katharina G, “The Minimum Core of Economic and Social Rights: a Concept in Search of Content”, *The Yale Journal of International Law*, 2008, 114-116

<sup>194</sup> Art. 12(2) of ICESCR

Furthermore, the reasonable times within the ambulance should reach the patient form integral part of the EMS. However, compliance with such time limits is *inter alia* dependable on the number of available ambulances and technical standards of the vehicles. Maintenance of ambulance even in a workable condition requires financial resources which the developing states may lack.

Additionally, the geographical aspects of the states should not be disregarded. Especially in the countries with long distances and large sparsely populated areas the access to EMS appears not easy to be guaranteed. In such situations the geographical infrastructure and the individuals exercising their freedom to choose the residence and right to establish homes in rural areas impose challenges for the states to ensure the access to EMS. It appears highly doubtful that states would willingly accept such demanding obligation. Thus, by opposing such obligation the state expresses its *opinion iuris* not to be bound by such rule.

Therefore, it seems that unfortunately right to health or access to EMS would not amount to customary norms but the obligation to ensure the enjoyment of such rights is based on the treaty provisions. Thus, the states who are not ratified ICESCR, who wish to revoke their participation or emerge as newly independent state are not required to guarantee access to EMS under the international law.

## 7. Conclusion

The international human rights law has established universally accepted standards to guarantee the inherent dignity of every human being on equal basis and without discrimination. In addition to the states obligation to ensure the recognition, realization and the application of the human rights within their own jurisdictions, the articles 55 and 56 of the UN Charter as well as the article 2(1) of the ICESCR, *inter alia*, require the co-operation of the states to respect and protect human rights also in the international level.

Despite the long history of human rights as an ideology, the major codifications of the human rights norms occurred after the WWII. Although the UDHR appeared as the first international document dedicated to the promotion and protection of human dignity, due to the historical division between capitalism and socialist ideology as well as differential scope of obligations and nature of the rights, in 1966 the international community adopted two separate legally binding human rights covenants. However, such division between civil and political rights and ESC rights has raised plenty of criticism. Especially after the Cold War the mutual applicability and simultaneous coexistence between these two categories of human rights have been promoted.

In fact, the current situation in Oulu concerning the access to EMS provides valuable and practical example on the relationship and indisputable interdependence between the ICCPR and ICESCR. On the other hand though, the circumstances also illustrate the special problems relating to the implementation and application of the ICESCR. In comparison to the ICCPR which merely obliges the states to recognize the rights listed in the Covenant and to refrain from interfering with such rights, the problems relating to ESC rights derive largely from the positive obligation of the state to progressively take steps to achieve the full realization of the rights of the Covenant. Thus, in distinction to civil and political rights, the realization of the ESC rights is highly dependable on the available resources and the state actions.

According to the international perception and observations *inter alia* by the Human Rights Committee as well as Economic and Social Council, Finland has extraordinary high standards on protection and promotion of human rights. Unfortunately, the violations still occur. For example the adoption of the renewed Health Care Act launched the chain of events that conflicts with both International Human Rights Covenants.

The article 39 in the updated Health Care Act shifted the responsibility on arrangement of EMS from local municipals to the hospital districts. In Oulu region, hospital district implemented and executed its obligation based on the evaluation of cost-effectiveness. Resulting from such analysis, three ambulances were abolished. Two of those ambulances had been operated in the sparsely populated areas located far from the city center. Despite the intention of the renewed legislation to harmonize and unify the standards of EMS, the decision of the new organizer in Oulu region has caused the situation where the equal access to the EMS cannot be guaranteed.

From the perspective of the international human rights law, the situation in Oulu can be seen to violate, restrict and endanger the enjoyment of several articles from both ICCPR and ICESCR. Article 12(1) in ICCPR guarantees the individuals freedom of movement within the state territory and right to choose their residence. In conjunction with such rights, article 11(1) of the ICESCR recognizes the right of everyone to an adequate standard of living and to the continuously improvements of living conditions. Additionally, according to the Economic and Social Council, to ensure the full enjoyment of such rights, the state is obliged to guarantee the access to employment, education and health services within the whole territory. Especially by ensuring the access to urgent medical care the state would also contribute to the obligation to provide special protection for children under the article 10(3) of ICESCR. Furthermore, to strengthen the enjoyment the rights to choose the residence and improve living conditions, article 2(2) of ICESCR as well as the articles 2(1) and 26 of the ICCPR prohibits the discrimination *inter alia* on the grounds of property.

Under the article 12(1) of the ICESCR, the state must recognize the right to the highest attainable standard of health. Article 12(2)(d) obliges the state to create the conditions which would assure the medical service and attention in the event of sickness. Failure to provide sufficient and promptly access to urgent medical care may endanger the right to life under the article 6(1) of the ICCPR and interferes with the right to privacy guaranteed by the article 17(1) of the ICCPR as the delayed medical help would compromise the family life. In worst case scenario the ambulance does not reach the patient within the required time due to the long distance and loss of life become inevitable.

The Finnish Health Care legislation itself does not conflict with the International Human Rights Covenants but the violation is found in the practice. The decision of the hospital district to reduce two ambulances from the sparsely populated areas does not only undermine right to the access to the EMS without discrimination but also appears incompatible with the general obligation under the ICESCR article 2(1). By decreasing the number of the ambulances, the hospital district adopted retrogressive measures.

Furthermore, the abolishment of the permanent ambulances from the rural areas places the inhabitants of those regions to less favorable situation as their access to emergency medical care is questioned due to the long distances. However, the lack of resources would not constitute the legitimate excuse. Simultaneously, it seems that the justifications under the article 12(3) of the ICCPR are problematic to lawfully limit the individual freedom of movement and right to choose the residence in rural areas.

On the other hand, the differential treatment can be objectively justified based on the lesser need for EMS in sparsely populated areas. However, even in such case the core problem relates to the retrogressive measures of the hospital district to abolish ambulances from the rural areas and to reduce the possibility to access to EMS under the art. 12(2)(d) of ICESCR. The situation affects especially to the individuals that already lives in the sparsely populated regions and endangers *inter alia* their rights to life and protection of children.

Thus, it can be concluded that the implementation and the execution of the renewed Health Care Act provisions relating to the EMS seems to be done in the breach of the international human rights law in Oulu. The most urgent violation appear to exist in relation to the article 12(2)(d) together with the general obligations under the article 2(1) of the ICESCR as the Hospital District has adopted retrogressive measures in relations to the conditions which should assure the medical attention in the event of sickness. Additionally, such violations can be seen to have restrictive effect on the right to exercise and enjoy the freedom of movement and right to choose the residence under the ICCPR article 12(1) and right to improve the living standards according to the article 11(1) of ICESCR. Furthermore, the due to the prevailing conditions, the right to life under the article 6(1) of the ICCPR and the protection of the children according to the article 10(3) of the ICESCR are endangered.

However, it should also be noted that the ESC rights are attached with further aspects and problems which cannot be disregarded on evaluation of the accessibility to EMS in sparsely populated areas. In relations to economic aspects, the ambulances can be divided according to their functions. The Basic Units can maintain the vital functions whereas the Treatment Units are legitimized to perform intensified treatments to secure vital functions. FRU, on the other hand, can only provide the general first aid. Indisputably the Treatment Units offers the best service but simultaneously the better equipment and higher trained employees also imposes higher costs. Thus, in order to guarantee the equal access to EMS also in the sparsely populated areas, the analysis cost-effectiveness appears inevitable. Although the Treatment Units provides the better services, it may appear more reasonable to place basic unit to the rural areas to respond the emergency calls and help the patient until the treatment unit arrives. In the most urgent situations where even the placement of Basic Unit to the sparsely populated region appears too expensive, at least the FRU should be located in the area. In that way the access to medical care within the lawful time limits could be guaranteed.

Additional evaluation in relations to the economic aspects of EMS revolves around the question of the different service providers such as local rescue centers, small private entrepreneurs and bigger companies. Advantage of rescue centers as service providers is



based on the funding from local municipalities but the disadvantage derives from the various other tasks and functions of the rescue persons. Small private entrepreneurs are generally dependable on the business as they may have financed their enterprise with banking loan. Therefore, they have invested to the paramedic business and are highly motivated to provide services. Bigger paramedic companies, on the other hand, have the better financial stability and good equipment but their operations may be more economically orientated.

In relations to enforcement of the ESC rights, in national level the access to court should be guaranteed. However, the argumentation on the violations in the implementation and application of the ESC rights may appear challenging as such claims undermine and criticize the existing system of political and economic decisions of the relevant authorities. In the international level, the enforcement appears even more complicated due to the absence of sufficiently effective mechanism. The compliance with the ICESCR is monitored only through the state reports. In very rare situations the individuals can utilize the individual communication procedure guaranteed in the Optional Protocol to the ICESCR. Nevertheless, even if such option would be available in a specific state, the response to the claim is merely a non-legally binding recommendation for the state.

Academic discussion has also sought to answer whether the human rights can be ranked into the hierarchy. As such ranking can be perceived to contain a potential to undermine the full enjoyment of the human rights, it should nevertheless be acknowledged that in a sense the states are obliged to balance between the different ESC rights. States are required to analyze how to distribute the limited resources to achieve the highest attainable realization of the rights under the ICESCR. Thus, primary decision on the extent to which the EMS is guaranteed in the sparsely populated areas is based on economic, social and political evaluation of the state authorities.

Finally, it appears that the right to health and access to EMS are affiliated with such relatively varying aspects that universally applied practices among the states are difficult

to find. As the realization of the ESC rights is highly dependable on actions and the resources of the states, the grounds on access to EMS also varies from state to state and no international consensus exists in relations *inter alia* to number of ambulances, level of equipment or time limits to reach the patient. Therefore, the access to EMS cannot be regarded as international customary norm but the state obligation to ensure such right derives from the ICESCR as far as the state concerned is party to the Covenant.

## SUMMARY

In May 2011 reformed Health Care Act entered into force in Finland shifting the responsibility of arranging and maintaining the emergency medical services from local municipals to hospital districts. Transitional period expired in January 2013. In Oulu region the hospital district implemented and executed its new obligations by abolishing two ambulances from sparsely populated areas resulting from the cost-effectiveness-analysis.

From the perspective of the international human rights law, the situation in Oulu can be seen to violate, restrict and endanger the enjoyment of several articles from both ICCPR and ICESCR. The most urgent violation exists in relation to the article 12(2)(d) together with the general obligations under the article 2(1) of the ICESCR. By abolishing two EMS units from the rural areas the Hospital District adopted retrogressive measures in relations to the conditions which should assure the medical attention in the event of sickness. Furthermore, retrogressive measures may have restrictive effect on the right to exercise and enjoy the freedom of movement and right to choose the residence under the ICCPR article 12(1) as well as right to improve the living standards according to the article 11(1) of ICESCR. Moreover, the due to the abolishment of the sufficient amount of ambulances, the right to life under the article 6(1) of the ICCPR and the protection of the children according to the article 10(3) of the ICESCR are endangered.

On the other hand, the human rights law does allow certain differentiating treatment among the different groups. However, although the reduction of EMS units could be justified on the grounds of the economic conditions and lesser need for EMS in rural areas, it appears unreasonable to locate the EMS units so far from the areas which nevertheless have permanent population. Equivalent aim could have been reached merely by relocating the ambulances closer to the rural areas. Thus the implementation and the execution of the Health Care Act in Oulu have not been done in compliance with the article 2(1) of ICESCR and the principle of proportionality.

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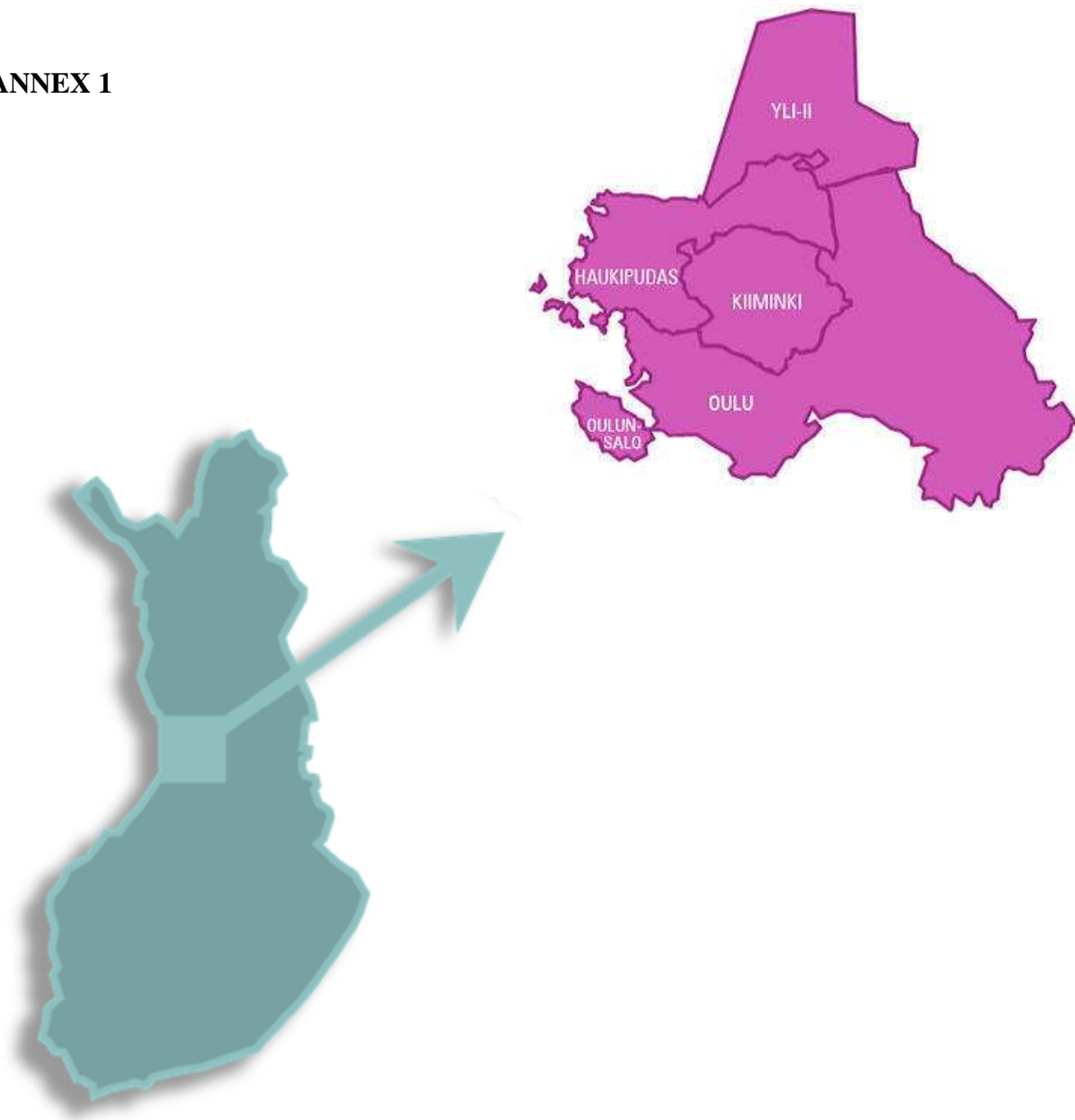
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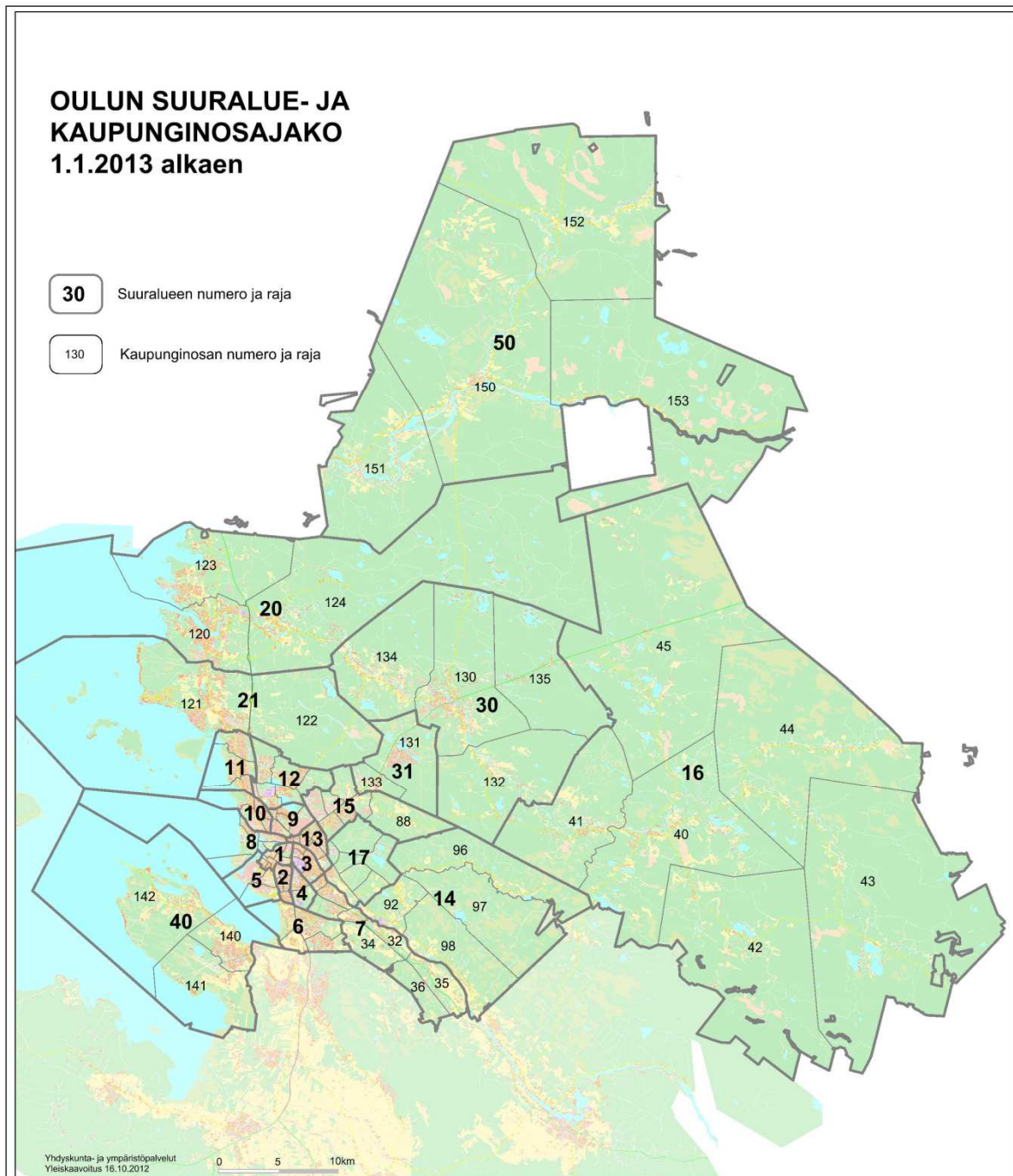
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## ANNEX 2A



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## ANNEX 2B

### 1 KESKUSTA

1 I Pokkinen  
2 II Vaara  
3 III Vanhatulli  
4 IV Hollihaka  
5 V Leveri  
6 VI Myllytulli  
11 Intiö  
12 Raksila

### 2 HÖYHTYÄ

13 Karjasilta  
14 Nokela  
15 Höyhtyä  
16 Lintula  
17 Mäntylä

### 3 OULUNSUU

18 Peltola  
19 Kontinkangas  
22 Oulunsuu  
23 Värttö

### 4 KAUKOVAINIO

20 Kaukovainio  
21 Hiironen

### 5 NUOTTASAARI

7 Nuottasaari  
9 Limingantulli  
10 Äimärautio

### 6 KAAKKURI

27 Kaakkuri  
28 Metsokangas  
30 Kiviniemi  
31 Perävainio

### 7 MAIKKULA

24 Maikkula  
25 Knuutila  
26 Iinatti  
32 Madekoski  
33 Heikkilänkangas  
34 Juurusoja  
35 Pikkarala  
36 Hangaskangas

### 8 TUIRA

50 Pikisaari  
51 Koskikeskus  
52 Tuira  
54 Vihreäsaari  
55 Hietasaari  
56 Toppilansaari

### 9 PUOLIVÄLINKANGAS

60 Välivainio  
61 Puolivälinkangas  
62 Isko  
63 Pyykösjärvi  
64 Takalaanila

### 10 KOSKELA

57 Toppila  
58 Alppila  
59 Koskela  
74 Taskila

### 11 PATENIEMI

75 Rajakylä  
76 Pateniemi  
77 Herukka

### 12 KAIJONHARJU

78 Linnanmaa  
79 Ritaharju  
80 Kaijonharju  
81 Kuivasjärvi  
82 Liikanen

### 13 MYLLYOJA

65 Laanila  
66 Kynsilehto  
67 Hintta  
68 Parkkisenkangas  
69 Myllyoja  
70 Kirkkokangas  
72 Haapalehto

### 14 SANGINSUU

92 Sanginsuu  
96 Ulkosanki  
97 Sanginjoki  
98 Lapinkangas

### 15 KORVENSUORA

83 Rusko  
84 Ruskonselkä  
85 Heikinharju  
86 Korvensuora  
87 Korvenkylä  
88 Saviharju  
90 Talvikangas

### 16 YLIKIIMINKI

40 Ylikiiminki  
41 Vesala  
42 Vepsä  
43 Vuotto  
44 Nuoritta  
45 Jolos

### 17 HIUKKAVAARA

46 Puolukkakangas  
47 Kivikkokangas  
48 Vanha Hiukkavaara  
49 Haukkasuo  
71 Hiukkavaara  
89 Saarela  
91 Niiles

### 20 HAUKIPUDAS

120 Haukipudas  
123 Martinniemi  
124 Jokikylä

### 21 KELLO

121 Kello  
122 Kalimenkylä

### 30 KIIMINKI

130 Kiiminki  
132 Huttukylä  
134 Alakylä  
135 Hannus

### 31 JÄÄLI

131 Jääli  
133 Välikylä

### 40 OULUNSALO

140 Oulunsalo  
141 Kylänpuoli  
142 Salonpää

### 50 YLI-II

150 Yli-II  
151 Jakkukylä  
152 Tannila  
153 Pahkala

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