

# **Access to Socio-Cultural Life inside Assisted Care Homes?**

## **Overviewing Legislation in Finland and Kazakhstan**

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### **Abstract**

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This is a comparative survey of two national legal frameworks in Finland and Kazakhstan providing the elderly in assisted care homes with an opportunity of socio-cultural inclusion. The study departs from the evolving international standards of ageing, which dictate legal obligations to provide the elderly in residential care with access to socio-cultural activities. Our analysis continues with explorations how these standards are reflected in legislation of two selected states. We deliberately selected these two jurisdictions, different in many respects, the most significant of which are the current state of the welfare system and the approach towards elderly care. The residential care in Finland is the primary responsibility of the state, a common modern solution adapted to meet the realities of the modern volatile labor market, career and self-oriented life style and hectic differentiating global economy. In Kazakhstan such care is provided by the state only for those older persons who are in difficult life situation, whereas the able relatives are legally responsible for providing care for the elderly in need of 24/7 assistance. Respectively Kazakhstan's social order relies extensively on family ties.

Our analysis covers the status of the elderly residing both in 24/7 institutional care and in the so-called serviced apartments where the elderly are not in constant care. Rather than drawing on the generalized status of dependency we keep up with the premise that the elderly are special-rights holders. This limitation leaves studying the position of other individuals under public custody out of the present research agenda. Relying extensively on legal analysis, we employ, in particular, a comparative law method and empirical studies, i.e. the interviews with the aged rights holders.

After we examined how the opportunities for socio-cultural inclusion of the elderly are implemented in two selected jurisdictions with principally different welfare systems, we found that the problem in question is topical for each of the states under consideration. In light of the evolving international law standards institutional practices in both jurisdictions must be sensitive to the issue of socio-cultural inclusion. The socio-cultural dimension of the wellbeing of the elderly, especially with respect to those who are in 24/7 care, should be incorporated in the legal system of Kazakhstan just as it exists in the statutory law of Finland.

## **Keywords**

The rights of the elderly, assisted care homes, social inclusion, participation in socio-cultural life, Finland, Kazakhstan.

## **1. Introduction**

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This article contributes to a wider human-rights discussion of the inclusive society for all ages. Although all elderly persons have the right to take part in social and cultural life on equal footing with others, opportunities for socio-cultural inclusion are limited for those elderly persons who are compelled to live in assisted care homes.<sup>1</sup> The set of difficulties which the elderly persons residing in assisted care homes can encounter while pursuing everyday activities is foreseeable. For instance, the 2014 interviews which were conducted with residents of the assisted care homes in the Raisio municipality of Finland have shown that there are many serious impediments regarding the inclusion of the elderly in the socio-cultural life of the institution. Being confined to intensive-care units around the clock restricts opportunities for social communication. It is difficult for the elderly to get to know each other and find like-minded companions. Many of those interviewed admitted that not every resident of the assisted care homes is willing to communicate with each other. Many other interviewed persons required special assistance with simple activities, such as the use of the TV. For example, TV programs for adults are aired in Finland in the original language with text subtitles. Those who are unable to understand foreign languages or who cannot read the text subtitles owing to impaired vision cannot watch TV. At the same time, television is often the only available leisure activity for the elderly in residential care. These and other difficulties suggest that the elderly need special assistance in implementing their right to take part in socio-cultural life under institutional conditions.

Although the UN Open-Ended Working Group on Ageing recognizes that efforts by governments, relevant UN bodies and civil society “have not been sufficient

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1 Referring to the assisted care homes or the institutions, we discuss both the entities providing residential or 24/7 care for the elderly and serviced apartments providing accommodation and necessary services for the elderly.

to promote full and effective participation by and opportunities for older persons in economic, social, cultural and political life” (UN General Assembly 2012), it does not address the problems of social and cultural inclusion in residential care. Nor has the theme of the socio-cultural inclusion of the elderly persons residing in assisted care homes as yet received sufficient academic attention, neither in Finland and Kazakhstan, nor worldwide. In effect, the socio-cultural dimension of the wellbeing of the elderly under residential care is not conceptualized by legal scholars as being an integral part of the elder law. *Black’s Law Dictionary* defines elder law as the field of law “dealing with the elderly, including such issues as estate planning, retirement benefits, social security, age discrimination, and health care” (Garner 2007, 557). Similarly, modern legal research on the elderly in residential care is somewhat preoccupied with the issues of non-discrimination (Gaughan 2008); the rights to housing, social security and medical care (Rodríguez-Pinzón and Martin 2003); the rights to human dignity and privacy (Kanter 1991/1992; Knaplund 2009); prevention of elder abuse (Kapp 2003; Loue 2001); or even more specifically, the prevention of financial abuse of the elderly (Pearce et al. 2009; Catalano and Lazaro 2008). We join de Hert and Mantovani who argue for the necessity of recognizing the elderly as specific human-rights holders (de Hert and Mantovani 2011).

Our *main goal* is to argue for the significance of a clear national legal obligation to provide the elderly in residential care with access to socio-cultural activities. Two concrete research questions were formulated in order to meet this goal. 1. Is the existence of such an obligation an indicator of a shift from a service-delivery model to a human-rights based approach towards the position of the elderly? 2. How can an effective mechanism be ensured of implementing the corresponding right of the elderly in residential care to socio-cultural inclusion? We study how the evolving international legal standards of the right of the elderly inside the assisted care homes to socio-cultural inclusion or participation in social life – we treat these concepts as synonyms – are reflected in the national legal systems of Finland and Kazakhstan. The claim for such a legal obligation is illustrated with the results of interview studies.

## 2. Methods

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This study follows one of the comparative law approaches designed by Walter Hug in his 1932 publication “The History of Comparative Law”, i.e. it concentrates on comparing two different stages of development in two legal systems. Hug suggested five possible groups of comparative legal studies: 1. Comparing national and foreign legal systems in order to find similarities and differences; 2. Analyzing solutions which various systems offer for a given legal problem; 3. Investigating causal relationships between various legal systems; 4. Comparing several stages of various legal systems, and 5. Examining legal evolution generally, according to periods and systems (Hug 1932). We deliberately selected for our analysis these

two legal orders – Finland and Kazakhstan – which are different in terms of size of the population, geographical coverage, stages of economic development, etc. True, both jurisdictions share one common feature, i.e. they can be placed within civil-law legal families (Kembayev 2012; Husa 2015). Yet it would be more precise to differentiate Finland in a separate category within the Nordic legal family due to the “obvious similarity, as well as historical and geographical connections” (Husa 2015, 228–229) between the five Nordic states (Denmark, Finland, Norway, Iceland, and Sweden). As for the major differences between Finland and Kazakhstan significant for our discussion, there are: 1. the current state of welfare system and parallel laws, and 2. culturally-determined approaches and expectations concerning the elderly care. In particular, Section 4 of this article shows that Finland is a state with a developed welfare system where the residential elderly care is the primary responsibility of the state. In contrast, the welfare system of Kazakhstan provides the right to such care only for the elderly who are in a difficult life situation. The primary obligation to provide care for the elderly in need of 24/7 assistance is still vested in children or grandchildren. Based on the human-rights approach towards the problem discussed, we argue that ensuring the participation of the elderly in socio-cultural life inside the assisted care homes is relevant for both Finland – the state with the developed welfare system – and Kazakhstan – the state undergoing a transitional period, when it comes to the construction of welfare system. Said orientation on the legal dimension of implementing human rights distinguishes our approach from comparative policy analyses across the nations undertaken in the field of social sciences. Yet we remain aware of such comparative policy studies (see, e.g. Bender et al. 2014).

Respectively, this study is based on the examination of academic and legal sources in the field of international human-rights law and the national laws of Finland and Kazakhstan. Legal analysis constitutes the primary research method. Practical data obtained as the result of interviews with the rights holders regarding the inclusive practices in service institutions for the elderly is examined against the background of national legislation and interpretations of the right to take part in social and cultural life given by the UN Committee on Economic, Social and Cultural Rights (hereinafter: the ESCR Committee), the European Committee of Human Rights.

### **3. International law standards regarding social inclusion of the elderly**

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Although many international law documents employ the term “social inclusion”, the exact meaning of this term remains somewhat vague and dependent on concrete circumstances. Legal terminology assigns to the term “inclusion” a literal meaning of being “contained as a part of something” (Garner 2007, 777). Hence, social and

cultural inclusion can be understood as the state of being a part of the society and its cultural life. As applied to the situation of the elderly inside the assisted care homes we could argue that inclusion in socio-cultural life implies access, participation and contributions (insofar as it is possible) of the elderly in the local community, that is, in institutions for the elderly as well as in socio-cultural events organized both inside the respective institution and outside the institutional walls. Such events include, but are not limited to, the following: everyday routines in the assisted care homes, including conversations and more broadly communication with others; local socializing activities, such as coffee breaks and other leisure activities, i.e. discussions or reading circles, as well as artistic performances, various exhibitions, etc. Our approach is based on the interpretation of the UN ESCR Committee regarding participation in cultural life. In General comment No. 21 to the CESCR the Committee claims that “there are, among others, three interrelated main components of the right to participate or take part in cultural life: (a) participation in, (b) access to, and (c) contribution to cultural life” (UN Committee on Economic, Social and Cultural Rights 2009, par. 15).

From the perspective of international human rights, achieving social and cultural inclusion requires public authorities to undertake positive measures to meet the needs of different individuals in order to create environments where everyone enjoys equality of opportunity to participate in social life. Social exclusion results from socio-economic disadvantage characterized by such factors as, e.g., unemployment and/or from certain pre-given characteristics as, e.g., sex, age, disability, etc. Since we depart from the premise that the elderly are right holders distinct from other individuals with the generalized status of dependency, we look at the problem of socio-cultural inclusion of the elderly from the positions of non-discrimination and equality. Universally prohibited grounds for discrimination as enshrined by common article 2 on the prohibition of discrimination in the *Universal Declaration of Human Rights* (1948) and in both international covenants to which Finland and Kazakhstan are state parties, i.e., the *International Covenant on Civil and Political Rights* (1966; hereinafter: the ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (1966; hereinafter: the ICESCR) regard “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Since age is not specifically mentioned as a prohibited ground for discrimination, neither by these covenants nor by the *Universal Declaration of*

*Human Rights*, the prohibition of discrimination on the grounds of “other status” could be interpreted as applying to age.<sup>2</sup>

International legal regulation at the regional level takes a more nuanced approach and mentions age as a prohibited ground for discrimination. Although Finland and Kazakhstan do not belong to one regional organization, the regional human-rights treaties relevant for each of these two states specifically prohibit discrimination of age. Although art. 1 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR)<sup>3</sup> is silent about age discrimination, the Revised European Social Charter calls for the introduction of positive measures targeted at the social inclusion of the elderly. According to art. 23 of the Revised European Social Charter (Council of Europe 1996), to which Finland is a state party, the state parties need to adopt measures enabling the elderly to play an active part in public, social and cultural life in order for them to remain “full members of society”. Pursuant to the Explanatory Report to the 1988 Additional Protocol to the European Social Charter, the expression “full members of society” implies that the elderly must not be restricted in their access to societal activities and functions, even if an elderly person is retired or restricted in their legal capacity. More particularly, according to par. 45 of the Explanatory Report, this expression means that elderly persons should not be ostracized on account of their age, as the right to take part in society’s various fields of activity is not granted or refused depending on whether an elderly person is retired or is still vocationally active or whether such a person is still of full legal capacity or is subject to some restrictions in this respect (*diminutio capitis*; Council of Europe 1988). The clause “full members of society” is closely connected with the idea of participation in socio-cultural life. Yet again art. E of the Revised European Social Charter is silent about age as a prohibited ground for discrimination.<sup>4</sup>

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2 Such statement is given by the ESCR Committee in its General Comment No. 6 to the ICESCR. In particular, the Committee notes that “while it may not yet be possible to conclude that discrimination on the grounds of age is comprehensively prohibited by the Covenant, the range of matters in relation to which such discrimination can be accepted is very limited. Moreover, it must be emphasized that the unacceptableness of discrimination against older persons is underlined in many international policy documents and is confirmed in the legislation of the vast majority of States. In the few areas in which discrimination continues to be tolerated, such as in relation to mandatory retirement ages or access to tertiary education, there is a clear trend towards the elimination of such barriers. The Committee is of the view that States parties should seek to expedite this trend to the greatest extent possible” (UN Committee on Economic, Social and Cultural Rights 1995).

3 This article 1 mentions such prohibited grounds for discrimination as “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Council of Europe 2011).

4 Likewise in art. 1 of the Protocol No. 12 of the ECHR, the Revised Social Charter mentions as prohibited grounds for discrimination the following: “race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Regionally Kazakhstan belongs to the Commonwealth of Independent States (hereinafter: the CIS). In 1998 a separate document was adopted at the level of this organization which deals with the rights of the elderly, i.e. the Elderly Charter (*Khartiia pozhilykh liudei SNG*; Commonwealth of Independent States 1998). The Charter gives due recognition to the issues of social inclusion of the elderly. It emphasizes that the elderly should be provided with an opportunity to effectively participate in and contribute to the life of the society. It also reinstates that the elderly persons residing in the assisted care homes have the right to the services which meet the standards of human rights and dignity. The right to actively take part in social life is also mentioned by this document. Although this Charter is a political recommendation lacking binding legal force, it advises CIS member states to use its provisions as guidelines for further developing national statutory law. The Charter calls upon the CIS member states to guarantee full implementation of the rights of the elderly in their national policies.

#### **4. Social and cultural inclusion of the elderly in residential care: national legal regulation**

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##### **4.1 Finland**

The theme of socio-cultural inclusion of the elderly residing in assisted care homes is especially topical for Finland, where, according to the information provided by the Ministry of Social Affairs and Health, “more than 50,000 people receive 24-hour care outside private homes (sheltered housing with 24-hour assistance, old people’s homes or long-term care at health centre hospitals)” (Finland, the Ministry of Social Affairs ... 2013YEAR). Finland implements the Nordic welfare system based on the principles of equality, universality of social rights and public responsibility for providing services for the population (Kotkas 2012). Nowadays, the health-care system of Finland can be characterized as being a patient-centered one (Tanenbaum 2015. YEAR, 273). The same comment can be addressed to the welfare system. Finnish courts consider cases of violations of individual patient rights and the rights of the clients of welfare services. However, until the 1970s, the legislator and the courts in Finland looked at the welfare system from a perspective of service providers, considering this system to be a rather rigid state-steered conglomeration. If the quality of welfare services was to be improved during this period, this took place via administrative reforms and implementing internal review processes within public administration. Much depended on relatives and families. Yet already in the 1950s the assisted care homes began to differentiate from the earlier general “poor houses”. It is peculiar, however, that the elderly in those homes which were able to work had to work for the institution, having been engaged in, e.g., farming. Moreover, the elderly were lacking many basic rights, such as the right to possess property, the right to freedom of movement, etc. (Paasivaara 2002). The sad fact is,

however, that due to a massive move of the Finnish population from the countryside to the cities in the 1960s and 1970s many elderly persons were bound to a life in the countryside without care from relatives. In the cities, due to the intensified work life, fewer chances were left for the relatives to look after their elderly parents (Paasivaara 2002, 154). In order to deal with such hurdles the 1971 Public Healthcare Act obligated municipalities to introduce new supervisory mechanisms over the wellbeing of the elderly (Koskinen et al. 1998). The shift towards the client-oriented, i.e., human-rights-based approach towards the welfare services started in the 1980s when the administrative courts began to concentrate on the essence of individual rights while considering disputes regarding the delivery of welfare services. However, it was only during the 1990s that special legislation on patient and welfare client rights was enacted.

Hence, extensive social welfare services have been provided in Finland on a universal basis for the population since the 1980s (Kotkas 2012, 261). For instance, as specified by the 2014 Social Welfare Act (1301/2014) (*Sosiaalihuoltolaki*), municipalities are in charge of providing residential care for the elderly (Finland, Social Welfare Act 2014). At the same time informal residential care provided by the relatives is also important. Following the data provided by the Ministry of Social Affairs and Health, “approximately one half of those relying on informal care – nearly 20,000 people – would be in 24-hour care without the informal carer (in sheltered housing with 24-hour assistance or in institutions)” (Finland, the Ministry of Social Affairs ... 2013YEAR).

Considering constitutional regulation of social inclusion, one departs from Section 6 of the 1999 Constitution of Finland which stipulates that age is among the prohibited grounds for discrimination.<sup>5</sup> Likewise, the 2004 Non-Discrimination Act (21/2004) includes age in the inventory of such grounds.<sup>6</sup> Furthermore, the Constitution provides that everybody has the right to *participate* and *influence* the development of society as well as one’s own living conditions.<sup>7</sup> Furthermore, Section 19 of the Constitution of Finland (1999) guarantees the right to social security as those “who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care”. This section specifically mentions

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5 Section 6 of the Constitution of Finland provides that “[n]o one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person” (Constitution of Finland 1999).

6 Section 6 of this Act reads that “[n]obody may be discriminated against on the basis of age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other personal characteristics. The prohibition of discrimination based on gender is covered by the provisions of the Act on Equality between Women and Men (609/1986)” (Finland, Non-Discrimination Act 2004).

7 In accordance with Section 2 of the Constitution of Finland (1999), “democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions.”



that “everyone shall be guaranteed the right to basic subsistence ... during old age.” Adequate social, health and medical services and the right to housing are also guaranteed to everyone by this Constitutional provision.

The principle of democratic participation with respect to welfare services for the elderly can be distilled from the provisions of the 2012 Act on Supporting the Functional Capacity of the Older Population and on Social and Health Care Services for Older Persons (980/2012) (*Laki ikääntyneen väestön toimintakyvyn tukemisesta sekä iäkkäiden sosiaali- ja terveystalvveluista*) – hereinafter the 2012 Act. This Act contains provisions aiming at promoting equality for the older population. This Act emphasizes the issues of participation of the elderly in residential care in socio-cultural life within the institutions. More particularly, art. 13 of this statute guarantees that services for the elderly should “support the wellbeing, health, functional capacity, independent living, and inclusion of older persons.”

The implementation of the 2012 Act, stipulating the obligation of public authorities to ensure social inclusion of the elderly in the assisted care homes, is supported by a mechanism entailing several procedures within public organs and agencies. The active role in this procedures is assigned to the Ministry of Social Affairs, municipalities as service providers, the Finnish National Supervisory Authority for Welfare and Health – Valvira, the Patient and Social Ombudsman, and, of course the courts of law. Shortly after the adoption of the 2012 Act the Ministry of Social Affairs and Health of Finland and the Association of Finnish Local and Regional Authorities designed a document, entitled “Quality recommendation to guarantee a good quality of life and improved services for older persons” (Finland, the Ministry of Social Affairs ... 2013YEAR). Safeguarding the diverse inclusion of older people is a cross-cutting principle of these recommendations (*ibid.*, 17). According to these recommendations, a client-based approach to inclusion means “taking part in the planning of your own services, handling of your own affairs as a client and assessing the quality of the services, even when you have lost some of your functional capacity” (*ibid.*, 17). Finally, in 2014 Valvira issued recommendations for private and public service providers, requiring that health-care professionals draft a “self-assessment plan”, recording *inter alia* the clients’ social functioning and well-being (Finland, the Finnish National Supervisory Authority ... 2014 YEAR). Hence, the personnel of the assisted care homes for the elderly in Finland are required to draft a personal plan for every elderly person residing in their institution which takes into account the social dimension of the clients’ background. Since the obligation to ensure socio-cultural inclusion is a statutory-entrenched obligation, failures in its fulfillment can be challenged before the courts of law. Yet entailing the court mechanism can be skipped in case of successful dispute resolution via two authorities, i.e. the Patient and the Social services Ombudsmen. Art. 6 of the 2012 Act stipulates that the evaluation of the adequacy and quality of welfare services for older persons is vested in the municipal Social services Ombudsman, who considers the results of such evaluation, based on feedback from service users, their family members and

other persons close to them as well as municipal staff of such evaluation in annual reports. If the dispute regards the violated right of access to health-care services, the 1992 Act on Patient's Position and Rights (785/1992) introduced the mandate of a Patient Ombudsman. In accordance with art. 11 of this Act, the Patient Ombudsman "shall be appointed for health-care units". This Ombudsman is charged with the following functions: advising patients in issues concerning the application of this Act; informing patients of their rights; and acting otherwise for the promotion and implementation of patient rights. The Patient Ombudsman is, however, not charged with the function of assisting the individuals in submitting court complaints on violations of patient rights.

## 4.2 Kazakhstan

Kazakhstan shares the Central Asian tradition of elderly care, based on family members' commitments. In accordance with long family traditions, elderly parents rarely remain living alone. Most parents live in the household of one of their sons (Stasevitch 2009, 102). These traditions originate in Tengriism – the beliefs of ancient Mongols that existed even before the Kazakhs accepted Islam (Dmitriev 2006, 124). The customary family law of the Kazakhs, hence, prioritizes the respect for the elderly, which is taught to the children since their early childhood. In particular, according to the still valid social norms, children are prohibited from arguing against their elderly relatives; raising their voice is unacceptable (Dmitriev 2006).

Said cultural approach towards elderly care is reflected in the modern legislation of Kazakhstan. The 1995 Constitution provides that able-bodied children are obligated to take care of their non-able-bodied parents (art. 27 par. 3). Respectively, the 2011 Code "On marriage (matrimony) and family" (*O brake (supruzhestve) i semè*) stipulates that the able-bodied children of age capable to work are obligated to provide "maintenance and care" for their unable-bodied parents in need of their help and care. The principles of such an approach are comparable to those of Finland before the modern Finnish welfare model was introduced in the 1960s. Failure to provide care should be compensated by additional maintenance obligations due to art. 132 of this Code. In case there are no children, the obligation to provide maintenance for the elderly in need is vested in their grandchildren (arts. 139 and 141). If the children fail to provide care in person, the parents have the right to claim alimonies for substitute care on the basis of art. 145 of the same Code. According to the 2015 Review, provided by the Supreme Court of the Republic of Kazakhstan, during the first nine months of 2015 all courts of general jurisdiction considered 136 cases where the parents claimed alimonies from their children for substitute care (Obobshchenie vytekaiushchim ... 2015). The failure to provide maintenance for the unable-bodied elderly parents in need for more than three months is punishable under Article 139 of the 2014 Criminal Code by the restriction of liberty for up to two years or alternatively by deprivation of liberty for the same period.

As for public residential services for the elderly, the 2008 Law of the Republic of Kazakhstan “On special social services” (*O spetsial’nykh sotsial’nykh uslugakh*) stipulates that special social services are a complex of services, ensuring for a person (a family) in difficult life circumstances the conditions for overcoming social problems which are targeted to creating equal opportunities to participate in social life (art. 1 par. 1). Art. 6 par. 7 of this law specifies that a lack of ability to serve own deeds due to old age or illness is among such “difficult life circumstances”. Respectively, there are only 55 assisted care homes for the elderly in Kazakhstan (Kazakhstan, Kolichsetvo i struktura 2014YEAR). Hence, the issue of socio-cultural inclusion of the elderly in residential care in Kazakhstan remains outside the realm of legal regulation. Respectively, no legal or administrative mechanisms can be entailed in order to promote or implement such inclusion. This strongly speaks for the necessity to consider incorporating the right of the elderly in residential care to socio-cultural inclusion in the 2008 Law of the Republic of Kazakhstan “On special social services”.

## 5. Interview studies

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In order to check how the 2012 Act is implemented, our team in Finland interviewed 38 elderly residents of the assisted care homes in Kuopio City in the *Suokatu, Männistö* institution with two units, i.e. *Väinölä* and *Ilmatar*, and the *Alava* assisted care homes. Our colleagues in Kazakhstan conducted a mirror interview study with 80 interviewed persons in the *Ardager* assisted care home of Almaty City. When it comes to Finland, the questions to the elderly were approved by the Turku University Central Hospital (TYKS) Ethical Committee. There is no requirement of obtaining a statement from an ethical committee in Kazakhstan. We focused on the opinions of the elderly, not the opinions of the staff of the above-mentioned institutions. This is due to the fact that we concentrate on the experiences of the service recipients and not its service producers. The criteria for selecting the elderly for the studies were as follows: a) willingness and ability to communicate; b) residing in the assisted care homes for at least 1 month before the interview. The interviewees’ gender is not relevant to the research topic. It is sufficient that the respondent be a resident of a 24-hour care unit. Each interview lasts 15–20 minutes.

The interview questions aimed at exploring individual attitudes and wishes of the elderly towards participation in social, cultural, sport and recreational activities inside the institution. In particular, we targeted to find out the following: how much interest do the elderly have in communication and socio-cultural activities; are there enough socio-cultural events organized in their institution; do relatives take an active role in providing opportunities for the elderly to take part in socio-cultural activities; how exactly does the service institution assist the elderly in participating in such events (providing information; providing assistance with trans-

portation, etc.); how much contact do the elderly still have with the outside world by being capable of, e.g., communicating over the telephone?

The questions, asked in the Finnish and Kazakh languages respectively, are the following:

- How often do your relatives or friends visit you?
- How interested are you in communicating, spending time or doing something together with other people?
- Do you feel that the service institution organizes enough social activities? How does the service institution help you to participate in such events?
- How do you communicate with others (phone, letters, other)? Do you follow the news?

The interviews revealed that most elderly persons (102 individuals out of 118) in the institutions were extremely interested in spending time and talking to others. When it comes to the visits of relatives, the results were expectable. In Almaty the vast majority of the respondents (55 individuals out of 80) did not have relatives who could visit them. In Kuopio only four persons out of 38 did not have visitors. This is explained by the main approach of the welfare system in the two states under consideration. Since the Kazakh Constitution charges the children with the responsibility to provide care for their parents, mostly parents who lack active children and grandchildren are provided with residential care. In Almaty 80 % of the respondents felt that there were enough socio-cultural activities for them, in which they freely participated. The interviewed persons reported that their favorite type of socio-cultural activities when the elderly could communicate with each other were events when students or the attendants of schools and daycare centers visited their institution with performances. In Kuopio 20 out of 38 respondents felt in need of more organized activities. 90 % of the interviewed individuals in both states actively followed the news and used the telephone for communication with the outside world. Hence, both in Finland, where a statutory-based obligation to ensure socio-cultural inclusion inside the assisted care homes exists, and in Kazakhstan, which is lacking such a legal provision, the elderly in residential care revealed a strong interest in a socio-cultural program. This speaks for the possibility of introducing such an obligation in the national law of Kazakhstan.

## **6. Conclusions**

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As the ageing of the population concerns almost all industrialized countries the optimal treatment of the elderly in the assisted care homes becomes a more and more significant issue. If the state succeeds in dealing with the problems of primary physical care-taking, such a serious challenge as the socio-cultural aspect of life

inside the institution remains. The evolving international legal standards of ageing support our main argument that social inclusion of the elderly in residential care should be approached from the perspective of human rights. As a result, the assisted care homes and the municipalities responsible for such services must have a special responsibility to ensure that this right is implemented, for example by preventing ostracism inside the institution, organizing joint celebrations, reading groups, field trips, etc. outside the unit. Our study has argued for the necessity to include the right to participate in social and cultural life inside the assisted care homes in the national law of Kazakhstan. Finland with the developed welfare system introduced such a right in the 2012 Act of parliament, the implementation of which is supported by a number of public organs and agencies, including the Ministry for Social Welfare and Health, municipalities, courts, Patient and Social services Ombudsmen, and the national supervising agency Valvira. Since the legal provision of access to socio-cultural life within the assisted care homes for the elderly is lacking in the statutory law of Kazakhstan, there are no mechanisms of ensuring such access.

Our interviews with 118 elderly persons residing inside the institutions in Almaty, Kazakhstan, and in Kuopio, Finland, proved that the vast majority of respondents, i.e. 102 individuals, have a strong interest in participating in social and cultural activities. As we could foresee, there were variations in personal circumstances in Kazakhstan and in Finland. These variations originate in the constitutional and legal settings, where Kazakhstan's law charges the children with the obligation to provide care for their elderly relatives and Finnish law charges municipalities with this obligation. Hence, those elderly persons who reside in the institutions in Kazakhstan do not have relatives who could visit them. This suggests that the position of the elderly in Kazakhstan would benefit from adopting a law similar to the 2012 Act in Finland on supporting social and health care services for the elderly population.

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