

Report of the Ombudsman for Children in Iceland to the UN Committee on the Rights of the Child

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Introduction

The legal position of children in Iceland has improved markedly in recent years. The Parliament of Iceland has passed a number of statutory provisions enhancing children's rights. In addition, levels of awareness about children's issues – their feelings and the influencing factors in their upbringing and general circumstances – have risen. In most instances, the condition of children in Iceland is good; however, there is a given group that does not enjoy all of the rights provided for in the Convention on the Rights of the Child. Thus there is a need to improve the legal position of children in Iceland in many areas.

This report addresses a number of the key issues relating to the interests of children in Iceland. However, these issues are numerous and it is impossible to provide an exhaustive summary of all of them in a report such as this one. The report focuses primarily on the issues that the Ombudsman for Children in Iceland is most concerned about and considers it most important to rectify.

One of the Ombudsman for Children's main concerns is the fiscal budget cuts resulting from the financial crisis that has affected Iceland since the fall of 2008. In many areas, budget cuts have already been made, and in others, cutbacks are proposed. These austerity measures have a negative effect on all groups in society, children in particular. The Ombudsman for Children is concerned about this development and has pointed out that the authorities should always seek other ways to streamline before they cut back on services to children.

The Ombudsman for Children welcomes plans to incorporate the Convention on the Rights of the Child (the Convention)¹ into Icelandic legislation. A bill of legislation proposing the incorporation of the Convention has been drafted. Before the bill is presented to Parliament, however, work is being done to adapt Icelandic law more closely to the Convention. The bulk of this work relates to meeting the requirements set forth in Article 37(c) of the Convention.

The Act on the Ombudsman for Children, no. 83/1994, stipulates that the Ombudsman shall protect the interests of all children in Iceland. Children are experts on their own lives; therefore, the Ombudsman strongly emphasises the importance of listening to children regarding matters that concern them; cf. Article 12 of the Convention. With this in mind, the Ombudsman for Children established an advisory group of young people aged 13-17, whose task is to act as an advisory body to the Ombudsman's office.

The Icelandic Government has now submitted its second report in accordance with Article 44(b) of the Convention. The Ombudsman for Children hopes that the following comments will be useful to the Committee as it makes its comments on the report submitted by the Icelandic Government.

¹ Hereinafter referred to as the Convention.

General Measures of Implementation

Article 4 – Responsibility of States Parties

Legalisation of the Convention on the Rights of the Child

Iceland ratified the Convention on the Rights of the Child in 1992, but the Convention has not yet been legalised in this country. Although ratification obliges the Icelandic Government to honour and fulfil the provisions of the Convention, its provisions are seldom cited in the resolution of cases by the authorities and the courts. For example, a study of judicial practice has revealed that whether the courts cite the Convention or not is entirely coincidental.² It can be inferred that one reason for this is that the Convention has not been incorporated into Icelandic law.

The Ombudsman for Children considers it important to legalise the Convention so that it will be used increasingly in practice and so that children and adults will be more fully aware of children's rights. This is particularly important in view of court decisions that have been in contravention of the provisions of the Convention; for example, the Supreme Court decision in Case no. 506/2008, which is discussed later in this report.

In November 2009, the Ministry of Justice and Human Rights published a bill on the legalisation of the Convention. The bill has not yet been presented before Parliament, however, and the main impediment is the reservation that Iceland originally made to Article 37(c) on the separation of young prisoners from their elders. When the bill on the legalisation of the Convention was presented, a work group was established in order to examine how children bearing criminal liability can serve sentences in a manner fulfilling this provision. The work group submitted a report in May 2010, and it is clear that this matter must be rectified before the Convention can be legalised.

Article 42 - Presentation

Presentation of the Convention on the Rights of the Child

One issue that the Ombudsman for Children stresses strongly is presenting the Convention so that children and adults are familiar with it and know what rights it confers. Presentations of the Convention must be held regularly so that no groups of children are left out. It is important that the Ombudsman for Children receive support in order to promote presentation of the Convention and instruction on children's rights; cf. Article 42 of the Convention.

In this context, it is extremely important that all individuals and institutions involved in children's affairs – teachers, the police, the courts, child protection authorities, etc. – be well acquainted with the contents of the Convention. A thorough knowledge of children's rights increases the likelihood that children will receive the assistance they need and that violations of children's rights will be met with prompt response.

Recommendations

- The Icelandic Government shall work diligently at fulfilling the Convention as a whole and can therefore retract its statement on Article 37(c).
- The Icelandic Government shall legalise the Convention.
- The Icelandic Government shall ensure adequate funding for presentation and instruction on the Convention, for children, adults, and institutions involved in children's affairs. It shall also encourage Government institutions and parties involved in children's affairs to participate in and support the presentation of the Convention.

² http://www.forsaetisraduneyti.is/media/Skyrslur/Skyrsla_um_doma_Mannrettindadomstols_Evropu.pdf.

General Principles

Article 2 – Non-discrimination

Vulnerable groups

Even though a majority of children in Iceland live in good circumstances, certain groups of children are vulnerable and do not enjoy the same rights as other children. This is particularly true of children of foreign origin, children with special needs, and children of less affluent parents. For example, studies show that children of immigrants generally feel worse than their Icelandic peers and are more likely to be bullied.

It should also be pointed out that the school system appears not to take sufficient account of diversity among students, and children in minority groups often have more difficulty in the school setting. For example, lesbian, gay, bisexual, and transgender (LGBT) youth are more likely than others to be bullied. Violations of Article 2 of the Convention are discussed in other sections of this report.

Recommendations

- The Icelandic Government shall guarantee all children the same rights and respect, without discrimination.
- The Icelandic Government shall work towards reducing prejudice and reinforcing instruction on various societal groups and their position.

Article 3 – The best interests of the child

Cutbacks that negatively affect children

One of the negative side effects of the current economic situation is the severe cutbacks taking place in all areas of Icelandic society. These cutbacks negatively affect all societal groups, particularly those that are vulnerable in some way. The Ombudsman for Children has pointed out the particular importance of protecting children and their rights during times like these and ensuring that they receive the services their welfare requires. Furthermore, the Ombudsman for Children has pointed out that the child's best interests shall always take precedence when decisions concerning children are taken; cf. Article 3 of the Convention. Consequently, the authorities must always seek other means of cutting costs before curtailing services to children. However, the comments received by the Ombudsman for Children reveal clearly that the current and proposed cutbacks make a marked negative impact on children. The following discussion gives examples of such cutbacks.

Subsidy payments to parents of disabled and chronically ill children

The Ombudsman for Children has received comments on the proposed reduction of the subsidy payments to which parents of disabled and chronically ill children are entitled. There has

also been discussion of reducing services to this group to some extent; for example, home nursing care. It is important that the Icelandic Government guarantees children with disabilities and long-term illnesses special assistance and support and that they avoid cutting budgetary allocations to them.

Cutbacks in pre-schools and primary schools

The Ombudsman for Children has received a number of comments on budget cuts in Iceland's pre-schools and primary schools. Examples of cost-cutting measures already adopted include reductions in staffing, merger of class groups, and cancellation of courses. Reducing the number of teaching days in primary school has been considered as well, as has the merger of pre-schools, primary schools, and recreation centres. The cutbacks in pre-schools and primary schools vary from one municipality to another, as these matters are handled at the local government level.

When economic hardship strikes, it is important to prevent it from affecting children's daily lives. Schools are enormously important for children, and even more so in times like these. Experience in neighbouring countries has shown that cutbacks in the school system have long-term repercussions.

The Ombudsman for Children has pointed out how important it is that the Ministry of Education, Science, and Culture keep close watch on whether all legally mandated services are ensured in pre-schools and primary schools. There are examples of cutbacks in such mandatory services. A survey carried out by the Ministry of Education, Science, and Culture revealed that 30% of the nation's primary schools are without a guidance counsellor. The Compulsory School Act, no. 91/2008, stipulates that students are entitled to receive academic and work-related guidance counselling from parties with the statutory qualifications for the provision of such services. It is therefore clear that some schools do not provide children with the mandatory services to which they are entitled, and that children are discriminated against on the basis of residence.

Cutbacks in upper secondary schools

Upper secondary schools have already been subjected to considerable cutbacks, and the current budget proposes further reductions in budgetary allocations. It is clear that this reduction negatively affects the services that upper secondary schools provide to students, not least those who need special support. It can be assumed that this will result in an increased dropout rate from upper secondary school. This is inconsistent with the authorities' policy of reducing the dropout rate from upper secondary schools in Iceland, which is already among the highest in Europe.

It is important to consider the consequences of such cutbacks for this group and for future generations. In this context, it is

³ <http://www.rannsoknir.is/media/rg/skjol/Ungt-folk---Utan-skola-2009.pdf>.

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worth mentioning the study Young People Outside School 2009,³ which reveals that young people who are not in school feel worse than their peers who are in school; furthermore, experience from other countries indicates that this group will face difficulties in the future.

Mediation

According to Article 33 of the Children's Act, no. 76/2003, the district Commissioner shall offer services from expert consultants to the parties in cases involving custody, access and visitation, and per diem fines, with the child's best interests as a guiding principle. Such service can make a great difference in the child's welfare and can avert difficult disputes between parents. The Ombudsman for Children has received comments that the mediation services provided for by the Children's Act are not available from all district Commissioners. When the Ombudsman investigated the matter, it came to light that the funding allocated for these services had been exhausted and further services were discontinued. In the wake of the Ombudsman's query, it was announced that further funding was expected and that services would resume. The funding was received as promised, but the arrangements for mediation services were changed markedly due to cost-cutting measures. The main change is that the travel expenses incurred by individuals seeking such services are not subsidised; only the service itself is. The specialist services offered in connection with mediation are only available in certain municipalities; therefore, many people must travel long distances to seek the services. The Ombudsman for Children is concerned about this change and is of the opinion that increased travel expense could mean that some groups will not avail themselves of the services due to the cost involved. Consequently, there is the risk that children will be subjected to discrimination on the basis of their parents' financial position, which is in violation of Article 2 of the Convention.

Child protection

There has been a drastic increase in the number of reports to child protection committees nationwide.⁴ There is also greater strain on child protection workers because of the increased difficulty and complexity of the cases they take on. Budgetary allocations to child protection committees have not risen accordingly, and staffing has increased only to a limited degree. As a result, services to children have been reduced because child protection workers cannot handle the volume of cases reported. The Ombudsman for Children has also received comments to the effect that emergency child protection committee services have been cut back markedly and are no longer available after midnight.

Childbirth leave

It is very important that children be cared for by their parents, not least during the first months of their lives. The Act on Childbirth and Parental Leave, no. 95/2000 aims to ensure that parents bear joint responsibility for raising their children; cf. Article 18 of the Convention.

Since the Act was passed, many changes have been made in parents' right to payments from the Childbirth Leave Fund; for example, payments to parents have been cut, and the ceiling on payments has been lowered. Now further cutbacks in childbirth leave are proposed, either through reducing maximum payments or shortening the childbirth leave period. Such changes are a step backwards in these matters, as fathers use their childbirth leave less than they did previously. Furthermore, these changes have an adverse effect on single parents.

Cutbacks in the healthcare system

In many respects, the status of healthcare issues in Iceland is not acceptable. Among the areas needing improvement are dental health services, psychological services, professional psychiatric services, and speech therapy services, which are discussed in greater depth later in this report. The healthcare system has been subjected to major cutbacks, and further cuts are proposed. The Ombudsman for Children considers it clear that this will adversely affect children, particularly those living in rural areas, those who are disabled, and those who are vulnerable in some way. If children do not receive the healthcare service they need now, they are likelier to have more serious problems in the future.

Recommendations

- The Icelandic Government shall always have the best interests of the child as a guiding principle when taking decisions on cutbacks, and it shall seek other means of meeting its goals before curtailing services to children.
- The Icelandic Government shall ensure that sufficient funding is allocated to children's affairs and that all children are guaranteed the services to which they are entitled by Icelandic law and the Convention on the Rights of the Child.

Article 12 – Children's right to express their views and have their views considered

Personal affairs

In recent years, children have been granted enhanced rights to express their views and have those views considered. There are still statutory provisions that do not meet the requirements of Article 12 of the Convention, as children are granted the right to express their views only when they have reached a specified age. This pertains, for example, to the Act on Registered Religious Sects, no. 108/1999, and the Personal Names Act, no. 45/1996, which allow only children aged 12 or older the right to express their views.

The Children's Act, no. 76/2003, contains two provisions that were included in order to fulfil Article 12 of the Convention. According to these provisions, a child who has attained sufficient maturity shall have the opportunity to express his or her views un-

⁴ Annual report of the Government Agency for Child Protection 2008-2009: <http://bvs.is/files/file874.pdf>.

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less such expression could be considered to have a detrimental effect on the child or is irrelevant to the resolution of the matter in question. The Act does not state explicitly, however, that account shall be taken of the child's views. It is also cause for concern that children's views do not always appear to be accorded due consideration in custody and visitation cases. It is important to emphasise that those who deal with children's affairs have a duty always to seek out and consider children's views, in accordance with the child's best interests.

Youth Councils

The Youth Act, no. 70/2007, legalised the requirement that the local authorities promote the establishment of youth councils in their municipalities. The Act does not oblige the local authorities to establish youth councils but merely mentions that they should promote their establishment. The Ombudsman for Children conducted a survey of the status of youth councils in Iceland and found that, of 76 municipalities, only 18 have functional youth councils, although there are plans to establish youth councils in another 28 municipalities. Thus it is clear that in 29 municipalities there are no plans to establish youth councils. The survey also revealed that youth councils are generally established in larger municipalities, which means that children in regional Iceland do not have the same opportunity to express themselves in a formal setting.

No co-ordinated rules have been adopted concerning appointment of members and operations of youth councils; instead, the municipality concerned decides how such matters are to be handled. In many municipalities, the rules set for youth councils are exemplary, while in other areas the rules are less well conceived. It would be desirable to adopt co-ordinated rules so as to achieve the objectives envisaged with the establishment of youth councils.

Government decisions affecting children

Youth councils operate only at the municipal level, and there is no comparable forum at the national level. The Parliament of Iceland, the ministries, and other Government authorities often take decisions on children's affairs without consulting the children themselves. This often results in decisions based on the views of adults rather than children. For example, the decision of the Ministry of Education, Science and Culture to change the structure of standardised regents' examinations and registration for upper secondary school was taken without any consultation with student representatives.

School councils

The Compulsory School Act, no. 91/2008, stipulates that a school council shall operate in primary schools and shall act as a consultative forum within the schools. In this forum, two student

representatives are given the opportunity to express their views on various issues related to the school. A survey was carried out at the behest of the Ombudsman for Children on the status of student councils in primary schools, and it revealed that there is a need to promote the establishment of student councils in primary schools and further the students' roles in them.

Voices of all children

Certain groups of children and very young children have greater difficulty than others in expressing their opinions. In this context, it should be noted that the Pre-School Act, no. 90/2008, does not provide for the children's right to affect school operations. Giving young children a chance to express themselves also provides them with democratic upbringing and prepares them for participation in society, which is consistent with Article 29 of the Convention. In addition, children belonging to minority groups – for example, immigrants and disabled children – often have greater difficulty in communicating their views. It is important to encourage those who take decisions to seek out the opinions of all children, irrespective of age, capabilities, origins, or status, and to give consideration to the views they express.

Recommendations

- Icelandic law shall be fully aligned with Article 12 of the Convention, and the age limit on children's right to be heard shall be abolished.
- The wording of Icelandic legislation shall be clarified so that not only are children given the option of expressing their views, but also will it be mandatory to take account of their views, in accordance with their age and maturity.
- Local authorities shall be required to establish youth councils, and a provision to this effect shall be added to the Local Government Act, no. 45/1998. In addition, rules shall be adopted concerning the role, appointment, and governance of youth councils, and all municipalities shall be required to follow them.
- The Icelandic Government shall establish a national forum that gives children the opportunity to express their views and affect decisions on issues pertaining to children.
- The Icelandic Government shall ensure that important decisions concerning children are not taken without consulting with them.
- The Icelandic Government shall ensure that children at all educational levels have the opportunity to express their views in a setting that is appropriate for them, and that consideration is given to their views.
- The Icelandic Government shall take steps to ensure that different societal groups have the same opportunity to express themselves on their own terms.

Civil Rights and Freedoms

Article 7 – The children’s rights to know their origins

Artificial Fertilisation Act

It is important to guarantee children's right to know their origins. Article 4, Paragraph 2 of the Artificial Fertilisation Act, no. 55/1996, guarantees anonymity for donors of gametes. In this respect, children's right to know their origins is not guaranteed in Icelandic law.

Adopted children are guaranteed the right to information on their biological parents; cf. Article 27 of the Adoption Act, no. 130/1999. The Adoption Act also obliges parents to tell their adoptive children that they are adopted as soon as the children attain the required maturity, and no later than at the age of six years; cf. Article 26 of the Act. No comparable rule is set forth in the Artificial Fertilisation Act. In other words, Icelandic law grants adopted children the right to know their origins, while children conceived via artificial fertilisation do not have that right.

Recommendations

- The Artificial Fertilisation Act, no. 55/1996, shall be amended so as to guarantee children the right to know their origins.

Article 16 – Privacy

Publication of court decisions

The publication of court judgments involving children can be a sensitive issue and can be harmful to the child concerned. This can be the case, for example, when a child has been the victim or perpetrator of a serious violation; for example, a sexual violation. This is particularly the case when the child lives in a small

community and the case can be traced to the child in question, even though the child's name does not appear. The Act on Criminal Procedure, no. 88/2008, authorises judges to expunge from court judgments or other rulings any information that it is appropriate to keep secret with respect to private interests, if there is particular reason to do so. It is desirable to apply this provision more broadly when children are involved, and in all cases where publication is likely to cause them suffering and discomfort.

When criminal cases are brought before the courts, a judge can decide, either on his or her own initiative or at the demand of the parties to the case, to conduct a closed hearing, either wholly or in part. In the opinion of the Ombudsman for Children, court hearings should always be closed when a child has committed a crime.

Media coverage

The media can be ruthless as regards publication of photographs and names of individuals involved in court cases, and they sometimes publish information on young offenders. It is clear that the publication of their names and photographs can harm the children concerned even more and can have a detrimental effect on their self-image. This also affects other people's attitudes and can do lasting damage to the reputation of the child concerned.

Recommendations

- The Icelandic Government shall set rules on the publication of court judgments involving children and shall ensure that it is never possible to trace sensitive court cases to individual children.
- The Icelandic Government shall set rules on the publication of photographs and names of children and youth, with the aim of protecting them from the media.

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Article 9 – Separation from parents

Access rights

The right of access is a child's fundamental right. It is therefore important that it be possible to resolve disputes about access and visitation as carefully and quickly as possible. As matters stand today, it often takes many months for district Commissioners to resolve access and visitation issues, and during the interim, no visitation takes place. It is critical to expedite handling of these cases without compromising professionalism. In cases involving a deep-seated dispute on visitation, the Commission must seek an opinion from child protection authorities, which can take a long time. It would be desirable if district Commissioners had access to their own experts who could investigate before a ruling is handed down in a visitation dispute. Such an arrangement would raise the level of expertise within the Commissioner's Offices and greatly expedite case handling.

When a decision is taken on access rights, the child's best interests must always take precedence; cf. Article 3 of the Convention and Article 47 of the Children's Act no. 76/2003. In spite of this, decisions concerning access and visitation in Iceland are often taken from the viewpoint of the parent's rights rather than the child's. For example, it is almost always decided that visitation shall take place, even if the child emphatically does not wish it and has been subjected to violence by its parent. The fact is that access rights are extremely parent-oriented, and the child's best interests and wishes are not given due consideration nearly often enough.

Children of prisoners

If a parent is in prison, the child's daily life is profoundly affected. Article 34 of the Execution of Sentences Act, no. 49/2005, stipulates that prison directors must arrange facilities so that children can visit their close relatives and be treated with due consideration. In most instances, prisoners are permitted to receive one visit per week, for a period of two to three hours at a time. The Ombudsman for Children has investigated facilities for visits to prisons in Iceland. That investigation revealed that such facilities vary greatly and are far from adequate in some instances. It is most common that visits take place in small rooms within the prison, and the facilities are not child-friendly.

Article 25 – Regular review of child placement

Supervision of child protection committees and treatment homes

According to the Child Protection Act, no. 80/2002, the Government Agency for Child Protection is required to advise the nation's child protection committees and monitor their work methods. The Ombudsman is of the opinion that it must be difficult for the Agency to monitor child protection committees after having advised them at earlier stages of the same case. The

Agency also handles the development and operation of treatment homes and institutions that receive children in emergencies or provide them with specialised treatment for behavioural disorders, substance use, or other problems. It can assign operations to other parties or handle them itself. The Government Agency for Child Protection also conducts professional and financial surveillance of these same institutions. In the Ombudsman for Children's opinion, it is inappropriate that the same party should carry out operations and professional oversight of such an important function. Such an arrangement compromises the safety and reliability of the measures offered and can weaken the position of protégés.

Recent examples of the lack of oversight of treatment homes and discussion of failed oversight of treatment homes in the past have eroded the public's confidence in treatment facilities. As a result, it is vital that the law ensure that child protection committees and treatment homes be subject to regular, impartial monitoring. This would be likely to guarantee professionalism in work for children and would enhance confidence in the child protection authorities

Recommendations

- The Icelandic Government shall guarantee expedited handling of access and visitation cases.
- The Icelandic Government shall guarantee that consideration is given to the desires and best interests of the child in access and visitation cases. Furthermore, in each case, it shall be determined whether access is best for the child.
- The Icelandic Government shall ensure that all prisons in Iceland provide a child-friendly setting for visits so that children can interact with their parents.
- The Icelandic Government shall also ensure that child protection committees and treatment facilities for children are subjected to regular, impartial monitoring.

Article 19 – Protection against violence

Physical and mental violence

In recent years, there has been a significant awakening of consciousness concerning sexual violence against children and the severe repercussions of such violence. On the other hand, physical and mental violence against children have not received the same recognition. As a result, it appears as though the responses to physical or mental violence against children within the home are not comparable to the responses to sexual violence.

Corporal punishment

It is important to guarantee children protection against all forms of violence. Although the Ombudsman for Children had believed that Icelandic legislation provided children with sufficient protection against violence, the Supreme Court judgment of 22 January 2009, in Case no. 506/2008, proved otherwise. That

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judgment stated, among other things, that it was permissible to spank children on their bare bottoms if such were not conducive to harming the child mentally or physically. The judgment also stated that parents were permitted to authorise such spanking. This decision by the Court implies that children are actually less protected against violence than adults are, which is contrary to Article 19 of the Convention. After this decision was handed down, the Child Protection Act, no. 80/2002, was amended, and it now explicitly prohibits physical or mental punishment of children. What remains, however, is the Supreme Court's interpretation of Article 217 of the General Penal Code, no. 19/1940, on the prohibition of physical attack. The Ombudsman for Children harshly criticises the interpretation that Article 217 of the General Penal Code does not apply to spanking children if their parents authorise it, as children are fully valid individuals with their own rights. The idea that parents can authorise violence against their children is insupportable, as parents are obliged to protect their children against violence.

The Children's Act, no. 76/2003, stipulates that parents are obliged to protect their children against physical and mental violence and other debasement. It does not state explicitly, however, that parents are forbidden to strike their children or authorise others to do so. This only appears in the comments on the legislation, but the Ombudsman for Children considers it important to incorporate this rule into the Children's Act itself. This would make it clear that any type of violence against children is prohibited.

Physical punishment of children for childrearing purposes was long practised in Iceland and is still considered a matter of course in many parts of the world. Even though attitudes towards physical punishment have certainly changed, such punishment is still practised in some instances. This must be changed, and it is important to inform parents, children, and others involved with children's affairs that any type of violence against children is prohibited, no matter what form it takes. Special protection and instruction must be provided to immigrants and their children, as physical punishment is still practised widely.

The impact of violence on decisions concerning custody and visitation

Domestic violence makes a prolonged and serious impact in children's development and wellbeing, whether it is directed at the children themselves or someone close to them. When violence has taken place within the home, it very often continues even if the parents divorce or separate; moreover, under such circumstances, the perpetrator is far more likely to direct his or her violent behaviour against the child. It is therefore important to consider protection of children against domestic violence when assessing which custody arrangements are best for the child. The Children's Act, no. 76/2003, does not stipulate how important domestic violence shall be considered in decisions on child custody. A study of rulings in custody cases revealed

that domestic violence has limited impact on the assessment of a parent's eligibility for custody. Such results reflect a certain ignorance of the repercussions of domestic violence and the risk created when the perpetrator of violence is granted custody of a child.

In the same manner, domestic violence has limited impact on an assessment of a child's access to its parent. As is described above, in numerous instances it is stipulated that children must visit the absent parent regularly, even though they are in danger of being subjected to violence. It can be inferred from the way the law is implemented that access is almost always deemed best for the child, irrespective of the behaviour or circumstances of the parent concerned.

Given the limited impact that domestic violence has on decisions concerning custody and visitation, there is reason to doubt that children are guaranteed adequate protection against violence in the implementation of Icelandic law.

The Children's House

The Children's House was established to handle the affairs of children suspected of being victims of sexual abuse. Child protection committees and judges can request the services of the Children's House, where all pertinent services are available in one place; for example, it is possible to conduct interviews and medical examinations, give statements and testimony, and receive treatment there. The idea behind the Children's House is that the child concerned need only appear at one place to tell about his or her experience and can then receive treatment. The demand for services from the Children's House has grown substantially, but budgetary allocations have not increased accordingly.

In general, the police take statements from alleged victims during the investigative stage of a case. In cases involving sexual violations against children under age 15, a judge shall take such a statement; cf. Article 59 of the Act on Criminal Procedure, no. 88/2008. The judge may decide where such a statement is to be taken. As a result, the judge decides whether or not to avail him- or herself of the services of the Children's House when taking statements. Some judges always take statements at the Children's House, while others use courthouse facilities and may or may not engage specialists to hear the testimony. It is not desirable that such an important decision be in the hands of individual judges, as it creates the risk that children will not all receive the same service.

Before the current Act on Criminal Procedure entered into force, a judge was to take statements from all victims under age 18 at the investigative stage of sexual abuse cases. Therefore, the current legislation does not provide children aged 15-18 the same protection as the previous Act. Children in this age group must

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give testimony both to the police and before the court, although describing the violation again and again can cause victims of sexual abuse increased suffering. It is important to ensure the wellbeing of children subjected to sexual abuse, irrespective of their age; cf. Articles 19 and 34 of the Convention. It is also in accordance with the duties of States Parties to ensure appropriate measures to protect the rights and interests of children at all stages of a criminal case and to give special consideration to the needs of children who are victims; cf. the Optional Protocol on the sale of children, child prostitution, and child pornography. Consequently, it must be that the discussed statutory amendment is not in accordance with the child's best interests.

Finally, it should be noted that the Children's House is only used in instances where children have been subjected to sexual abuse. Children subjected to serious physical or mental violence do not receive corresponding service and treatment. The Ombudsman for Children considers it necessary to guarantee comparable measures for children who suffer other types of violence.

Recommendations

- The Icelandic Government shall guarantee the same type of protection against all types of violence.
- The Icelandic Government shall recognise that children are fully valid individuals with their own rights. In accordance with this, the courts should interpret Article 217 of the General Penal Code, no. 19/1940, so that children are provided at least the same protection against violence as adults.
- The Children's Act, no. 76/2003, shall explicitly prohibit acts of violence against children by parents and others.
- Efforts must be made to inform children, their parents or guardians, and the public that it is never permissible to subject children to physical or otherwise debasing punishment, whether for childrearing purposes or not.
- Special instruction shall be provided to parents and children who come from countries where physical punishment is still practised.
- The Children's Act, no. 76/2003, shall be amended to give protection against violence increased importance in decisions that involve children in one way or another.
- The Icelandic Government shall further reinforce the activities of the Children's House so that all children who have suffered sexual abuse receive adequate service.
- The Icelandic Government shall establish a facility comparable to the Children's House for children who have suffered physical or mental abuse.
- The Act on Criminal Procedure shall be amended so that statements taken from children in cases of alleged sexual, mental, or physical violence always take place in the Children's House or a comparable facility.

Basic Health and Welfare

Article 23 – Children with disabilities and long-term illnesses

Affairs of the disabled

A new report from the Icelandic National Audit Office on the affairs of the disabled⁵ seriously criticises the handling of these matters in Iceland. The report states, among other things, that there is no formally approved overall strategy in this area and that budgetary allocations are not based on regular assessments of the need for services, as is provided for by law.

Assistive equipment

The Ombudsman for Children has received comments to the effect that, in some instances, disabled children do not enjoy the same rights as other children. For example, the Social Security Institute provides children with needed assistive equipment at their legal address. When the parents do not live together, the subsidy covers the purchase of equipment at the home of one parent only. This can severely restrict a disabled child's right to have access to both its parents, and equal status of children is not ensured in this respect; cf. Article 2 of the Convention.

Article 24 – Children's health

Dental health

It is clear that the dental health of children in Iceland is deteriorating.⁶ Government participation in the cost of dental repairs for children and youth has declined. Consequently, many parents have neglected to take care of their children's dental health.

For over a decade, no contractual agreement has existed between the Social Security Institute and the Icelandic Dentists' Association concerning reimbursement for dental service expenses. Today, parents are reimbursed according to the Minister's price list, which is not in line with the actual cost of the service, and the reimbursement ratio is therefore constantly declining. As a result, there is the risk that children of less affluent parents will be less likely to receive the dental care they need. This is contrary to Article 2 of the Convention.

Children's visits to dentists have declined in number even though preventive visits for children aged 3, 6, and 12 years are available free of charge. This may well be because parents see no reason to take their child for a free dental check-up when it is clear that the child needs dental repair. The fact is that there has been a surplus on budgetary allocations for dental care in the recent past – at a time when there is a greater need to equalise children's position and guarantee all of them access to dental healthcare.

Dental health is not accorded the same status as other areas of healthcare in the Icelandic welfare system. The Ombudsman for Children considers this abnormal, as dental health plays an undeniably large role in children's overall health and wellbeing.

In September 2009, when new sugar tax legislation entered into force, special excise taxes were imposed on various food products. It was originally said that the objective of this taxation was to protect children's dental health by steering consumer choices; that is, making unhealthy products less inexpensive than they have been in recent years. The Ombudsman for Children considers it appropriate, based on the public health perspective referred to in the bill of legislation later passed as the above-mentioned Act, that some portion of the revenues generated by the Treasury with this tax should be allocated to the protection of children's dental health.

Speech pathologists

The services of speech pathologists are extremely important for children who, for any reason, need assistance in order to express themselves or attain satisfactory understanding of language. Since 2007, there has been a negative trend in the affairs of these children. The Ombudsman for Children has received a large number of comments to the effect that the cost borne by parents for their children's speech therapy has increased substantially and that some parents feel unable to purchase the service. This is unacceptable, as it involves an important aspect of children's rights. Only six speech pathologists in the entire country have a contract with Sjúkratryggingar Íslands, the national medical insurance institution, one of them in the greater Reykjavík area. In instances where speech pathologists have such a contract, the insurance institution pays a large portion of the cost of each session. When speech pathologists do not have a contract with Sjúkratryggingar Íslands, however, subsidy payments are insignificant. It is therefore clear that parents must pay large sums for speech therapy in the vast majority of cases. Clearly, this expense can be quite onerous for parents, and many children do not receive the service they need as a result. In these cases, children are subjected to discrimination on the basis of their parents' financial position; cf. Article 2 of the Convention.

Psychological services at healthcare centres

Healthcare centres provide important services and are the first place people go in the healthcare system. The Ombudsman for Children has received confirmation that healthcare centres do not always offer comparable services for children. For example, free psychological services are only offered to children at certain healthcare centres in the greater Reykjavík area. Children who live in neighbourhoods or municipalities that do not offer such services must therefore seek psychological services elsewhere and pay for them in full. Psychological services can be of vital importance to children's wellbeing; therefore, it is unacceptable that children should be subjected to this sort of discrimination; cf. Article 2 of the Convention.

Children with behavioural and mental disorders

The status of children with behavioural and mental disorders is a matter of growing concern in Iceland. Long waiting lists and

⁵ Icelandic National Audit Office. Report to Parliament: "Service for the Disabled," August 2010.

⁶ <http://www.lydheilsustod.is/rannsoknir/tannvernd/nr/1986>.

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a shortage of solutions for children with such disorders have created an extremely difficult situation for these children and their families. The Children's Psychiatric Department of the Landspítali – University Hospital (BUGL) provides services to children with mental health problems. In June 2007, Parliament approved a four-year action plan to strengthen the position of children and youth and their families. Among other measures, the action plan proposed the adoption of special measures to shorten the waiting list for services at BUGL. The action plan generated immediate results, and the waiting list was shortened.⁷ Since the economic crisis struck, however, cases have grown in number, and the waiting list has grown longer once again. There are examples of children who must wait for as much as a full year for service and treatment.

It is very important to respond promptly to behavioural and mental disorders among children in order to prevent the problems associated with such disorders. The Ombudsman for Children has received comments citing a lack of clear organisation and procedures in this area. As a result, it is often unclear what roles schools, healthcare centres, and social services play, and which institution should handle the various aspects of a given case. Communication among the parties working in this field appears to be limited, and professionals do not know what services have been offered or how successful they were.

The Ombudsman for Children has also received comments on the helplessness of the child protection authorities as regards children who jeopardise their own welfare; for example, due to mental discomfort, behavioural problems, or substance abuse. It is necessary to ensure that sufficient solutions are in place and that, in each instance, the parties involved assess which solutions are suitable for the child concerned. It is also important that children need not wait long periods for appropriate treatment and that they receive assistance as soon as possible.

Children with ADHD

Services to children with attention deficit-hyperactivity disorder (ADHD) have been expanded in recent years. The role of the Centre for Child Development and Behaviour is to serve as the centre of expertise and services for children with ADHD and their parents. The Centre's services have been available only to children of pre-school and early primary school age. When children are diagnosed with ADHD after age 12, they cannot avail themselves of these services. Older children often do not receive the same advice, treatment, and information as younger children. The Ombudsman for Children considers it abnormal that youth who are diagnosed with ADHD should receive less service, as it is clear that the teenage years can prove especially difficult for this group.

Recommendations

- The Icelandic Government shall respond to the comments from the Icelandic National Audit Office and shall work towards the improvements that are necessary to safeguard the rights and interests of disabled children.
- The Icelandic Government shall guarantee all children dental health services free of charge.
- The Icelandic Government shall guarantee all children the speech therapy that they need, irrespective of residence or parents' financial position.
- All children shall be guaranteed comparable services at healthcare centres.
- The Icelandic Government guarantee all children with mental disorders appropriate services immediately.
- The Icelandic Government shall ensure that sufficient solutions are in place for children who jeopardise their own welfare and that, in each instance, the parties involved assess which solutions are suitable for the child concerned.
- The Icelandic Government shall subsidise the operations of the Centre for Child Development and Behaviour and shall ensure that it can provide children of all ages with appropriate services.

⁷ Press release from the Ministry of Health: <http://www.heilbrigdisraduneyti.is/frettir/nr/2774>.

Education, Leisure and Cultural Activities

Article 28 – Education

Accommodation for children with special needs

According to Article 17 of the Compulsory School Act, no. 91/2008, students are entitled to having their academic needs met in public primary schools, without separation and irrespective of their physical and mental capacities. The municipalities are responsible for the operation of primary schools and for the overall structure of school activities. The Ombudsman for Children is concerned that, with cutbacks in staffing and merger of classes, children with special needs will receive less attention and poorer service than before. There is also the risk that, as a result of cutbacks in primary schools, it will not be possible to guarantee access and accommodation for these children.

The Ombudsman for Children has received a number of comments to the effect that facilities for special needs children within the school system are inadequate. In this context, it is worth mentioning that children who need assistive equipment in their daily lives are only allocated one such item. If the equipment in question is bulky or unwieldy, it is necessary to decide whether the child will use it in school or at home.

Students' wellbeing in school

The fact is that many children in Iceland are subjected to bullying at some point in their lives. Such bullying most often takes place in school; therefore, it is important that the schools respond appropriately in such instances. According to the Compulsory Education Act, no. 91/2008, one of the roles of the schools is to ensure students' general welfare and security. According to the National Curriculum Guide for Iceland's primary schools, a strategy for responding to bullying shall be in place in the schools. The Ombudsman for Children is frequently informed that children are subjected to serious and protracted bullying without satisfactory action taken by the school authorities. The Ombudsman for Children therefore considers it necessary to increase the responsibility of all parties within the school community and make them aware that bullying is a social problem.

A February 2010 survey carried out by the Ombudsman for Children on children's wellbeing in school revealed that 15% of students seldom or never feel safe and secure in school, whether in the schoolyard or in the classroom. Safety in school appears to be lacking, and the children's responses indicate clearly that they want increased supervision. It was also notable that about 11% of students said that teachers sometimes or often belittled some of the students. It is important to ensure that children feel good in school and that they consider themselves safe there. If cutbacks to education continue in Iceland, the strain on primary school staff can be expected to increase and supervision of students to decline still further.

Equalisation subsidy

Article 32 of the Upper Secondary School Act, no. 92/2008, discusses the duty to educate, which entitles all persons to attend upper secondary school until age 18. When this provision was passed into law, reference was made, among other things, to the importance of reducing the dropout rate.

In order to ensure that students can attend upper secondary school, attendance may not be unduly costly. In order to meet the needs of students whose legal address is a long distance from an upper secondary school, the State provides equalisation subsidies. Only students who are Icelandic citizens, citizens of countries within the European Economic Area, or citizens of countries with which the Icelandic has concluded international agreements are entitled to such subsidies. It is therefore clear that a small group of students who do not come from the above countries do not receive equalisation subsidies even though they have lived in Iceland for many years and attended primary school here. The rules on the allocation of equalisation subsidies therefore discriminate on the basis of nationality and are in violation of Article 2 of the Convention. This is also in obvious opposition to the Government's objective of reducing the dropout rate among immigrants, as was emphasised in the Committee's comments on the implementation of the Convention in Iceland.

Recommendations

- The Icelandic Government shall ensure that all children receive the education to which they are entitled.
- The Icelandic Government shall ensure that budget cuts do not have a detrimental effect on children's education and on accommodation in the schools.
- The Icelandic Government shall ensure that children with special needs receive comparable opportunities to educate themselves as other children and that their academic needs are met in full.
- Provisions on bullying shall be included in legislation on pre-schools, primary schools, and upper secondary schools.
- The Icelandic Government shall provide equalisation subsidies to all students who complete primary school in Iceland and have a legal address far from an upper secondary school, irrespective of nationality.

Special Protection Measures

Article 37 – Deprivation of liberty, mistreatment, and punishment

Separation of young prisoners from older prisoners

Very few criminally liable children are in prison in Iceland. Nonetheless, it is cause for concern when children in prison are not separated from adult prisoners, as is stipulated in Article 37(c) of the Convention. As is stated above, Iceland made a reservation concerning this Article because separation of prisoners is not enshrined in the law in Iceland. On the other hand, the law does state that a prisoner's age shall be considered in a decision on where he or she shall serve a prison sentence. The Prison and Probation Administration and the Government Agency for Child Protection have made an agreement that children who have been sentenced to prison shall serve their sentences in treatment homes. This is subject to the consent of the child concerned, however, and subject to a Government Agency for Child Protection treatment home's ability to receive the child. This arrangement does not always ensure that children are separated from older prisoners. Experience shows that there are always some who choose to serve their sentences in prison rather than in a treatment home, which is not always best for the child concerned. As a result, the Ombudsman for Children considers it desirable that the agreement with the Government Agency for Child Protection be amended so as to allow for a child to be sent to a treatment home without his or her consent, or for a judge to be authorised to sentence an individual to serve a sentence in a treatment home.

Article 40 – Criminal acts and case handling

Measures in response to violations committed by criminally liable children

Although children are considered criminally liable at age 15, a number of special views apply to violations committed by children aged 15-18. The utmost effort is made to avoid sentencing children to prison unless the violations committed are repeated or very serious. In order to avoid prison terms for these children, a number of measures are adopted in view of their young age. Examples of such measures include deferred indictment, mediation, deferred sentencing, and suspended sentencing. On the other hand, these measures have not always been successful because, in some instances, the young offenders do not realise the severity of their infringements. In the past, suspended sentencing and deferred indictment subject to special conditions monitored by the prison authorities were applied, and these measures were deemed successful. Today, however, it is very rare that a judgment or deferred indictment is subject to any real conditions. The

Ombudsman for Children considers it important to return these matters to their previous state so as to provide young people with increased support and restraint.

Mediation is one of the measures used to respond to infringements by criminally liable young people. It entails bringing the parties together and attempting to reach an agreement between the perpetrator and the victim. There are certain preconditions for mediation; for example, both victim and perpetrator must agree to participate, and the violation must be specified in certain provisions of the General Penal Code, no. 19/1940. The police have stated that work is being done to develop and improve this measure in the greater Reykjavik area, and the Ombudsman for Children welcomes this. On the other hand, the Ombudsman is concerned that cases receiving this treatment have declined in number recently. Furthermore, mediation has not been as widely used in regional Iceland, and the Ombudsman considers it important to promote it nationwide. Moreover, it is worth noting that mediation for children who are not criminally liable has not been used effectively enough by the child protection authorities, and that it is important to intervene in delinquent behaviour among children as early as possible.

One impediment to the use of mediation is that larger companies refuse to participate in the process. They consider it too time-consuming to send an employee to mediation sessions in order to meet a perpetrator who, for example, is caught in the act of theft. The Ombudsman for Children considers it important to find ways to increase companies' participation in mediation, as it is to everyone's benefit to intervene in delinquent behaviour in a constructive way.

Community service

According to Icelandic law, community service is one way of serving a non-suspended prison sentence. An individual who has received a non-suspended sentence of six months or less can apply to provide community service instead of serving a prison term. This measure is not very useful for children who commit crimes, as these children are not sentenced to non-suspended prison terms unless all other options have been exhausted. This arrangement is unfortunate in view of the fact that community service is a solution that could prove useful for infringements by criminally liable children, as it requires that the individual shoulder responsibility for his or her own behaviour in a constructive manner. In order for community service to be useful to young people, it would be desirable if a judge could sentence an individual to community service; for example, instead of a suspended prison sentence.

⁸ Report of the work group on sentencing of criminally liable children, page 6.

Special Protection Measures

Reintegration into society

Although young prisoners receive more assistance from the prison authorities than other prisoners do, the Ombudsman for Children is of the opinion that this service is insufficient. There is little or no cooperation between the child protection authorities and the prison authorities when a child is sentenced to a prison term and chooses to serve the term in prison rather than in a treatment home. As a result, the child protection authorities seem not to monitor children in prison. Furthermore, when young prisoners complete their sentences, there are no special services or options available to help them to reintegrate into society, whether they are still children or not. These children and youth often have to stand on their own two feet, and there is the risk that they will quickly lose their footing once again. It is necessary to provide young prisoners with appropriate assistance and rehabilitation so as to strengthen their self-image and help them to become good citizens.

Prompt handling

The Ombudsman for Children is gravely concerned about the length of time that passes between the commission of a crime and the decision on punishment. When the perpetrator is a child, it is important that he or she need not wait for punishment because children often have difficulty understanding the cause-and-effect relationship between infringement and punishment. It would therefore be more in children's best interests to respond to their violations sooner than is currently done. In order for this to be possible, the child protection authorities and the courts must work together.

Recommendations

- The Icelandic Government shall recall its statement concerning Article 37(c) of the Convention and ensure that young prisoners are always separated from older prisoners if this is considered in their best interests.
- Suspended sentences or deferred indictments shall be used in greater measure, subject to conditions that the young offenders must fulfil.
- The Icelandic Government shall ensure that mediation will be a permanent part of the Icelandic legal system and is available in all police precincts in the country.
- Mediation shall be available for children who are not criminally liable, and a policy for its use shall be formulated.
- A greater variety of punishments for young people shall be enshrined in the law so that judges can avail themselves of them; for example, community service or service of a term at a treatment home.
- More effective cooperation between the child protection authorities and the prison authorities shall be ensured in cases where children serve sentences in prison.
- The Icelandic Government shall assist young people who have completed sentences in prison or in treatment homes and shall support them in reintegrating into society.
- The Icelandic Government shall make every effort to shorten the time lag between the commission of a violation and the punishment when the offender is a child.

