

Supplementary Report from the Ombudsman for Children in Iceland



*Supplementary Report from the Ombudsman for
Children in Iceland to the United Nations
Committee on the Rights of the Child regarding
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About the Ombudsman for Children

The Ombudsman for Children was established in 1995, under the Act on the Ombudsman for Children, No. 83/1994. The Ombudsman is a national, independent supervisory body, entrusted to guard the interests, needs and rights of children. The Ombudsman initiates discussion and points out the need for development of policies, practices, and procedures to promote children's rights and welfare. The Ombudsman highlights issues that are of concern to children and monitors and reviews legislation and other actions of the authorities. The Ombudsman for Children further supports children by providing information and advice on how their rights can be protected and realised.

This report

This report is based on observations made by the Ombudsman, information received from children and other parties, and from research conducted among children. In this report, additional information and updates are provided, to complement the Supplementary report, already provided by the Office of the Ombudsman for Children in October 2020.

Children during the pandemic

During the last two years, the children in Iceland have been active participants in the fight against the pandemic, and their contribution to the protection of vital societal interests, such as public health, has been considerable. While fully understanding the need for swift action during the pandemic, it must be pointed out, that many decisions, having adverse effects on children, have been taken without the input of children or their representatives, and without a prior assessment of the impact on them. Therefore, it has not been possible to take measures designed to reduce the negative impact the pandemic has had on children.

The implementation of the Convention

This shows the need for the authorities to take the next steps in the implementation of the Convention, by introducing processes and working methods that ensure that information is provided to children when applicable and that they are allowed to participate in the relevant decision-making process and that the impact on children of decisions concerning them, is always assessed.

The strain of the pandemic and the restrictions imposed by the authorities, have already severely affected children, however there is a need to examine further, the effects on children, and to monitor and to follow up the long-term effects on children's health and well-being. It is therefore vital that the authorities gather, process, evaluate and assess data, concerning the situation of children, in particular certain groups of children, such as children with disabilities and children with an immigrant background. It is important to monitor children's health, education and need for services and support.

In its last concluding comments to the Icelandic State, the Committee stated that there are insufficient mechanisms for the processing, evaluation, and assessment of data of children. These mechanisms are still lacking, and it has become more apparent with the strain of the pandemic and the many challenges children have had to face. The Government needs to address this fact and act immediately.

Legislation on epidemic diseases

Two examples of omission of children's rights during the pandemic: in April 2021, a law was approved by the Parliament, proposing changes to the existing laws on foreigners and the law on epidemic diseases, allowing for the forced stay of tourists, coming from high risk Covid areas, in quarantine accommodation. Before the Parliament, the Ombudsman for children pointed out that the proposed law was not in accordance with the Convention since the impact on children had not been assessed and the proposed law did not in any way differentiate between adults and children despite proposing severe restrictions on children. Despite the objections of the Ombudsman, the draft law was accepted, without any changes being made to protect

the rights of children. Even though the law never entered into force, it is important to address the way children's rights were ignored through the preparatory work.

In November 2021, the Ministry of Health presented the new draft law on epidemic diseases, stating that the new law would build on the pandemic experience and was meant to ensure rights which are protected by the Icelandic Constitution as well as the European Convention on Human Rights. In a writing, the Ombudsman stated that the official restrictions imposed due to the pandemic have had serious detrimental effects on children's health and wellbeing as well as their rights. The Ombudsman further stated that as a Convention Member State, the Icelandic Government is obligated to undertake all appropriate legislative, administrative, and other measures for the implementation of the Convention. The Ombudsman therefore criticized the fact that in the draft law, with its obvious implications for children, there was no mention of children, their rights, or the Convention. A new draft law on epidemic diseases was then presented in January 2022, and with a reference to the opinion of the Ombudsman, now has a specific mention to the interests of children.

When the final draft law was presented to the Parliament in March 2022, the Ministry rejected the suggestions of the Ombudsman to specifically state in the law that children should be provided with child friendly information regarding measures that concern them, that the impact of all measures based on the law which affects children, should be assessed. In the draft law, the Ministry states that it is unnecessary since the authorities are already dutybound by the Convention. However, it must be stressed, that during the pandemic, the Ministry has failed to consult the Ombudsman for Children or children themselves. Almost every measure undertaken by the Ministry of Health and other relevant health authorities, regarding restrictions and other Covid measures, has been implemented without assessing their impact on children, without children being informed and without ensuring child friendly environment where applicable.

Covid testing of children

The Ombudsman for Children was forced to act when the number of children, even very young children including infants, infected by Covid-19 increased rapidly towards the end of 2021. This meant that large numbers of children were being subjected to PCR testing, in circumstances which were not child friendly, having to stand in long queues outside in the cold winter weather, being tested in premises very unsuitable to the needs causing them unnecessary stress. Further, the staff responsible for the testing, were not licensed health workers and had no training in interacting with children. After the intervention of the Ombudsman, changes were made, children were tested separately, were allowed to jump ahead of the queues and the staff testing children were chosen specifically, however this shows how decisions were made during the pandemic which affected children, with no prior consideration being given to their needs and rights.

Vaccination of children

In August 2021, the Ministry of Health announced that children aged 12 to 15 would be offered vaccination against the Covid-19 virus only 11 days after the announcement. During that time, WHO did not recommend general vaccinations for children and there was a lot of misleading information being circulated in public media, on the vaccinations and possible side effects, causing children and their parents, a lot of stress, and making their decision harder. The Ombudsman pointed out, that there was a need to provide parents with the necessary information, and to give them time for consideration, to allow them to have an informed discussion with their children, to allow them to reach a mutual informed decision, based on the best interests of the child. The lack of necessary information, for both parents and the children, the lack of time given to families to discuss and prepare, on behalf of the Ministry and other relevant authorities, must be criticized.

In January 2022, the Ministry of Health announced that the preparation for the vaccinations of children aged 5-11 years had begun, and in that work, the Ombudsman for Children was consulted. Originally the vaccinations were supposed to take place within schools, during school time, which was criticized by the Ombudsman, since the schools are meant to be a safe space for children. The Ombudsman also had other

concerns, for instance over how to ensure the privacy of children regarding highly sensitive and personal information on their choice in the matter within the schools. Right before the vaccinations were to be carried out the decision was changed and health authorities announced that the vaccinations would not take place in schools, due to the lack of staff.

However, although the vaccination of younger children was given more time and consideration, and children were indeed provided with information, this shows that these decisions were first and foremost taken on the grounds of societal interests such as public health and efficiency but not on the best interests of children. This further applies to most of the decisions taken during the pandemic which affected children.

It is the opinion of the Ombudsman that these abovementioned examples manifest that the rights and interests of children of children, according to the Convention, should be addressed in the new law on epidemic diseases.

Children with disabilities and long-term illnesses during Covid-19

Disabled children and children with long-term illnesses have been particularly affected by the restrictions in schools and in recreational settings, since the necessary support to them has in many cases been limited. Children with certain disabilities struggle with digital education and many children with disabilities need certain teaching methods or equipment which were often unavailable during the pandemic, with home schooling and limited staffing at schools. It is therefore foreseeable, that many children will struggle in school during the next years, because of the added restrictions applying to them and challenges they have been facing. Many children have also struggled with the disruptions in their daily lives, which the pandemic and the restrictions have caused. It is therefore necessary to ensure that schools are aware of the different needs of children which need to be met, even in the time of crisis.

A recent survey showed an increase in the number of children with ADHD, suffering from emotional difficulties, during the pandemic, with restrictions causing disruption in their daily lives and their social interactions. According to the study, their parents have also experienced more anxiety, stress, and depression. Although this research

focused on children with ADHD and their families, it is likely that other groups of children, facing similar challenges, are having the same difficulties and it is therefore vital that support is provided to children with special needs and their families.

Protective quarantine

During certain periods of the pandemic, the Directorate of health encouraged the parents of children with certain disabilities and long-term illnesses to keep them away from schools and day care. Many parents to children with disabilities decided to go without the necessary support services, due to the infection risk, which increased the stress and the working load in these families.

In many cases, the siblings of these children, had to stay at home in protective quarantine, due to the infection risk and the risk to the disabled or sibling with long term illnesses. This meant that these children had little access to education and have in many cases experienced little support from their schools, meaning that the parents were partly or wholly responsible for their education. In many cases, these children have been left behind in school and are struggling to catch up. The ability of the parents to assume the responsibility for the education is varied, particularly for the parents responsible for the care of a disabled child, also working from home during the pandemic. There needs to be more research done on the effects of lack of services, lack of access to education, and the long-term effects of the care-weariness of the parents and the families involved.

Children in isolation or quarantine and their right to education

During certain periods of the pandemic, children in large numbers were subjected to isolation and quarantine, and according to information requested by the Ombudsman from the Directorate of Health, a great majority of Icelandic children have been subjected at least once to quarantine, and over a thousand children have been subjected to quarantine more than four times.

This means that a great number of children have missed weeks or even months of schooling and their chosen recreational activities, added to the general restrictions which applied to all children. The Ombudsman has therefore notified the Ministry of

Education and Children, of the need to address the fact that the support of schools, being provided to children in isolation or quarantine, has been very diverse, and therefore the Ministry needs to provide guidance to the schools, on how to support children in their education, in these circumstances or other times of crisis.

Digital education

In many cases, schools resorted to digital teaching during the pandemic, due to the restrictions imposed on schools. While it was positive, that the schools tried to find ways to continue teaching despite the restrictions, the digital education poses new challenges.

Even though around 98% of Icelandic households have access to internet, there are still homes without an internet connection and where there are no computers or tablets. These are the homes of children living in difficult social circumstances and poverty, many of whom are the children of divorced or separated parents or have parents with an immigrant background. These children are therefore already at risk and many of them are facing increased difficulties in keeping up with their peers in school. There is a need for further guidance to the schools, requiring them to consider the needs of all the children, before resorting to digital education, by enquiring if all of them have the necessary access to equipment and an internet connection, and if not, special measures need to be taken, such as providing them with the necessary equipment or giving them access to certain premises at their schools to allow them to keep up with the education and their peers.

Children of immigrant background in schools during the pandemic

Research has shown that the situation of children in vulnerable circumstances has worsened during the pandemic, they have become isolated and struggle to keep up in school.

This applies particularly to children with an immigrant background. Many of these children have parents who work long hours and don't have Icelandic as their first language, which makes it harder for them to support their children during restricted schooling and digital education, and these parents also are struggling to take part of the constant flow of information, from the schools and the authorities, on the pandemic and the imposed restrictions.

Report to the Parliament on compulsory education

In a recent letter to the Ministry of Education and children, the Ombudsman pointed out, that according to Article 4 of the law on compulsory education, No. 91/2008, the Ministry should present a report to the Parliament, every three years, on the execution of education in compulsory schools. So far, only one such report has been presented, in the year 2018. In the letter the Ombudsman stated that the Parliament needs to be allowed to fulfil its role in supervising the actions of the Ministries, and it is vital that such a report, which the Ministry by law should present every three years, is presented as soon as possible, to form the basis of a holistic assessment on the effects of the pandemic and the subsequent restrictions on the execution of education in recent years.

Students in upper secondary education

The emphasis of the authorities during the pandemic, has been to impose less restrictions on younger children in compulsory education, meaning that more restrictions were imposed on children in upper secondary education. The restrictions have been quite far reaching in upper secondary schools, where many of the students have had very limited schooling within the school premises during the last two years. However, the effects were different in different schools, based on the organization of the education and the size of the schools. With periods of digital teaching, students

have had to rely on their own abilities, and students with learning difficulties, lack of parental support, or students with no access at home to computers or an internet connection, were struggling to keep up with their peers. There are indicators showing that this has increased the social inequality among the students which needs to be monitored and assessed.

The Participation of children in recreational activities

Pandemic restrictions affected the recreational activities of children, in different ways during different periods, and the information about the restrictions was either lacking entirely or was confusing or misleading, causing stress to children and their families as well as the organizers of such activities. Despite the restrictions disrupting the daily lives of children, they were not provided with the necessary information, to allow them to understand the need for restrictions and what they entailed.

The long-term restrictions and the constant uncertainty may cause an increase in the number of children who drop out of organized recreational activities; therefore, it is important to monitor whether the number of children who are not involved in such activities will grow in the years to come. The focus and the discussion on children's participation in recreational activities during the pandemic has mainly been on sports. There has been less emphasis and less discussion on other recreational activities for children, such as their societal participation in for instance youth and student councils which in many cases have been inactive for longer periods of time. It is important that the authorities ensure equality, so that children are given equal opportunities to participate in the recreational activities of their choice, and that the importance of youth and student councils is highlighted and that active measures are taken, to ensure their operation and participation in decision making, during crisis.

Recently, the Ombudsman for Children wrote a letter to the Ministry of Education and Children, enquiring whether the Ministry intends to introduce a regulation, to implement the provision in the law on upper secondary schooling, on school boards. It is the opinion of the Ombudsman that there is a need for a regulation to clarify the role and mandate of the school boards and more importantly to ensure the meaningful participation of students in the work of the boards. The Ministry has replied and says it is considering the proposal.

Bullying in compulsory education

Surveys have shown that during the pandemic, there has been an increase of children, experiencing bullying in compulsory education. It is important to monitor and assess this development. During recent years, the Office of the Ombudsman has been concerned over the growing numbers of complaints to the Office concerning the handling of these cases by the schools and the municipalities. In 2021, the Ombudsman for Children, together with several organizations, such as the Association of teachers and the Association of school leaders, the Association of municipalities and the National Association of Parents, wrote a letter to the Ministry of Education. In the letter the need for further measures is stated, to support municipalities, schools, parents, and students, in complex cases concerning bullying, where there are challenges in the communication and the trust between the schools and the parents of the children involved, negatively affecting the possibilities for a solution. In the letter it is stated that there is a need to involve an impartial professional party, to protect the interest of the child. The Ministry has not acted on this proposal.

Ruling in a District Court on violence in an educational setting

In a recent ruling in a District Court, in a case concerning the dismissal of a teacher from compulsory education, following an incident where the teacher slapped a student in the face, the wording of the ruling is concerning, and could indicate that judges are not fully aware of the Convention and its total ban against any form of violence against children in all setting.

In the case, a child had ignored the instructions of a teacher, which led the teacher to take hold of the wrist of the student, who objected to being touched and slapped the teacher, who then slapped the child back. In the ruling of the Court, it says that the slap of the teacher cannot be considered as an isolated event but must be considered as a part of a sequence of events, and the court references to the refusal of the child to follow the teacher's instructions as well as the behavioural issues of the child. In the ruling, the Court states that while it does not approve of the actions of the teacher, it considers them understandable, in these circumstances.

In a letter to the Ministry of Justice and the Judicial Administration, the Ombudsman pointed out that if courts considered violence against children justifiable on the ground of their own behaviour, despite the total ban against any form of violence against children, it means that children with behavioural issues, already in a vulnerable position, are discriminated against and do not enjoy the protection against violence provided by national law and the Convention. In the letter, the Ombudsman stated that there is a need to educate professionals within the judicial system, on children's right to protection against all forms of violence in any setting, and on the different forms of violence, and its detrimental effects on children.

Violence against children

A growing number of children have been subjected to violence during the pandemic, with more time spent in their homes and further isolation has increased the risks, with less access to support and less supervision of children in vulnerable situations, by school staff and others working with children. Further, the digital teaching and more unsupervised screen time has exposed children to added risk of violence in the digital world.

There has been a significant increase in the notifications to the child protection authorities concerning violence and neglect towards children, which in part can be explained by more awareness of children's situation and the duty to report. However, the situation of children has worsened, and they are being exposed to more violence, which needs to be addressed. The Children's House, the Barnahus, providing specialized support and services to child victims of serious abuse, has waiting lists, which also applies to other child protection services. There is a need to strengthen child protection services and more emphasis needs to be placed on educating children on their right to protection against all forms of violence, in any setting, and on educating them on their right to support services and how to access it.

Action plan and the rights of LGBTQI+ children

In March 2022, the Government presented to the Parliament a new action plan on the matters of LGBTQI+ people with two planned actions for children, both to be carried out by the Ministry of Education and Children. The first action addresses the situation of children in different recreational activities, and the aim is to produce educational material and to ensure that those responsible for such activities have a policy on equality which addresses the access of LGBTQI+ children.

The other action concerning children, is an action on the health and wellbeing of LGBTQI+ children in schools, with the aim to integrate surveys on the wellbeing of LGBTQI+ children in school, with other regular surveys done in school. The action plan states that this project should start in the year 2024, meaning that no suggestions for actions will be presented until year 2025. In recent years, research, and surveys, performed regularly in schools as well as other surveys and research, such as surveys done by the National Queer Organization of Iceland, have already shown that the situation of LGBTQI+ children in Iceland is grave, many of them are already suffering from anxiety, self-medication, self-harm, and even suicidal thoughts. This was already stated in the Supplementary Report of the Ombudsman for Children to the Committee, submitted in 2020.

The Ombudsman considers these actions to be important and timely actions but has voiced concern that the action plan is not adequately funded, and considering the present uncertainty on State budget, it is unlikely that these projects will be completed. It is time for action and to address the situation of LGBTQI+ children, the Government needs to prioritize on their behalf and provide for real and effective measures.

The new law on integrated services and the policy of early intervention

During recent years, the Government has announced major systematic changes in the framework for services to children, based on early intervention. In 2021 a new law on the integration of services to children was approved, with the aim of ensuring that children and parents in need of services have access to integrated services without any obstacles. The new law defines service tiers and the responsibility of different service providers, with an emphasis on the responsibility of service providers in the near environment of children, mostly in the municipalities. The preparation of this work has been ongoing since 2018, and the Government, has allocated large sums to its implementation, which is now under way. However, some municipalities are already critical to the implementation of these changes, mainly to be implemented in the municipalities, the full cost of which, will not be covered by the State, meaning that smaller municipalities will struggle. When the draft bill for the new law was presented by the Ministry, the Ombudsman was critical to the fact, while fully supporting the new emphasis on children and early intervention, the new law does not fully address the current situation, with long waiting lists for children in all areas of specialised services. It is the opinion of the Ombudsman, that implementing the new law will take at least four more years, and its implementation does not eradicate the already long waiting lists for specialised services. Hopefully, the full implementation of the law in accordance with the plan, will lessen the need for specialised services, since children are meant to get help sooner, in more general services. However, the new law does not provide a solution to the critical situation in all specialized services for children, which needs to be addressed urgently.

To Ombudsman for Children has recently started a new project of monitoring the waiting lists, by gathering information for service providers and disseminating it on Ombudsman's website. An update will be published twice a year, to monitor the development. According to this information, there are long waiting lists in all mental health services, for speech therapy, for counselling and diagnosis of developmental disorders and in the handling of disputes concerning the custody or access of children and in the handling of cases concerning children by judicial authorities. Long waiting lists for specialized services, will prevent early intervention, which is the aim of the

new law, and are the most pressing issue concerning children in Iceland today. There is an immediate need for very significant funding on a sustained basis, allocated to increase the variety and capacity of service providers, to support children and families in desperate need.

The role and the independence of the Ombudsman for children

The Office of the Ombudsman for Children was established on 1st January 1995 and operates under the law on the Ombudsman for Children, No. 83/1994. In the preparatory work for the law on the Ombudsman, the need to ensure the independence of the Ombudsman is stressed, so that the Ombudsman can fulfil the role of being the official spokesperson for children, and work towards the goal of ensuring that the authorities, individuals, associations, and companies, fully respect the rights, needs and interests of children in all areas of society.

Article 1 of the law on the Ombudsman for Children states the full independence of the Ombudsman while Article 8 states that the Prime Ministry is responsible for monitoring the finances of the Office of the Ombudsman. In the preparatory work for the law on the Ombudsman it states the need for the Ombudsman for Children to be affiliated to the Prime Ministry rather than the Ministries of Social Affairs, Justice, or Education, since these are the ministries with the responsibility for most matters concerning children directly. In the preparatory work it is further stated that impartiality of the Ombudsman towards these ministries is a precondition for the full and effective work of the Office. It is further stated that to ensure public trust in the work of the Ombudsman, it is necessary to ensure the Office is not affiliated with a Ministry directly responsible for policy matters concerning children, since it is foreseeable that the suggestions and criticism of the Ombudsman is likely to be directed towards those ministries. The affiliation of the Ombudsman to the Prime Ministry has been ongoing since 1995 and has been a success, ensuring the independence of the Ombudsman and the access of the Office to support from the Ministry concerning financial matters.

Last year Parliamentary elections were held in Iceland and as the new Government was presented in November major changes to the structure and role of the different ministries was introduced. Among the changes announced was that a new Ministry of

Education of Children, with the responsibility for many policy areas concerning children, such as policy and children and child participation, education, child protection services, the new law on integrated services for children among other policy areas concerning children, was to be established. When the new Government was presented, the Ombudsman was informed of the decision of the Government to add the Office of the Ombudsman for Children to the list of institutions affiliated with the new Ministry of Education and Children. Before this decision, which breached both the provisions and the very spirit of the law of the Ombudsman for Children, the Ombudsman was not consulted or informed, and no satisfactory explanation was given as to why this decision was taken, which the Ombudsman considered to compromise the independence and the role of the Ombudsman's Office, as the official spokesperson for children. Following the protests of the Ombudsman, this decision was withdrawn and the role of the Ombudsman and its affiliation with the Prime Ministry, as before, has now been restored. However, this decision has shown how vulnerable the Office of the Ombudsman for children is against the Government and changes in political policies. In recent years the Office of the Ombudsman for Children has been strengthened and given additional funding and staff, as well as new roles and responsibilities, allowing the Office to pursue its work even more vigorously, making a significant impact in the lives and situation of children. This has in many cases involved criticizing the actions or inactions of different ministries. It is the view of the Ombudsman that further protection needs to be provided to the Office of the Ombudsman, to ensure the independence and the full function of the Ombudsman, the only public institution legally bound to ensure that all public entities fully protect. The Ombudsman has therefore entered a discussion with the Prime Ministry, on the possibility of changes in law, stating that the Office of the Ombudsman for Children should be affiliated to the Parliament like the Office of the Parliamentary Ombudsman, to ensure its independence from the Government and its different Ministries.

Ensuring the independence of the office is also important due to the intention of the government to establish an independent human rights institution, in accordance with the Paris principles. It has been voiced whether such an institution could be established by moving around funding or staff, where the Ombudsman for Children would be a department, under a board, which also would be responsible for other departments. The Ombudsman has argued against such a structure on the grounds

that the matters of children tend to have less priority, when becoming a part of other human rights issues and other groups, such as gender equality, where there are many strong activists and organizations. Children are a vulnerable group, with limited access to public discussion, as well as policy and decision making, and therefore need to rely on their spokespersons, such as the Office of the Ombudsman for Children. The Ombudsman has expressed a willingness to explore any ideas of cooperation and rationalization with other institutions working for human rights, such as sharing office space or equipment and staff. The ideas of the Government to establish an independent human rights institution, cannot be implemented by abolishing the only public entity, which by law is entrusted with the role of being children's public spokesperson, advocating for the full respect and realization of children's rights in all areas.