

Visit report

Stuđlar Diagnostic and Treatment Centre for Juveniles

27–28 November 2018

Summary

The Althingi Ombudsman visited the emergency unit of Stuðlar Diagnostic and Treatment Centre for Juveniles (*neyðarvistun Stuðla*) on 27th – 28th November 2018. This was the Ombudsman's second visit on the basis of the OPCAT mandate. On 14 November 2019, a second visit to the emergency unit of Stuðlar was carried out by one of the Ombudsman's legal advisor.

Stuðlar is a treatment centre for children 13-18 years of age and it is operated by the Government Agency for Child Protection. The purpose of the emergency unit is to secure the safety of children e.g. because of severe alcohol and drug use, behavioural problems, unsolved crimes, violence, homelessness or disruptive behaviour. The aim of a placement in the emergency unit is to end undesirable behaviour while the Child Protection Committees prepare other placement options. The maximum permitted stay at the emergency unit is 14 days.

Generally, children are placed in the emergency unit of Stuðlar by decisions of the Child Protection Committee of the municipality where they are domiciled. Supervisors of other treatment centres operated by the Government Agency for Child Protection can also request a placement for children undergoing treatment at these centres if they have shown harmful behaviour. Neyðarvistun Stuðla is an emergency unit, and the children staying there are generally not allowed to leave the unit unless accompanied by a staff member. Therefore, the children are, in effect, deprived of their liberty in accordance with the OPCAT's broad definition thereon, whether or not they have approved their placement.

The Ombudsman's visit brought to light various issues regarding the rights of children and their guardians concerning their placement, conditions and treatment in the emergency unit which in return required closer investigation. This can partly be explained by unclear legal basis on these issues and the fact that the Minister of Social Affairs and Children has not adopted regulations as required by certain provisions of the Child Protection Act.

The Ombudsman's observation revealed that the requests for child's placement is only exceptionally done in writing and accompanied by the Child Protection Committee's decision or the parent's and child's consent. Thus, the legal basis for a child's placement is not always clear. Therefore, the Ombudsman recommends, *inter alia*, that the Government Agency for Child Protection and the emergency unit of Stuðlar take appropriate measures to ensure that these requests and decisions meet certain requirements to guarantee that the legal basis for a child's placement is clear. Moreover, they have to ensure that children, their guardians and the staff of the emergency unit are informed of these procedures.

In the report, it is pointed out that even though a child has been deprived of its liberty on the basis of a lawful decision, decisions to restrict its rights have to be in accordance with law and strictly necessary. According to Section 82 of the Child Protection Act, the principle is that the use of coercive measures or serious disciplinary measures and interference with the right to respect for private life of a child, which is placed in an institution or home for which the state is responsible, is forbidden. The exceptions set out in the provision are unclear and allow for a wide margin of appreciation. The provision also provides that its application is to be set out in more detail in a regulation. This regulation has not been adopted. The Ombudsman recommends that the Government Agency for Child Protection and the emergency unit of Stuðlar clarify which actions and decisions entail coercive measures and interference with the child's rights to respect for private life, ensure that the application of such measures have a sufficient legal basis and that they are in accordance with Section 82 of the Child Protection Act, the Constitution and the human rights principles set out in the report. Moreover, it is recommended that the Government Agency for Child Protection and the emergency unit of Stuðlar

clarify which decisions are defined as administrative decisions subject to the provisions of the Administrative Procedures Act. It is recommended that the Agency and Stuđlar review their procedures in this regard to ensure that these decisions are dealt with appropriately and are consistent with the provisions of the Administrative Procedures Act.

Although a clear legal basis for the use of coercive measures and other interferences in the emergency unit of Stuđlar is sometimes absent, there were no indications of inhuman or degrading treatment towards the children. It appears that the staff is concerned for the children and endeavour to the best of their ability to perform their work in accordance with their responsibilities.

Children staying in the emergency unit of Stuđlar generally appear to enjoy good living conditions and the staffing is adequate. However, recommendations are put forth regarding, *inter alia*, the boundaries between safety issues and a welcoming atmosphere in the unit, the addition of a reception and visiting areas that take into account the sensitive situations of the children and safety issues in the children's environment. Furthermore, it is recommended that efforts are made so that the compositions of the group of personnel allows for both female and male staff members working on each shift.

Stuđlar is not a healthcare institution and it does not provide healthcare service or treatment. If a child is in need of health care, it is entitled to it according to the Act on Health Services and the Patients' Rights Act. In the report recommendations are put forth to the Minister of Social Affairs and Children and the Minister of Health to consider how to secure that children, placed at the emergency unit of Stuđlar, receive a general health examination when they arrive there or soon thereafter. Additionally, it is recommended that the Ministers consider how to secure appropriate health services for the children during their stay, both as regards mental and physical health, and to prevent general staff members at Stuđlar taking on the tasks of medical staff.

In the report, recommendations are put forth to the Government Agency for Child Protection and the emergency unit of Stuđlar to ensure that children, their guardians and staff members receive information, *inter alia*, on the children's rights and on statutory complaints and appeal procedures in relation to the service and treatment provided in the emergency unit.

Certain recommendations are also specifically addressed to the Minister of Social Affairs and Children pertaining to legislative issues disclosed in the report. These issues relate, *inter alia*, to the adoption of regulations and rules required by the Child Protection Act and concern the placement of children in a home or institution for which the state is responsible, cf. Section 79 of the Child Protection Act, and the activities of the aforementioned places. Additionally, the recommendations relate to enforcing plans to increase available places in Stuđlar and/or to find ways, in accordance with the legal obligation of Section 79, to ensure that resources are available for children needing a placement in an institution or a home for which the state is responsible. The emergency unit must be equipped to accommodate more children. This means that there has to be enough space in the building for additional placements, and the funds allocated to the emergency unit have to be in accordance with the obligation placed on the unit in this respect.

The legal development as regards the authorisation to use force or coercion and to infringe a person's right to privacy and other rights of individuals protected by the Constitution or human rights conventions has been to require clearer legal basis and stricter assessment as to the necessity of the measures. Section 82 of the Child Protection Act no 80/2002 provides for a wide margin of appreciation in this regard. The provision provides that its application is to be set out in more detail in a regulation. This regulation has not been adopted. For that reason, the recommendation is put forth to the Minister of Social Affairs and Children to suggest amendments to the Child Protection Act in order to better guarantee the legal rights of children deprived of their liberty and placed in homes or institutions for

which the state is responsible, cf. current Chapter XIII of the Child Protection Act no 80/2002, to the extent the authorities responsible for this matters consider necessary. Then it is the task of Althingi to decide which measures to implement into law. Furthermore, it is recommended that the law stipulate clearly which administrative body takes decisions regarding children placed in homes and institutions for which the state is responsible, *inter alia*, in order to make it clear where to complain about or appeal these decisions, what is the higher authority in this respect and reviews the decisions. Furthermore, to consider whether or not it is necessary to implement more detailed provisions on the children's rights to appeal decisions on infringement of rights and the use of force or coercion to the Welfare Appeals Committee, cf. Section 82 (6) of the Child Protection Act.

The Ombudsman will continue to monitor the progress of these matters but requests that Stuðlar, the Government Agency for Child Protection and other relevant authorities inform him of their reaction to the report before 1 December 2020.

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