

# **Visit Report**

## **Klettabær Initial Report on Privately Operated Residential Facilities for Children**

**9 and 12-13 June 2023**

**OPCAT monitoring of facilities where  
persons deprived of their liberty reside**

## Summary

The Althingi Ombudsman and staff visited Klettabær's residential facilities in June 2023 on the basis of OPCAT monitoring of facilities where people are or may be deprived of their liberty. Klettabær is a private institution where residents stay based on agreements between their municipality of legal domicile and Klettabær. This was the second visit by the Ombudsman to private residential facilities for children. In this instance the inspection focused on eight individual residential facilities for children with multiple challenges aged 13-18 years, where two or more staff members were on duty 24 hours a day.

Those using Klettabær's services are mainly children and young people with multiple challenges, i.e. serious behaviour problems, mental disorders and/or developmental disorders and possibly additional problems with substance abuse or self-harming behaviour. Many of the children also have a history of violence or threatening behaviour. In some cases, difficult home conditions may also be involved.

All the children visited stay in their own apartment, all of which are located in the capital area. These were spacious apartments where the children had their own room as well as a kitchen, living room and sanitary facilities. Interviews with the children, their relatives and the staff usually revealed that they considered the facilities at Klettabær good in this respect.

The services for the children visited by the Ombudsman are the responsibility of municipalities, but in the cases in question they have entrusted a private party, i.e. Klettabær, with providing them on their behalf, on a contract basis. The children were placed in Klettabær either on the basis of the Child Protection Act, the Act on Services for Disabled Persons with Long-Term Support Needs or both Acts. The Report makes recommendations to municipalities that they ensure that it is always clear on what basis a child is placed in Klettabær or other similar residential facilities, that the facility clearly understands the basis of the placement, and that the arrangements for the placement take into account the rules that result from it. The recommendation is also made that municipalities always seek the advice of a team of experts when deciding whether to place a child with multiple challenges and/or disabilities outside the home, as provided for by law.

When a statutory service of an authority has been outsourced to a private party, it falls under the Ombudsman's mandate to consider whether the authority has sufficiently ensured that the provision of the service is in accordance with the law. To this end, various recommendations and suggestions are addressed to municipalities regarding their service level agreements and requirements. The municipalities are also made aware that assessment of service needs, decisions about services and the substance of support programs are their responsibility. The recommendation is made that municipalities carry out regular, target-based, performance evaluations of children's placement in Klettabær.

Children's right to self-determination regarding their personal affairs is a principle upon which the activities of homes and institutions providing statutory services for children, whether operated by the state or municipalities or as private parties providing services under contract, are to be based, although that right may be subject to certain limitations in consideration of the child's safety and well-being. However, interference with freedom and privacy must always be supported by a clear legal authority and necessity. The report recommends that the Minister of Education and Children take the initiative to ensure that there is an appropriate legal framework for applying coercive measures against children in homes and institutions under the aegis of the state and municipalities, provided that it is the will of the authorities and parliament to authorise such measures. This is a reiteration of the Ombudsman's previous

recommendations, made in a report of 2020, in connection with a visit to the emergency accommodation at Stuðlar, the government's treatment centre for juveniles.

Decisions by the authorities involving coercive measures or compulsion of some kind are onerous administrative decisions and subject to the provisions of the Administrative Procedures Act and Information Act, as well as the unwritten principles of administrative law. The authorities may not delegate their power to take such decisions without clear statutory authorisation. Such authorisation is found in the Child Protection Act; however, the Act on the Protection of the Rights of Disabled Persons assumes that compulsion towards disabled persons is generally unauthorised without a prior decision of the Committee on Exemption from the Prohibition of the Use of Compulsion, which operates on the basis of the latter Act.

The report recommends to Klettabær that it conduct its operations with regard for the legal position that the use of compulsion against service users, who due to their disability are covered by the provisions of the Act on the Protection of the Rights of Disabled Persons, is unauthorised except in emergency situations, unless an exemption from the prohibition on the use of compulsion has been granted. If such compulsion is deemed necessary, the recommendation is made that Klettabær follow up on requests to the authorities for advice and, as the case may be, an exemption from the ban on the use of compulsion. Furthermore, the recommendation is directed to the Minister of Social Affairs and Labour that the Minister examine and assess whether the legal security of disabled persons is sufficiently guaranteed in practice, based on the current legal framework concerning the use of compulsion.

In light of the challenges of the children staying in Klettabær's residential facilities, incidents may arise where employees feel they need to intervene in situations in some way, e.g. to ensure the safety of the children themselves, employees or others. The report recommends to Klettabær and the relevant municipalities that they define what actions and decisions regarding the children involve coercive measures or compulsion, within the meaning of the Child Protection Act and the Act on the Protection of the Rights of Disabled Persons. The same parties are directed to analyse the nature and content of the decisions taken towards the children with the aim of defining which decisions are considered administrative decisions in the sense of the Administrative Procedures Act. An analysis must also be made of whether there are sufficient statutory grounds for delegation of authority to make such decisions. Following such an analysis, it is recommended that a co-ordinated procedure be prepared for actions and decisions that are considered administrative decisions under the Administrative Procedures Act, so that employees follow the proper channels.

The recommendation is made that Klettabær make sure that the children are informed about the rules that apply at any given time in the residential facilities and the possible consequences of breaking them. The recommendation is also made that restrictions on telephone calls to certain parties, imposed due to the assumed discomfort of those parties, be removed.

Most of the children visited by the Ombudsman and his staff live in considerable social isolation. This was evident, inter alia, in interviews with the children and their guardians. Very few children, for instance, could communicate with their friends through social media or meet them in person without an employee of Klettabær being present. In this regard, the recommendation is addressed to Klettabær to consider and assess the importance of security considerations vis-à-vis the harm of social isolation and, where applicable, review the existing arrangements.

The report recommends that Klettabær make sure that unexpected incidents are reported to the Quality and Supervisory Authority for Welfare, as provided for by law, and that guardians are notified of serious incidents, such as self-harm and the use of force. It is also necessary to

ensure debriefing with the children in the wake of serious incidents as well as their recording, including details of who exercised force and the child's comments.

During the Ombudsman's visit, it was revealed that the children generally need to inform Klettabær's staff as to why they want to see a doctor and that a doctor is not always contacted following the use of force. With reference thereto, the recommendation is addressed to Klettabær to stop the practice of requesting grounds for children's proposed communications with healthcare professionals and systematically invite the children to contact or see a doctor following use of force. Recommendations are also made to Klettabær regarding procedures for medicine administration and staff training in that regard.

According to interviews and available data, therapists and other professionals have limited involvement in the day-to-day care of the children. In that regard, recommendations are addressed to the municipalities and the relevant Ministers that they examine and assess whether children staying in Klettabær receive the specialised and multidisciplinary services they are entitled to and to make improvements if deemed necessary.

Laws, regulations and international standards emphasise the education, training and skills of staff who work with children placed outside their home and children with developmental and mental disorders. In this regard, the recommendation is addressed to Klettabær that it seek ways to ensure the involvement of professional workers in the care of the children, for at least part of their waking hours, and to provide staff with appropriate education on the children's rights. A suggestion has also been made to Klettabær that it consider increasing the diversity of its workforce.

The report draws attention to the importance of clear and efficient means of complaint, appeal and referral. Recommendations are directed to Klettabær and the municipalities regarding the handling of complaints, including their recording, prompt handling and guidance. Recommendations are also addressed to the municipalities regarding children's access to representatives of child protection and social services and their possibilities of expressing their views, for example, with the help of a spokesperson, lawyer or rights protection officer. In that context, the suggestion is addressed to the relevant Minister to consider whether the children's right to a spokesperson's assistance or other rights protection is sufficiently guaranteed in cases concerning their placement outside the home. Municipalities and Klettabær are advised to map out the children's rights and inform them, as well as their families and, where applicable, spokespersons, about them in an accessible and comprehensible manner. Finally, recommendations are made to the municipalities regarding predictability for the children regarding the length of their stay in Klettabær and reassessment.

A child entrusted by the authorities to another party for care, protection or treatment has the right to have its treatment and all other circumstances regularly monitored and supervised. The recommendation is addressed to Klettabær that it ensure that internal monitoring of the activity is in accordance with statutory provisions and the suggestion is directed to the Minister of Social Affairs and Labour that the Minister consider whether there is reason to issue a regulation on internal monitoring, in accordance with the relevant statutory authorisation. The recommendation is directed to municipalities that they have satisfactory internal monitoring of the placement of children in Klettabær and to the Minister of Education and Children that the Minister issue a regulation on internal monitoring of child protection services as provided for by law.

The report outlines the statutory responsibility of the state and municipalities for services to children with multiple challenges. In recent years, the trend has been that responsibility for remedies for this group has been mostly shifted from the state to the municipalities; however,

due to their varying ability to provide the services, the latter appear to have resorted increasingly to resources run by private parties. Work is currently underway in the Ministry of Education and Children on reviewing the organisation of services for children with multiple challenges. Irrespective of that, there is reason to emphasise the considerations outlined in the report regarding the basis on which statutory tasks of the state and municipalities can be turned over to private parties, including that proper monitoring of the activities must be ensured.

The Ombudsman will continue to monitor the development of these issues, but requests that Klettabær and the relevant municipalities to whom recommendations are directed give an account of their response to the report by 1 January 2025.

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