

# **Visit Report**

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

**25-27 April 2023**

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

## Summary

The Althingi Ombudsman and staff visited Vinakot's residential facilities in April 2023 on the basis of OPCAT monitoring of facilities where people are or may be deprived of their liberty. Vinakot is a private institution where residents stay based on agreements between their municipality of legal domicile and Vinakot. This was the first visit by the Ombudsman to private residential facilities for children. In this instance the inspection focused on residential facilities for children with multiple challenges aged 13-18 years, where at least one staff member was on duty 24 hours a day. There were three single places and one double.

Those using Vinakot'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.

The accommodations were in general spacious, as 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 Vinakot 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, Vinakot, with providing them on their behalf, on a contract basis. The children were placed in Vinakot either on the basis of the Child Protection Act or the Act on Services for Disabled Persons with Long-Term Support Needs. The Report makes recommendations to municipalities that they ensure that it is always clear on what basis a child is placed in Vinakot 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 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. These also concern assessment of service needs, decisions about services and the substance of support programs, as well as the involvement of the children in such planning. The recommendation is made that municipalities carry out regular, target-based, performance evaluations of children's placement in Vinakot.

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 the 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 Vinakot 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 Vinakot 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 some of Vinakot's residential facilities, one full-time position is allocated per shift, including for the single facilities, so in some cases a child is alone in a facility with an employee. There are examples where Vinakot considers the staffing needs to be greater than provided for in the municipalities' assessment, but there are also examples where the municipality provided for two employees to be on duty with a child, but there is only one for at least part of the day. There are also examples of male employees being alone on duty with a girl. In this regard, the recommendation is directed to Vinakot that staffing in the residential facilities be in accordance with the municipality's assessment of staffing needs and to ensure, bearing in mind the safety and special needs of girls, that at least one female employee is on duty with girls. The recommendation is also made to municipalities that they examine and assess whether the security of the service users is sufficiently guaranteed in cases where a contract provides for a single employee to be on duty with a child. Finally, the recommendation is made to Vinakot that it ensure that employees know the location of emergency alert buttons and the suggestion is made that an examination and assessment be made of whether there is cause to undertake further actions with regard to employees' safety.

The report recommends that Vinakot make sure that unexpected incidents are reported to the Quality and Supervisory Authority for Welfare, as provided for by law. It is also necessary to inform guardians of serious incidents, such as self-harm and use of force, and to ensure debriefing with the children in the wake of such incidents as well as recording, including details of who exercised force and the child's comments.

The Ombudsman's visit revealed that a doctor is not always contacted following use of force. With reference thereto, the recommendation is addressed to Vinakot that it systematically invite the children to contact or see a doctor following use of force. Recommendations are also made to Vinakot 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 municipalities and the relevant Ministers that they examine and assess whether children staying in Vinakot 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 living outside their home and children with developmental and mental disorders. In this regard, the recommendation is addressed to Vinakot that it examine and assess whether the initial training of staff is adequate, especially in cases where it is foreseen that a new recruit will be alone on duty with a child. The recommendation is also made that Vinakot 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.

The report draws attention to the importance of clear and efficient means of complaint, appeal and referral. Recommendations are directed to Vinakot 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. The recommendation is made that municipalities and Vinakot 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 Vinakot 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 Vinakot 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 Vinakot 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 Vinakot 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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