

Visit report

Central police station at Hverfisgata

Police custody facility

15-17 April 2019

Summary

On 15th – 17th April 2019 the Althingi Ombudsman visited the custody facility of the central police station at Hverfisgata. The visit was on the basis of the OPCAT mandate. On 14th November 2019, a second visit was carried out by one of the Ombudsman's legal advisors. During the visits, the Ombudsman focused mainly on the detention of arrested persons, material conditions of the custody facility and general procedures and practices of the police in relation to the detention.

The central police station at Hverfisgata is equipped with holding cells which the police uses to detain individuals who have been arrested for the purpose of a criminal investigation or due to other reasons, e.g. to maintain law and order. If the detainee is suspected of a criminal conduct a judge shall, within 24 hours, issue a reasoned decision on whether they shall be detained on remand but if the detainee is placed in custody for other reasons a court shall review the legality of the measure as soon as possible. The Ombudsman's visit revealed that the duration of detention in the custody facility is almost invariably less than 24 hours.

A decision to detain an arrested person in police custody entails an extensive interference with their individual rights. In the recent years, due to increased emphasis on human rights provisions and their enforcement by supervisory bodies and the judiciary, the legal development in matters of individuals deprived of their liberty, both in Iceland and in our neighbouring countries, has been to prescribe by law their legal status, material conditions and interference with their personal liberty. This development is apparent in the Icelandic legal framework for remand and sentenced prisoners. However, apart from one provision in the Code of Criminal Procedure there are no provisions of law or regulations regarding the treatment of and material conditions for detainees in police custody. The report also highlights an uncertainty as to which rules guaranteeing legal security apply as regards the status and placement of a person in police custody, depending on the legal basis of the placement. Therefore, the Ombudsman issues the recommendation to the Minister of Justice and the National Commissioner of the Icelandic Police to enact legal provisions on the detention of arrested persons in police custody where material conditions, their treatment and legal status will be further stipulated and to consider, where appropriate, which changes need to be made to the current legislation. Furthermore, it must be clearly prescribed by law if the provisions of the Administrative Procedures Act should not apply to a decision on detention in police custody, regarding other matters than those stipulated in the Code of Criminal Procedure and the Police Act.

In general, a legal basis is required to impose on citizens any form of coercion or use of force which interferes with their constitutional rights, such as the right to liberty and respect for private life. Those who exercise police authority may use force in the course of executing their duties on the basis of the Police Act while upholding the principle of proportionality. The custody facility of the central police station employs not only police officers but also other employees who neither exercise police authority according to the Police Act nor exercise authority to use force on other legal basis. Furthermore, they have not completed training comparable to police officers or prison guards. It is apparent that situations may arise where these employees need to assist the police with intervention, coercion and the use of force in the custody facility. The Ombudsman issues the recommendation to the Metropolitan Commissioner of Police and the National Commissioner of the Icelandic Police to review work procedures in the custody facility to ensure that only police officers, who have the appropriate education, training and authorisation to use force, attend to tasks pertaining to police work. Concurrently with that revision, the offices should consider and inform the Ministry of Justice whether and in which cases it is considered necessary for other employees of the custody

facility to have authorisation to use force and which requirements should be made in terms of their education and training. In addition, certain recommendations are put forth to the Metropolitan Commissioner of Police, *inter alia*, that individual assessment and the principle of proportionality are observed when assessing the need for interventions such as the use of handcuffs, body search and seizure of objects as well as on work procedures pertaining to video surveillance.

Arrested persons placed in the custody facility generally seem to enjoy acceptable conditions, considering that the placement is only intended to last for a short period of time, usually for a maximum of 24 hours. However, recommendations are put forth in the report, *inter alia*, regarding certain safety issues and access to sanitary facilities and nourishment.

In general, two employees are on duty in the custody facility at any given time, one senior duty officer and one employee. With regard to the number of tasks they have to carry out, the conditions at the police station and the safety of those placed in custody there, a recommendation is put forth to the Metropolitan Commissioner of Police to ensure adequate staffing in the custody facility. Furthermore, a recommendation is put forth to the Commissioner that efforts are made so that the composition of personnel allows for both female and male staff members working on each shift.

Arrested persons may be in a condition which requires health care. As the involvement of healthcare professionals is limited in the custody facility, unskilled staff may be required to make important decisions concerning the life and health of arrested persons, e.g. assessing whether the involvement of healthcare professionals is necessary due to their condition. In the report, the recommendation is issued to the Metropolitan Commissioner of Police to consider how the involvement of healthcare professionals in the assessment of arrested persons' condition can be assured, before they are placed in detention, not least to prevent the risk of suicide and the spread of infectious diseases or to ensure adequate conditions with regard to illness or necessary medication. Furthermore, recommendations are issued to the authorities regarding measures pertaining to the detention of persons with self-harming behaviour or who are suicidal.

The Ombudsman's visit and the following examination revealed that there are examples of 15-17-year-old children being detained in the custody facility. According to the police, every effort is made to find other and more suitable placement for arrested children but a lack of available places in the appropriate institutions is the main reason for their placement in police custody. According to information obtained from the emergency unit of Stuðlar, Diagnostic and Treatment Centre for Juveniles, arrested children have not been denied placement there since the Minister of Social Affairs and Children issued a recommendation to that effect at the end of 2018. In accordance with law, international conventions and multinational standards, the Ombudsman recommends that the Metropolitan Commissioner of Police places arrested children in a facility appropriate to their age and maturity. Furthermore, recommendations are put forth to the Commissioner regarding notifications to guardians and child protection authorities, registration and information provided to children placed in the custody facility.

In the report, the recommendation is issued to the Metropolitan Commissioner of Police to examine how the provisions of the Administrative Procedures Act, the unwritten principles of administrative law and good administrative practices need to be observed when providing information to arrested persons, and how to ensure the interaction of these principles and practices with other applicable provisions regarding decision-making and execution of placement in police custody. Based on the findings procedural rules should be reviewed and staff instructed thereon. Furthermore, in order to ensure consistency, police officers and other employees at the custody facility must be informed on how to provide information to arrested

persons about their rights, e.g. when they can contact a lawyer and close relatives. Moreover, a recommendation is put forth to the Metropolitan Commissioner of Police to provide adequate interpreting services to those who need it. Additionally, information in detention reports need to be precise, particularly when recording the time an arrested person is placed into custody and when they are released.

It is important that detainees in police custody are informed of their rights, including appeals procedure. The Ombudsman issues the recommendation to the Metropolitan Commissioner of Police to ensure that arrested persons are informed in a formal and verifiable manner of means of appeals and complaints procedure available to them, including where they can submit suggestions, complaints or appeals, internally and externally, and that this information is included in the written instructions provided at the time of arrest. Furthermore, a recommendation is put forth to the Commissioner to consider whether there is a reason to implement clearer procedures in relation to decisions to place arrested persons in custody facility, *inter alia*, to ensure that they have an opportunity to comment on the decision as soon as possible, with regard to the principle of the right to be heard.

The Ombudsman will continue to monitor the progress of these matters but requests that the Metropolitan Commissioner of Police and other authorities to which recommendations are issued inform him of their reactions to the report before 1 April 2021.

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