

CHAPTER 8

CHILDREN'S PARTICIPATION IN EVERYDAY LIFE IN RESIDENTIAL CARE

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INTRODUCTION

In this chapter we will look at children's participation rights in residential care from a Norwegian perspective, with special focus on participation in daily life. The presentation contains two parts: 1) A brief presentation of the legal basis for children's participation rights, 2) Young people's views of participation in everyday life in institutions, based on empirical data from interviews with 12 youth living in institutions. The interviews were conducted in the institutions using a semi-structured interview guide.

LEGAL BASIS FOR CHILDREN'S PARTICIPATION

Norway has a long history with respect to taking children's rights seriously. The first Norwegian "child care act" was passed in 1896 and implemented in 1900 (Lov om behandling av forsømte barn 1896). The act is mentioned as the first of its kind in the world. In 1981 Norway appointed the world's first ombudsman for children (Lov om barneombud 1981). The intention with the ombudsman was to promote children's interests, and monitor the conditions under which children are raised. The same year, the children's and parent's act (Lov om barn og foreldre 1981) was issued. The act regulates private matters between parents and children, and also gives the child an independent right to participation (subject to age). In 1954 a new child care act (Lov om Barnevern 1953) replaced the act of 1896. "The best interest of the child" was a basic principle in this act. The UN Convention on the Rights of the Child (1989) (hereafter – the UN convention), was ratified by Norway in 1991. The convention became Norwegian law in 2003 through its incorporation in the Human Right Act. This means that provisions in the convention take precedence over Norwegian law in case of conflict. In 1993, another child care act was adopted (Lov om barneverntjenester 1992) - hereafter the child protection act, replacing the 1953 legislation. The 1992 act embodies several of the articles in the UN convention and its recognition of children as human beings with their own human rights.

The presentation in this chapter is based upon the legal framework established by the UN convention, the child protection act with its later amendments, departmental regulations and guidelines, and the recognition of the child as an individual.

The UN convention contains several articles which safeguard children's rights to participate. The most important of these is article 12: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

There are also several articles in the UN convention of special importance for children in residential care. These are:

- Article 3 – "In the best interest of the child"
- Article 16 – Right to privacy
- Article 25 – Right to a periodic review of the treatment provided and all other circumstances relevant to his or her placement.
- Article 31 – Right to rest and leisure and engage in play and recreational activities.

The child protection act reflects many of the principles in the UN convention regarding participation and specific rights for children in residential care. The principle of "the best interest of the child" is also fundamental to an understanding of the treatment of the child. The act also has a provision similar to article 12 in the UN convention, which says that children, seven years or older, shall be informed, shall have a say, and their opinions shall be given weight in matters concerning them (during casework in child protection).

Children's participation rights in residential care settings are stated in section 5-9 in the act: "Institutions shall be run in a manner which provides residents with the opportunity to decide in personal matters, and to be together with other people according to their own wishes, as long as this is compatible with the age and maturity of the child,

the aim of the placement, and the institutional responsibility for management, including safety and well-being. The children shall have the right to move freely within and outside of the grounds of the institution, subject to limitations imposed to maintain the safety and well-being of the residents.”

The Ministry for children and family affairs has, since 2002, issued several regulations concerning residential care which supplement the provisions in the child protection act.

These include requirements about:

- Rights of children in residential care and the use of involuntary constraints (2002),
- Quality of institutions (2003),
- Authorization of public and private institutions (2003),
- The inspection system for children in residential care (2003).

Statutory provisions and other regulations are important for safeguarding the rights of children in residential care. There can, however, be a big gap between rhetoric and practice when it comes to the implementation of these rights. Central authorities are aware of that, and emphasise that requirements about children's rights are important, but cannot fully ensure that they are implemented as intended. The authorities say, in their comments to the regulations for children's residential rights and use of constraint, that the institutional staff is an important tool for implementation: “Within the statutory framework, it might, to a certain extent, be necessary to practice professional judgement. A condition for achieving the aims of this regulation is that the institutional staff is conscious of this responsibility, that they exercise judgment in a proper professional and ethical manner, and that they are caring and empathetic.”

RECOGNITION OF THE CHILD

Children's participation presupposes a specific understanding of the child; that means that the child must be understood as an active protagonist, participant and partner, and not as a passive recipient who needs to be protected. Understanding the child as a social participant, however, does not exclude the importance of considering the child's other needs. The child shall participate, but also be cared for and protected (Sandbæk, 2004).

While these requirements need not be contradictory in themselves, conflicts between them can arise in specific situations where it is difficult to combine protection and participation (Tjelflaat, 1998). This may be particularly difficult when adults' desire to protect the child is in conflict with the child's own opinion. Children and adults can understand and use concepts differently. The adults can claim that participation is the right to be heard, but not to decide. The child, on the other hand, can understand participation as being synonymous with the right to decide. Both the convention and Norwegian legislation express some "qualification criteria" for the child's participation. The criteria are based on the child's age and judgment about maturity. Lansdown (1997) argues that participation is fundamental and cannot be negated by arguments that "it is not in the child's best interests" or that "the child is not qualified". She writes: "Participation is the right to be involved in the process of making those decisions and is fundamental to any basic recognition of children as people. The right is not qualified in any way. The right to participate therefore is not contingent on the judgement of the competence of the child. Nor is it restricted by adult perceptions of the best interests of the child (p. 29)."

PARTICIPATION IN DAILY LIFE IN THE INSTITUTION

This part of the chapter is based on stories from residents about participation in daily life in residential care. We have chosen to present this topic through the voices of the young people themselves, even if this means a somewhat one-sided presentation. This might have led to more negative than positive statements as the informants were

allowed to be critical and speak freely. We will in the following focus on three themes that from the residents' point of view can hinder participation: 1) Routines that govern daily life, and thereby give little time to individual preferences and choices, 2) Rules and sanctions that suppress opinions, and 3) Routines meant to safeguard participation, but which don't always succeed.

Routines

Residential life is governed by daily schedules which systemise the life of the residents. The aim is to make the day predictable and bring about continuity. The logic behind this is that residents then will feel safe, and have control of their lives.

A girl told about one ordinary day (a Monday):

"I get out of bed at seven o'clock and have breakfast. Then I go to school, go home from school, do my homework and have dinner at a quarter to four. After dinner, there is one hour to relax. I have to stay in my room and not disturb the others. After that there is a planning meeting, and then some form of leisure activity decided by the adults. Supper is half past eight, and I have to go to bed at eleven o'clock."

This is an example of a daily routine that could be described by most of the residents. At first sight it might look like a normal day for a youngster in a family. The difference is that there is little or no room for spontaneity, and after dinner the day is strictly planned. Many residents, therefore, described the day as totally planned and abnormal compared to family life.

During daily life the residents had to focus on schedules. They felt there was always pressure to do things on time. "My life is a fight against the clock", expressed one of the informants. Some institutions practised zero tolerance as to being too late to meals and activities, and punished residents (mostly by reducing their pocket money) for not being there on time. This intensified the feeling of abnormality.

For many, routines were seen as negative aspects of the day because they limited self-selected activities. Residents told that something was always happening in the institution; they had to be present at meetings, evaluations and collective activities. The young people thought that the staff arranged too much of their spare time, and that too many activities took place inside the institution. It was difficult to make and keep friends from outside, make independent choices about "what to do this evening", and to be impulsive. Institutions are often situated in remote areas with little public communications, and residents are dependent upon the staff to drive them to different activities. On the one hand, residents praised the staff for their willingness to drive them; on the other hand they felt they had little freedom because they were always dependent upon the adults' plans and time. They also considered it a problem that their transportation had to be planned, often days ahead of time.

According to § 5-9 of the Child Protection Act, and departmental requirements about the rights of children in residential care: "The institution must be operated in a way that ensures the integrity of the residents" (§ 5), including participation. "The resident has the right to move inside and outside the area of the institution, subject to restrictions imposed by safety and welfare rules. He/she shall also be able to take part in local activities" (§ 6). Institutions should be located in areas where the young person's life outside the institution could be as normal as possible. Even if the staff were helpful in transporting the residents, they complained about not being able to be spontaneous, to choose activities themselves, to be with friends without planning and that every initiative had to fit into schedules decided in advance. Strict regulations of daily life certainly left little time for individual preferences and choices and occasionally suppressed participation.

Rules and sanctions

Routines, rules and sanctions in residential care are parts of systems and models which influence practice. These include different methods and clinical treatment, and they also mirror institutional attitudes, ethics and how young people are understood.

Some institutions had few formal rules, while others were more or less completely controlled by rules. We will now present some rules many had to relate to. The strongest rules are found in institutions practising "stage systems". A "stage system" often consists of four stages. Every stage has different requirements and rights; for instance stage one has few responsibilities and rights, while stage four has many. Every new resident is placed in stage one. Then, the resident has to climb the stages.

- At the lowest stage, the resident loses many rights and there are specific rules for bedtime, pocket money, freedom of self-determination, use of cell phone, television and so on.
- If the resident shows the "proper behaviour", he/she can be promoted to higher stages and obtain more rights and influence in daily life; individual integrity is extended. Upgrading also means more responsibilities on the part of the resident.
- The resident has to apply to the staff for promotion.
- There is a minimum stay in each stage; 30 days in stage one, 60 in stage two and 120 in stage three.
- The resident could also be demoted to lower stages if the requirements in the present stage were not fulfilled. This mostly occurred when major rules were broken; for instance because of drug abuse or running away, or if daily rules were consistently broken.

Residents in institutions not exposed to "stage systems" were also subjected to rules. Here are some examples:

- The young person had to be present at meals, time of changing of staff, "silent hour", meetings, tasks and common activities. Breaking the rules could lead to reduction in pocket money.

- The behaviour of the young person was evaluated (approved/not approved) one or more times a day. With several “not approved”, pocket money was reduced.
- The young person was not allowed to have visitors in his room, either other residents or friends from “outside”.

Residents understood that rules were necessary, but responded negatively to the strictness of the rules. One girl was particularly sceptical to the “stage system”, and expressed it this way:

“It must be possible to have rules without all the stages. The stage system makes rules out of everything. Upon arrival I was placed at stage one, and climbed to stage two after a few months. Then I was demoted to stage one because I ran away. I had no rights in stage one and two: My cell telephone was taken from me, I could not use the internet nor have television in my room.”

Residents thought it was “stupid” that everyone had to start in stage one regardless of the reason for placement. They argued that residents were not a homogenous group. They had different needs, and should not be treated exactly like. This view was the opposite of what they were told by the staff who believed that all residents should be treated on an equal basis, and that this was democratic.

A girl thought that many of the residents did not deserve to be placed in stage one upon arrival, and it made it difficult for them: “Everybody is resigned and frustrated by the system.” A boy said that rules and particularly the “stage system” were like being in boxes controlled by the adults. The residents felt passive and incapacitated, and had little control of the situation. Residents also complained about the gap between the inner life of the institution and “the world outside”. The situation felt abnormal. Residents told that there was little room for negotiation: “Rules are rules, and that’s it”.

Routines and rules can be relevant tools to structure the day and make it more predictable and comfortable for the residents. Routines and rules can seem purposeless if they are too rigorous, when followed by incomprehensible sanctions, and if they are not properly explained. Unfortunately, many residents experienced that.

The behaviour of residents was evaluated. In one institution, every young person had a rating card in his/her pocket. Four times a day he/she got an X or OK on the card. X was given when being late for a meal, using unacceptable language, failing to meet for planned activities; the more Xs on the card, the greater the reduction in allowance. Spending money was very important for the residents. It gave them freedom and a chance to be part of the "normal world" outside the institution. To avoid reduction, many chose not to express opinions with which the adults did not approve, criticise the system or the attitudes to the adults. One boy put it this way: "It is like being a football player – you get a yellow card if you protest against a decision from the referee – this is how it is here too." In one institution practising "stage systems", the young person was evaluated every evening to see if the youth had behaved according to the rules. If the behaviour was approved, the resident might be promoted to higher stages.

It might be opportune to ask if children's participation can be achieved within such strict regimes, and how individual needs can be met. It might also be asked if this is in accordance with how children should be recognised according to the UN convention and national legislation. In a way, residents gave up their participation rights to keep their benefits; for instance spending money, cell phone, et cetera. These benefits were important for their freedom; they were able to take part in the "normal" outside world; being (in contact) with friends, et cetera. It was therefore better to keep silent and adjust to the system; otherwise they would lose much of their freedom.

Meetings between residents and staff

Article 12 in the UN convention states that children shall have the right to express their views freely in all matters concerning them. According to § 9 in the guidelines for rights of children in residential care, children shall be ensured participation and influence in matters about daily routines, doings, collective leisure activities and so on. The ministry has commented that this kind of participation right refers to matters of importance for the collective and not

the individual. The ministry points out that safeguarding this kind of participation can be achieved in house meetings where residents and staff discuss and meet on an equal basis.

House meetings are in this manner meant to be forums for participation. Residents told that issues discussed were mostly about "what's for dinner", and the use of electronic media. The residents felt they had little support for their views from the adults, and questioned if the meetings were democratic. The residents did not focus on these meetings as forums for participation; they did not believe they could influence their situation or the treatment from adults.

SOME CONCLUDING REMARKS

In Norway, emphasis has been given to children's participation in residential care in the last few years. New legislation, departmental regulations and guidelines have been issued to safeguard participation, and there should be a professional recognition of the child as an individual with his or her own rights. The UN convention has been made part of Norwegian law, with its focus as a tool for how to understand the child. However, when we listen to young people in residential care, they have many complaints about participation in daily life. They complain about routines, rules and sanctions that put them into abnormal boxes. They feel they are victims of systems that give little room for participation, and they also suppress their opinions to avoid losing benefits. Despite good legal intentions, there still seems to be a gap between rhetoric and practise concerning how residents in residential care are able to exercise their participation rights.

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