



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Fifth periodic report of States parties**

**Iceland\***

[27 April 2010]

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\* In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **I. General observations**

### **A. Introduction**

1. Iceland's fifth periodic report on the implementation of the International Covenant on Civil and Political Rights is presented below. The present report has been prepared taking into account the Human Rights Committee's guidelines for State reports of 26 February 2001 (CCPR/C/66/GUI/Rev.2).

2. Part I of this the present report presents a description in general terms of the legal amendments effected and the measures taken during the six years since Iceland's fourth periodic report on the implementation of the International Covenant on Civil and Political Rights was submitted in April 2004. Thus, it describes developments in legislation, executive measures and judicial practice in the field of human rights which are relevant regarding the implementation of the Covenant in Iceland up to April 2010.

3. Part II of the present report contains a more detailed discussion of the substance of legislation, the application of human rights provisions by the courts and particular measures taken in connection with individual provisions of the Covenant. An account is also given here of the main international human rights conventions to which Iceland has acceded in recent years. Furthermore, attention is turned to decisions by the European Court of Human Rights and the Human Rights Committee in cases brought against Iceland during the period. Finally, an attempt is made to answer particular points raised by the Committee in its concluding observations of 25 April 2005 following its examination of Iceland's fourth periodic report at its meeting with representatives of Iceland on 16 March 2005.

### **B. Analysis of the European Commission of Iceland's current situation with respect to human rights and democracy**

4. It is useful to examine, together with the present report, the detailed report which the Government of Iceland submitted to the European Commission on 22 October 2009 and the Commission's conclusions of 24 February 2010 regarding the situation in Iceland, including as regards the protection of human rights and democracy. Iceland submitted an application for membership of the European Union in summer 2009, and the aforementioned report by Iceland consisted of answers to an extensive questionnaire by the Commission regarding economic and political circumstances in the country. This is part of the standard application procedure for membership of the EU, and is designed to provide information on the political and economic structure in order for the EU to assess whether the country meets the conditions for membership. Membership of the EU requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Thus, the Commission specifically requested information regarding the governmental system and its structure, democracy in Iceland and how fundamental human rights were guaranteed. Thus, Iceland's answers to the EU Commission contain extremely thorough and recently updated information about measures in force in the country to guarantee civil and political rights which are protected under the International Covenant on Civil and Political Rights and the status of international human rights conventions and monitoring of their application under Icelandic law. For this reason, this same material will be used, to some extent, in the discussion of individual rights protected under the Covenant in Part II of the present report. By way of information for the Committee, reference is also made to the questions put by the EU Commission and the answers given by the Government of Iceland, which are published in full on the website of the Icelandic Ministry for Foreign Affairs:

<http://www.mfa.is/eu/answers/>. The sections, “General Part I. Political Criteria”, and “General Part II. Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security)” contain special discussions of matters that are of significance for an assessment of the application of the Covenant in Iceland.

5. The EU Commission announced its opinion on 24 February 2010, having examined the replies submitted by the Government of Iceland. Its opinion was that Iceland met the political and social requirements for membership of the union. Regarding the political criteria, the Commission said, *inter alia*:

“Iceland is a functioning democracy with strong institutions. It is a parliamentary republic with deeply rooted traditions of representative democracy and division of powers. Its constitutional and legal order and governing institutions are stable.

The separation of powers between the legislature, the executive and the judiciary is respected. The government is subject to effective parliamentary control; its ministers are accountable for their acts. Municipal authorities function efficiently.

Iceland’s judiciary is of a high standard and the judicial system is well established. The effective independence of the judiciary, in particular the procedure for judicial appointments, is, however, a matter of concern.

Iceland’s public administration is, in general, efficient and free from political interference. A public administration reform process was initiated in October 2009.

Following the financial crisis, certain questions have been raised concerning possible conflicts of interest in Iceland’s public life, such as close links between the political class and the business community, especially in light of the country’s small population and isolated location. Immediately following the crisis, a Special Investigation Commission and a Special Prosecutor were set up to investigate and prosecute alleged criminal acts in the context of the bank collapse. Investigations are under way. Against this background, mechanisms will, where appropriate, need to be strengthened to reduce the scope for conflict of interest.

Iceland has a comprehensive system for safeguarding fundamental rights and there is a high level of cooperation with international mechanisms for the protection of human rights.”

6. The full text of the Commission’s opinion can be accessed on its homepage: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/is\\_opinion\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/is_opinion_en.pdf).

### **C. The status of the Covenant in Icelandic law and its effect on legislation and judicial practice**

7. Iceland’s fourth periodic report stated that the amendments made to the human rights provisions of the Icelandic Constitution in 1995 had had a considerable effect and substantially enhanced the status of international human rights conventions in Icelandic law. Even though the Covenant on Civil and Political Rights has not been incorporated in its entirety into Icelandic law, Icelandic authorities are obliged to interpret domestic legislation in the light of the Covenant. Following the amendments of 1995 the connection between the Covenant and the human rights provisions of the Constitution are unequivocal, and reference is frequently made to the Covenant in the pleading of parties to cases before the courts and in the courts’ interpretations of the provisions of the Constitution. In fact, the same applies to most of the other United Nations human rights conventions.

8. Iceland's fourth report gave an account of the main judgements that had been delivered by the courts up to that time and that had cited or been based on the provisions of the Covenant. Two judgements mentioned there remain as the most important precedents in this area; in these, particular reference was made to the principle of equality before the law, as set out in article 26 of the Covenant, when interpreting article 65 of the Constitution. In both cases, the conclusion was that legislation was found to be at variance with the human rights provisions of the Constitution. In the first of these, delivered on 3 December 1998 in Case No. 145/1998, reference was made both to article 26 of the Covenant and to article 14 of the European Convention on Human Rights (ECHR) regarding the interpretation of article 65 of the Constitution, and the court considered that the provisions of the Fisheries Management Act regarding the allocation of fishing permits violated the principle of equality set forth in the first paragraph of article 65 of the Constitution, which had to be observed when applying a restriction on the right to employment under the first paragraph of article 75 of the Constitution. In the second judgement, 19 December 2000 in *Case No. 125/2000*, the influence of various international human rights conventions can be seen clearly: reference was made not only to article 26 of the Covenant on Civil and Political Rights, but also to article 9 of the Covenant on Economic, Social and Cultural Rights, the European Social Charter and the Conventions of the International Labour Organization, resulting in a new interpretation of the provisions of the Constitution regarding social rights.

9. Mention may be made of the following judgements which have been passed since Iceland's fourth report was submitted, and in which reference was made to the Covenant on Civil and Political Rights or use was made of its provisions:

(a) Supreme Court Judgement of 20 February 2006 in Case No. 98/2006, which concerned the deprivation of personal competence and the administration of medication by force in case of mentally ill individual. The district court judgement had referred to article 67 of the Constitution regarding personal liberty and also to article 9 of the Covenant and article 5 of the ECHR;

(b) Supreme Court Judgement of 4 October 2007, in Case No. 37/2007. This concerned the punishment of an editor and a journalist of a newspaper that had published information of a personal nature concerning the plaintiff. The district court interpreted the concept of privacy under article 71 of the Constitution and also referred to the protection of privacy afforded by article 17 of the Covenant and article 8 of the ECHR;

(c) Supreme Court Judgement of 29 September 2008, in Case No. 512/2008. This concerned a dispute regarding the appointment of a defence lawyer for the accused in a case in which the former had also been a witness. The district court, in its judgement, had given consideration both to the Covenant and the ECHR. The court took the view that the accused's defence counsel had not managed to demonstrate, with the evidence and arguments presented, that the provisions to which reference was made in the Code of Criminal Procedure, No. 19/1991 were at variance with article 70 of the Constitution, regarding a fair trial, items b and c of the third paragraph of article 14 of the Covenant and item (c) of the third paragraph of article 6 of the ECHR;

(d) Finally, mention may be made of the Supreme Court Judgement of 12 March 2009 in Case No. 353/2008, in which an asylum-seeker argued that he would be subjected to forced labour if he were expelled to his home country, and that consequently his repatriation would constitute a violation of his rights under article 8 of the Covenant. Under the judgement, the decision by the Directorate of Immigration to refuse him asylum and expel him from the country was revoked, as it was considered that insufficient examination had been made of whether these assertions by the asylum seeker were based on good reason.

10. From the examples listed above, it can be seen that many provisions of the Covenant have been examined by the Icelandic courts. In the light of this case-law, it may be concluded that the provisions of the Covenant have become established as potential complementary material for the interpretation of the human rights provisions of the Constitution. It must be stated that in most cases, reference has been made to provisions of the Covenant together with comparable provisions of the ECHR, but this has not always been the case.

11. From the deliberations of the Icelandic courts in which reference has been made to both these conventions when interpreting the Constitution, it is difficult to see that the fact that the Covenant has not been ratified in its entirety in Iceland has made any difference regarding its influence, or that as a consequence of this it has had any less validity or more limited influence than the Convention has had on the interpretation of the provisions of the Constitution that were under examination. It is evident, on the other hand, that references to provisions of the Covenant in case-law have still, up to the present time, been somewhat random, and it is not possible to draw clear conclusions as to when it will be applied in tandem with comparable provisions of the ECHR and when it will not. This is explained in part by the presentation of cases by parties to cases before the courts, there being no consistency in whether they choose to refer both to the Covenant and the ECHR; generally, they refer less often to the Covenant.

12. When the focus shifts from case-law to the Covenant's general influence on legislation, various examples can be found where reference has been made to the Covenant in legal commentaries, and where its provisions are taken into account when legislation is enacted. One of the first such examples was in the bill which became the Police Act, No. 90/1996. Article 2 of the Act, which bears the title "Connections with International Law", specifies that in the course of their work, police officers are to observe the international legal obligations that Iceland has undertaken. The commentary on this provision states that, amongst other things, this referred to the Universal Declaration of Human Rights of 1948 and the Covenant.

13. The commentary accompanying the bill which became the Foreign Nationals Act, No. 96/2002, contained a special section devoted to a discussion of international human rights conventions that have a bearing on the legal status of foreign nationals in various ways and that were used as guidelines in the enactment of the Act. In addition to the ECHR, mention is made there of the Covenant and the United Nations other principal human rights conventions. Furthermore, specific mention is made of article 13 of the Covenant regarding the rights of foreign nationals who are expelled from the country and how the Act is intended to protect these rights.

14. The extent to which the provisions of the Covenant, and other international human rights conventions, and in particular the ECHR, have been taken into account in general when new legislation is enacted, has increased significantly since 1995. Before that time, there seem to have been no cases where these conventions were taken into account when legislation was drafted.

#### **D. Legislation in fields coming under the scope of the Covenant**

15. Below follows a list of the main statutes that have taken effect since 2004 and that have a bearing on matters under the scope of the Covenant. Their contents, and those of other smaller legislative amendments, will be described in further detail in Part II of this Report, where appropriate, in connection with the implementation of individual provisions of the Covenant:

(a) Amendments to the Limited Companies Act, No. 2/1995 and the Private Limited Companies Act, No. 138/1994, were passed on 4 March 2010. They introduce provisions whereby in publicly-owned limited companies and limited companies employing more than 50 people, there shall be representatives of both sexes on boards consisting of three persons; where there are more than three board members in such companies, the ratio of either sex may not be lower than 40 per cent;

(b) New legislation was passed on 16 February 2010 regarding the arrest and extradition of criminals between the Nordic countries in connection with their trial and service of sentences. The Act provides for a simpler and more efficient procedure on extradition than under the older legislation, and was based on an agreement between the Nordic countries signed on 15 December 2005 on the extradition of criminals;

(c) A new Exclusion Order Act, No. 122/2008, took effect on 1 January 2009. It lays down more detailed rules on exclusion orders in order to secure the legal position of those who apply to the police for exclusion orders, in addition to which the police are to adopt a position on such applications at the earliest opportunity, and never later than two weeks after they are received;

(d) A new Code of Criminal Procedure, No. 88/2008, entered into force on 1 January 2009. Amongst other things it is designed to achieve a substantial improvement in the legal position of accused persons (see in particular article 14 of the Covenant on Civil and Political Rights), and it also introduces various rules aimed at defending the rights of victims and witnesses;

(e) The Act No. 54/2008 introduced amendments to the Act on Artificial Fertilization and the use of Human Sex Cells and Embryos for Stem-Cell Research, No. 55/1996. The amendments secure the right of single women to undergo artificial fertilization in healthcare institutions, including the provision of donor sperm. The Act was also amended to secure the rights of lesbian women living in registered same-sex partnerships;

(f) Under the Act No. 65/2006, the Children's Act was amended so that a woman in a registered partnership or cohabitational relationship who agrees to artificial fertilization procedure regarding her spouse is recognized as the adoptive mother of the child so engendered;

(g) A new Gender Equality Act, 10/2008, took effect on 18 March 2008. It includes various innovations regarding policy, including tighter measures to monitor application of the Act, granting the Centre for Gender Equality clearer authorisations in this field. Also, the Gender Equality Complaints Committee is granted broader powers to demand and gather information, and its rulings are unequivocally binding. A further discussion of the new Act will be presented in connection with articles 3 and 26 of the Covenant;

(h) A new Act, No. 45/2007, on the rights and obligations of foreign undertakings that post workers temporarily in Iceland and on their workers' terms and condition of employment, has been passed. One of the aims of the Act is to provide for more effective monitoring on the Icelandic labour market to ensure that provisions of legislation and collective agreements are respected so as to secure the position of foreign workers who are posted temporarily in Iceland in order to provide services;

(i) A new Execution of Sentences Act, No. 49/2005, has been enacted; this has particular bearing on areas covered by articles 7 and 10 of the Covenant. One of the aims of the Act was to bring together in a single statute all the rules regarding the rights and obligations of convicts and to provide a firmer basis in law regarding prisoners' rights, e.g. as regards communication by telephone and mail, the items that prisoners are allowed to



have in their cells, their right to spend time out of doors and to pursue leisure activities, access to the media in order to keep abreast of matters of national importance and their right to contact priests or comparable representatives of registered religious organizations;

(j) Various amendments have been made to the General Penal Code (GPC) which are relevant for the protection of human rights falling under the Covenant. The principal of these are listed below:

(i) Under the Act No. 149/2009, amendments were made to the GPC in order, on the one hand, to ratify the United Nations Convention against Transnational Organized Crime (the Palermo Convention) of 15 November 2000, and the protocol to the Convention of the same date in order to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and on the other to ratify the European Convention on Human Trafficking of 3 May 2005. Amongst other things, this involved an amendment of the definition of the concept 'trafficking' in the GPC;

(ii) The Act No. 54/2009 amended the GPC making the purchase of the services of prostitutes illegal, and providing for punishment in the form of fines or up to one year's imprisonment. In cases of the purchase of prostitutes' services from a child under the age of 18, sentences of up to two years' imprisonment may be imposed;

(iii) The Act No. 61/2007 amended the provisions of the GPC covering sexual offences in many respects. Among the main changes, the definition of rape was broadened as compared with older legislation, and provisions were introduced identifying circumstances that are to result in heavier sentences for rape, including cases where the victims are of a young age. General provisions were introduced prescribing punishment for sexual harassment and the beginning of the period for calculating the expiry of criminal liability was raised to when the victim is 18 years old, instead of 14 as was the case in the older provisions of the GPC.

## **E. International agreements ratified or signed by Iceland**

16. Iceland has signed or ratified various new international instruments on or relating to human rights since the delivery of the fourth periodic report, and has taken, or is preparing, the necessary legislative or other measures for implementing them. Those of significance will now be enumerated, stating the time of ratification or signature:

(a) Protocol No. 14 to the European Convention on Human Rights, amending the control system of the Convention of 13 May 2004. Date of ratification: 16 May 2005;

(b) The 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Date of signature: 16 May 2005;

(c) The 2006 International Convention for the Protection of All Persons from Enforced Disappearance. Date of signature: 1 October 2008;

(f) The 2006 Convention on the Rights of Persons with Disabilities. Date of signature: 30 March 2007;

(g) Optional Protocol to the Convention on the Rights of Persons with Disabilities of 13 December 2006. Date of signature: 30 March 2007;

(h) European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007. Signed on behalf of Iceland on 4 February 2008. Not yet in force;

(i) European Convention on the Adoption of Children (Revised) of 27 November 2008. Signed on behalf of Iceland on 27 November 2008. Not yet in force.

## **F. Conclusions of the European Court of Human Rights in cases against Iceland**

17. Below follows a brief summary of applications considered on their merits by the ECHR since the delivery of the fourth periodic report, and of applications which were declared inadmissible, with the reasons given for this decision by the Court's chamber. All of them concern rights also afforded protection by the Covenant on Civil and Political Rights, and are therefore relevant for mention here. During this period four judgments were pronounced by the Court in cases where violations were found to have taken place. The Government acted on these conclusions by paying compensation and amending legislation where appropriate:

(a) *Hilda Hafsteinsdóttir v. Iceland*, 8 June 2004 (No. 40905/98). The Court considered a violation of article 5 of the ECHR had taken place when the applicant had been held overnight in a prison cell on several occasions due to drunk and disorderly behaviour; the police rules on procedure and the release of persons so held were not sufficiently publicized and accessible;

(b) *Kjartan Ásmundsson v. Iceland*, 12 October 2004 (No. 60669/00). Legislation had amended the rules on the calculation of disability assessment, with the result that the applicant's disability benefit payments were discontinued; this was considered by the Court as constituting discrimination, so violating Article 1 of Protocol 1 regarding the peaceful enjoyment of one's possessions;

(c) *Sara Lind Eggertsdóttir v. Iceland*, 5 July 2004 (No. 31930/04). The Court considered that the applicant's right to a hearing by an independent and impartial tribunal under the first paragraph of Article 6 of the Convention. The Court's conclusion was that her rights been violated in the procedure of civil case brought against Iceland for compensation for injury resulting from medical error since the party called in to deliver an opinion on the case was the Medical Council, which included physicians employed by the hospital where the alleged errors had been made;

(d) *Súsanna Rós Westlund v. Iceland*, 6 December 2007 (No. 42628/04). The Court considered that the applicant's rights under the first paragraph of Article 6 of the Convention had been violated as she had not been allowed to present her own case orally before the Supreme Court in a civil case in which the counterparty in an appeal action had failed to appear before the Supreme Court.

18. The European Court of Human Rights also rejected the following 6 applications, basing its decision on the view that no violation had committed:

(a) *Sigurður Guðmundsson v. Iceland*, 31 August 2006 (No. 315490/03). In the view of the Court, the fact that the applicant had not been permitted to bring foreign medical specialists as witnesses in a criminal case was not considered to constitute a violation of the first paragraph of Article 6 of the Convention;

(b) *Jóhann S. Kristjánsson and Bóas K. Bóasson v. Iceland*, 10 April 2007 (No. 24945/04). The Court did not consider a violation of article 2 of Protocol 7 to the Convention to have taken place because the applicant was unable to appeal to the Supreme Court of Iceland against a low pecuniary fine for an infringement of the Hunting Act, since only a minor offence had been committed;

(c) *Þorlákur Örn Bergsson et al. v. Iceland, 23 September 2008 (No. 46461/06)*. The applicants' right to the peaceful enjoyment of their possessions under article 1 of Protocol 1 was not considered to have been violated by the enactment of legislation on national property according to which land in the interior of Iceland, for which there was no demonstration of the applicants' direct ownership, was the property of the Icelandic State;

(d) *Björn Guðni Guðjónsson v. Iceland, 2 December 2008 (No. 40169/05)*. The Court did not consider that any violation of property rights under article 1 of Protocol 1 or discrimination under article 14 had taken place when the applicant was punished for setting out to catch lumpfish without a fishing permit as required under the Fisheries Management Act;

(e) *Hilmar Kristinn Adolfsson et al. v. Iceland, 24 March 2009 (No. 14890/06)*. The Court did not consider that a violation of the applicants' property rights had taken place when the value of inheritance which they expected was eroded due to dereliction of duty by the legator's trustee;

(f) *Jónína Benediktsdóttir v. Iceland, 19 June 2009 (No. 38079/06)*. The Court did not consider that the applicant's right to privacy under article 8 of the Convention had been violated by the acquittal of the editor of a newspaper against whom she had brought an action for the publication of her private affairs.

19. It should be mentioned that all the European Court of Human Rights' judgements and reasoned opinions in cases brought against Iceland are translated into Icelandic and disseminated to all institutions in the justice system, including the courts, the prosecution authorities, the district commissioners and the police. The decisions are published in a special periodical published by the University of Iceland's Institute of Human Rights and financed by the Ministry of Justice and Human Rights. There too are published analyses in Icelandic of the most significant judgements by the Court in cases brought against other States which could be of relevance for Icelandic law and the interpretation and application of domestic legislation. Publication of this periodical began in 2005, and two issues are published each year. The periodical is distributed to all lawyers in the country as a supplement to the widest-circulating legal periodical in Iceland.

## **G. Views of the Human Rights Committee concerning communication No. 1306/2004 and measures taken**

20. Since the submission of Iceland's fourth periodic report, the Human Rights Committee has for the first time issued an opinion in a complaint against Iceland under the Optional Protocol to the International Covenant on Civil and Political Rights; this was in the case *Haraldsson and Sveinsson v. Iceland of 24 October 2007, No. 1306/2004*. The conclusion was that the Government of Iceland had not shown that the particular design and modalities of implementation of the quota system according to the Icelandic Fisheries Management Act No. 38/1990 met the requirement of reasonableness. The Committee concluded that, in the particular circumstances of the case, the property entitlement privilege accorded permanently to the original quota owners, to the detriment of the authors, was not based on reasonable grounds and that this disclosed a violation of article 26 of the Covenant.

21. The Committee's conclusion in this case aroused immense interest and public debate in Iceland and it has been discussed repeatedly in meetings of the Althingi, as disputes on the fishing management structure had been one of the most hotly debated political issues in the country for many years. The Committee's opinion was translated and published in its entirety in Icelandic on the homepage of the Ministry of Justice. It was also printed and distributed in the aforementioned legal periodical, together with discussions of the principal

judgements of the European Court of Human Rights, and thus was distributed to all the main organs of the justice system and the legal profession.

22. The Government of Iceland has already given the Human Rights Committee information on its initial response to the Committee's opinion on the complaint mentioned above; reference is made to the detailed letter, with the response by the Minister of Fisheries and Agriculture, of 6 June 2008. There, a comprehensive account was given of the position of the Icelandic Government in response to the Committee's views, with a description of the problems that would be involved in taking away from the vessel operators the employment rights that accompany the fishing permits they are allocated each year, and on which they base their economic livelihoods and the operation of the fisheries enterprises. Considerations relating to the protection of ownership rights in connection with Iceland's fisheries management system were also under examination in the complaint brought against Iceland in the aforementioned complaint to the European Court of Human Rights, *Björn Guðni Guðjónsson v. Iceland of 2 December 2008 (No. 40169/05)*.

23. In the aforementioned letter to the Human Rights Committee it was indicated that an overall review of the Icelandic fisheries management system would be carried out in the near future with a view to its amendment. However, in the autumn of 2008 and in 2009 a number of events took place in Iceland: virtually the entire banking system collapsed, the IMF intervened with a loan to revive the economy, a new Government took over in February 2009 and general elections took place in April 2009. The unique economic, financial and political crisis resulted in an unprecedented situation in Iceland, with unavoidable delays, as the entire energies of the Government and the administration have been focused on measures to respond to the crisis. This situation was furthermore explained to the Human Rights Committee in a letter from the Icelandic Minister of Fisheries and Agriculture of 26 February 2009. Since that letter was written, further developments have taken place and steps have been taken which will now be discussed.

24. Firstly, the proposed amendments by the Government to the Constitution mentioned in the letter, including a general provision on the common ownership of the nation of natural resources (including fishing resources), was much debated in the Parliament and by the general public in the spring of 2009. No consensus was reached between the political parties on the issue, such as how to define the term "national property" as a form of ownership over natural resources and the draft legislation did not go through Parliament.

25. The policy statement of the present Government, a coalition of the Social Democratic Alliance and the Left Green Movement, dated 10 May 2009, stated that it was necessary to take further action in response to the opinion given by the Human Rights Committee, this including measures to protect freedom of employment and ensure equality in the allocation of access to, and the right to use, common resources. It also stated that the Fisheries Management Act would be completely revised with the aim of (a) promoting conservation of the fish stocks, (b) promoting the economic utilisation of marine resources, (c) securing employment, (d) developing rural areas, (e) creating a national consensus regarding the ownership and utilisation of marine resources and (e) laying the foundations for the recall and re-allocation of fishing permits over a 20-year period, in accordance with the policies of both coalition parties.

26. With reference to the Government's policy statement, the Minister of Fisheries and Agriculture appointed a task force in July 2009 with the aim of defining the principal matters of contention in the current legislation and describing them. The task force is to have the necessary analysis made and then propose alternatives for reforming the situation so as to create favourable operating conditions for the fishing industry in the long term, ensuring that fishing will be sustainable and that there will be the broadest possible consensus in Iceland regarding fisheries management. The task force is obliged to consult the broadest possible range of other parties, e.g. by means of interviews, receiving

statements of position and submissions on the Internet. On the basis of the work of the task force and the options it recommends, the minister is then to decide further moves on revising the Fisheries Management Act. This revision will be carried out in consultation with interest groups in the fishing industry, and it is anticipated that a schedule for the recall and re-allocation of fishing permits should take effect at the beginning of the fishing season on 1 September 2010. With reference to the foregoing account of events in Iceland, it is not possible at the present time to give the Human Rights Committee any further details of the situation regarding Iceland's fisheries management structure. Mention should be made, however, of an important innovation which is related to the revision of the fisheries management system: in spring 2009, the Minister of Fisheries announced ideas regarding 'coastal catches'. The declared aim of granting permits for coastal catches is to place the utilisation of marine resources on a new basis. Thus, coastal catches opened the way for limited fish catches by those who do not have catch quotas or handline catch quotas. The Ministry of Fisheries and Agriculture worked on the further structure of these catches, and a bill amending the Fisheries Management Act was presented to the Althingi in its spring session in 2009. Coastal catches began at the end of June 2009 after the Althingi had approved an interim provision added to the Act No. 66/2009, amending the Fisheries Management Act, No. 116/2006, with subsequent amendments. This interim provision was valid only until the end of the fishing season 2008/2009; and under it, the experience of that year's coastal catches was to be used to assess the arrangement. A bill is currently before the Althingi, under which authorisations for coastal catches are to be enshrined in law under a structure that is in all principal points similar to the one introduced by the interim provision of the Act No. 66/2009. It is envisaged that coastal catches will be restricted by specially-assigned permits to a total of 6,000 tons of whole demersal fish. The country is divided into four regions, and the minister is to issue further regulations on regional divisions and the catches permitted in each of them on a monthly basis.

27. Finally, it should be noted that on 22 March 2010, legislation was passed amending the Fisheries Management Act, No. 116/2006 and authorizing the minister to increase the total allowable catch for lumpfish by up to 2,000 tons per year for the next two years. This is in addition to the quota for the species already determined by the Marine Research Institute. However, an innovation here is that none of the additional quantity will be allocated pro rata and free of charge to the vessel-operating companies that already hold shares of the 2,500 ton quota set for this species last autumn. Instead, the additional lumpfish quota is to be allocated, up to five tons at a time for each vessel, in return for a fee paid by the operating company; the vessels involved will be required, as before, to hold fishing permits. The sale of these lumpfish catch quotas could bring the State revenues of ISK 240 million. This legislation has aroused sharp criticism. It has been criticised both for being likely to lead to over-fishing of the species, since the permitted catch will be about 80% above the level recommended by the Marine Research Institute, and also for striking a blow at the basis of Iceland's fisheries management system. It has even been declared that the 'stability agreement' between the Government and the social partners, which was made in response to the crisis in the Icelandic economy, has been invalidated by this move. Opponents of the quota system, on the other hand, have welcomed the new legislation, and look on the 'lumpfish act' as an important milestone in their campaign to have the fisheries management system reviewed in its entirety.

## **H. Recommendations made by Human Rights Committee in its concluding observations of 2005**

28. In the following paragraphs, further information will be provided relating to the subjects of principal concern and recommendations of the Human Rights Committee, set forth in its conclusions of 25 April 2005 (part C, paragraphs 8–16).

**The State party is invited to withdraw its reservations**

29. As noted during the consideration of Iceland's fourth periodic report, two reservations to the Covenant have been recalled, on the one hand relating to its article 8 (3) (a) concerning forced labour, and on the other relating to article 13 concerning procedure in denying entry to foreign nationals. Legislation and associated mechanisms concerning these matters were amended more than a decade ago, and they now fulfil in every respect the requirements made in the above provisions of the Covenant. Other reservations, i.e. those relating to article 10 (2) (b) concerning separation of young prisoners from other prisoners, article 14 (7) concerning reopening of adjudicated court cases, and article 10 (1) concerning war propaganda, still remain, however. There are no plans to withdraw these reservations, as the Icelandic Government considers that the reasons underlying them continue to apply. Furthermore, the Icelandic Government is of the opinion that these reservations are fully compatible with the objective and purpose of the Covenant, and in no way undermine its effectiveness.

**The Committee encourages the State party to ensure that all rights protected under the Covenant are given effect in Icelandic law**

30. It has been discussed previously, that even though the international conventions to which Iceland is a party have not been incorporated into Icelandic law, with the exception of the European Convention on Human Rights, they nevertheless have substantial influence on Icelandic legislation and the application of the law. It is a general principle in Icelandic law that provisions in domestic law are to be interpreted in accordance with the principles of international law. In Icelandic judicial practice, this principle of interpretation has been applied not only to general legislation and executive regulations, but also to the provisions of the Icelandic Constitution. Even though the main United Nations human rights conventions, such as the Covenant on Civil and Political Rights, have not been incorporated into Icelandic law, their contents are reflected in the human rights provisions of the Constitution and are frequently referred to. In the practice of the courts it is not possible to say that their status in the Icelandic legal system is manifestly weaker than that of the European Convention.

**The State party should formulate and adopt a more precise definition of terrorist offences**

31. The Government of Iceland has changed the definition of terrorist offences in order to meet the Committee's recommendation. An amendment was made for this purpose to the first paragraph of article 100 in the General Penal Code under the Act No. 149/2009. Reference was made to the criticism by the Human Rights Committee, amongst other parties, in the commentary to the bill. Following the amendment, the first paragraph of this article now reads as follows: "For acts of terrorism, periods of up to lifelong imprisonment shall be imposed on any person who commits one or more of the following offences, in order to cause substantial fear among the public or to force, by unlawful means, the Icelandic authorities or those of a foreign power, or an international institution, to act or refrain from acting in order to weaken or damage the constitutional structure or the political, economic or social basis of the State or international institution."

**The Committee recommends that the State party ensure that rape does not go unpunished**

32. The Government has sought ways of complying with this recommendation by the Committee. It should be borne in mind that according to Icelandic law, as in most European States with legal systems based on the principle of the rule of law, indictments are not to be brought in cases where the investigation reveals that it is unlikely that a conviction will be

obtained. This is stipulated in article 145 of the Code of Criminal Procedure, No. 88/2008, which states that when the prosecutor has received the materials relating to a case, and has established that the investigation is complete, he is to consider whether or not to prosecute. If he considers that what has been revealed is insufficient, or unlikely, to lead to a conviction, he is to take no action; otherwise, he is to send the case to court.

33. Proof may be difficult in rape cases, in addition to which human rights principles may make it difficult to introduce amendments in this area. It is a fundamental principle of Icelandic law, and in accordance with article 70 (2) of the Constitution and 14 (2) of the Covenant, that an individual who is accused of a criminal act is ensured the right to be regarded as innocent until his guilt has been proved. The burden of proof regarding the guilt of an accused person lies with the prosecution, and the judge is to assess in each individual case whether the commission of a criminal act has been adequately proved. Furthermore, as is stated above, it is laid down in law that cases are to be dropped, or their investigation closed, if there appear to be insufficient grounds for a conviction. As the burden of proof in rape cases is difficult, and all reasonable doubt is to be interpreted to the benefit of the accused, the question has been asked whether the burden of proof should be reversed, which means that the accused person would have to take the consequences of being unable to prove his innocence. However, the rule that a person is innocent until his guilt has been proved is so fundamental to the legal system that interfering with it has not been considered likely to produce good results.

34. It is necessary to ensure high-quality procedure regarding sexual offences, and for this purpose the Director of Public Prosecutions appointed a task committee in the autumn of 2006 to examine the investigation and handling of rape cases and procedure in their prosecution. The committee examined all rape cases during the period 2002–06 and traced their outcomes in order to assess the quality of investigations and procedure by the prosecution. The committee gave particular attention to the correlation between the number of cases that were discontinued and the procedure adopted during their investigation and prosecution. It also re-examined the working rules on the investigation of rape cases. It submitted its report on 31 May 2007. The committee's conclusions included the criticism that in some cases, investigation of the case had taken far too long, and it recommended that the Director of Public Prosecutions should set guidelines on the maximum length of time to be taken for the handling of rape cases, and that a special investigative unit for rape cases be set up within the Reykjavík Police. The establishment of this unit has resulted in greater speed in the processing of rape investigations.

#### **The State party is invited to take all necessary steps to ensure appropriate protection of women from domestic violence**

35. The Government has made constant efforts regarding policy and legislative amendments to tackle domestic violence and other forms of gender-based violence. It should first be noted that the General Penal Code, No. 19/1940, was amended in 2006, by the Act No. 27/2006, in order to amend the provisions dealing with domestic violence. The bill of amendment was part of the campaign by the Ministry of Justice and Ecclesiastical Affairs (now Ministry of Justice and Human Rights) against domestic violence. The aim of the amendments was to make the legal remedies available in cases of domestic violence more effective. It was considered necessary to have Icelandic legislation reflect more clearly the view of the legislature, which was that offences committed between persons in an intimate relationship are of a special nature. To achieve this aim, a new paragraph was added to article 70 of the General Penal Code, which is a general provision on the determination of punishment. Under the new provision, in paragraph 3 of article 70, where violence is directed against a man, woman or child who is closely associated with the perpetrator and their relationship is considered to have added to the seriousness of the offence, this is generally to lead to a heavier punishment.

36. Furthermore, a new provision was introduced in the General Penal Code, article 233 (b), replacing article 191 of the Code and providing for up to two years' imprisonment in cases where a person insults or vilifies his or her spouse or former spouse, child or another person closely related to the perpetrator and the action is seen as constituting gross defamation. The intention behind the enactment of this new provision was to give a clearer embodiment to the provision for punishment that had already existed in article 191 (1) of the Code. The aim was also to provide individuals with better protection against offences committed by individuals closely related to them, such as through marriage or family relationship, and to afford better protection against gross defamation so as to make it more realistic to achieve the procedural and legal aims that it is normal to apply in this context. Finally, it was proposed that violations of article 233 (b) should be liable to public indictment.

37. Finally, as was stated earlier in the present report, a new Exclusion Order Act, No. 122/2008, entered into force on 1 January 2009. This includes more detailed provisions on exclusion orders in order to improve the legal position of the individuals who apply to the police for such orders, and the police are obliged to respond to such requests as soon as possible and in no case more than two weeks after receiving them. Obviously, measures to ensure quicker processing of requests for exclusion orders make it possible to respond effectively to domestic violence, and that this move therefore constitutes an important move by the Government in this area.

38. Recent years have seen an increase in the number of judgements in which men have been sentenced to prison for assaulting their wives and children. The most recent of these was *Supreme Court Judgement of 10 December 2009 in Case No. 251/2009*, in which a man was sentenced to nine months' imprisonment (of which six months were suspended) for assault and unlawful coercion in which, in the bathroom of their home, he struck his wife in the face repeatedly, both with his clenched fist and his open hand, seized her by the throat with both hands, held her round the neck in the crook of his arm and struck her head against the bathroom wall.

**The State party should implement without delay a national action plan to react to trafficking in persons**

39. The Icelandic authorities have reacted firmly to the growing phenomenon of trafficking in persons, especially women, on which the Human Rights Committee expressed its concern in its 2005 concluding observations. The Government of Iceland adopted its first National Action Plan against Trafficking in Human Beings on 17 March 2009. This was made in close cooperation with NGOs. Its objective is to enhance the coordination of actions that are necessary in order to prevent human trafficking in Iceland, and to further study trafficking in human beings.

40. The National Action Plan against Trafficking in Human Beings lays down the priorities of the Government of Iceland with regard to combating trafficking in human beings. The objective of the National Action Plan is to enhance coordination between parties in dealing with trafficking in human beings in order to prevent human trafficking in Iceland and to further study trafficking in human beings. Furthermore, it specifies actions that are aimed at prevention and education regarding this matter and aimed to ensure that aid and protection to victims is provided. Emphasis is placed on actions that aim at facilitating the prosecution of the perpetrators. At the same time, the intention was to initiate necessary legislative amendments. As of 1 October 2009, the overall internal responsibility for trafficking in human beings (THB) falls within the Ministry of Justice and Human Rights; up to that time the Ministry of Social Affairs and Social Security was responsible for the field.



41. The priorities include: (a) the ratification of the Palermo Protocol and the Council of Europe 2005 Convention on Action against Human Trafficking, and the legislative amendments the ratifications require; (b) the establishment of the supervisory specialist and co-ordination team; (c) the establishment of a specially trained police unit to investigate alleged cases of human trafficking; and (d) education and training of various professional groups that may encounter possible victims of human trafficking in their work.

42. Iceland has participated in the Council of Baltic Sea States Task Force against Trafficking in Human Beings (CBSS TF-THB) since its establishment. The CBSS TF-THB builds on the work of the previous Nordic Baltic Task Force against Trafficking in Human Beings.

43. For 2008–2010 the TF-THB has agreed on the following Strategy for the CBSS Region:

(a) Trainings on Human Trafficking for Diplomatic and Consular Personnel in the CBSS Region in cooperation with the International Organization for Migration (IOM);

(b) Joint Project with the United Nations Office on Drugs and Crime (UNODC) on Fostering NGO and Law Enforcement Cooperation in Preventing and Combating Human Trafficking in, from and to the Baltic Sea Region;

(c) Regional Information Campaign against Trafficking in Human Beings;

(d) Improved Data Collection and Support to Research on Human Trafficking in the Region;

(e) Comparative Regional Legal Analysis on Human Trafficking.

44. In December 2009 a joint CBSS TF-THB/UNODC conference was held in Stockholm. The Conference presented the findings of the regional assessment of the joint project with the United Nations Office on Drugs and Crime on fostering NGO and Law Enforcement Cooperation in Preventing and Combating Human Trafficking in, from and to the Baltic Sea Region. The findings of the regional assessment will be published in 2010.

45. As has been mentioned above, a number of amendments were made to the General Penal Code by the Act No. 149/2009 in connection with the ratification of two international conventions aimed at eradicating trafficking in human beings. These are, firstly, the United Nations Convention against Transnational Organized Crime, of 15 November 2000 and its Protocol, of the same date, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and secondly the European Convention on Human Trafficking of 3 May 2005. Amongst the amendments made is a provision for the prosecution of offences under these conventions even when the perpetrator is a foreign national and the offence is committed outside Icelandic jurisdiction.

46. One of the amendments referred to above involved a change in the wording of the description applying to the trafficking in human beings in article 227 (a) of the General Penal Code, making it clearer and more unequivocal. For example, it no longer contains the condition that the individual shall have demonstrated an intention to “misuse”; in the current wording, “using” a person is sufficient. Accordingly, anyone becoming guilty of the following acts for the purpose of sexually using a person or for forced labour or to remove his/her organs shall be punished for trafficking in human beings by up to eight years imprisonment: (a) Procuring, removing, housing or accepting someone who has been subjected to unlawful force under article 225 or deprived of freedom as per article 226 or threat as per article 233 or unlawful deception by awakening, strengthening or utilizing his/her lack of understanding of the person concerned about circumstances or other inappropriate method. (b) Procuring, removing, housing or accepting an individual younger

than 18 years of age or rendering payment or other gain in order to acquire the approval of those having the care of a child.

47. The special emphasis in the legal system against human trafficking is beginning to yield results: in 2009 the first two indictments for violations of article 227 (a) were heard by the Icelandic courts. Both have now been judged by district courts. In the first of these judgements, delivered on 1 December 2009, a woman was accused of multiple offences connected with the running of organized prostitution, including trafficking in human beings, threats, assault and drug offences. The court's ruling was that the evidence provided by the prosecution was insufficient and therefore acquitted the defendant of a human trafficking offence but she was found guilty of a drug offence and for profiting from the prostitution of others. An appeal against this judgement has been lodged with the Supreme Court of Iceland.

48. The second of these judgements was delivered by the Reykjanes District Court on 8 March 2010. This was the first conviction in Iceland of a human trafficking offence, and the perpetrators were given heavy sentences. Five Lithuanian men were accused of a trafficking offence committed in autumn 2009 against a 19-year-old Lithuanian girl who had been subjected to unlawful coercion, deprived of her freedom and been subject to improper treatment both before being sent, and when she was sent, to Iceland, and also at the hands of the accused when in Iceland. They had met her after her arrival in Iceland and taken her to premises for the purpose of exploiting her sexually. The five men were convicted of violations of article 227 (a) of the GPC and sentenced to five years' imprisonment. This case aroused a great deal of attention in Iceland in autumn 2009 and occupied the police in an extremely large-scale and complex investigation which involved collaboration with the police in Lithuania and other European countries. There is reason to suspect that the men were connected with a criminal organization in Lithuania. The police in Iceland considered that the girl and other witnesses in the case would be in substantial danger from the men if the men were to be released, and for this reason special security precautions were taken. This judgement sets an important precedent for the law-enforcement system in Iceland in its work against human trafficking; however, the legal counsels of the accused have announced their intention of bringing an appeal against the judgment before the Supreme Court.

49. The police authorities have recently completed another investigation of a human trafficking violation. The case has been sent to the Director of Public Prosecutions, who is to decide whether to indict the individual in question.

50. The Regulation on Health Services to those who do not qualify for health insurance under the Act on Health Insurance and Health Service Benefits has been amended, securing emergency health care for the victims of trafficking.

51. Furthermore an act of amendment to the Foreign Nationals Act is in preparation in the Ministry of Justice and Human Rights which will enact the provisions of the Council of Europe Convention against Trafficking in Human Beings regarding the reflection period and issue of residence permits to victims of trafficking.

52. To raise awareness of trafficking in human beings, the Ministry for Foreign Affairs and the Ministry of Justice organized a seminar on trafficking in human beings in October 2009. One of the speakers in the seminar was Ruth Pojman, deputy coordinator at the OSCE office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.

53. In November 2009, a special module on human trafficking and the role of law enforcement was integrated into a larger seminar in the Police Academy on foreigners and border control, where a representative from OSCE lectured.

54. Finally, mention may be made of legislative amendments aimed at reducing the incidence of sexual abuse to which foreign women are likely to be exposed when they are brought forcibly to Iceland in order to engage in prostitution. For this purpose, the purchase of sexual services has been made punishable under Act No. 54/2009, amending article 206 of the General Penal Code, No. 19/1940. Furthermore, on 23 March 2010, legislation was passed revoking authorizations to hold strip-tease shows in night clubs. The main arguments in support of this amendment was that strip-tease shows have been based almost exclusively on the participation of young women who come to Iceland in numbers reaching into the hundreds each year. The Icelandic police authorities have seen it as a priority to ensure their safety, but as they stay in the country for very short periods it has proved difficult to investigate their standing, circumstances and the reasons why they choose this employment and whether they have been forced to do so in one way or another. Furthermore, it has proved difficult to carry out monitoring of their places of employment in Iceland. It is hoped that the revocation of the authorisation for strip-tease shows as part of night-clubs' activities, trafficking in human beings to Iceland will be reduced.

**The State party should recognize the right of everyone convicted of a criminal offence to have his/her sentence and conviction reviewed by a higher tribunal**

55. No changes have been made to the structure whereby, under Icelandic law, there are restrictions to the scope that convicted persons have to have their cases reviewed by an appeal court if only minor offences were involved. Under article 198 of the Code of Criminal Procedure, No. 88/2008, a verdict of 'guilty' may be appealed in cases where the guilty party has been sentenced to prison or to pay a fine, or suffer confiscation of property, amounting to the sum which is the criterion for being able to lodge an appeal in a civil action. This sum, in 2010, is about ISK 600,000 (about USD 5,000). Notwithstanding this provision, an appeal may be made against a district court judgement when a lower sum is involved by permission of the Supreme Court if the outcome of the case has substantial general significance or if it concerns important interests, or if, in the light of available evidence, it is not out of the question that the sentence may be substantially revised. From this, it is clear both that the monetary criterion for permitting appeals is very low and also that liberal provisions are made for granting exemptions, and it is common for permission to appeal to be granted in response to an application. Furthermore, it is clear that in criminal procedure at first-instance level, all the conditions for a free and fair trial according to article 14 of the Covenant on Civil and Political Rights are scrupulously observed, since the hearing is public, with oral testimony taken from witnesses in court.

56. It may also be pointed out that in its decision in *S. Kristjánsson and Bóas K. Bóasson v. Iceland of 10 April 2007, No. 24945/04*, the European Court of Human Rights ruled that the fact that the applicants were not able to bring an appeal before the Supreme Court of Iceland against a mild punishment for a violation of the Fisheries Management Act because the offence involved was minor did not constitute a violation of their rights under article 2 of the Seventh Protocol to the European Convention on Human Rights. The applicants had been convicted of unlawful hunting and sentenced to pay a fine of ISK 50,000 (approximately USD 400) each; in addition, their hunting licences were suspended for a year, their rifles were confiscated for a year and their bag, consisting of 15 mountain grouse, was confiscated.

57. It is clear that the provision of the fifth paragraph of article 14 of the Covenant does not contain any exemption for "offences of a minor character" as are mentioned in article 2 of Protocol 7 to the European Convention on Human Rights. Nevertheless, it is worth referring to the reasoning cited by the European Court of Human Rights in the aforementioned case brought against Iceland. This stated, amongst other things: "However, any restrictions contained in domestic legislation on the right to a review mentioned in that provision must, by analogy with the right of access to a court embodied in article 6,

paragraph 1 of the Convention, pursue a legitimate aim and not infringe the very essence of that right.” In the view of the Government of Iceland, the essence of the right of appeal against convictions and sentences in criminal cases is completely ensured in the procedure provided for in Icelandic law.

## **II. Information relating to the individual provisions of Parts I, II and III of the Covenant**

58. In the second part of the present report a description will be made on the substance of new legislation, judicial practice as regards individual human rights provisions, and particular measures taken with respect to the individual provisions of the Covenant. This will not include any particular consideration of matters concerning individual provisions of the Covenant in fields where no legal amendments have been made or other measures taken, i.e. where the situation remains unaltered since Iceland’s fourth periodic report was examined.

### **Article 1 The right to self-determination**

59. Reference is made to Iceland’s previous reports as regards this provision of the Covenant. No amendments have been made to Icelandic legislation and no changes have occurred as regards Icelandic policy in relation to this provision, and previous information therefore remains unaffected.

### **Article 2 Measures to respect and ensure to everyone the rights protected by the Covenant**

60. As noted in Iceland’s fourth periodic report in the context of paragraph 1 of article 2, various provisions can be found in domestic law concerning prohibition of discrimination and equality before the law. The most important general provision of this kind is article 65 of the Constitution expressing the general equality principle, which has been examined in many court cases, and will be given discussed further in relation to article 26 of the Covenant. Mention may also be made of article 11 of the Administrative Procedure Act of 1993 concerning equality of persons when public administrative authorities exercise their functions, which has been of considerable influence. As regard special provisions prohibiting discrimination, reference is also made to the fourth report.

61. When an individual person considers that his or her rights protected by the Covenant have been violated, effective remedies are guaranteed before competent judicial, administrative and legislative authorities. A person considering his or her rights infringed by administrative authorities, such as public institutions or committees, is generally able to lodge an appeal to a superior authority in order to obtain a revision, or an annulment if the action is contrary to constitutional principles. The superior authority is usually a Ministry of the Government or a particular administrative committee with the role of resolving such appeals. This right of appeal, and other rules intended to provide security under the law when administrative functions are being exercised, is guaranteed by the Administrative Procedure Act, No. 37/1993.

62. The role of the Parliamentary Ombudsman has been described in detail in previous Reports. The office of the Ombudsman is governed by Act No. 85/1997. The Ombudsman exercises control of State and municipal administration and is to ensure that the rights of the

public vis-à-vis public administration are respected. Anyone claiming to have suffered injustice at the hands of public administrative authorities can lodge a complaint to the Ombudsman. The Ombudsman can also conduct examinations on his own initiative. The Ombudsman has done so on many occasions. He or she monitors, for example, whether legislation conflicts with the Constitution or suffers from other defects, including whether it is in conformity with international human rights agreements to which Iceland is a party. In his or her conclusions on individual complaint cases, the Ombudsman issues an opinion as to whether the action by an administrative authority was contrary to law or accepted administrative standards. The opinions of the Ombudsman have had great influence within public administration, and every effort is made to heed his or her recommendations and proposals and to redress the complainant's situation accordingly. As this recourse is of high practical significance, complaints to the Ombudsman have increased greatly in number in the last few years.

63. Individuals have easy access to the courts to have an examination made of whether the executive authorities have violated their human rights under the Constitution and international conventions. Under article 60 of the Constitution, the courts are to monitor the functions of the government authorities, and applications can be made for the invalidation of executive decisions if it is possible to demonstrate that they are at variance with the human-rights provisions of the Constitution. In addition, individuals are guaranteed access to the courts under article 70 of the Constitution, which in this respect guarantees the same right as the first paragraph of article 14 of the Covenant. With reference to these two provisions, taken together, the view has been taken that the executive cannot be granted final power of decision regarding specific issues, or that these issues may be exempted from the purview of the judiciary. It is at all times possible to apply to have administrative decisions set aside by the courts, which review them to establish whether they have been taken on the correct authorization in law, whether lawful considerations were observed, the correct procedures followed, etc. Such cases are relatively common, and in many of them, the courts have found that decisions taken by the executive have been at variance with the Constitution and international human rights conventions.

64. Liberal provision exists in Icelandic law for granting legal assistance to individuals of limited means for prosecuting matters before the courts; under the first paragraph of article 126 of the Code of Civil Procedure, No. 91/1991, an individual may be granted legal assistance if his financial standing is such that the cost of defending his interests would foreseeably be too great for him, providing that there are sufficient grounds for bringing an action and that paying for it from public funds can be seen as natural. In some instances where important human rights are involved, there are special provisions in law stating that individuals are at all times to receive legal assistance. This applies, for example, to certain cases under the Adoption Act, No. 130/1999, and the Child Protection Act, No. 80/2002, and in connection with police actions relating to the investigation of criminal cases or sentences involving punishment (see the Code of Criminal Procedure).

65. Furthermore, an individual considering that legislation enacted by Parliament conflicts with his or her constitutional rights, or the rights protected by the Covenant, may bring legal action in the general court system requesting a declaratory judgment to the effect that the Act is in conflict with the Constitution. This recourse has proved of practical value and the courts have on a number of occasions found that laws have been in conflict with the human rights provisions of the Constitution. The legislature has reacted quickly to such judgments, amending legislation to conform to the judiciary's conclusions.

### **Article 3**

#### **Equal rights of men and women**

66. Full legal equality has been achieved between men and women under Icelandic law as regards the enjoyment of civil and political rights provided for in the Covenant. In addition to the general equality principle contained in article 65 (1) of the Constitution, the second paragraph of that article particularly reiterates that men and women shall enjoy equal rights in all respects. Some legislative measures will be discussed in further detail below; these have the aim of ensuring equality between men and women, particularly as regards employment, work and pay. Experience has shown that in these areas there may be a danger of discriminatory treatment between men and women and special measures have been taken to tackle such situations.

67. Iceland has had a special statute intended to ensure equality between women, and men and their equal status in all respects, since 1976. The current Gender Equality Act, (the Act on Equal Status and Equal Rights of Women and Men), No. 10/2008, revoked the previous Gender Equality Act passed in 2000. The objective of the Act is to continue making progress towards gender equality and to give women and men equal opportunities. The new provisions it contains are meant to carry the Icelandic nation forward in the direction of increased equality between women and men. The experience of the old legislation highlighted the need for firmer law regarding the rights and obligations of those who are responsible for implementing gender equality.

68. The Minister of Social Affairs and Social Security is responsible for gender equality issues within the executive sector. The Centre for Gender Equality is a special institution working on behalf of the Minister and operating under the Gender Equality Act, in which its activities are further defined. The Centre for Gender Equality, the Gender Equality Council and the Complaints Committee on Gender Equality were empowered by the Act of 2008. Among other things, the Centre for Gender Equality is expected to monitor the implementation of the Act, to educate and distribute information, and to provide gender-equality consultation services for a range of bodies, including the Government, other public bodies, municipalities and the private sector. The Centre is also to monitor gender equality developments within the community, and make comments and proposals to the Minister, the Gender Equality Council and other administrative bodies on action that could be taken to achieve gender equality. The Act specifically states that the Centre for Gender Equality is expected to work against gender-based wage discrimination and other gender-based differences in the labour market; it is also to work on increasing participation by men in gender equality activities. Although this is not regarded as being a new challenge, the importance of the Centre's work cannot be sufficiently stressed. The Centre is also expected to arbitrate in any disputes referred to it under the Act. The Act gives the Centre for Gender Equality a more powerful supervisory role than before, with broader authority to gather information from companies, institutions and associations on occasions when there are sufficient grounds for suspecting that the law has been broken. When such a case arises, the Centre must ascertain whether there is reason to refer the matter to the Complaints Committee on Gender Equality. The institution, company or association under investigation must then provide the Centre with any information or documents considered necessary for the investigation of the case.

69. If the Centre's request is not complied with within a reasonable period, it may impose per diem fines until the information or documents are submitted. If the Centre then decides that the information or documents provide sufficient evidence of a violation of the law, it may request that the Complaints Committee consider the case. The institution, company or association involved will then be informed about the decision in writing.

70. This increased authority replaces the more general powers the Centre for Gender Equality had under the old legislation, in which there were no provisions for special penalties in cases where information was not provided on request. The Complaints Committee on Gender Equality consists of three lawyers nominated by the Supreme Court of Iceland and appointed by the Minister of Social Affairs and Social Security. The Supreme Court of Iceland now nominates all three, whereas previously it nominated only two. The Committee considers cases brought before it concerning alleged violations of the Gender Equality Act. This means that the committee plays the same role as before, but under the new law it delivers a binding decision on whether or not the Gender Equality Act has been violated. Previously, the Committee could only deliver a non-binding opinion. These measures seek to give the Committee's decisions more weight than before. The Committee is an independent administrative committee – neither the Minister nor any other authority can give the committee binding instructions regarding the outcome of a case. The Committee's decisions are final, and they cannot be referred to any other administrative authority. However, the parties may refer the Committee's decision to a court of law. In this case the committee can decide to postpone the legal effects of the decision on the request of either party, on the fulfilment of the particular provisions of the Act.

71. New legal provisions allow complainants to request that the Centre for Gender Equality follow up the Complaints Committee's decisions when these decisions are not complied with. The Centre will then issue an appropriate instruction to the party that is subject to the decision, concerning reparation consistent with the committee's ruling within a reasonable period. If the instruction is ignored, the Centre may decide to impose per diem fines on the party until the order is complied with. In addition, the legislation allows the Complaints Committee, after consulting the complainant, to refer a case for arbitration by the Centre for Gender Equality. This applies to cases in which a result may be reached more quickly without infringing the rights of the complainant.

72. Another new legal provision allows the Complaints Committee on Gender Equality to demand that a party found to have violated the law must pay the complainant's costs in bringing the matter before the committee. Each ministry is required to appoint a gender equality expert to mainstream gender equality issues within the sphere of the ministry and the institutions which work under the ministry. The gender equality expert must be a specialist in gender equality issues. The experts may also provide the institutions that work under the ministries with consultancy services on gender equality. The experts' role is to involve themselves in matters of gender equality at work, and to monitor issues in the field within their respective ministries or public bodies. The Act provides for gender mainstreaming to be respected in all policymaking and planning carried out on behalf of ministries and public bodies. The same applies to all decision-making within ministries and public bodies, where appropriate. In addition to the gender equality expert in the Ministry of Education, Science and Culture the Act provides for a special gender equality advisor in the Ministry. The advisor is expected to follow up the provisions of the law on education and schooling, which stipulates that students at all levels of schooling must receive education on gender equality issues, with special emphasis on the equal participation of both genders in the community.

73. Under the Gender Equality Act, the Gender Equality Council will continue to work as an administrative committee, operating within the administration and reporting to the Minister of Social Affairs and Social Security. It is important that the members of the Council reflect knowledge of a wide range of fields in gender equality issues. Therefore, a proposal was made to alter the composition of the committee, and the number of representatives was increased by two – so eleven people now sit on the council. The Minister appoints the council's chairperson without nomination. Two representatives are jointly appointed by trade unions, two jointly by employers' organisations, two jointly by the Feminist Association of Iceland, the Federation of Icelandic Women's Associations and

the Women's Rights Association of Iceland, and one jointly by the Association for a Women's Shelter (*Samtök um kvennaathvarf*) and the Education and Counselling Centre for Victims of Sexual Abuse and Violence (*Stígamót*), one by the Centre for Women's and Gender Studies at the University of Iceland, one by the Organisation for Parental Equality, and one by the Association of Local Authorities in Iceland.

74. The Act provides for the Gender Equality Council and the Centre for Gender Equality to work closely together. One of the Council's purposes is to advise the Minister of Social Affairs and Social Security and the Director of the Centre for Gender Equality in policy making where gender equality is concerned. This involves placing particular emphasis on the equal status of both genders in the labour market, and the co-ordination of family life and working life. The Gender Equality Council is also to organize a gender equality forum in partnership with the Minister of Social Affairs and Social Security – this event is to be held every two years. The forum is intended to be a venue for discussion of gender equality matters. One of its objectives is to encourage more vigorous debate in this field among the public and at most levels in the community. The forum is open to everyone. However, the Gender Equality Council must invite Members of Althingi and representatives of public bodies and local authorities, including gender equality experts, the social partners and NGOs with policies that include gender equality issues. The first forum took place in January 2009.

75. In order to stimulate more effective discussion in the gender equality fora, the Minister of Social Affairs and Social Security submits a report on the status and development of gender equality issues at the beginning of each forum. The report discusses the status of the genders in main areas of society. It is to cover a wide range of topics including: the labour market and the development of gender-based wage discrimination; women and men in employment and the participation of the genders in the business community in general; grants provided by public bodies, itemised according to the gender of the recipient; the participation of men and women in politics; and the gender ratio of public committees and boards. The discussions are also expected to cover developments that have occurred in particular areas since the previous report, as well as an assessment of the status and results of projects in the current action plan. The report from the forum held in January 2009 is available on the Ministry's website. It is hoped that this forum will prove useful for communication on gender equality between experts on this matter, politicians, Government representatives and NGOs involved in these issues.

76. The overall objective of the gender equality fora is to generate ideas and suggestions for the preparatory work on the Governmental gender equality action plan, thus creating a basis of participation in the plan involving various actors in society. As a result, it is important that the Minister should not submit his or her proposals to the Althingi until after the gender equality forum. Furthermore, it is the statutory role of the Gender Equality Council to ensure that a summary of the conference discussions is prepared and delivered to the Minister.

77. The Minister of Social Affairs and Social Security is expected to present a motion for a resolution by the Althingi regarding the implementation of a gender equality action plan for the following four years. The action plan is to be formulated after proposals have been received from other ministries, from the Centre for Gender Equality and from the Gender Equality Council. Discussions at the gender equality forum must also be taken into account. The Ministry of Social Affairs and Social Security and the Centre for Gender Equality have attached great importance to informing and activating local authorities in the field of gender equality. Local authorities must continue to appoint gender equality committees that will provide local authorities with advice in this field, and monitor and implement measures, including special measures, to ensure the equal status and equal rights of women and men in every local government area. These committees also prepare gender



equality policies and action plans for the following four years. A new addition to the legislation is that each committee must deliver a report to the Centre for Gender Equality every two years, describing the status and development of gender equality issues in the relevant local authority. One purpose of these reports is to encourage local authorities to apply even more effort in the gender equality arena.

78. For many years, the Gender Equality Act included a provision to ensure equality in the numbers of women and men on public committees, councils and boards. In order to strengthen this provision, there is a clear stipulation that the proportion of the genders must be as even as possible, each having not less than 40 per cent when there are more than three members. This also applies to the boards of public companies on which the Government or local authorities are represented – this is a new provision. In order to make sure that this objective is achieved, both women and men must be nominated when appointments are made to committees, councils and boards. Furthermore, amendments were made on 4 March to the Limited Companies Act, No. 2/1995 and the Private Limited Companies Act, No. 138/1994 were passed on 4 March 2010. They introduce provisions whereby in publicly-owned limited companies and limited companies employing more than 50 people, there shall be representatives of both sexes on boards consisting of three persons; where there are more than three board members in such companies, the ratio of either sex may not be lower than 40 per cent.

79. A further addition to the Gender Equality Act is that one of the tasks of the Centre for Gender Equality is to seek to change traditional images of the genders and to eliminate negative stereotypes of the roles of women and men. This task has always been regarded as vital for achieving gender equality. For this reason, it has been specifically included in the Act, both as a means of achieving its objectives and as a task which the Centre for Gender Equality is required to attend to. The Act prohibits discrimination of all types, direct or indirect, on grounds of gender. It contains definitions of direct and indirect discrimination. Previously, these definitions were only found in regulations. In addition, opinions remain unchanged regarding certain special actions, and they are not considered as violating the Act – e.g., treating women with particular consideration due to pregnancy and childbirth is not considered to be discrimination. Special provisions on education and schooling remain in the Act. They specifically require gender mainstreaming in all policy formulation and planning in education and schooling, and expect students to be educated on gender equality issues. Employers are not permitted to discriminate between their employees with regard to wages, or other terms, on the grounds of gender. The same applies to promotion, continuing education, vocational training, study leave, working conditions, and other matters. Employers and trade unions are expected to work systematically to equalize the position of women and men in the labour market. Employers are also expected to continue to work specifically on equalizing gender status within their company or institution. At the same time, they must focus on increasing the proportion of women in management and positions of influence.

80. Since 2000 there has been a provision in the Act stating that institutions and enterprises with more than 25 employees are to create gender equality policies, or to make special provisions regarding gender equality in their human resources policies. No changes were proposed as regards their obligations, although the Act gives the Centre for Gender Equality greater authority to monitor compliance with the law. The seven-year period since the enactment of the provision was regarded satisfactory for companies and institutions to adapt to changed circumstances. The companies and institutions involved are under an obligation to deliver a copy of their gender equality policies, or human resources policies if no gender equality policy has been prepared, to the Centre for Gender Equality whenever it so requests. They must also provide the Centre with a report on their progress within a reasonable time, when so requested. If a company or institution has not prepared a gender equality policy or has not integrated equality perspectives into its human resources policy,

the Centre for Gender Equality will instruct it to remedy the matter within a reasonable timeframe. The same applies if the Centre considers that a company's or institution's gender equality policy is not acceptable, or if equal rights perspectives have not been integrated into its human resources policy sufficiently clearly. If the company or institution does not comply with the Centre's instructions, the Centre may impose per diem fines until its instructions are met. The same applies when a company or institution neglects to deliver a copy of its gender equality policy or human resources policy to the Centre for Gender Equality, or refuses to deliver a report on its progress. Fines of up to ISK 50,000 per diem may be imposed until the matter has been remedied in an acceptable manner. This amendment is considered to be extremely important; it gives the Centre clearer authority for more active monitoring of companies and institutions regarding their compliance with the Act.

81. Article 19 of the Act stipulates that women and men working for the same employer shall be paid equal wages and enjoy equal terms of employment for the same jobs or jobs of equal value. By "equal wages" is meant that wages shall be determined in the same way for women and men. The criteria on the basis of which wages are determined shall not involve gender discrimination. Workers shall at all times, upon their choice, be permitted to disclose their wage terms. In the Act from 2008, a new provision has been added stipulating that employees are at all times permitted to disclose their wage terms if they so choose; companies may no longer prohibit employees from discussing their salaries with a third party. In order to encourage companies to establish policies on equal pay, and to follow them through, the Minister of Social Affairs and Social Security will, according to temporary provisions in the Act, oversee the development of a certification system for implementation of equal pay and equal rights policies as regards recruitment and termination of employment. The provisions will be implemented during the next two years in co-operation with the social partners.

82. Collective agreements negotiated in the private sector in February 2008 contained a special clause that draws particular attention to cooperation between the social partners as regards gender equality issues during the term of the agreement. The clause states, among other things, that work on "developing procedures for certifying the implementation of the gender equality policies of companies shall begin immediately with the objective of completing such work by the end of 2009." In order to fulfil their obligations, the Minister of Social Affairs and Social Security, the Confederation of Icelandic Employers and the Icelandic Confederation of Labour have signed a declaration to the effect that they will embark on negotiations with Icelandic Standards (*Staðlaráð Íslands*) for the creation and management of a standard on the implementation of equal pay and equal opportunities policies. The standard will also cover professional development.

#### **Article 4**

##### **Measures in time of emergency**

83. No changes have been made to Icelandic law or practice in relation to this provision of the Covenant, and no changes are planned. Although the Icelandic Constitution does not contain any provisions authorising derogations in time of emergency, and no enacted law supports such a view, emergencies would probably be deemed to justify derogations from its provisions. It must however be noted that in such situations, the Republic of Iceland would without any doubt be bound by the limitations imposed by article 4 of the Covenant and article 15 of ECHR. Domestic law would not effect any change in that respect; emergencies could never justify any derogation from the principles of civilized nations concerning the protection of fundamental human rights.

## **Article 5**

### **Prohibition of abuse of rights**

84. No changes have been made to law or practice concerning this provision of the Covenant.

## **Article 6**

### **The right to life**

85. No changes have occurred to law or practice concerning this provision of the Covenant. Article 69, paragraph 2, of the Constitution, states that death penalty may never be stipulated by law. At the end of 2003, Parliament passed the Act No. 128/2003, incorporating into law Protocol No. 13 to the European Convention on Human Rights concerning abolition of the death penalty in all circumstances. The Protocol was ratified on 10 November 2004.

86. With the ratification of Protocol No. 13, the protection afforded to the citizenry has been greatly strengthened, and Iceland at the same time expressed its solidarity with the view that the death penalty should be abolished in all circumstances. The last execution that took place in Iceland was in 1830, and the death penalty was abolished entirely in Iceland in 1928. There are no special provisions in Icelandic legislation regarding extrajudicial killings and crimes in the name of honour, and there are no practical results in investigating such crimes. No such crimes have been committed or investigated to date.

## **Article 7**

### **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment**

87. Article 68, paragraph 1 of the Constitution provides that no one may be subjected to torture or any other inhuman or degrading treatment or punishment. As described in previous reports, there are criminal provisions in the General Penal Code, No. 19/1940, that classify torture as a criminal act. If a public servant subjects someone to physical torture, his/her conduct would fall under the provisions on infringement of physical inviolability in articles 217 or 218 of the General Penal Code, depending on the severity of the deed. Chapter XIV of the Penal Code contains special provisions criminalizing offences committed in an official capacity, of which articles 131, 132, 134 and 135 would chiefly be applicable to conduct such as that described in article 7 of the Covenant on Civil and Political Rights and article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These would usually, in cases of physical torture, be applied jointly with the provisions concerning the infliction of physical injury. In cases of non-physical torture these provisions, by themselves, make criminal sanctions possible if a person acting in an official capacity applies such torture. There is no doubt that these criminal provisions apply to any conduct described in article 1 of the Convention against Torture, despite the fact that no term corresponding to "torture" is used there. In addition, the provisions mentioned are in some respects of more extensive scope than the definition in article 1 of the Convention against Torture, as they make punishable any misuse of public authority, and not only misuse for the purposes which article 1 describes. It should be noted that intent is not always a condition for applying these criminal provisions. Punishment may also be ordered in cases of gross negligence.

88. In addition to the above-mentioned provisions on offences committed by public officials, physical torture is punishable under a large number of criminal provisions, despite

the fact that no term corresponding to “torture” is used. In general, all provisions of the General Penal Code make acts committed against life and limb punishable, including physical torture. In addition to the provisions of articles 217 and 218 already referred to, examples such as article 225 on unlawful duress, article 226 on deprivation of liberty and various provisions of Chapter XXII on sexual offences can be mentioned. Various Icelandic statutes, in particular the provisions of the recently adopted Code on Criminal Procedure, No. 88/2008, protect the rights of arrested persons and remand prisoners in connection with police investigation of criminal cases. The Regulation on the legal status of arrested persons and police interrogations, No. 651/2009, specifies, among other things, the procedure for police hearings of a suspected person. Regulation No. 190/2009 provides for the conduct of judicial hearings, in particular if the witness is under 15 years of age.

89. The Execution of Sentences Act, No. 49/2005, provides for the execution of sentences, control and structure of the prison system, prisoners’ rights and obligations, procedure and appeals, etc. The Act No. 15/1990 was enacted on account of Iceland’s ratification of the European Convention against Torture of 1990. Its provisions specify how Icelandic authorities are to assist the Committee for the Prevention of Torture when it examines the conditions afforded to persons deprived of liberty in Iceland. The Committee has visited Iceland three times, in 1993, 1998 and 2004. The Committee’s reports on its visits to Iceland can be found on the CPT website: <http://www.cpt.coe.int/EN/states/isl.htm>.

90. Icelandic law provides for measures to protect persons other than those deprived of liberty on account of suspicion of criminal conduct, or serving a prison sentence, from torture or other inhuman treatment; the danger of such treatment is deemed not only to exist in prisons, but also, for example, where persons have been deprived of their liberty by reason of mental illness and committed to hospitals against their will, or where adolescent persons, not responsible under criminal law, have against their will been committed to institutions. Such danger is also deemed to exist where an individual is placed in full personal charge of another individual, or where a person is dependent on another person by reason of his or her sensitive position. Situations that may be examined in this context include the treatment of children in homes or schools and of patients in hospitals. The law responds to this, to some extent, by protective provisions regulating such situations in order to prevent cruel, inhuman or degrading treatment.

91. The main role of the Ministry of Justice and Human Rights is to uphold law and order and ensure that civil rights are respected. In relation to the question at hand, it should be mentioned that the Ministry of Justice and Human Rights supervises the affairs of the police, detention centres and prisons.

92. Impartial investigation is to be carried out by the authorities in the event of a suspicion that torture has taken place, and persons have the right to press charges if they have been subjected to torture or other inhuman or degrading treatment. Under article 35 of the Police Act, No. 90/1996, complaints against police officers for alleged criminal violations in the course of carrying out their work are to be submitted to the Director of Public Prosecutions, who is responsible for the investigation of such cases. A prisoner may lodge a complaint on account of torture on the part of a prison warder to the person in charge of the prison, to the Prison and Probation Administration or directly to the Police Commissioner with jurisdiction in the area where the prison is situated. The Parliamentary Ombudsman has, at his own initiative, undertaken the examination of certain aspects of the prison system and submitted opinions on them.

93. No judgments have been rendered in Iceland on questions relating to the treatment of prisoners or other individuals, where article 68 (1) of the Constitution or provisions of the Penal Code have been at issue; nor have any complaints related thereto been investigated by international human rights monitoring bodies.

## **Article 8**

### **Prohibition of slavery and compulsory labour**

94. Icelandic law prohibits slavery and compulsory labour in any form, a basic principle to this effect being found in article 68, paragraph 2 of the Constitution. Icelandic legislation does not provide for any civil obligations that may be contrary to this provision. Military service has never been provided for in Iceland, and no Icelandic armed forces have come into being.

95. Under article 225 of the General Penal Code, No. 19/1940, it is a punishable offence to force another person to do something by using physical violence or threatening to use physical violence against him/her or his/her relatives, and under article 226 it is a punishable offence to deprive another person of his/her freedom.

96. The most practical issues related to compulsory labour and servitude in Iceland have been related to the growing phenomenon of trafficking of human beings and new measures to combat organized criminal activity in the field. In Part I (paras. 39–54) above, a detailed description was given of how the Icelandic authorities have reacted to these problems by adopting a National Action Plan against Trafficking in Human Beings and providing for legislative amendments. A special punitive provision is to be found in the General Penal Code, as article 227 (a), introduced by the Act No. 40/2003, and this was amended by Act No. 149/2009 so as to make the provision more effective. At the same time, necessary amendments were made in relation to the ratification of some important international conventions in the field. These are the United Nations Convention against Transnational Organized Crime and its Protocol on Human Trafficking (2000), the Council of Europe Convention on Action against Human Trafficking (2005), and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007).

97. Since autumn 2009, three indictments have been issued for violations of article 227 (a), and judgements has been delivered in two cases. In one of these, five men were given heavy prison sentences for trafficking; judgement is awaited in one case. Reference is made to the detailed description of these cases in Part I of the present report. The experience of the past few years shows that the measures taken by the Government of Iceland have proved highly effective in the fight against trafficking in human beings.

98. The Act on the Working Environment, Health and Safety in the Workplace, No. 46/1980, with subsequent amendments, applies to occupational health and safety. Under the Act, the employer is required to ensure full safety and good working environment and health in the workplace. The employer shall also inform the employees of all dangers of accidents and health hazards that may be associated with their work. The employer shall, furthermore, ensure that the employees receive education and training for their jobs to minimize dangers associated therewith.

99. Iceland has ratified ILO Convention No. 29, concerning Forced Labour, ILO Convention No. 105, concerning Abolition of Forced Labour, ILO Convention No. 138, on Minimum Age, and the ILO Convention No. 182, concerning the Worst Forms of Child Labour. Iceland has also ratified the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the ECHR and the European Social Charter of 1961. Iceland has signed the Revised European Social Charter from 1996 and is preparing to ratify it. Iceland has also signed the United Nations 2000 Convention against Transnational Organized Crime and its Protocol on Human Trafficking, the Council of Europe 2005 Convention on Action against Human Trafficking, and the Council of Europe 2007

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and is preparing to ratify them, as has been previously stated.

## **Article 9**

### **The right to liberty and security of person**

100. The Constitution stipulates the main principles regarding the right to liberty in article 67, paragraph 3 of which states that detention on remand may only be ordered due to a charge subject to heavier sanctions than fines or punitive custody. Furthermore, the provision declares that the right of a person detained on remand to refer the decision on his/her remand to a superior court is guaranteed by law. A person may never be detained on remand for longer than necessary; if the judge deems that s/he may be released on bail, the amount of bail shall be determined by a judicial order. These principal rules related to pretrial detention are further elaborated in the Code on Criminal Procedure No. 88/2008. The Act came into force on 1 January 2009. It includes in many respects more detailed provisions than previous legislation, especially regarding the right of arrested persons and the time limits regarding detention on remand.

101. According to article 95 of the Code on Criminal Procedure, No. 88/2008, a defendant shall only be detained by arrest and put in pretrial detention if there is a reasonable suspicion that he has committed a crime that is punishable by imprisonment, and the defendant has reached 15 years of age. Furthermore it must aim:

- To prevent him from complicating or impeding the investigation, by destroying evidence, influence witnesses, etc.
- To prevent him from absconding or hiding to avoid prosecution
- To prevent him from continuing his/her conduct, committing crimes
- To secure the safety of the defendant and others

102. In addition, the second paragraph of article 95 of the Act provides that a defendant may be held in custody, even if the conditions of items (a)–(d) are not met, if there is a strong suspicion that he has committed offences for which punishment prescribed in law is heavier than 10 years' imprisonment, providing that the offence is of a such a nature as to make custody a necessary precaution from the point of view of the public interest. A defendant may also be held on remand by a court order if it is considered evident that the offence of which he is accused would, according to the circumstances, only be punishable by fines or a suspended prison sentence. Furthermore, all efforts are to be made to ensure that an accused person is not held on remand for longer than the time during which it is thought evident that he will be sentenced to imprisonment.

103. A new rule was introduced in the Act No. 88/2008 regarding the length of custody on remand; under the fourth paragraph of article 95, a defendant may not be remanded in custody by a court order for longer than twelve weeks unless a case has been brought against him or this is rendered necessary by urgent considerations regarding the investigation (see item *a* of the first paragraph). Also, a special rule applies under the fifth paragraph of article 95 to defendants under the age of 18; they may not be committed to remand custody unless it can be considered certain that the other measures referred to in the first paragraph of article 100, or prescribed in the Child Protection Act, would not be sufficient instead. Thus, it is only in the most exceptional cases that it is necessary to commit a young person aged 15–18 to custody.

104. In accordance with article 94 of the Code on Criminal Procedure, an arrested person shall be brought before a judicial authority within 24 hours if he is not released after giving

a statement. If it is not possible for the defendant to give a statement because s/he is under the influence of alcohol or drugs, s/he shall do so as soon as he or she is capable, and never more than 30 hours after arrest. If, due to weather conditions or other extenuating circumstances, the defendant cannot be brought before a judge within 24 hours, this shall be done as soon as possible (see article 94 of the Code of Criminal Procedure). All decisions by district courts on pretrial detention and extensions of pretrial detention may be brought before the Supreme Court for revision at the request of the detainee.

105. The estimated time from the time a person is deprived of his/her freedom before s/he is brought before a competent judicial authority to decide on the detention is 15–20 hours. The estimated average period between the lawful arrest and the start of the trial is 2–10 months from the time of the offence (minor, uncomplicated offences take less time, serious and extensive offences take more time).

106. According to articles 100 and 101 of the Code of Criminal Procedure, if conditions for pretrial detention are fulfilled, a judge can, instead of deciding on the detention, set bail, order that the person be committed to a hospital or a suitable institution, prohibit the person from leaving the country or order the person to stay in particular places. A prohibition on leaving the country is generally applied as a milder measure than remand, and examples can be found from the past few years in which the Supreme Court has set aside remand orders made by the district courts because it has considered prohibitions on leaving the country sufficient to ensure that accused persons will not abscond.

107. All those who are deprived of their liberty under circumstances other than arrests in connection with criminal cases are guaranteed the right to refer the decision to a court under the fourth paragraph of article 67 of the Constitution. The authorisations in law under which persons may be deprived of their liberty which come into consideration here are chiefly those of the Legal Competence Act, No. 71/1997, when it becomes necessary to commit mentally ill persons to a hospital, and those of the Child Protection Act, No. 80/2002, when children have to be taken from their guardians and placed in an institution because their well-being is in jeopardy. Both these statutes contain detailed rules on procedure, which state that deprivations of liberty which last for a specific length of time may in all cases be referred to a court; where they exceed this length of time; a court order must be obtained to permit the extension of the deprivation of liberty.

## **Article 10**

### **Treatment of persons deprived of liberty**

108. A new Act on Execution of Sentences, No. 49/2005, came into force on 1 July 2005. One of the aims of the new act was to set clearer rules regarding prisoners' rights; promote better conditions for them during imprisonment and prescribe various other types of treatment. For example, the Act includes provisions for the drawing up of a treatment schedule at the beginning of the prison term, and also rules on prisoners' rights and obligations regarding the use of telephones and mail, the items they are permitted to have in their cells, their right to spend time out of doors and to engage in leisure activities, their access to the media in order to keep abreast of matters of national interest and their right to contact a priest or other representative of a registered religious organization. Rules were also set concerning permission for regular day-visits outside prison, which are intended to confer greater rights in this area.

109. As of 1 September 2009, there were 122 persons serving prison sentences in Iceland, and 25 were being held on remand.

110. Under article 27 of the Act, it is possible when a person has been sentenced to up to six months' non-conditional imprisonment, to execute the sentence in the form of unpaid

community service lasting a minimum of 40 hours and a maximum of 240 hours. The Prison and Probation Administration may decide that part of this unpaid community service is to take the form of counselling (cognitive therapy), providing this in no case amounts to more than one-fifth of the community service. About 25 per cent of non-conditional prison sentences are applied in the form of unpaid community service.

111. All complaints by prisoners and remand prisoners regarding ill-treatment in prison are registered and investigated by the prison authorities and responded to appropriately. According to the Execution of Sentences Act, No. 49/2005, if prisoners consider they have been subjected to ill-treatment by the prison authorities they can complain to the Minister of Justice and Human Rights, who is in overall charge of the prison system. They can also lodge a complaint with the Parliamentary Ombudsman. If they consider they have been subjected to torture or other kind of physical abuse they can file charges to the police. The Constitution assures citizens' rights against the Government. The executive is obliged to act in conformity with the law and judges are independent in exercising their judicial power.

112. Under article 32 of the Execution of Sentences Act, each prisoner shall have a cell to himself/herself unless special circumstances or the accommodation available prevents this. The average number of prisoners per cell is one. Pretrial detainees are not separated from convicted prisoners except when in isolation. The separation is only within the prison. The prison that holds pretrial detainees has a separate wing for pretrial detainees. There is no separate pretrial prison.

113. According to an agreement between the prison authorities and the Government Agency for Child Protection (GACP), the latter is to try to find appropriate treatment facilities for children under the age of 18 instead of prison. Regarding young offenders aged 18–21, the general rule is to have them serve their sentence in open prison. Under article 63 of the Execution of Sentences Act, when deciding on probation release, the young age of the offender is one of the factors taken into account. If a prisoner was 21 years of age or younger when the offence was committed, s/he may be released after having served half the sentence, despite having committed a serious offence. This is conditional upon his/her having shown very good behaviour during the sentencing period. The prison authorities also focus on this group of young offenders during their probation period, which includes increased supervision, stricter conditions and more interaction.

114. About 25 per cent of unconditional imprisonment is executed in the form of unpaid community service. Under articles 15 and 24 of the Execution of Sentences Act, prisoners can serve their sentence at treatment facilities and complete their sentence outside the prisons at a halfway-house in Reykjavík. In 2008, 23 per cent of the prisoners completed their sentence at treatment facilities and 27 per cent completed their sentence at the halfway-house. The prison authorities have sent a proposal to the Ministry of Justice and Human Rights on electronic monitoring as a way of executing unconditional sentences.

## **Article 11**

### **Prohibition of imprisonment on the grounds of inability to fulfil a contractual obligation**

115. Reference is made to the discussion of this provision in Iceland's previous reports. No changes have been made to Icelandic legislation or practice that relate to the rights provided for here, which are secured in full in conformity with the article.



## Article 12

### Liberty of movement

116. No changes have occurred in Icelandic legislation that relate to this provision of the Covenant since the Committee's consideration of Iceland's fourth periodic report. Article 66, paragraph 3 of the Constitution states that no one can be barred from leaving Iceland except by a judicial decision; however, a person may be prevented from leaving Iceland by lawful arrest. It is added in article 66, paragraph 4, that every person lawfully staying in Iceland shall be free to choose his residence and shall enjoy freedom of travel subject to any limitations laid down by law.

117. The first case regarding individual's freedom to choose his residence and the application of article 66 (4) of the Constitution was dealt with by the Supreme Court of Iceland in its *Judgment of 14 April 2005, in Case No. 474/2004*. This case concerned the legal authorisation for provisions in a regulation issued by a government minister which defined a holiday (leisure) area in a particular locality and prevented a person from registering his place of domicile in such an area. The Supreme Court referred to the plaintiff's right, under the fourth paragraph of article 66 of the Constitution, to determine his place of residence, as this decision had not violated any law and the plaintiff had the place in question at his disposal. The court did not consider that the local authority could invoke any sources of law, either in the Local Planning Act, No. 73/1997 or in other statutes that could prevent the plaintiff from having his domicile in a holiday cottage in an area designated as a holiday area. Thus, the local authority was not permitted to prevent the plaintiff from having his domicile in the place he had chosen.

## Article 13

### The legal status of aliens in case of denial of entry or expulsion

118. Article 66, paragraph 2 of the Constitution states the principle that the right of aliens to enter Iceland and stay in the country, and the reasons for which they may be expelled, shall be laid down by law. Icelandic law ensures both high-quality procedure in cases of this type and the right of appeal to a higher authority. The main acts and regulations governing aliens and detailed rules related to residence permit and expulsion are the following:

- (a) The Foreign Nationals Act, No. 96/2002;
- (b) The Regulation on Foreign Nationals, No. 53/2003;
- (c) The Foreign Nationals' Right to Work Act, No. 97/2002;
- (d) The Regulation on Foreign Nationals' Right to Work, No. 339/2005.

119. The legal framework on foreign nationals' issues has, for the most part, remained unchanged since Iceland's fourth periodic report was submitted, though certain amendments have been made to the Act No. 96/2002.

120. The Directorate of Immigration operates under the Foreign Nationals Act, No. 96/2002 and the Regulation on Foreign Nationals, No. 53/2003. The main function of the Directorate consists of issuing residence permits. The Directorate handles all applications for residence permits and other matters concerning foreigners, and cooperates on many levels with other organizations. The Directorate is the central administrative institution responsible for laws and regulations related to foreign nationals, and takes decisions regarding, e.g., temporary residence permits, applications for asylum and expulsion.

121. Section V of the Foreign Nationals Act, No. 96/2002, contains procedural rules on decisions taken under the Act; the general rules on administrative procedure under the

Administrative Procedure Act, No. 37/1993, apply unless other arrangements are specifically set forth; these include the right to have reasons given for any decision taken. In the case of decisions regarding expulsion or the revocation of residence permits, and applications for asylum, the foreign nationals involved are guaranteed special rights during the processing of the case.

122. Thus, foreign nationals are guaranteed the right of objection under article 24 of the Act, and the authorities are obliged to provide them with guidance regarding their rights, including the right to have the assistance of a lawyer or to contact a representative of their home countries, a representative of the United Nations Refugee Agency and humanitarian and human rights organizations in Iceland (see article 25 of the Act). Appeals against decisions by the Directorate of Immigration regarding expulsion or the granting of asylum may be lodged with the Ministry of Justice for review under article 30 of the Act. If a foreign national avails himself of the right to lodge an appeal with the ministry, he is entitled under article 34 of the Act to have a spokesman appointed to represent his case vis-à-vis the ministry.

123. Icelandic asylum policy and procedure is governed by the Foreign Nationals Act and the Regulation on Foreign Nationals. Article 44 of the Foreign Nationals Act refers to the definition of refugees in the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Iceland has been a party to the Convention since 1956. In addition Iceland is a party to a number of international human rights conventions that contain rules which may affect the decision on refugee status, such as the ECHR, the United Nations Convention against Torture, the United Nations Convention on the Rights of the Child and others.

124. Iceland is a member of the Schengen Agreement which embraces a number of States of the European Union and provides for the abolition of internal border control between States participating in the scheme, while active monitoring is applied to those entering or leaving the outer borders of the Schengen area. Through Iceland's membership of the Schengen scheme, it has adopted Council Regulation (EC) No. 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national and Commission Regulation (EC) No. 1560/2003, laying down rules for the application of Council Regulation (EC) No. 343/2003 (the 'Dublin regulation'). The Foreign Nationals Act contains references to these regulations in article 46.

125. In addition to the provision under which foreign nationals expelled from Iceland are able to appeal to the ministry against the expulsion decision, they are able to submit the decision to the authorities and demand that it be set aside. In the past few years some judgements have been delivered regarding foreign nationals' rights and whether correct procedure has been observed; these have, in particular, concerned the rights of asylum-seekers. In its *Judgement of 12 March 2009 in Case No. 353/2008*, the Supreme Court examined the handling by the Directorate of Immigration and the Ministry of Justice of an application for asylum in Iceland. In its processing of the case, the Directorate had requested information from the United Nations Refugee Agency on conditions in the asylum-seeker's home country, but took its decision before it received the reply. The asylum-seeker appealed against this decision to the Ministry of Justice and Ecclesiastical Affairs, which upheld it. The court considered that insufficient efforts had been made to obtain the necessary information (which was available) in order to take a decision on the matter as was required under the third paragraph of article 50 of the Act No. 96/2002. Consequently, the court ruled that the rule covering investigations in article 10 of the Administrative Procedure Act, No. 37/1993, had been violated. The ruling by the Ministry of Justice and the decision by the Directorate of Immigration to refuse to grant asylum were set aside.

126. The Minister of Justice appointed task force in spring 2009, consisting of experts and representatives of the Government and the Red Cross, to examine the laws and regulations relating to asylum-seekers, not least in the light of the jurisprudence of the Icelandic courts and international obligations, and to make proposals regarding any reforms it considered necessary. The committee submitted a detailed report to the minister in summer 2009, setting forth many proposals for improvements in the handling of asylum applications. At the time of writing, work is in progress on a comprehensive review of the Foreign Nationals Act, taking into account the proposals made by the committee and aimed at ensuring asylum-seekers a better standing in law when their applications for asylum are under examination.

## **Article 14**

### **The right to a fair trial**

#### **Paragraph 1**

127. The chief principles of article 14 of the Covenant are stipulated in article 70 of the Constitution, providing for the right to a fair trial before an independent and impartial court in both civil and criminal cases. The most important amendment relating to legal procedure since the fourth periodic report was submitted is the aforementioned enactment of a new Code of Criminal Procedure, No. 88/2008, which came into force on 1 January 2009.

128. There are two instances in the main court system. The district courts handle all kinds of cases (civil, criminal, administrative, etc.). The Supreme Court also handles all kinds of cases with the exception of cases heard by the Labour Court and the Court of Impeachment. Two main laws, the Code of Civil Procedure, No. 91/1991, and the Code of Criminal Procedure, No. 88/2008, lay down the rules on procedure. The latter is the result of a complete overhaul of the previous code. Amongst other things, this revision took special notice of article 6 of the European Convention for Human Rights and the jurisprudence of the European Court of Human Rights.

129. Rules governing the structure and function of the judicial system are to be found chiefly in the Act on the Judiciary, No. 15/1998, which was described in the fourth report and no major changes have been made since then in this respect. There are nine Supreme Court judges and 38 district court judges. According to article 18, paragraph 1 of the Code on Criminal Procedure No. 88/2008, the current prosecutors are the Director of Public Prosecutions (1) and the Police Commissioners (15). Temporarily, because of the bank collapse in 2008, there is also the office of the Special Prosecutor, with four independent prosecutors. There are plans to increase the number of district court judges in order to respond to the expected rise in the number of criminal cases and civil disputes in the court system resulting from the crisis and the collapse of the banks in autumn 2008.

130. In the recent years there has been growing concern that the rules relating to the selection and appointment of judges, both in the district courts and the Supreme Court, do not sufficiently guarantee the independence of the judiciary. This debate has centred on the role of the ministers, who have sole responsibility for appointing judges, and have on occasions disregarding the recommendations of a special evaluation committee concerning the appointment of district court judges and the opinion of the Supreme Court concerning the appointment of Supreme Court Judges. A response has now been made to this criticism, and the Minister of Justice has submitted a bill to the Althingi on amendments to the Judiciary Act, No. 15/1998. Under the amendments proposed, the aim is that the Minister of Justice would appoint a five-man selection committee to examine the qualifications and competence of applicants for the position of both Supreme Court and district court judges. Two members of this committee would be nominated by the Supreme Court, one of them to

be the chairman of the committee, and least one of them would be a judge who is currently active. The Judiciary Council would nominate the third member of the committee, and the Icelandic Bar Association would nominate the fourth. The fifth member of the committee would be elected by the Althingi. Alternates would be nominated and appointed in the same way as these principals. The term of appointment to this committee would be five years, structured in such a way that the appointment period of one member would come to an end each year. The same person could not be appointed as a principal member of the committee for more than two consecutive terms. This selection committee would submit to the Minister of Justice written and reasoned comments on applicants for positions as Supreme Court judges. In its comments, the committee would adopt a position as to which applicant was the best qualified to be appointed to the position, but would be able to name two or more as being equally well qualified.

131. The most significant element in these proposals is that the minister would not be able to appoint as a judge a person that the evaluation committee did not consider to be the best qualified, either absolutely or tying with one or more others, among the applicants. Exemptions could be made from this rule, however, if the Althingi approved an application by the Minister of Justice for permission to appoint to the position another applicant, whose name was specified, who in the opinion of the selection committee met all the conditions of the second, third and fourth paragraphs. The minister would be required to submit such an application to the Althingi within two weeks of the submission of the selection committee's comments, or within two weeks of the Althingi's convening its next session after the comments are submitted, and the application would have to be approved within a month of its being submitted: otherwise, the minister would be bound by the comments and recommendations of the selection committee.

132. Access to independent and impartial courts is guaranteed in the Icelandic legal system, both in civil and criminal cases, and the legal system is generally considered to be efficient. This is reflected, for example, in the fact that cases before the courts are dealt with at a normal speed. Accordingly, the length of proceedings has not been considered a problem in Iceland to date. It should be noted that excessive length of proceedings is extremely rare within the Icelandic court system and that Iceland is the only State among the initial parties to the European Convention on Human Rights where no complaint under article 6 of the Convention regarding the length of proceedings has ever been declared admissible. By way of example, it may be mentioned that the average length of proceedings in recent years has been 300 days in criminal cases and less than 70 days in civil cases.

### **Paragraph 2**

133. The right of presumption of innocence is given particular protection in article 70 (2) of the Constitution, which is identical to article 14, paragraph 2 of the Covenant. These state that everyone charged with criminal conduct shall be presumed innocent until proved guilty. Under article 108 of the Code of Criminal Procedure, No. 88/2008, the burden of proof rests with the prosecution authorities (*in dubio pro reo*). In practice, the judge of the case in question evaluates whether or not the prosecution has presented its case in such a manner that the charges are considered to be proved beyond reasonable doubt, this being one of his/her obligations as set forth in the Act, (see article 109 of the Code of Criminal Procedure).

### **Paragraph 3**

134. Article 28 (1) of the Code of Criminal Procedure, No. 88/2008, states that an accused person is entitled to information on the charges made against him/her before his/her statement is taken in respect of the charges made or at the time of arrest, as applicable. Article 63 (5) of the Act provides that on taking a statement, the police are to

summon an authorized court interpreter or other qualified person to translate the proceedings if the person giving the statement lacks an adequate command of Icelandic. If the person giving the statement is incapable of communicating orally, the police are required, similarly to call in an expert to render assistance. The same applies to giving testimony before a court of law, as provided for under articles 12 (2) and 12 (4) of the CCP.

135. The defendant's right to have adequate time and facilities for the preparation of his defence is stated in law: this right is considered to be secured under article 70 (1) of the Constitution, which states that everyone shall be entitled to the resolution of criminal charges made against him/her within a reasonable time. This rule entails both the entitlement of the defendant to have the process as expedient as possible, in line with the general principle of expedient process, which is also legislated in article 171 (1) of the Criminal Procedure Act, and the right of the defendant to a reasonable period of time in which to prepare his defence. After the first hearing of a case, a defendant may ask for an adjournment to prepare a defence and gather further evidence, as provided in article 165 (2) of the Act. When a case has been taken for adjudication, the judge is authorized to adjourn the proceedings as needed if he is of the opinion that further evidence is needed or if he sees reason to question the defendant or witnesses further, as is provided for under article 168 of the Act. Such extended deadlines must be granted by a judge within the limits imposed by the rule in article 171 (1) of the Act concerning expedient proceedings.

136. It is a general principle of Icelandic law that a defendant is permitted to defend himself if he so chooses and if he is deemed capable of doing so in the opinion of a judge or the police. The rule is codified in article 29 of the Code of Criminal Procedure. The provision also states that a defendant who is not trained in law must be provided with guidance on the formal aspects of a case as necessary. The same applies to procedure in civil cases.

137. Under article 32 (2) of the Code of Criminal Procedure, a defendant is, at all stages of criminal proceedings, permitted to appoint, at his own expense, a lawyer to represent his interests. Similarly, the police are required, on certain occasions which are listed in article 30 of the Act, to appoint a counsel for his defence. Similarly, a judge, at the request of a defendant, is required, on certain occasions listed in article 31 of the Act to appoint a counsel for his defence. According to article 33 (1), the judge or the police must, when required or permitted to appoint a legal counsel for a defendant, inform the defendant of this right. The judge is furthermore required to appoint a legal counsel for the defendant, even if he has not requested one, if it is the opinion of the judge that the defendant is incapable of defending his interests as necessary in the course of proceedings before a court of law, as provided in article 33 (3) of the CCP. The fee of an appointed or designated counsel is paid out of the State Treasury and is included in the calculation of the cost of proceedings, as provided for under article 38 (3) and subsection (a) of article 216 (3) of the Code of Criminal Procedure.

138. Under article 33 (3) of the Code, before the appointment or designation of a counsel, the defendant is to be granted an opportunity to nominate a counsel to take the post, and normally the defendant's wishes are to be observed in this regard. The judge or the police may refuse to appoint the requested counsel if a risk is perceived that he or she will unlawfully obstruct investigation of the case. Finally, article 33 (4) provides that a counsel may not be appointed or designated who has served as an assessor or who may be summoned to testify as a witness in a case, or who is in other respects so involved in the case or with a party to the case with the result that there is a risk that he or she may not be able to represent the defendant's interests as required.

139. Under article 138 (1) of the Code of Criminal Procedure, both the prosecution and the defendant are entitled to call witnesses to give testimony before a court of law. Under article 122 (2), the defendant in criminal proceedings shall be granted an opportunity to

question a witness who has been summoned in proceedings against him/her. The general rule is that the party calling a witness questions first, followed immediately by the counterparty.

140. If a person cannot understand or speak the language used in the court, he or she is entitled to have free assistance of an interpreter. In criminal cases, the cost of interpreting is not included in the case legal costs, (see article 216 (2) of the Code of Criminal Procedure). Accordingly, the defendant is not to be charged for this cost in criminal cases. In civil cases however, the cost of interpreting is part of the legal costs (see articles 10 (2) and 129 (1) of the Code of Civil Procedure), except in private penal cases, paternity cases, cases regarding deprivation of legal competence and finally in cases where an interpreter is required in an agreement with a foreign State.

141. The cost of the work of an interpreter/expert is paid out of the State Treasury, as provided in articles 63 (5) and 216 (2) of the Criminal Procedure Act. This cost is therefore not counted in calculating the cost of the proceedings.

142. The Code of Criminal Procedure contains detailed provisions on depositions by defendants, both during the investigation by the police (see Section VIII, articles 58–67) and in court (see Section XVII, articles 113–115). In both cases, the defendant is guaranteed an unequivocal right not to have to answer questions concerning criminal conduct of which he is accused. He may refuse to make any comment on the matter of which he is accused, or refuse to answer individual questions put to him about it.

143. Disputes have arisen regarding whether deposition made by individuals to government authorities, e.g. various monitoring agencies in the area of law-enforcement, without their being suspected of having committed criminal offences, can be used later as evidence in criminal proceedings against them. Various legal amendments have been made to ensure the right of individuals not to incriminate themselves under circumstances like these. These include amendments made to the Competition Act by the Act No. 52/1997; this introduced a new article, article 42 (a), to ensure that information given by the representative of an enterprise to the Competition Authority as evidence in a criminal case cannot be used against him in connection with violations of the Act.

#### **Paragraph 4**

144. The Code of Criminal Procedure contains various special provisions covering the investigation of criminal cases and procedure in court in cases where the defendant is aged 15–18 years; these are intended specifically to take account of the fact that minors of this age are in a sensitive position. Under article 10 of the Code, the judge has broader powers to hold the court *in camera* if the accused is aged under 18, and under Article 41 it is always obligatory to appoint a defendant of this age a spokesman to defend his or her legal interests. If a deposition is to be taken from a defendant aged under 18 in connection with an alleged violation of the General Penal Code, or a violation of another statute which may be punishable by more than two years' imprisonment, the local child welfare committee is to be informed. No defendant younger than 18 may be remanded in custody unless, under the fifth paragraph of article 100 of the Code, it must be considered that no other measure, including those prescribed in the Child Protection Act, would suffice instead.

145. According to an agreement between the Prison authorities and the Government Agency for Child Protection, the latter shall try to find appropriate treatment facilities for children under the age of 18 instead of prison. Regarding young offenders at the age of 18–21 the general rule is to have them serve their sentence in open prison. According to the article 63 of the Execution of Sentences Act, when deciding on probation release, the young age of the offender is one of the factors taken into account. If the prisoner was 21 years of age or younger when the offence was committed, he may be released after having served

half the sentence, despite having committed a serious offence. This is conditional upon his having exhibited very good behaviour during the sentencing period. The prison authorities also focus on this group of young offenders during their probation period, that includes increased supervision, stricter conditions and more interaction.

#### **Paragraph 5**

146. Reference is made to the general discussion in paragraphs 55–57 above regarding appeals against sentences. No changes have been made since Iceland's fourth periodic report was compiled to the arrangement under article 198 of the Code of Criminal Procedure, No. 88/2008, by which an appeal may only be lodged against a sentence when the accused person has been sentenced to prison or to the payment of a fine, or confiscation of property, of the value regarded as the criterion for an appeal in a civil case. Now, in 2010, this sum stands at about ISK 600,000 ISK (c. USD 5,000 USD). Notwithstanding this provision, an appeal may be made against a district court judgement when a lower sum is involved by permission of the Supreme Court if the outcome of the case has substantial general significance or if it concerns important interests, or if, in the light of available evidence, it is not out of the question that the sentence may be substantially revised. From this, it is clear both that the monetary criterion for permitting appeals is very low and also that liberal provisions are made for granting exemptions, and it is common for permission to appeal to be granted in response to an application. Furthermore, it is clear that in criminal procedure at first-instance level, all the conditions for a free and fair trial according to article 14 of the Covenant on Civil and Political Rights are scrupulously observed, since the hearing is public, with oral testimony taken from witnesses in court.

#### **Paragraphs 6 and 7**

147. No substantive amendments have been made to the legislation governing these issues since the fourth periodic report was considered. A judgment is binding as regards the outcome of a charge for the accused, the prosecution and other parties with regard to the substance of the adjudication, as provided in articles 186 (1) and 210 of the CCP. A claim that has been adjudicated in substance cannot be referred again to the same court or a court of the same level except in the circumstances provided for by law. Any new case involving such claim shall be dismissed from court, as provided in article 186 (2) of the CCP.

### **Article 15**

#### **No punishment without law**

148. General legislation that concerns the rights provided for in the Covenant. Article 15 remains unchanged since the consideration of the fourth periodic report by the HRC. As stated in that report, these rights are now given particular protection in article 69 (1) of the Constitution and belong to the fundamental principles of Icelandic criminal law.

149. Some practice has been gathered as regards the application of this constitutional provision by the Icelandic judiciary, but the issues adjudicated all concern the question whether criminal statutes are adequately unequivocal and foreseeable to fulfil the requirements of article 69 (1). During this period, no judgments have been rendered concerning the retroactivity of criminal provisions.

## **Article 16**

### **The right of recognition as a person before the law**

150. Icelandic legislation conforms in full to this provision of the Covenant, although the rule is not expressly stated. Legislation and practice relating to the scope of article 16 of the Covenant is unaltered since Iceland's fourth periodic report was considered, and no issues relating thereto have been brought up.

## **Article 17**

### **Right to privacy, family life and home**

151. No major amendments have taken place in legislation concerning the right to privacy since the fourth periodic report was submitted. As stated in that report, article 71, paragraph 1 of the Icelandic Constitution stipulates that everyone shall enjoy freedom from interference with privacy, home and family life. The second paragraph of article 71 states in what circumstances these rights can be subject to limitations, stating that bodily or personal search or a search of a person's premises or possessions may only be conducted in accordance with a judicial decision or a statutory law provision. This shall also apply to the examination of documents and mail, communications by telephone and other means, and to any other comparable interference with a person's right to privacy. The third paragraph of article 71 says that notwithstanding the provisions of the first paragraph, freedom from interference with privacy, home and family life may be otherwise limited by statutory provisions if this is urgently necessary for the protection of the rights of others. In their assessment, the courts of law will also take into account whether the principle of proportionality has been observed in administrative actions. Several judgments have been pronounced since the fourth report was submitted which concern the application and interpretation of article 71 and several examples are cited below. In some instances direct references have been made to article 17 of the Covenant.

152. In *Supreme Court judgment of 29 December 2006, in Case No. 670/2006* the police submitted a request for two telephone companies to be ordered to provide information on all telephone numbers that had used a specified cell phone transmitter over a ten-hour period in connection with an investigation of a fire in a fish-meal plant. The Supreme Court denied the request on the grounds that it had not been demonstrated that there was reasonable suspicion of a specific telephone or telecommunications device being used in connection with a criminal act. Furthermore, it had not been submitted that the users of specific telephones served by the telecommunications companies were connected with the fire under investigation. The police request was considered to exceed the scope permitted by the provisions concerning the right to privacy in article 71 of the Constitution and articles 86 and 87 of the Code of Criminal Procedure thereby violating the constitutional right to personal privacy.

153. *Supreme Court Judgement of 20 February 2006, in Case No. 98/2006* concerned the forcible administration of medication to a woman who had been committed to a psychiatric ward. The district court's arguments had made reference to article 71 of the Constitution, stating that it was to be interpreted in the light of article 8 of the European Convention on Human Rights and article 17 of the Covenant on Civil and Political Rights.

154. In its *Judgment of 4 October 2007, in Case No. 37/2007*, the Supreme Court had to weigh the interests protected by the provisions of article 71 against the provisions of article 73 of the Constitution on freedom of expression and the right of the media to impart information. The plaintiff in the case demanded that the editor and journalist of a daily newspaper be punished for having published information of a personal nature about her, so violating provisions of the General Penal Code regarding the protection of privacy. The



district court had interpreted ‘privacy’ in accordance with article 71 of the Constitution, and also referred to the fact that privacy is protected under both article 8 of the ECHR and article 17 of the Covenant. The editor and the journalist were acquitted of the demand. This conclusion of the case was the subject of a complaint to the European Court of Human Rights, Iceland being accused of a violation of article 8 of the ECHR. The European Court of Human Rights referred to the fact that that the Icelandic courts had weighed the interests of privacy protected by the provisions of article 71 against the provisions of article 73 of the Constitution on freedom of expression. There was nothing to indicate that they had transgressed their margin of appreciation and failed to strike a fair balance between the newspaper’s freedom of expression under article 10 and the applicant’s right to respect for her private life and correspondence under article 8. Accordingly, the application was declared manifestly ill-founded (see *Jónína Benediktsdóttir v. Iceland*, of 19 June 2009, Case No. 38079/06).

155. As regards important measures to protect privacy, it should be repeated, as was discussed in the fourth report that the Data Protection Act, No. 77/2000, applies to any automated processing of personal data and to manual processing of such data if it is, or is intended to become, a part of a file. The purpose of the Act is to promote the practice of personal data being processed in conformity with the fundamental principles of data protection and the right to privacy. The Data Protection Authority (DPA) exercises surveillance and effective control over processing of data to which the Act applies. With proper identification, the staff of the DPA is admitted without a court order to any and all premises where personal data is being processed. The decisions made by the DPA are final administrative decisions but can be taken to the courts for review.

## **Article 18**

### **Freedom of conscience and religious belief**

156. A reference is made to Iceland’s fourth periodic report as regards the constitutional protection of religious belief in Iceland. The rights enshrined in article 18 of the Covenant are protected by articles 63 and 64 of the Constitution. Article 63 provides that all persons have the right to form religious associations and to practice their religion in conformity with their individual convictions. Nothing may, however, be preached or practised which is prejudicial to good morals or public order. Article 64 provides that no one may lose any of their civil or national rights on account of their religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds. Everyone is free to remain outside religious associations. No one shall be obliged to pay any personal dues to any religious association of which s/he is not a member. A person who is not a member of any religious association shall pay to the University of Iceland the dues that they would have had to pay to such an association if they had been member. This may be amended by law.

157. A change that has been made since the submission of Iceland’s fourth report is that the fee paid to the University of Iceland under the third paragraph of article 64 of the Constitution by those who stand outside religious organizations has been abolished. Under the Parish Dues Act, No. 91/1987, congregations in the National Church of Iceland and religious organizations registered under the Parish Dues (Etc.) Act, No. 91/1987, congregations in the National Church of Iceland and religious organizations registered under the Act are to have a certain share of individuals’ income tax. Under the Act No. 70/2009, the authorisation to allow this part of the income tax of individuals who stand outside religious organizations go to the University of Iceland was abolished. In the commentary to the act of amendment when it was presented as a bill, it was pointed out that this contribution from individuals not included in any religious organization was not directly related to any expense that was incurred as a result of people’s religious belief, as

was the case in the registered religious organizations, including the National Church. In addition, this contribution was a hangover from earlier times when there was only one university in the country, and there was no comparable arrangement for the other universities now in existence. It was considered a more natural measure to abolish this mechanism for paying contributions to the university fund, this to be replaced by direct funding from the State Treasury.

158. No other major legislative amendments have been made falling under the scope of article 18 of the Covenant. As discussed in the fourth periodic report, article 62 of the Constitution provides that the Evangelical Lutheran Church shall be the National Church in Iceland and, as such, it shall be supported and protected by the State. In accordance with articles 63 and 64 of the Constitution, no one is obliged to be a member of a religious association in Iceland. The Act on registered religious associations, No. 108/1999, grants permission to found religious associations outside the National Church of Iceland without any obligation to give notice to government authorities of their establishment or operation.

159. In addition to the provision of article 64 of the Constitution, under which it is not permitted to discriminate against persons on the grounds of their entitlement to exercise their right to practise their religion, article 65 of the Constitution guarantees equality before the law and enjoyment of human rights irrespective of sex, religion, opinion, national origin, race, colour, property, birth or other status.

160. One judgment has been rendered since the fourth report was submitted regarding the constitutional provisions on freedom of religion and the principle of equality. In its *Judgment of 25 October 2007, in Case No. 109/2007*, the Supreme Court of Iceland confirmed that it was not in violation with the freedom of religion and the principle of equality that the State supports and protects the National Church, according to article 62 of the Constitution. The plaintiff in this case was a registered religious association, *Ásatrúarfélagið* (the 'Asa Faith Society', the Nordic pagan religion's association), which demanded that the Court recognize that articles 62 and 65 of the Constitution should be interpreted in equivalent fashion, i.e. that under the constitutional provision on equality, it was unlawful to discriminate between religions organizations in legislation regarding the payment of funding to them. In its conclusion, the Supreme Court referred to the functions entrusted to the National Church of Iceland as part of its legally-prescribed role under the Act No. 78/1997 on the Status, Control and Working Procedures of the National Church and the fact that the staff of the National Church were civil servants, and as such had rights and obligations towards the general public. As it was not possible to compare the functions of the *Ásatrúarfélagið*, and its duties towards the community, with those of the legally-prescribed functions and obligations of the National Church, the Court ruled that no discrimination was entailed in the fact that the legislature was empowered with determining funding to the National Church from the State Treasury to an extent over and above that received by other religious communities, and thus no violation of the rule of equality set forth in article 65 of the Constitution had taken place.

161. Detailed reasoning for this conclusion was stated in a separate opinion recorded by one of the Supreme Court judges. In this connection, reference was made to paragraph 9 of the Human Rights Committee's general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, regarding the requirement for a system of State supported church that it shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.

162. There is no legislative framework for conscientious objection. Iceland has never had a military force and no practical issues have been raised regarding the right to conscientious objection.

163. On 1 December 2008, registered membership figures of religious associations in Iceland, and the number of persons outside religious associations, were as follows:

	<i>Total</i>	<i>Males</i>	<i>Females</i>
<b>Total</b>	<b>319 756</b>	<b>162 538</b>	<b>157 218</b>
Lutheran Church of Iceland	252 948	126 238	126 710
Reykjavík Free Church	7 911	3 895	4 016
Reykjavík Independent Church	2 856	1 429	1 427
Hafnarfjörður Free Church	5 232	2 466	2 766
Roman Catholic Church	9 351	4 497	4 854
Seventh Day Adventists	781	384	397
Pentecostal Church	2 040	1 027	1 013
Sjónarhæð Congregation	61	27	34
Jehovah's Witnesses	683	347	336
Bahá'i Community	412	211	201
Asa Faith Society	1 270	921	349
The Cross	648	367	281
Church of Jesus Christ a.l.d.s.	180	86	94
The Way Free Church	734	377	357
Word of Life			
The Rock – Christian Community			
Buddhist Association of Iceland	838	293	545
Kefas – Christian Community	156	81	75
First Baptist Church	36	17	19
Muslim Association	402	228	174
The Icelandic Christ-Church	260	127	133
The Church of Evangelism	90	51	39
The Believers' Fellowship	33	21	12
Zen in Iceland – Night Pasture	69	48	21
Betania	167	81	86
Parish of St. Nicholas of the Russian Orthodox Church	293	117	176
Serbian Orthodox Church	170	88	82
Family Federation for World Peace and Unification International	17	10	7
Reykjavíkurgóðorð	20	16	4
Homechurch	11	8	3
SGI in Iceland	96	43	53
Other and not specified	22 726	13 574	9 152
Outside religious organizations	9 265	5 463	3 802

## **Article 19**

### **Freedom of opinion and expression**

164. Freedom of opinion and expression is protected by article 73 of the Constitution. In article 73, paragraph 1 it is stipulated that everyone has the right to freedom of opinion and belief. In the second paragraph, it is stated that everyone shall be free to express their thoughts but shall also be liable to answer for them in court. The law may never provide for censorship or other similar limitations to freedom of expression. In the third paragraph, it is stated that freedom of expression may only be restricted by law in the interests of public order or the security of the State, for the protection of health or morals or for the protection of the rights or reputation of others, if such restrictions are deemed necessary and in agreement with democratic traditions. Article 73 of the Constitution was formulated with particular view to article 10 of the ECHR and article 19 of the International Covenant on Civil and Political Rights. Limitations on freedom of expression can be found in the Icelandic legislation and they must comply with the criteria stipulated in articles 73 (3) and 10 (2) of the ECHR. Accordingly, the limitation must be provided for by law, have legitimate aim and be necessary in a democratic society. Limitations based on these grounds are further reflected in general legislation.

165. The Act on the Monitoring of Children's Access to Films and Computer Games, No. 62/2006, abolished the arrangement by which a State-run body, the Icelandic Film Review Board, viewed in advance all films intended for showing or distribution in Iceland. This body was also able to ban the distribution and showing of films that were considered as 'violent films' as defined in the act, in addition to which it took the decision on whether a ban should be imposed on showing or releasing films to children aged under 16. One of the main reasons why this arrangement was abolished is that it was considered to embody all the features of censorship, and thus to be at variance with the prohibition on censorship in the second paragraph of article 73 of the Constitution. The Act on the Monitoring of Children's Access to Films and Computer Games, No. 62/2006, introduced new rules designed to protect children from harmful films such as violent films or others that are considered to pose a threat to their well-being. In order to pursue this aim, the manufacturers of films or computer games intended for showing or sale in Iceland, or those who have films or computer games on view for commercial purposes, hire, sale or distribution in other forms in Iceland, are obliged to comply with rules that are set out in the Act, and to impose the appropriate age restrictions. The Child Protection Agency, which operates under the Child Protection Act, No. 80/2002, is entrusted with monitoring to ensure compliance with the provisions of the Act.

166. No other major legislative amendments falling under the scope of article 19 of the Covenant have taken place since the fourth report was submitted. However, questions related to the freedom of expression are frequently involved in cases before the courts, mainly those initiated in private litigation. Since 2004, the Supreme Court of Iceland has rendered between 10 and 20 judgments where various fundamental aspects relating to the interpretation of article 73 have been at issue. These include various typical issues related to limitation of freedom of expression in cases of libel or slander and the protection of the rights and reputation of others; these have also arisen in the course of political debate and role of the media to impart information, and in connection with prohibitions on the advertising of alcoholic beverages and tobacco as a measure intended to protect public health, etc. It can be seen from these judgments that the courts present detailed reasoning for their conclusions in cases to which the provision relates. The methods of assessing whether limitations to freedom of expression are justified have also undergone significant development, involving the application of the principle of proportionality and an examination of whether they are to be deemed necessary in a democratic society. Some basic principles are firmly rooted in the courts' practice regarding article 73 of the

Constitution, such as the importance of the freedom of expression as a cornerstone of democratic society. Thus, the courts set high standards regarding the demonstration of the necessity of restricting the freedom of expression or disseminating information where important public interest or political issues are involved.

## **Article 20**

### **Propaganda for war and advocacy of racial hatred**

167. Icelandic legislation relating to the substance of article 20 of the Covenant remains unchanged since the consideration of Iceland's fourth periodic report. There is no new court practice to report on issues falling under the scope of article 20.

## **Article 21**

### **Freedom of assembly**

168. Article 74, paragraph 3, of the Constitution guarantees the right to assemble unarmed; the right to assemble armed may be subject to certain conditions set by law, for example, firearms 'associations may not hold competitions or engage in training except in certain designated areas approved by the relevant Commissioner of Police. According to the same provision of the Constitution, the police may ban public gatherings in the open if it is feared that riots may ensue. Should this be done prior to the commencement of the gathering, the organizers may submit such an administrative decision to the courts for a judicial review.

169. If this is done after the meeting has commenced, the lawfulness of such a decision may be referred to a court for a judicial review. Under the Police Act, No. 90/1996, the Police can resort to measures in the interests of public peace and quiet, public order etc. The Police may also place certain restriction on public gatherings, e.g. in order to maintain control of traffic, prohibit persons from remaining in particular areas (e.g., by cordoning the areas off or restricting movement through them), take dangerous items into their keeping, order people to move away, or remove them, order an end or a change to actions or an activity, enter privately-owned areas and order the removal of persons from such areas.

170. No major legislative amendments or judgments falling under the scope of article 21 of the Covenant have taken place since the fourth periodic report was submitted. It should be stated, however, that in the early months of 2009, the largest public demonstrations that have been seen in the history of the Republic of Iceland took place. These demonstrations were held in connection with the collapse of the banking system and the economy in autumn 2008 and the serious economic recession which began directly afterwards. This led to a great deal of criticism and anger throughout society towards the Government and those who had been in charge of the banks. A large number of protest meetings were held in front of the Althingi building, the Government ministries and other public buildings; thousands of people gathered at these places again and again to protest. These demonstrations took the form both of organized outdoor meetings, announced in advance, and also, in many cases, gatherings in front of public buildings that were not specifically announced and had no structured agenda. Typical demands made at these meetings included the resignation of the Government, the managers of the Central Bank and officials in charge of the monitoring institutions in the banking system, and also the call for a general election. While these demonstrations were for the most part peaceful, there were exceptions to this with various examples of acts of vandalism against public buildings, the forcible entry of public buildings including the parliament building and a police station, and attacks against the police. In some cases a general riot situation developed in the centre of Reykjavík where, faced by extreme necessity, the police had to use force against protesters who refused to

obey orders. In some cases pepper-spray was used against the crowd, and on one occasion tear-gas was used. However, despite this situation of unrest lasting many weeks in the city, the police never banned public meetings in view of the danger of public disorder, as they are permitted to do under the Constitution. These protests died down after the Government resigned, a new Government took over and a date was set for a general election. No one was seriously injured in the scuffles that took place between the police and the demonstrators, and it seems as if these events had very few lasting consequences. The Director of Public Prosecutions issued indictments against a few demonstrators for breaking into the Althingi building, attacking the Althingi's employees with violence, causing them physical injury, and interrupting a meeting of the Althingi; judgement has yet to be delivered in the case.

## **Article 22**

### **Freedom of association**

171. General legislation concerning establishment of associations and the protection of the freedom of association remains unchanged since Iceland's fourth periodic report was considered. It was mentioned in that Report that the rights under article 22 of the Covenant on Civil and Political Rights are protected by the first and second paragraphs of article 74 of the Constitution. The constitutional protection exceeds that of article 22 as regards negative freedom of association, as the second paragraph provides that no one may be obliged to be a member of an association unless provision is made for this in law, where this may be necessary in order to enable the association to discharge its functions in the public interest or on account of the rights of others.

172. The Constitution guarantees the right to establish associations for any lawful purpose, including political associations and trade unions. No age limits are set for the establishment of associations except for those with business purposes or those that can undertake certain financial obligations. Associations for any lawful purpose may be formed without prior permission or notification. The establishment of certain associations must, however, be reported to the authorities should they wish to operate as certain statutory associations such as public or private limited companies or cooperative societies. Such registration is based upon public interests, as these associations are granted certain financial rights and bear obligations of various types towards members of the public and other associations. Certain rules also apply to the registration of religious associations, as has been discussed above under article 18 of the Covenant, should they wish to invoke their right to receive financial benefits allocated to them in accordance with the Registered Religious Societies Act, No. 108/1999. These rules apply equally to all religious organisations.

173. In article 74, paragraph 1 of the Constitution, special reference is made to the establishment of political associations and trade unions, which are seen as the most important associations operating in democratic societies. Political associations are defined as all those associations that deal with matters of a political nature, irrespective of whether they field candidates in parliamentary or in municipal elections. As with the establishment of other associations, no conditions are placed upon the establishment or operation of such associations. No obligation is placed upon them to register or notify their establishment or operation. The Act No. 62/1978 prohibits the financial support of political associations by foreign entities. This restriction is based upon the interests of the public, and its aim is to prevent foreign entities from coming to power in national politics.

174. A new Act on the Financial Affairs of Political Organisations and Candidates and Their Duty to Provide Information, No. 162/2006, was adopted in 2006; prior to that time, no legislation was in place regarding the finances or funding of political associations and

candidates. The Act applies to political associations that field candidates in parliamentary or municipal elections. Pursuant to the Act, political associations that meet certain conditions are guaranteed funding from the central and local government. In addition, the Act sets a maximum on financial contributions made by legal entities.

175. No conditions are placed upon the establishment or operation of trade unions, and nobody is obliged to belong to a trade union. Trade unions are not under any obligation to register or notify the authorities of their establishment or operation. However, the Trade Union and Industrial Disputes Act, No. 80/1938, stipulates certain rules on the operation of trade unions, such as their status vis-à-vis employers, strikes and lockouts and the resolution of disputes that may arise due to alleged infringements of the law and on the interpretation of collective agreements. The Act states that anyone has the right to establish trade unions and/or an alliance of trade unions with the objective of operating collectively to safeguard the interests of the working class and wage earners. It also stipulates that trade unions are in control of their internal affairs subject to the limitations stated in the Act. Members of such unions must adhere to their lawful resolutions and the agreements with any alliance of trade unions they may belong to. In pursuing their aims, trade unions may resort to those remedies deemed necessary, including resorting to strikes. Particular rules apply to civil servants, as lawfully established trade unions represent them in accordance with the Act on Civil Servants Collective Agreements, No. 94/1986. The Act places certain conditions on the establishment of trade unions by civil servants and on strike action. It restricts the right of some civil servants to strike, on grounds of public interests. This applies, for example, to members of the police and employees in the field of administration of justice and in the field of health care.

176. The number of non-governmental organizations and associations in Iceland in 2008 was estimated at 918. Of these, 805 were non-profit organizations, 36 were foundations engaging in business operations and 77 were independent institutions with approved charters. The available statistics from Statistics Iceland are not very accurate, however: there is a problematic classification difficulty involved, and the registration does not indicate whether they are active or not. In addition, not all such organisations are registered in any official registry. It is, however, estimated that the total number of active non-governmental organizations and associations and foundations is around 5,000. Of these, about 500 are charity organisations. The number of funds and institutions operating according to an approved charter under the Act No. 18/1988 in 2008 was 712. The number of institutions engaged in business activities under the Act on Private Institutions that Engage in Business Operations, No. 33/1999, was under 100.

177. No single statute covers the legal status of non-governmental organizations and associations or foundations, regarding their financing, taxation, and restrictions on membership or activities, etc. Such matters are subject to provisions in a wide variety of statutes each in its specific field. Accordingly, the Ministry of Social Affairs appointed a committee in the spring of 2009 with the task to draft an Act on the legal status of NGOs, funds and institutions operating according to approved charters. The first step the committee has taken is to ask a specialist to compile a list of the activities, goals, functions and main substance of such legislation in Iceland's neighbouring countries, and also the Icelandic acts and regulations on the organisations, associations and foundations and their main substance.

## **Article 23**

### **Protection of family life and the right to marry**

178. The Icelandic social community is based on the principle that the family is its natural fundamental unit and enjoys the protection of the State as such, although this rule is

not expressed anywhere in the Constitution or in enacted law. All legislation concerning the affairs of families and children is based on this premise. The principle statute in the field, the Marriage Act, No. 31/1993, reflects this premise, and its chief features are described in Iceland's fourth periodic report. The Act is largely based on the views regarding the inception and termination of marriage, and on the financial affairs of spouses, shared by the legislators of the Nordic countries. Emphasis is placed on the view prominent in contemporary Nordic family law, that marriage is a freely-entered agreement. But as before, it is deemed desirable to provide checks against any impetuous termination of marriage, in particular by providing for the availability of an official reconciliation procedure. In cases when spouses are the custodians of children of minority age, such reconciliation procedure is mandatory.

179. The main legislative amendments in the field of Icelandic family law in recent years have concerned the rights of homosexual couples and protection of their family life. Iceland is now among the nations that have gone furthest in ensuring these rights. Homosexual couples can now have their partnerships confirmed either by a district commissioner or a priest or representative of a registered religious association, and this confers and involves the same rights as marriage (see the Registered Partnership Act, No. 87/1996). In March 2010 the Minister of Justice submitted a new bill to the Althingi, proposing an amendment to the Marriage Act; this is still being examined by the Althingi. The amendment is aimed at completely removing the differences involved in having different legislation governing marriage between a man and a woman, on the one hand, and the confirmation of a same-sex union on the other. At the same time, the aim is that the Registered Partnership Act, which establishes same-sex unions as a particular type of cohabitation, will be repealed.

180. The same legal provisions apply to homosexual couples in cohabitational unions as apply to cohabitational unions consisting of a man and a woman; this was secured by amendments to various acts made by the Act No. 65/2006. The Act No. 54/2008 introduced amendments to the Artificial Fertilization Act, No. 55/1996, by which homosexual women in cohabitational unions are now guaranteed the right to artificial fertilization with donor sperm in public health-care institutions. In addition, the right of single women to undergo artificial fertilization in a health-care institution has been secured, in addition to which they are provided with donor sperm.

## **Article 24**

### **The rights of the child**

181. Article 76, paragraph 3 of the Icelandic Constitution provides that the law is to guarantee the protection and care necessary for children's well-being. This wording is modelled in particular on article 3, paragraph 2 of the Convention on the Rights of the Child. It is intended to highlight the duties of public authorities to adopt laws and other provisions and to take measures designed to secure the rights of children in all circumstances.

182. No major legislative amendments have been made falling under the scope of article 24 of the Covenant, and the main legislation in force consists of the Children's Act, No. 76/2003, and the Child Welfare Act, No. 80/2002, with subsequent amendments. The child welfare system is the responsibility of both the local authorities and the State. Child welfare committees in the local government areas (municipalities) are responsible for basic services to children and families. A public body, the Government Agency for Child Protection, is responsible for monitoring child protection committees and ensuring that they operate in accordance with legislation. Furthermore, the Government Agency for Child Protection is responsible for the specialized tasks of child protection.



183. Any person who becomes aware that a child is being abused or neglected, or that his/her living conditions are so poor as to endanger the child's welfare, is under an obligation to notify a child welfare committee. Special obligations are placed on those who, owing to their position, are likely to be familiar with the circumstances of the child, to notify the respective child welfare committee. Once the child welfare committee has investigated a case and it is clear that the matter is a child welfare case, work begins on supporting the child and his/her family. Measures include support within the home and measures outside the home, such as fostering, with parental approval in both cases. If the above measures do not lead to acceptable results, measures that do not have parental approval may be sought. Parents may refer such decisions to a court of law. Cases where serious intervention in the parenting role is necessary, such as where parents are deprived of custody, are referred to a court of law. Certain decisions made by child protection committees can be referred to the Child Protection Appeals Board.

184. The Government Agency for Child Protection is responsible for monitoring child welfare committees. Complaints against the committees may be made to the Agency, which will then assess the case. The Agency also provides child welfare committees with guidance and advice in matters pertaining to family protection and the resolution of child welfare cases. Moreover, the Agency is responsible for creating a range of informative materials for the public.

185. A separate institution for children with special behavioural problems and drug addiction is operated for the entire country. This institution is responsible for diagnosis and treatment on the one hand, and emergency placement on the other, providing short-term monitoring and evaluation. If a child in trouble needs long-term treatment, the Government Agency for Child Protection operates homes for children with behavioural problems or drug addiction. The treatment may take a year or longer. The Children's House is responsible for cases in which it is suspected that the child has been subjected to sexual harassment or abuse. Children and their guardians may, with a reference from a child welfare committee, obtain all the services in one location, free of charge. In cases involving police investigation, the location of interviews is decided by a judge. However, child welfare committees can request other services provided by the Children's House.

186. There are no special provisions on domestic violence against children in the General Penal Code, No. 19/1940. However, the General Penal Code was amended in 2006 (see Act No. 27/2006), whereby a provision was implemented to impose heavier punishment in cases where the close relationship between the perpetrator and the victim is considered to increase the severity of the crime. The aim of the amendments in 2006 was to make the legal remedies available in cases of domestic violence more effective. It was considered necessary to have Icelandic legislation reflect more clearly the view of the legislature, which was that offences committed between persons in an intimate relationship are of a special nature. The bill called for the introduction of authorization in law for heavier punishments in cases where it is considered that the close relationship between perpetrator and victim has led to grosser violations.

187. The Child Protection Act, No. 80/2002 has special provisions on violations against children, including those involving violence. Article 37 (Expulsion of a person from the home and injunctions) states that: If a child welfare committee believes that a child is at risk due to the behaviour or conduct of a person, such as violence, threats or menaces, or due to drug use or other actions, the committee may take court action for the person in question to be prohibited from being in a certain place or area, and from following, visiting or otherwise making contact with the child. By the same token, a request may be made that a person be excluded from the home if the committee deems this necessary in the interests of the child. With regard to procedure, the provisions on injunctions in the Act on Procedures in Criminal Cases shall otherwise apply. Furthermore, the Act contains

provisions making certain serious offences of abuse, maltreatment or negligence against children punishable.

188. It should be mentioned that in *Supreme Court Judgement of 11 February 2010, in Case No. 504/2009*, a man was sentenced to two years' imprisonment for numerous violations of the General Penal Code and the Child Protection Act against his three young children, and also to pay them compensation. These offences were committed in the family home over a period of almost three years. The Court considered that the father had no extenuating circumstances in his favour, and the case as a whole was without precedent. In determining the punishment, the Court took account of the fact that he had offended against the children in their own home, the place where they were entitled to safety and security. Partly on the basis of this judgement, the Child Protection Agency is currently preparing special treatment facilities for children who have been subjected to physical abuse in their homes, and children who have witnessed domestic violence.

## **Article 25**

### **The right to democratic elections**

189. No major amendments have been made to legislation, or to procedures or practice, relating to article 25 of the Covenant, and reference is made the fourth periodic report regarding the general electoral system.

190. In general and presidential elections, the right to vote is granted to all Icelandic citizens who have reached the age of 18 years and are permanent residents of Iceland. Non-resident citizens remain on the electoral register for a period of eight years from the time when they transfer their residence from the country. After that date, non-resident citizens must apply to the National Registry to be included in the electoral register, and can thus prolong their right for four years at a time.

191. A larger group of people have the right to vote in local government elections: Danish, Finnish, Norwegian and Swedish nationals have the right to vote after having had legal residence in Iceland for three years prior to election day. This also applies to other foreign citizens who have been legally resident in Iceland for five years prior to election day. Iceland has a passive voter-registration system. The National Registry keeps a central database of registered voters, including those who reside abroad. After elections are called, it sends relevant extracts to the local authorities, which, which are responsible for preparing the voters' register. Some 227,896 Icelandic citizens were registered to vote in the 25 April 2009 election, including 9,924 living abroad and 9,398 first-time voters.

192. A citizen must be registered as a resident in a local government area (municipality) for at least four weeks prior to the elections in order to be put on the voters' register in that municipality. The Ministry of Justice and Human Rights must announce that the voters' registers are open for public inspection not more than twelve days before election day. The voters' register must be available in the municipality ten days before election day to enable election stakeholders and voters to review the register and submit complaints. Corrections — e.g. in the case of death — may be made up to election day. The National Registry sends the voter-register database information to municipalities in hard-copy form. Municipalities must divide up by hand the consolidated hard copies for use in individual wards for voting, and enter by hand any alterations before election day.

193. As mentioned previously in relation to article 22, new rules governing political financing were introduced in Act on the Financial Affairs of Political Organisations and Candidates and Their Duty to Provide Information, No. 162/2006, which applies to political parties and alliances fielding candidates in elections to the Althingi and local councils, and also individual candidates who run either for internal party elections (primaries) or posts at

municipal level. The main objectives of the Act No. 162/2006 are to reduce the risk of conflicting interests and to promote transparency in financial affairs, with the ultimate goal of increasing public trust in political activities and strengthening democracy (art. 1). The Act No. 162/2006 entered into force on 1 January 2007. In addition, the National Audit Office issued, in March 2007, a set of Rules on the Financial Accounts of Political Parties, etc., which comprises some minimum standards for reporting the finances of political parties and electoral candidates.

## **Article 26**

### **Equality before the law**

194. In Iceland's fourth periodic report, detailed information was presented regarding Article 65 of the Constitution, which was added into in 1995, providing for the equality of all before the law and the prohibition of discrimination. Furthermore, the chief model for this provision was article 26 of the Covenant, which was referred to in the explanatory notes to the amendment when it was presented as a bill. This provision has exerted very marked influence in Icelandic jurisprudence, and many judgments have been rendered on its basis, some of which were described in the fourth report. Judgments relating to article 65 of the Constitution also frequently refer to article 26 of the Covenant.

195. A number of judgments have been rendered on the question whether some restrictions to freedom of employment, which are protected for by article 75 of the Constitution, involve discrimination, thus violating its article 65. Two examples that have occurred since the fourth report was submitted may be mentioned.

196. In its *Judgement of 20 December 2005, in Case No. 315/2005* the Supreme Court examined whether a violation of article 65 of the Constitution had taken place when a company owned by a public authority was exempt from paying the industrial charge (or levy) provided for under the Act No. 134/1993; private industrial enterprises were subject to this levy. In the judgement rendered by the majority of the Supreme Court, it was stated that public companies were different in many ways from those owned by private parties, and that different considerations applied to their taxation in various fields, as can be seen in the general tax legislation. The Court did not consider that it had been demonstrated that the plaintiff had suffered discrimination in comparison with the parties to whom the exemption applied.

197. In *Case No. 182/2007, which the Supreme Court judged on 27 September 2007*, it was claimed that a violation had been committed against the principle of equality because a company which had received a 30-year licence to quarry materials from the sea floor had been obliged to have this licence revoked by an act of law, and the issue of a new licence for quarrying would be subject to an environmental impact assessment. The company pointed out that other parties, which had received operating licences that were issued at different times from its own, were not in the same position. The Supreme Court ruled that the first paragraph of article 65 of the Constitution did not prevent the legislature from setting different rules in law regarding operations of different types, providing that these were based on relevant considerations. The Court ruled that unspecified official operating licences issued on the basis of other legislation could not be regarded as comparable with licences issued under the State Ownership of the Resources of the Seabed Act, No. 73/1990, in such a way as to qualify for comparison when considering the application of the principle of equality. As a consistent approach had been observed regarding comparable licences for the quarrying of gravel and sand from the seabed, the Court did not accept that the plaintiff's rights under the first paragraph of article 65 of the Constitution had been violated.

198. Mention may also be made of the *Supreme Court Judgement of 25 September 2008, in Case No. 484/2007*. The issue in this case was whether the legal conditions regarding age-limits for women undergoing artificial fertilization treatment under the Act No. 55/1996, and the different age-limits applying to women and to men in this area, constituted discrimination that might be at variance with article 65 of the Constitution. The district court judgement (which the Supreme Court upheld) pointed out that it had been the intention of the legislature to arrange things in this way. Furthermore, it considered that the provisions of the regulation set under the act, specifying that in no instance was the woman to be older than 45 when an embryo was implanted in her, and her husband or cohabiting partner not older than 50, did not constitute a violation of the principle of equality as stated in article 65 of the Constitution, since general, impartial and relevant considerations lay behind the provision, which was based on considerations for the health of the woman. The conclusion that may be drawn from this judgement is that the biological difference between the sexes, and the influence it has on matters relating to pregnancy and childbirth, may justify making a distinction between them, and that the view taken by the Court was that the status of men and women in this respect was not comparable. Thus, medical considerations were considered as taking precedence over the desire of women aged over 45 to undergo artificial fertilization.

## **Article 27**

### **The rights of minorities**

199. As regards the field covered by article 27, no comprehensive legal amendments have been made in Iceland with the specific aim of protecting the rights of Icelandic minority groups. As was mentioned in previous Reports, Iceland has, ever since its settlement in the ninth century, been inhabited by a homogenous population with a common historical, cultural, linguistic and religious origin, and there is no aboriginal population.

200. Iceland has never had minority groups in the sense of specific minorities among the population with a rich historical or long-lasting connection with the country, furthermore distinguishing themselves from the majority of the population in terms of language, culture, religion or other collective features.

201. There has, however, been a continuing increase in the number of foreigners in Iceland in the last decade. Over the past 10 years, a considerable amount of foreign immigration has taken place, mainly for employment purposes, and this has resulted in a considerable increase in the number of people in the country whose mother tongue is not Icelandic. The following figures give a survey of developments in this area.

#### **Foreign nationals in Iceland, 2000–2009**

<i>Year</i>	<i>Number</i>	<i>Proportion %</i>
2000	7 271	2.6
2001	8 824	3.1
2002	9 850	3.4
2003	10 221	3.5
2004	10 180	3.5
2005	10 636	3.6
2006	13 778	4.6
2007	18 563	6

<i>Year</i>	<i>Number</i>	<i>Proportion %</i>
2008	23 421	7.4
2009	24 379	7.6

202. At the same time as the proportion of foreign nationals increased, there was a drop in the overall population of the country in 2009 for the first time since the end of the 19<sup>th</sup> century. One of the reasons for this is that a considerable number of Icelandic citizens emigrated from the country, mostly to the other Nordic countries, due to the sharp rise in unemployment during 2009. On 1 January 2010, the population (persons permanently resident in Iceland) was 317,630; on the same date the previous year the figure was 319,368. This represents a contraction of half a percent.

203. In 2009 there were nearly 24,400 persons in Iceland whose nationality was other than Icelandic; a breakdown showing the main groups is presented below. No general statistical information exists on the number of people belonging to linguistic minority groups in Iceland apart from this general information on foreign nationals. Most foreign nationals, approximately 70 per cent, come from other European countries. Of these, the highest proportion is from Poland, as for a number of years many Polish nationals have sought employment in Iceland, where workers have been needed in various fields. This is likely to change due to the economic crisis in Iceland and the higher unemployment rate.

	<i>Total</i>
Poland	<b>10 660</b>
Lithuania	<b>1 527</b>
Germany	<b>1 095</b>
Denmark	<b>542</b>
Former Yugoslavia	<b>298</b>
Philippines	<b>650</b>
China	<b>210</b>
Portugal	<b>726</b>
USA	<b>428</b>
Thailand	<b>540</b>
United Kingdom	<b>484</b>
Sweden	<b>333</b>
Czech Republic and Slovakia	<b>569</b>
Latvia	<b>603</b>
Norway	<b>280</b>
Italy	<b>290</b>
Vietnam	<b>225</b>
Russia	<b>161</b>
France	<b>257</b>
Ukraine	<b>154</b>

204. As has been stated in the discussion of religious associations under article 18 of the Convention in paragraphs 156–163 of the present report, a large number of such associations are registered in Iceland, the smallest of which embrace only a few dozen members. From this it may be concluded that there are various religious minorities in the

country, but most of these smaller associations have been registered in the past twenty years, partly in step with the rise in the number of foreign immigrants. Article 64 of the Constitution imposes a special prohibition on discrimination on religious grounds, in addition to which there is a general provision on the equality of persons before the law irrespective of their religious faith in article 65 of the Constitution, as has already been stated. Thus, all individuals in Iceland have the same right to establish religious associations and practise their faith in accordance with their individual conviction.

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