UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/37/Add.2
9 June 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1997

Addendum

ICELAND

[10 February 1998]

CONTENTS

## Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment of 10 December 1994 was signed by Iceland on 4 February 1995 subject to ratification. On 21 October 1996 the Secretary-General of the United Nations received Iceland's instrument of ratification. The Convention entered into effect for Iceland on 22 November 1996.

2. This report is compiled in accordance with article 19 of the Convention, which provides that the parties shall submit to the Committee reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. This report was prepared under the auspices of the Ministry of Justice in November and December 1997. In the course of its preparation information was collected from a multitude of sources engaged in matters to which the Convention relates. Among the chief institutions from which information was gathered were the Prison and Probation Administration, the Director of Public Prosecutions, the National Commissioner of Police, the Immigration Office, the Ombudsman of Parliament, the State Police School, the Ministry of Health and the Director of Public Health.

3. In completing the report, account was taken of United Nations Manual on Human Rights Reporting of 1991. Recourse was also made to the guidelines of the Committee against Torture of 18 June 1991 (CAT/C/4/Rev.2).

4. As this is Iceland's first report on the implementation of the Convention, a large part of it is unavoidably concerned with describing Icelandic law in substance and individual Icelandic statutory provisions. Instead of submitting attachments with translations of legal texts, an effort will be made to provide summaries of their substance and descriptions of them in the main text of the report. Attachment I to this report is the report to the Icelandic Government of 2 March 1994 on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Iceland in the summer of 1993. Attachment II* contains the replies of the Icelandic Government to the CPT of 27 September 1994. These documents contain detailed information on matters such as the administrative organization of Icelandic prisons, the treatment and conditions afforded prisoners and other persons deprived of liberty, and other matters coming under the scope of the Convention.

---

* The attachments may be consulted at the Office of the High Commissioner for Human Rights.

# I. GENERAL OBSERVATIONS

5. The following account presents an overview of the Icelandic constitutional order and practice, and the human rights provisions of the written Constitution. Other human rights instruments to which Iceland is a party will also be mentioned and their status under Icelandic law described. A survey will be provided of Icelandic statute provisions which prohibit torture and make it a criminal act, and of rules designed to prevent it. Finally a brief account will be given of the remedies open to an individual person who alleges to have been a victim of torture. As regards further information on the country and its inhabitants, reference can be made to document HRI/CORE/1/Add.26 of 24 June 1993.

6. In this report the Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will be referred to as “the Convention”, or the “Convention against Torture”.

## A. Icelandic constitutional law and practice

7. Iceland is a parliamentary republic. The President of the Republic, the members of the legislature and local authorities are elected by public ballot at intervals of four years. Iceland became fully independent when the links with Denmark were severed in 1944. The Constitution dates from that year; however, most of its provisions are much older, and can be traced back to 1874, the year in which Iceland first received a written Constitution. In 1995 extensive amendments and additions were made to the human rights chapter of the Constitution, which until that time had remained almost unchanged since the first Constitution was adopted. The new human rights provisions will be described in the following. The principle of triple division of government is provided for in the Constitution.

### The legislative branch

8. The President of Iceland and Parliament exercise the legislative power jointly. Parliament is composed of 63 national representatives, elected by secret, public, proportional ballot for a term of four years from eight different constituencies.

### The administrative branch

9. The ministers of the Government, each within his or her own field, are the highest holders of administrative authority. The ministries are 14 in number. The ministers have usually only been 10 in number, so that some of them are in charge of more than one ministry. The distribution of duties between the ministers is determined by statute.

10. The magistrates represent the administrative branch of government locally. They, and their jurisdictions, are 27 in number. They do not wield any judicial powers. Among their duties are direction of police, crime investigation, public prosecution, direction of customs, collection of State revenues, civil marriages, separations and divorces, decisions on rights of access and support payments under family law, legal competency, real estate records, registration of deceased persons and various involvement with estates

at death, enforcement of judgements, forced sales, etc. Disputes concerning the functions of the magistrates can be referred to the courts in many cases, in particular those concerning enforcement proceedings and settlement of estates at death, but if not, administrative appeal can be made to the Ministry of Justice. In Reykjavik, which is the largest administrative area, there is, in addition to the Magistrate, a commissioner of police, who, in addition to controlling the police, is in charge of criminal investigation and public prosecution within the area of his office.

11. The National Commissioner of Police is in charge of police as an agent of the Minister of Justice. His role is to perform various administrative functions in fields related to law enforcement, such as providing general instructions to regional commissioners of police and making proposals for rationalization, coordination, development and safety in policing. His office shall grant the regional commissioners of police assistance and support, and carry out any police work which calls for centralization or coordination among the offices involved. Finally, there are certain investigation departments under the office of the National Commissioner of Police, such as departments for tax and economic offences, treason and related offences, and accusations against police of unlawful conduct. The National Commissioner of Police has the authority of prosecution in cases such as those enumerated above except for cases concerning alleged criminal violations by police, where the Director of Public Prosecutions has the power of prosecution.

12. The Director of Public Prosecutions is the highest holder of prosecution authority. His role is to ensure that legally prescribed sanctions are applied against persons who have committed criminal violations, and to supervise the exercise of prosecution authority by commissioners of police. The Director of Public Prosecutions prosecutes the more serious offences against the Criminal Code, including offences committed in official capacity.

The judiciary

13. The Constitution provides that the judges wield judicial power. There are eight courts of the lower instance in Iceland, one in each constituency. These have jurisdiction in private and criminal cases, and they issue remand orders and other orders necessary in the context of criminal investigation. They also render bankruptcy orders and resolve disputes arising in enforcement of judgements by the magistrates. Judges are furthermore competent to resolve any disputes relating to the limits of administrative authority. Thus, any decisions of administrative authorities can be invalidated by the courts. The general principle is that the courts are competent to resolve any dispute if its subject matter is governed by law unless it is exempted from their jurisdiction by law, by custom, or by the nature of the matter. The resolutions of the lower courts can be referred to the Supreme Court of Iceland, which is a court of appeals serving all Iceland. Criminal judgements can be referred to the Supreme Court subject to certain conditions, and in private cases appeal is subject to certain requirements concerning minimum interests.

The Ombudsman of the Althing

14. The Office of the Ombudsman was established in 1988 by Act No. 82/1988. The Ombudsman is elected by Parliament and reports to Parliament annually, but in other respects he is autonomous. His role is to supervise State and municipal administration. He is to secure the rights of the private citizens vis-à-vis the holders of administrative authority. He investigates administrative cases either on his own initiative or upon complaint. Any person who maintains that he has suffered injustice at the hands of an administrative authority can lodge a complaint with the Ombudsman. If a matter can be referred to a higher administrative authority such complaint cannot be lodged until the superior authority has decided on the matter. The activities of the judiciary and decisions and other actions taken by administrative authorities which according to express legal provisions shall be referred to the courts, are outside the sphere of the Ombudsman's functions.

15. The Ombudsman may request from administrative authorities any information he may need. He may for example demand delivery of reports, documents, entries and other evidence relating to a matter. He is free to enter and examine the offices of any administrative authorities, and the personnel shall provide him with all necessary assistance. In his conclusions in the cases handled by him, the Ombudsman provides an opinion as to whether a measure taken by an administrative authority conflicted with law or good administrative practice. He may provide guidance or recommendations on better practices to administrative authorities. His opinion is not formally binding upon the authorities, as for example a judgement would be, and the Ombudsman cannot formally invalidate an administrative measure. His opinions, however, carry great weight and his recommendations and guidance are usually acted upon.

16. The Ombudsman keeps under observation whether laws conflict with the Constitution or suffer from other faults, including whether they are in conformity with international instruments to which Iceland is a party.

## B. The human rights provisions of the Constitution

17. Constitutional Act No. 97/1995 introduced many amendments and additions to the human rights provisions of the Constitution. These measures were considered highly timely, as the provisions in effect until then were in various respects out of date, having remained practically unchanged since 1874. They had been the subject of criticism both in domestic debate and internationally. The principal criticism related to the fact that the Constitution lacked various explicit provisions on fundamental human rights. In spite of the general consensus that Icelanders enjoyed such rights in fact, as ordinary legislation or the unwritten principles of the constitution secured them, this was no longer considered adequate. The amendments to the Constitution were intended to amend this situation. They added various new rights to those already provided for, and added more detail to some of the older provisions.

18. The rights added to the Human Rights chapter of the Constitution are the following, referred to by article numbers:

A general principle on equality before the law and that everyone shall enjoy human rights (art. 65, para. 1);

Equal rights of men and women (art. 65, para. 2);

Prohibition against deprivation of Icelandic citizenship and the rights of Icelandic citizens (art. 66, paras. 1 and 2);

Freedom of travel and the right to choose one's place of residence (art. 66, paras. 3 and 4);

Prohibition of torture and inhuman or degrading treatment or punishment (art. 68, para. 1);

Prohibition against forced labour (art. 68, para. 2);

Prohibition against retroactivity of criminal legislation (art. 69, para. 1);

Prohibition against legalization of the death penalty (art. 69, para. 2);

Minimum requirements of fair judicial procedure in private and criminal litigation (art. 70);

The duty of the State to secure special legal protection to children (art. 76, para. 76);

Prohibition against retroactivity of tax law (art. 77).

19. In addition to the above rights introduced into the Constitution, the provisions on other rights were phrased in a manner significantly clearer and their wording modernized. This was done, inter alia, with a view to international instruments in effect in these fields, in particular the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The protection of personal freedom (art. 67), freedom from interference with privacy, home and family life (art. 71), and freedom of opinion and expression (art. 73) are examples of rights that were significantly changed in substance.

20. Other rights protected by the Constitution are freedom of religion (arts. 63 and 64); the right of private ownership (art. 72); the freedom of association and assembly (art. 74); the freedom of occupation and the right to negotiate for terms of employment and other labour-related rights (art. 75); the right to assistance in case of sickness, invalidity et al. (art. 76, para. 1); the right to education (art. 76, para. 2), and the rights of children (art. 76, para. 3).

21. The Constitution is the primary source of Icelandic law. The courts have reserved for themselves the right to determine whether statutes conflict with the Constitution, despite the fact that this power of review is not expressly provided for there. If the courts consider that a statutory provision conflicts with a constitutional human rights provision they will disregard the former in their resolutions. A number of such examples are found in Icelandic judicial practice. The courts do not, however, have jurisdiction formally to invalidate a statutory provision, even if they consider it in conflict with the Constitution.

### C. International agreements to which Iceland is a party and their status under national law

22. Iceland is a party to numerous human rights instruments prepared under the auspices of the United Nations and the Council of Europe. The most important ones, apart from the Convention against Torture, are enumerated as follows. The year in which each agreement entered into effect for Iceland is stated in parentheses.

United Nations Conventions:

International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (1967). Iceland has made the declaration under its article 14 concerning communications from individuals claiming to be victims of violations of the Convention to the Committee instituted in accordance with its provisions;

International Covenant on Civil and Political Rights, 1966 (1979). Iceland has ratified the Optional Protocol to the Covenant concerning communications from individuals claiming to be victims of violations thereof to the Committee instituted in accordance with its provisions, as well as the Second Optional Protocol, aiming at the abolition of the death penalty;

International Covenant on Economic, Social and Cultural Rights, 1966 (1979);

Convention on the Elimination of All Forms of Discrimination against Women, 1979 (1985);

Convention on the Rights of the Child, 1989 (1992).

European Conventions:

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (1953), and Protocol Nos. 1, 4, 6 and 7, which add substantial rights;

European Social Charter, 1961 (1976);

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987 (1990).

23. Iceland is among the States that adhere to the doctrine of the duality of international and national law. This means that the provisions of an international human rights instrument do not achieve the status of national law unless active measures are taken to adopt them into national law.

24. Iceland has generally held the view that Icelandic legislation conforms to the provisions of the human rights instruments to which Iceland is a party. The method of implementing the provisions of such instruments has usually been adaptation of national law to their provisions. The courts of Iceland have also interpreted the provisions of national law to conform to international human rights obligations. To this extent the provisions of human rights instruments are indisputably among the sources of law to be taken into account when interpreting statutory provisions; however, they yield to express statutory provisions which directly conflict with them. In the past few decades some instances have occurred when the courts had to give Icelandic statutes, which conflicted with the European Convention on Human Rights, precedence over its provisions. In order to prevent such discrepancies between national law and the provisions of that Convention, the Convention in its entirety was incorporated into national law by Act No. 62/1994. This is the first and only instance of such incorporation of a human rights instrument into national law.

25. The influence of international human rights instruments on Icelandic legal procedure and the implementation of constitutional provisions on human rights has increased substantially since Iceland became a party to them. This has particularly been the case during the past decade. This is especially marked as regards their effect on the interpretation of Icelandic law. The amendments made to the Constitution by Constitutional Enactment No. 97/1995 can to some degree be traced to this influence. By reason of the discrepancies that could manifest themselves between the European Convention on Human Rights and Icelandic legislation, its incorporation into national law was thought necessary. The attention of the public and public debate has increasingly concerned the question whether Iceland has fulfilled its obligations under other human rights instruments. For the time being there is, however, no intention of incorporating other human rights instruments into national law. It may be noted that all the most important human rights instruments mentioned above are officially published in a law collection regularly issued by the Ministry of Justice, where only enacted statutes are generally published.

26. As mentioned above, the new provisions of the Constitution have been formulated, bearing in mind the provisions of international human rights instruments. The provisions of the Constitution remain, however, less detailed than the international provisions, as the former seek chiefly to lay down broad principles. It must be kept in mind that the foundations of these principles are of wide scope, and they can be seen in the detailed provisions of the human rights instruments to which Iceland has become a party. The Constitution now enumerates all the most important fundamental rights that these instruments aim to secure. The international instruments now play a still more important role than before in further interpretation of what these rights involve.

## D. Icelandic laws on prohibition of torture

27. In the past decade Icelandic legislation on legal procedure and law enforcement has been profoundly changed. The new enactments have to a greater degree than before taken international human rights obligations into account, including the requirement for protection against torture and other inhuman or degrading treatment or punishment.

28. Icelandic legislation prohibiting torture and other inhuman or degrading treatment or punishment can be said to fall into three categories. Firstly, such conduct and treatment are prohibited in article 68, paragraph 1, of the Constitution. Secondly, a comparable prohibition is found in article 3 of the European Convention on Human Rights, which has the force of law after its incorporation into national law by Act No. 62/1994. The two provisions are identically worded, but their sphere of effect is wider than what may be inferred from article 1 of the Convention against Torture, because they are not restricted to torture applied by a person acting in an official capacity or other holder of public authority. Instead, they apply generally.

29. Thirdly, there are criminal provisions in the General Penal Code, No. 19/1940 (GPC), where torture is made a criminal act. If a public servant applies physical torture his conduct falls under the provisions on infringement of physical inviolability in sections 217 or 218 of the GPC, depending on the severity of the act. Chapter XIV of the GPC contains special provisions criminalizing offences committed in an official capacity, of which sections 131, 132, 134 and 135 would chiefly be applicable to conduct such as described in article 1 of the Convention. These would usually, in cases of physical torture, be applied jointly with the provisions concerning 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 a term corresponding to “torture” is not used there. In addition, the provisions mentioned are in some respects of more extensive scope than the definition in article 1 of the Convention, as they make punishable any misuse of public authority, not only such 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. The substance of the above provisions will be further described when discussing articles 2 and 4 of the Convention against Torture.

30. In addition to the above provisions on offences committed by public officials, physical torture is of course punishable under a large number of criminal provisions, despite the fact that a term corresponding to “torture” is not used. Generally speaking, all provisions of the GPC making punishable intentional acts committed against life and limb in fact make physical torture punishable as well. In addition to the provisions of sections 217 and 218 already referred to, examples such as section 225 on unlawful duress, section 226 on deprivation of liberty and various provisions of chapter XXII on sexual offences can be mentioned.

31. Various Icelandic statutes, in particular the provisions of the Code of Criminal Procedure, No. 19/1991 (CCP), protect the rights of arrested persons and remand prisoners in connection with police investigation of criminal cases. Their specific aim is to prevent the occurrence of torture, any excesses in order to obtain confession from persons deprived of their liberty, and any compulsion exercised by holders of public authority for investigative purposes. Section 69, paragraph 2, of the CCP and the Regulations on the Legal Status of Arrested Persons and Police Interrogations, No. 395/1997, specify the maximum duration of interrogation of a suspected person, according to which a person may not be questioned for more than six hours at a time following adequate sleep and rest. Section 42, paragraph 2, of the CCP ensures that legal counsel may always be present when a suspect is being interrogated. The Regulations on Custody on Remand, No. 179/1992, contain more detailed provisions on interrogation procedure and the treatment of remand prisoners. These will be further described in connection with article 11 of the Convention.

32. The Prisons and Imprisonment Act, No. 48/1988, contains general provisions on the treatment to be afforded convicted prisoners, for example concerning the rights they are to enjoy in prison and to what extent their special needs are to be taken into account if they suffer from physical ailments or mental deficiencies. The Act also contains clear provisions on disciplinary measures and the conditions under which a prisoner may be subjected to solitary confinement. The rights of convicted prisoners will be further described in connection with article 11 of the Convention.

33. A specific piece of legislation, 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 that Committee examines the conditions afforded to persons deprived of liberty in Iceland. The Committee came to Iceland in the summer of 1993 and visited a few prisons and police stations in order to examine the conditions of imprisonment and seek indications of whether torture occurred or whether prisoners were subjected to inhuman or degrading treatment. Among its conclusions was that no such indications were observed. The Committee, on the other hand, made observations on the poor condition of some places of detention which it had visited. Various improvements have been made since then. Among them are the opening of a new prison and the closure of a remand prison considered unacceptable by the Committee. The Committee plans to visit Iceland again in the first half of 1998.

34. The death penalty has long since been abolished from Icelandic law, as has corporal punishment. Article 69, paragraph 2, of the Constitution prohibits adoption into law of the death penalty. The kinds of punishment provided for in Icelandic law are only fines and imprisonment. The latter is of two kinds, i.e. commitment to prison and penal custody. There is no difference in practice between the two kinds of deprivation of liberty, but penal custody is usually ordered for a shorter period than deprivation of liberty of the other distinction. There is no provision in Icelandic law for imprisonment involving torture or any punishment regarded as cruel, inhuman or degrading.

35. Icelandic law provides for measures to protect other persons than those deprived of liberty on account of suspicion of criminal conduct or for 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 which 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. Section 63 of the Act on Protection of Children and Adolescent Persons, No. 58/1992, makes it a punishable offence if a person who has a child or an adolescent person in his care affords such person ill-treatment, violates such person's mental or physical integrity, or endangers such person's life or health by negligence. According to its section 64 it is a criminal act to punish, threaten or intimidate a child so as to endanger its emotional or physical well-being. Section 52, paragraph 2, of the Act the subject of which is supervision of homes and institutions for children and adolescent persons, prohibits physical and mental punishment. Patients also enjoy particular protection against cruel, inhuman or degrading treatment, for example under the provisions of the Act on the Rights of Patients, No. 74/1997. This provides among other things for the right of patients to decline medical treatment (sect. 7) and, according to section 10, the written approval of a patient is required for his or her participation in scientific experimentation, for example in testing new drugs.

## E. Jurisdiction over matters dealt with in the Convention

36. If a person maintains that he or she has suffered torture at the hands of a person acting in official capacity, as defined in article 1 of the Convention, Icelandic law provides for investigation of such cases and for criminal action against the perpetrator. The remedies available and the power to resolve such questions will be described here in general terms, but a more detailed account and statistical information on cases which have occurred, etc. will be included in the consideration of articles 12 and 13 of the Convention.

### Complaint to the police and criminal proceedings before the courts

37. The Police Act, No. 90/1996, provides for the procedure to be applied if a complaint is lodged against a policeman on account of an alleged criminal act in the exercise of his or her duties. Prior to the entry into effect of the Act on 1 July 1997, the procedure to be employed was not provided for by law. The objective in laying down such rules by statute law was to ensure careful and impartial investigation from the beginning. Article 35 of the Police Act specifies that if a complaint is received against a policeman on account of an alleged criminal offence in the exercise of his functions, or if such an offence is suspected, the Commissioner of Police shall immediately notify the Director of Public Prosecutions. The office of the National

Commissioner of Police operates a particular investigation department whose duties include investigation of all such complaints. The Director of Public Prosecutions is in charge of such investigation, but not the National Commissioner of Police, who is in charge of all other investigations coming under his office. If an investigation indicates that the conduct evidenced by a policeman is likely to lead to conviction, the Director of Public Prosecutions will bring criminal action. While a complaint of alleged criminal conduct on the part of a policeman is being investigated the policeman is temporarily suspended from his duties. It depends on the outcome of the investigation whether criminal charges are brought in court, whether the policeman is given a formal warning by his superior, that is, the regional commissioner of police in question, or whether his employment is terminated.

38. If a prisoner maintains that a prison warden has subjected him to torture, he can complain to the prison governor or to the Prison and Probation Administration, which is in charge of all Icelandic prisons, or send a complaint directly to the commissioner of police having jurisdiction in the area of the prison. If the Director of the Prison and Probation Administration receives information of torture or other ill-treatment by a prison warden, he can likewise lodge a complaint with the local commissioner of police, alleging a criminal offence on the part of a prison warden. If the conduct of a prison warden does not involve torture but is nevertheless inappropriate and unprofessional, the prison governor may give him a formal warning, which may be followed by termination of employment. A prison warden will be temporarily suspended from work while an investigation of an alleged criminal offence against a prisoner takes place.

The Ombudsman

39. A complaint of torture or other cruel, inhuman or degrading treatment or punishment on the part of a person acting in an official capacity may be sent to the Ombudsman of Parliament.

The European Commission on Human Rights and the European Court of Human Rights

40. Iceland has accepted the power of the European Commission on Human Rights to receive communications under article 25 of the European Convention on Human Rights from individual persons alleging violations of their rights under the Convention. Iceland has also accepted the jurisdiction of the European Court of Human Rights. Icelandic authorities are not aware of any complaints having been lodged with that Commission alleging violations of article 3 of the European Convention on Human Rights.

The Human Rights Committee instituted under the International Covenant on Civil and Political Rights

41. Iceland has ratified the Optional Protocol to the International Covenant on Civil and Political Rights concerning the competency of the Committee working in accordance with its provisions to receive communications from individuals claiming violations of them. The Icelandic Government is not aware of any communications to the Committee alleging violations of article 7 of the Covenant.

## F. Other information on prisons and imprisonment in Iceland

42. At the end of Part I of this report it is proper to present an overview of provisions of law relating to deprivation of liberty on account of suspected criminal conduct, and of prisons and imprisonment in Iceland. This is done in light of the fact that the specific measures to prevent torture are most likely to be called for in these fields.

43. According to article 67, paragraph 2, of the Constitution, any person arrested by reason of suspected criminal conduct shall be brought before a judge without undue delay. If he is not released at once the judge shall, within 24 hours, give a reasoned decision on whether he shall be imprisoned on remand. Now the present rule is that, without exception, a person must be brought before a judge within the specified period of time following his arrest, and until this is done he is detained at the detention facility of the commissioner of police in the relevant jurisdiction. When an arrested person is brought before a judge it is customary that the judge renders, in the same court session, a reasoned decision on whether he is released or remanded, but if this is not done such a decision must be rendered within 24 hours. A person may only be remanded if accused of conduct punishable by imprisonment. The CCP presents in detail the conditions for custody on remand in other respects, and section 105, paragraph 2, provides that custody on remand must always be allowed for a limited, specified period. According to its section 108, paragraph 3, a remand prisoner can always refer to the judge any matter relating to how the remand custody is carried out. Further rules on the treatment of remand prisoners are found in the Regulations on Remand Custody, No. 179/1992.

44. According to the Prisons and Imprisonment Act, No. 48/1988, Icelandic prisons are of two kinds, namely prisons for sentenced prisoners, and prisons for remand prisoners. Remand prisons are for prisoners remanded for custody according to the provisions of the CCP for the purposes of criminal investigation. The total number of prison places in Icelandic prisons is 138. The numbers of prisoners during the past four years are as follows, referring to the average number of prisoners each day. The numbers in parentheses indicate prisoners serving their sentences outside prisons, for example in hospitals or in treatment facilities for misuse of alcohol or drugs.

| | Convicted prisoners | Remand prisoners |
|---|---|---|
| 1994 | 102 (2) | 4 |
| 1995 | 107 (6) | 4 |
| 1996 | 118 (14) | 6 |
| 1997 (to 1 December) | 101 (12) | 12 |

The past five years have seen various improvements to Icelandic prisons. The attached documents contain detailed information on prison organization in Iceland, the treatment of prisoners and the remedies open to them if they consider that they have suffered torture or other ill-treatment by police or prison wardens.

## II. INFORMATION ON INDIVIDUAL PROVISIONS OF PART I OF THE CONVENTION

### Article 2

45. As mentioned above, article 68, paragraph 2, of the Constitution provides that no one may be subjected to torture or other inhuman or degrading treatment or punishment. This prohibition is unreserved and unconditional, allowing no exceptions. The provision is comparable to that of article 3 of the European Convention on Human Rights which has the force of law in Iceland by virtue of Act No. 62/1994.

46. The term “torture” is not defined in Icelandic statute law. Given the accepted interpretation of the term in article 3 of the European Convention on Human Rights the detailed definition in article 1 of the Convention against Torture will be accepted here.

47. The Constitution has no provision making possible any derogation from its human rights provisions by reason of specific circumstances, such as war, danger of war, insecure domestic political situation or any other public emergency. The question of having to derogate from the human rights provisions of the Constitution by reason of emergency, whether in time of war or peace, has never arisen. It is clear that even if a situation developed such as defined in article 2, paragraph 2, of the Convention against Torture, article 15, paragraph 2, of the European Convention on Human Rights ensures that the principle of prohibition of torture can never be disregarded. It may also be noted that Iceland is bound by a comparable principle in article 4, paragraph 4, of the International Covenant on Civil and Political Rights, according to which no derogation may be made from article 7 of the Covenant.

48. Various measures have been taken within the fields of legislation, public administration and law enforcement in order to prevent torture. These differ in nature, and will be described further when considering the individual provisions of the Convention against Torture. Nevertheless, it is proper to mention firstly legislation prohibiting torture of any description as well as other inhuman, cruel or degrading treatment or punishment. Torture is made punishable in Icelandic legislation, and special criminal provisions apply in the field of law enforcement to persons acting in an official capacity. These rules of law will be described in detail under article 4 of the Convention.

49. Secondly, the General Penal Code (GPC) makes it possible to prosecute a person for an offence described in article 1 of the Convention against Torture. Under the legislation now in effect, a person may be prosecuted before the courts of Iceland on account of such an offence, irrespective of the place of commission or the defendant’s nationality. These rules will be described further in the discussion on article 5 of the Convention.

50. Thirdly, measures have been taken specifically in order to prevent torture. These include rules on the interrogation and treatment of arrested persons, prisoners and other persons deprived of their liberty, which regulate the conduct of public servants working in this field. In this context it is also proper to mention information given public servants concerning the

prohibition of torture, which forms a part of their education, and the professional standards required of them. The measures taken in this field will be further described under articles 10 and 11 of the Convention.

51. Criminal legislation does not provide for the defence of referring to the orders of superiors or administrative authorities for justification of torture. It is a principle of Icelandic criminal law that punishment is ordered for the individual person based on his or her criminal guilt. A person committing an act described in article 1 of the Convention against Torture will be sentenced without regard as to whether the act was committed on the orders of a superior. The GPC also allows punishment of a superior who has ordered a person subject to his authority to apply torture, even if the superior does not himself commit the act. In fact, such orders are viewed as particularly serious. Thus, section 135 of the GPC provides that if a public servant takes part in the commission of an offence by another public servant subject to his authority, or seeks to entice him to commit such offence, he shall be subjected to the penalty provided for on account of that offence; however, up to one half of the penalty in question shall be added to the sentence.

## Article 3

52. Icelandic law ensures that a person cannot be extradited or sent back to another State if there is a significant reason to believe that he or she faces a risk of torture there. The provisions to this effect are chiefly found in the Act on Extradition and Other Assistance in Criminal Matters, No. 13/1984 (the Extradition Act) and the Act on Supervision of Foreigners, No. 45/1965 (the Immigration Act). A separate statute, Act No. 7/1962, applies to extradition to Denmark, Finland, Norway or Sweden.

53. According to the Extradition Act a person may be extradited to a State where he or she is suspected of, or has been indicted or sentenced for a punishable offence. The Act, however, makes various reservations to this general principle. Thus, according to section 3 extradition is only allowed if the act is punishable by more than one year in prison under Icelandic law. Article 5 prohibits extradition on account of political offences. According to article 6 extradition is prohibited if the person in question faces a significant risk of being, following extradition, subjected to oppression or persecution endangering life or liberty, or any oppression or persecution which is otherwise of serious nature, on account of his or her race, nationality, religion or political opinion, or on account of political conditions in other respects. Article 7 also permits denial of extradition in special cases on humanitarian grounds, such as on account of age, health or other personal conditions.

54. The Ministry of Justice receives requests for extradition made by foreign States. The procedure for handling such requests is laid down in sections 13–18 of the Extradition Act. If the Ministry considers, on the basis of the extradition request and the attached documents, that it is to be declined at once, this shall be done. If the request is not declined at once by the Ministry it shall be forwarded to the Director of Public Prosecutions, who shall have the necessary investigation carried out immediately. The person to whom the request relates may request a court to determine whether

the legal requirements for extradition are fulfilled. At the time the Director of Public Prosecutions notifies a person of a request for his extradition and the arguments in its support, he shall inform him of his right to refer the matter to the courts and that he can have legal counsel appointed for him. The fees of such legal counsel and other costs of the case shall be paid by the State Treasury.

55. According to the rules mentioned above, the court assesses, upon the request of the person whose extradition is requested, whether the legal conditions for extradition are fulfilled. The court will then examine, among other things, whether sections 6 or 7 of the Extradition Act stand in the way of extradition. If there is a significant reason to believe that a person may be subjected to torture in the country to which he is extradited, the legal conditions are not fulfilled, and the court will then deny extradition.

56. A case of this kind was recently brought before the courts of Iceland for the first time. A judgement of the Supreme Court on 17 October 1997 confirmed a decision of the district court denying extradition of a wife and her husband to the United States. The United States authorities had requested their extradition on account of a criminal action taking place against them in their home country. The spouses challenged the request and submitted detailed evidence in court, establishing that there was significant danger that they would not receive a fair trial before a court in Arizona. There was also a significant likelihood that they would be treated inhumanely by being transported in irons to their destination in accordance with rules governing prisoner transport in the United States, and in being remanded to a prison in Maricopa County, Arizona. They demonstrated that the conditions in that prison were inhuman and degrading, and that an Icelandic decision to grant the extradition request would therefore conflict with their rights under article 68, paragraph 1, of the Constitution, article 3 of the European Convention on Human Rights and article 7 of the International Covenant on Civil and Political Rights. The Supreme Court sustained the view that the legal requirements for extradition were not fulfilled and that the administrative authorities were to observe the principle of proportionality when taking a decision on the extradition, such as by seeking to negotiate with the United States authorities that the spouses travel to the United States of their own free will and that they be granted bail instead of imprisoned on remand while their case was in progress in Arizona. The spouses are still in Iceland, despite the fact that their residence permit has expired. At the time of writing a decision has not been taken on whether they shall be expelled.

57. Foreigners may be denied entry into Iceland or expelled under the conditions specified in the Immigration Act, No. 45/1985. Iceland is a party to the Convention relating to the Status of Refugees of 1951 and the Protocol of 1967. According to section 10, paragraph 4, of the Act a foreigner cannot be denied entry to Iceland if he claims to have had to seek asylum as a refugee and this claim is considered likely to be true. Here, the meaning of the term “refugee” is as defined in article 1 of the Convention relating to the Status of Refugees. A particular body, the Immigration Office, decides on the request of a person for political asylum. Appeal against the decision of the Office can be lodged with the Ministry of Justice, and the person seeking asylum must be notified of his right of appeal. The Immigration Act, and the

general rules of the Administrative Procedures Act, No. 37/1993, provide for procedure in such cases, including a foreigner's right of protest and his right to submit evidence on his behalf. During the past five years there have been no instances of a request for political asylum being granted in Iceland, i.e. of an applicant being deemed a political refugee within the meaning of the Convention relating to the Status of Refugees, but such applications have been relatively few in number. Such persons are frequently returned to the countries from which they came, most often the Nordic countries, and their requests for asylum are often under consideration by the authorities of those countries. There are, however, a few examples of foreigners seeking asylum being granted residence permits, for example on account of conditions in their home countries which nevertheless do not justify their being granted refugee status. The following table shows the number of requests for asylum in Iceland and the conclusions reached.

| | Requests for asylum | Residence granted | Returned |
|---|---|---|---|
| 1992 | 3 | 0 | 3 to Norway |
| 1993 | 7 | 3 | 2 to Norway;<br>2 to Sweden |
| 1994 | 0 | - | - |
| 1995 | 4 | 4 | - |
| 1996 | 4 | 1 | 1 to Norway;<br>2 to Denmark |

58. In three of the above cases (one in 1995 and two in 1996) the applicants exercised their right to appeal to the Ministry of Justice against the decision of the Immigration Office denying asylum. The Ministry confirmed two of these decisions, but granted residence in one case.

## Article 4

59. In the opinion of the Icelandic Government, Icelandic law makes torture, mental as well as physical, as defined in article 1 of the Convention, punishable to an adequate degree. In the following, the criminal provisions already mentioned, which make conduct involving torture punishable, will be described in further detail.

60. A term corresponding to "torture" is not used in Icelandic criminal legislation. Icelandic criminal statutes are as a general rule formulated so as to declare some specific act or conduct punishable, and the consequences of the act or conduct may be decisive as to what criminal provision is applied. Physical torture is punishable under many of the criminal provisions of the GPC. All the provisions of the Code making punishable intentional acts committed against a person's life or limb can be said to make physical torture punishable. The subject of section 217 of the Code is minor physical assault, which is punishable by fines or imprisonment for up to one year. Section 218 makes major physical assault punishable. It provides that if a person inflicts physical injury upon another person by wilful physical assault, and

the perpetrator is responsible for the consequences of the act by reason of intent or negligence, he shall be subjected to penal custody or imprisonment for up to three years, or fines in cases of particularly mitigating circumstances. If serious physical injury results from such assault, or if the offence is particularly dangerous by reason of the methods or implements used, or if the victim dies as a consequence of the act, the offence is punishable by imprisonment for up to 16 years.

61. In addition to these two important provisions of the GPC on physical assault, there are criminal provisions in section 215 on manslaughter, section 225 on unlawful duress, section 226 on deprivation of liberty, and various provisions in chapter XXII, the subject of which is sexual offences. Finally, certain mental torture is made punishable in section 221, the subject of which is failure to come to the assistance of a person whose life is in danger if this can be done without endangering one's own life or health; in section 225 on unlawful duress; section 226 on deprivation of liberty, and in various provisions of chapter XXV on offences against reputation and privacy.

62. The general observations above enumerated certain criminal provisions in chapter XIV of the GPC concerning offences committed in official capacity. The provisions most likely to come into consideration in connection with the definition of torture in article 1 of the Convention will now be described. These are sections 131, 132 and 134.

63. Section 131 provides that a judge or other public servant entrusted with public authority under criminal law, who employs unlawful methods in order to bring a person to confess or to provide a statement, arrests or imprisons a person unlawfully or carries out an unlawful investigation or unlawfully seizes documents or other objects, shall be fined or imprisoned for up to three years.

64. Section 132 provides for fines or penal custody, subject to any heavier penalties provided for by law, if a person acting in an official capacity intentionally fails to observe correct methods in the procedure or resolution of a case, arrest, search or imprisonment, or in the implementation of a sentence or seizure, or violates other rules of similar kind.

65. Section 134 provides for penal custody or imprisonment for up to three years if a person in an official capacity misuses his position in order to compel a person to perform an act, suffer an act or refrain from action.

66. Finally, section 138 of the GPC provides that if a public servant commits an offence deemed to constitute misuse of his position, and his offence is not punishable as an offence committed in official capacity, he shall be subjected to the penalty provided for on account of that offence; however, up to one half of the penalty in question shall be added to the sentence.

67. As regards torture, sections 132, 133 and 134 of the GPC have been interpreted as relating chiefly to mental torture on the part of persons acting in official capacity. In case of physical torture, such as described in article 1 of the Convention against Torture, a person acting in an official capacity would also be indicted for physical assault on the basis of

section 217 or 218 of the GPC, depending on the seriousness of the injury inflicted. According to section 138 it is possible, as mentioned above, to increase the penalty by up to 50 per cent. In two criminal judgements of recent years policemen were sentenced for ill-treatment of arrested persons. In the earlier judgement, rendered 14 November 1991, a policeman was sentenced on the basis of sections 218 and 138 of the GPC, but the additional application of section 132 was not deemed justified. In the later judgement, pronounced 21 March 1997, a policeman was sentenced for a violation of sections 217, 138 and 132 of the Code. These judgements will be further described in connection with articles 12 and 13 of the Convention.

68. The discussion relating to article 2 of the Convention described the special provision on the liability of an accessory in section 135 of the GPC, namely participation of a superior in an offence committed by a person over whom he has authority, or an offence committed on the orders of a superior. Such offences are regarded as particularly serious, as the penalty applicable to the person in authority may in such cases be increased by half. The general rules applicable to persons attempting, aiding or abetting crime are found in sections 20 and 22 of the Code. The general principle is, according to section 20, that anyone who has resolved to commit an offence punishable under the Code and overtly demonstrated this intention by an act aiming at its commission is, even if the offence has not been carried out, guilty of the attempted offence. In cases of an attempt, a sentence may be ordered which is lower than the sentence applicable to the completed offence.

69. The principle of section 22 on accessory participation is that anyone who in word or deed provides aid in the commission of an offence punishable under the Code, or has a part in its commission by persuasion, exhortation or otherwise, shall be sentenced as if he had committed the actual offence.

## Article 5

70. Under Icelandic law an offence as defined in article 1 of the Convention comes under Icelandic criminal jurisdiction in all the cases enumerated in its article 5. Icelandic criminal jurisdiction is governed by the detailed provisions of sections 4–6 of the GPC.

71. In order to fulfil the commitments described in article 5, paragraph 2, of the Convention against Torture, amendments were made to section 6 of the GPC by Act No. 142/1995, which extended Icelandic criminal jurisdiction in cases involving torture offences. According to section 6, subparagraph 9, of the Code, a person can be sentenced under Icelandic criminal law for an offence described in the Convention against Torture even if it has been committed outside Icelandic territory and irrespective of the perpetrator’s nationality. However, criminal action can only be brought under this provision if so ordered by the Minister of Justice. This requirement applies also to other cases involving exception from the main principle that Iceland only has criminal jurisdiction in cases where an offence has been committed on Icelandic territory or by an Icelandic national or a person residing in Iceland. Examples of other cases where Icelandic criminal jurisdiction is similarly extended are those described in article 1 of the European Convention on the Suppression of Terrorism of 27 January 1977, and in the International Convention against the Taking of Hostages of 18 December 1979. To date, the

question of prosecution by Icelandic authorities, and consequently the power of decision of the Minister of Justice in cases of such extended Icelandic criminal jurisdiction, has never arisen.

Article 6

72. Provisions enabling the measures described in article 6, paragraph 1, in the Convention against Torture, are mainly to be found in the Code of Criminal Procedure (CCP), No. 19/1991. According to its section 97, paragraph 1, a policeman may arrest a person if there is reasonable cause to believe that he has committed an indictable offence, provided arrest is necessary in order to prevent continued commission, to secure the suspect's presence and security or to prevent concealment or destruction of evidence. According to section 99, a judge may also order an arrest upon the request of the Director of Public Prosecutions or the police. The Extradition Act also provides, in section 19, for the arrest of a person wanted by the authorities of a foreign country as a suspected, indicted or sentenced perpetrator of an offence that could justify extradition under the Act. Such arrests, and other coercive measures, for example remand, are subject to the provisions of the CCP as if the person arrested were accused of a similar offence in Iceland.

73. The right of an arrested person to be brought before a judge without undue delay if he is to be placed in custody is protected by article 67 of the Constitution, as noted in the general observations above. Section 102 of the CCP also contains a similar rule. Chapter XIII of the CCP provides for custody on remand and related measures. According to section 103, paragraph 1, a person can only be remanded if there is a reasonable cause to believe that he has committed an act punishable by imprisonment, provided he has attained the age of 15 years. In addition to this, at least one of the following four conditions, enumerated in the section quoted, must be fulfilled:

(a) That the accused person may hinder the investigation of his case, for example by removing the evidence of his offence, concealing objects or influencing witnesses or other persons who have taken part in the commission of the offence;

(b) That he may leave the country, go into hiding or otherwise evade prosecution or sentence;

(c) That he may continue criminal activity while his case has not been brought to a conclusion;

(d) That imprisonment on remand is deemed necessary in order to protect others from the suspect, or the suspect from others.

74. Finally, section 103, paragraph 2, of the CCP provides that a person may be remanded even if the conditions in subparagraphs (a)–(d) have not been fulfilled, if there is a strong reason to believe that he has committed a crime punishable under law by 10 years in prison, and custody on remand is deemed necessary to the public interest.

75. Thus, Icelandic law provides adequately for custody of a person suspected of conduct described in article 1 of the Convention against Torture. Remand imprisonment ordered by the courts of Iceland is in practice most frequently justified by subparagraph (a) of section 103, paragraph 1, i.e. the interests of the investigation. This subparagraph may be expected to be applicable if a person is suspected of an offence involving torture. Subparagraph (b) may also be applicable, for example in the case of a foreigner who may be expected to attempt to leave the country. Paragraph 2 of section 103 may also be applied in case a person is suspected of a serious offence involving torture, punishable by up to 16 years in prison. It may finally be noted that in place of remand, a judicial order may be issued prohibiting a person from leaving a particular area. Thus a judge may, according to section 110 of the CCP, order a suspect to remain within a certain geographical boundary, or prohibit his departure from Iceland.

76. Remand custody, or a related measure such as an order to stay within a certain area, must be ordered for a specified period of time. An order to this effect may be appealed to the Supreme Court, where it is handled expeditiously. It is difficult to state the average duration of remand imprisonment. The period is of course ordered with regard to the facts and needs on which the order is based. In judicial practice remand is seldom ordered for a period exceeding four to six weeks. Shorter periods are more common, in particular when remand is ordered with regard to investigative needs. Remand can be extended for a definite period by a new order, but in cases where remand is justified by the needs of an investigation, the courts make stricter demands that the investigation authority establish the need for continued custody. During the past few years, the period of investigation of serious criminal cases where remand has been ordered, and their procedure in court, has become appreciably shorter. One of the chief aims of the new Police Act, No. 90/1996, which entered into effect 1 July 1997, was to make criminal investigation more efficient and shorten the time until an indictment is issued.

77. According to section 108 of the CCP, the treatment of remand prisoners shall be such as necessary to achieve the purpose of their custody, and any severity or harshness is to be avoided. The section then provides further for the accommodation afforded remand prisoners, for example concerning their right to receive visitors and to send or receive mail. These rules, with other matters concerning their custody, are regulated in further detail in the Regulations on Imprisonment on Remand, No. 179/1992. The main principle is that a remand prisoner is allowed the use of a telephone if this does not interfere with the interests of the investigation (section 62 of the Regulations). A remand prisoner may also send letters subject to the Regulations' chapter VII, but these may be held if they can harm the investigation of his alleged offence. The Regulations also contain provisions in chapter VI on the right of a remand prisoner to receive visitors during specified visitation hours, but this right can also be limited with a view to the interests of the investigation. This shows that a remand prisoner is fully entitled to contact the nearest appropriate representative of his country of nationality, for example an embassy, as it is very unlikely that this could affect the interests of an investigation. It should finally be

mentioned that a remand prisoner is always in his right to refer matters relating to his accommodation to a judge, including any limitations imposed on his contact with others.

78. It may finally be noted that remand has never been ordered in Iceland on account of a suspected offence involving torture, as described in articles 1 and 4 of the Convention against Torture.

79. No rules have been laid down by statute concerning the matters described in the Convention's article 6, paragraph 4. It is clear, however, that Icelandic authorities would immediately contact a State where a person is suspected of having committed a torture offence. Cooperation with the authorities in that State, for example concerning collection of evidence, is a necessary precondition for prosecution before the courts of Iceland, if the suspected offender is not extradited to the country where the crime was allegedly committed.

## Article 7

80. If an arrest takes place on account of a suspected offence as described in articles 1 and 4 of the Convention, committed by a policeman acting in official capacity, the matter will be investigated by the office of the National Commissioner of Police. In case the offender is some other person, a prison warden for example, or some other public servant, the commissioner of police having jurisdiction at the place of commission will investigate his case. The commissioner of police in question can ask for the assistance of the investigation department of the National Commissioner of Police, which renders assistance in serious criminal cases. If a person is arrested under suspicion of having committed such offence in a foreign State and he is not extradited to that State, the office of the National Commissioner of Police would in any event take charge of the investigation.

81. When investigation has been completed, different rules apply as to the decision to be taken on prosecution, depending on whether the suspected offence was committed in Iceland or abroad. If an offence involving torture was committed in Iceland or by an Icelandic national abroad, the Director of Public Prosecutions will decide on prosecution. According to section 27 of the CCP the Director of Public Prosecutions only initiates prosecution on account of the most serious offences, including all offences allegedly committed in official capacity, but in other cases the various commissioners of police have power of prosecution. If the offence was committed abroad by a person who is neither an Icelandic national nor a resident of Iceland, the special rule described above in connection with article 5, namely that the Minister of Justice shall decide on prosecution, will apply. The reason for this arrangement is that extended criminal jurisdiction of this kind is a clear exception from the principle that a suspected offender or offence must have ties to Iceland. A decision on such a measure, involving the application of a special exception from the general rules on prosecution, is deemed to require particular care, and the Ministry of Justice is deemed to be the proper authority to assess this need.

82. Icelandic law does not provide for any reduction of the demands for available proof in connection with prosecution or determination of guilt in

cases such as mentioned in article 5, paragraph 2. It is a basic principle of Icelandic criminal law that a person charged with a criminal offence is deemed innocent until his guilt is proven, and this principle is enshrined in article 70, paragraph 2, of the Constitution. A reference can also be made in this context to article 6, paragraph 2, of the European Convention on Human Rights and article 14, paragraph 2, of the Covenant on Civil and Political Rights. An important aspect of this principle is seen in section 45 of the CCP, providing that the burden of proving a defendant's guilt and any facts deemed to his disadvantage rests with the prosecution. According to section 112 of the CCP, criminal action cannot be brought against a person if the evidence available following investigation is deemed inadequate or unlikely to lead to conviction. There would be no purpose in bringing criminal action under such circumstances, because the courts are always bound by the rule that a person is deemed innocent until his guilt is established, and the burden of proving this rests with the prosecution.

83. The right of a person to a fair trial, both in civil and criminal cases, is secured by article 70 of the Constitution. In substance it is largely similar to article 6 of the European Convention on Human Rights and article 14 of the Covenant on Civil and Political Rights. The detailed provisions on criminal investigation and court procedure in criminal cases are in the CCP. The Icelandic Government is of the opinion that these sources of law fulfil in every respect the requirements of article 7, paragraph 3, of the Convention, that a person charged for an offence involving torture is ensured a fair procedure at all stages.

84. A report of this kind would be too long if the rights of a suspect and criminal procedure were described in detail, but it is well to mention a few main characteristics of criminal procedure as laid down in Icelandic legislation. The CCP now in effect, which entered into force 1 July 1992, provided for the first time for a complete separation between the role of the prosecution authority and the police on the one hand and judicial functions at the investigation stage on the other. Investigation of criminal cases is now exclusively in the hands of the prosecution authorities and the police, and a judge never takes any initiative as regards investigation, or controls investigation. The role of the judge in the investigation stage is limited to resolving various issues referred to the court by the parties.

85. In addition to abolishing completely inquisitive procedure and instituting accusatory procedure, the new act introduced various amendments with the specific purpose of ensuring fair treatment of accused persons before the courts. Thus, both article 70 of the Constitution and individual provisions of the CCP now ensure that a person accused of criminal conduct is always entitled to the resolution of an independent and impartial tribunal, within a reasonable period of time and following an open trial. The law also ensures for an accused person the rights enumerated in article 6, paragraph 3, of the European Convention on Human Rights and article 14, paragraph 3, of the Covenant on Civil and Political Rights. Thus, his right to be informed of the charges brought against him, the right to legal counsel from the first stages of an investigation, the right to adequate time and facilities to prepare a defence, the right to question witnesses testifying against him or to have such witnesses questioned, and the right to the assistance of an interpreter free of charge, to mention a few examples, are all secured.

Article 8

86. The main provisions in Icelandic law concerning extradition are found in Act No. 13/1984 on extradition of criminal offenders and other assistance in criminal matters (the Extradition Act), previously mentioned. A separate Act, No. 7/1962, applies to extradition to Denmark, Finland, Norway or Sweden, and similar legislation, with mutual extradition provisions, is in effect in the above Nordic countries. Iceland is a party to the European Convention on Extradition of 1957 and the Additional Protocols of 1975 and 1978. Some other extradition agreements, concluded with individual States, are in effect. It may also be noted that Iceland is a party to the European Convention on the International Validity of Criminal Judgements of 1970 and the Convention on the Transfer of Sentenced Persons of 1983. A particular act of law, No. 56/1993 on international cooperation concerning validity of criminal judgements, was enacted on the basis of these two Conventions. A different Act, No. 69/1963, applies to the execution of criminal judgements rendered in Denmark, Finland, Norway or Sweden.

87. An extradition agreement with a foreign State is not necessary in order to make possible the extradition of a suspected offender to that State. Section 1 of the Extradition Act provides for the extradition of a suspected, indicted or convicted person to a foreign State, if the further requirements specified in the Act are fulfilled. Among these is the principle of section 3 of the Act that the conduct on account of which extradition takes place must be punishable by more than one year in prison under Icelandic law. It is clear from the account given on article 4 of the Convention, concerning punishment of torture offences under Icelandic law, that this condition does not prevent extradition of a person to a foreign country.

88. It is proper to mention again the provisions in sections 3–7 of the Extradition Act, described in connection with article 3, to the effect that extradition may be denied if the person whose extradition is requested faces a risk of torture or persecution directed against his life or liberty on the grounds there mentioned. Extradition may also be denied on humanitarian grounds in certain instances.

89. According to section 2 of the Act, Icelandic nationals may not be extradited. If an Icelandic national is suspected of a torture offence his case must be investigated and prosecuted before the courts of Iceland. A special provision of the Act on extradition to Denmark, Finland, Norway or Sweden makes the extradition of an Icelandic national nevertheless possible, as according to section 2 of the Act, the person in question may be extradited if he or she has been a resident of the country requesting extradition for two years before the offence was committed, and if the offence, or a corresponding offence under Icelandic law, is punishable by more than four years in prison.

90. A request for extradition of a person under the extradition legislation, on the grounds of suspicion, indictment or conviction of an offence such as described in article 1 of the Convention, has never been submitted to Icelandic authorities.

## Article 9

91. Icelandic legislation makes it possible for Icelandic authorities to render assistance to a foreign State in the manner described in article 9 of the Convention. The rules in this respect are chiefly found in chapter IV of the Extradition Act. According to its section 22, the provisions of the CCP may be applied for collection of evidence on account of a criminal case prosecuted in a foreign State, if this is requested by the authorities of that State. Accordingly, an agreement on such judicial assistance with the State in question is not necessary. The statutory provision in question provides an adequate basis for such assistance.

92. Sections 22 and 23 of the Extradition Act provide in further detail for the handling of requests for judicial assistance. Icelandic assistance can only be granted if the act to which the request relates is also punishable under Icelandic law. There is no question of this condition standing in the way of prosecution on account of torture offences, as these are certainly punishable under Icelandic law. According to section 23, Icelandic authorities may grant the request of a State where a criminal case is in progress to send to that State a person who has been remanded or is serving a sentence in Iceland, for testimony in that case. If the person in question does not consent to such transport, a judge of the District Court of Reykjavik shall resolve whether the legal requirements for transport are fulfilled.

93. Iceland is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959 and the Additional Protocol of 1978. It may also be noted that a specific statute, Act No. 49/1994, has been enacted concerning judicial assistance to the International Criminal Tribunal for the former Yugoslavia. The Act makes it possible to grant a request from the Tribunal or its Prosecutor for extradition, other assistance, transfer of persons deprived of liberty in order that the Tribunal may receive their statements, and for the execution of judgements pronounced by the Tribunal.

94. No requests from foreign States for judicial assistance on account of torture offences call for application of the legislation described have been received by Icelandic authorities. Nor have they received any requests for such assistance from the Tribunal.

## Article 10

95. The rules governing the appointment of policemen and their training and duties are found in the Police Act, No. 90/1996. The Minister of Justice appoints policemen, who must have passed an examination from the State Police School. The Icelandic police force numbers approximately 600 persons.

96. The State Police School is an independent institution coming under the Minister of Justice. The School operates a department of basic education providing general police education for the students, and a department of advanced education providing for active policemen continuing education, advanced education and special education. The National Commissioner of Police advertises for students everywhere in Iceland. He decides the number of students to be admitted each year, on the basis of a plan for renewal of the force’s personnel. Applicants for admission must fulfil certain general

requirements. They must be between 20 and 25 years of age, mentally and physically healthy, have completed a certain basic education, and must not have been sentenced for an act punishable under the General Criminal Code. Before admission, they must pass an admission examination. The study takes place in two terms. Before commencing the second term the National Commissioner of Police shall provide the students with practical training with the State police for a minimum of eight months. On the average, about 30 new students are admitted annually. The number of students at the present time is 48.

97. Tuition in the first term of police studies includes the basic aspects of criminal law and criminal procedure. The provisions of the Constitution are described, with a particular emphasis on its human rights provisions. The second term provides a more detailed survey of human rights. The objectives of the course are to provide the students with an overview of the history of and the reasons underlying the human rights provisions of the Constitution, as well as knowledge of international human rights cooperation under the auspices of the United Nations and the Council of Europe and the chief international human rights instruments to which Iceland is committed, including the Convention against Torture. Practical education and training includes physical arrests, in order that the students may safely arrest a person even in cases where resistance is offered, and self-defence. On the whole, ethical standards and correct police procedures are given great emphasis in the training of new students at the Police School and in police work generally. This applies especially to the conduct of policemen in their relations with arrested persons. Police trainees and active policemen cannot fail to be aware of the fact that any brutality in their relations with arrested persons calls for disciplinary measures or criminal prosecution, and that complaints against police are examined and processed in an appropriate manner.

98. As regards competence requirements and education of policemen in charge of others, it may be noted that all 27 Icelandic commissioners of police are lawyers, and legal training is a condition for their appointment. Human rights education, which includes the human rights provisions of the Constitution, is one of the central themes in law studies. The Ministry of Justice sent all Icelandic commissioners of police, for their information, the report of the European Committee for the Prevention of Torture following that Committee’s visit to Iceland in 1993. The Ministry has also sent to all commissioners of police a publication containing the most important human rights agreements to which Iceland is a party.

99. Recently, more detailed provisions concerning the competence and education of prison wardens were issued in Regulation No. 11/1996 on requirements for appointment of prison wardens and the training of prison wardens. This provides some general requirements to be fulfilled for such engagement. The Regulations are issued on the basis of the Prisons and Imprisonment Act. The general requirements which an applicant for engagement as a prison warden must fulfil include an age of between 20 and 40 years, unblemished reputation, good personal character, tactful behaviour and mental and physical health. In addition, a certain minimum education is required. An applicant may be required to undergo psychological and psychiatric tests if this is considered necessary. A particular committee, composed of representatives of the Ministry of Justice, the Prison and Probation

Administration and the Association of Prison Wardens, assesses whether an applicant fulfils the general requirements. The Prison and Probation Administration operates an education department and a training committee is active under its auspices, the members of which are representatives of the above parties. The committee is in charge of organizing the education and tuition provided for prison wardens. Basic education of prison wardens takes six months, divided into three months of theoretical education and physical training and three months of practical training, which takes place in a prison. Among the courses provided are criminal law, the Code of Criminal Procedure and the service of sentences. The curriculum also includes the basic principles of human rights, the rights and duties of prisoners and human interaction. At the time of writing of this report, a formal description of the education of prison wardens is under preparation. This will emphasize the human rights provisions that relate to prohibition of torture and inhuman or degrading treatment, both those of the Constitution and those of international human rights instruments. The European Convention for the Prevention of Torture and the Convention against Torture will thus be given particular consideration.

100. Only persons who have completed the basic education described above, passed an examination and otherwise established to the committee that they are suited for such employment, can receive permanent appointment as prison wardens. When a prison warden has completed his or her basic education and practical training period, continued education is required for one term of at least 300 hours. This is designed to increase the general knowledge, competence and professionalism of the persons so employed, promote safety in prisons and strengthen the assistance and guidance roles of the prison wardens. Finally, the aim is to provide prison wardens with the opportunity of refreshment courses within five years from completing their prison warden education. Active prison wardens in Iceland are now about 80 in number.

101. According to the Prisons and Imprisonment Act persons who have passed an accredited university examination shall have precedence for appointment as prison governors. The Director of the Prison and Probation Administration shall be a lawyer.

102. The Icelandic Judges' Association recently conducted, in cooperation with the Ministry of Justice, a course for judges on human rights as enshrined in the Constitution and international human rights instruments. The Convention against Torture was specifically introduced to them as the most recent human rights instrument to which Iceland is committed. The Ministry of Justice has also sent all Icelandic judges a publication containing the texts of all international human rights agreements to which Iceland is a party.

103. A prohibition of torture is not expressly mentioned in the professional rules of policemen or prison wardens. This prohibition is deemed so self-evident as not to need mentioning. It is, however, well to reiterate that both the training and the rules of conduct applying to these professions place a heavy emphasis on proper conduct in relations with prisoners and other persons deprived of liberty, and their members are required to keep in mind at all times that any brutality is totally prohibited.

104. Patients enjoy special protection of the law according to Act No. 74/1997 on the rights of patients. According to its section 17, the members of medical and health-care professions and others having relations with patients in the course of their work shall respect the personal dignity of patients. Section 7 of the Act provides specifically for the right of a patient to refuse medical treatment, and according to section 10 a patient must give a written approval of any participation in scientific tests, such as experiments with new drugs.

105. The Legal Competency Act, No. 71/1997, contains special provisions on the treatment of persons committed to hospitals against their will. According to that Act, a person can be committed to a hospital for a limited period of time subject to strict conditions, if he or she suffers from a serious psychiatric illness or is seriously addicted to alcohol or other drugs of abuse. A person so committed is entitled to the support and counsel of a specially appointed counsellor, whose remuneration shall be paid by the State Treasury.

106. In other respects the professional conduct of the members of the medical and health-care professions is first and foremost based on their own rules of ethics, such as those of doctors and nurses, where humane treatment, respect for the dignity of patients and tactful conduct is heavily emphasized. A prohibition of torture is, however, not expressed, as this is regarded as self-evident.

## Article 11

107. Icelandic legislation and rules based on enacted laws now stipulate in detail interrogation procedure and the conditions afforded detained persons. When the European Committee for the Prevention of Torture visited Iceland in the summer of 1993, it made the observation that formal interrogation rules, giving among other things detailed description of the procedure to be followed in various contexts, were lacking in Iceland. The Committee also observed that more detailed rules were needed on the right of an arrested person to have a close relative or other party, as the arrested person might require, notified of the arrest. These observations provided an occasion for various amendments to the CCP, which were made by Act No. 136/1996. Rules on the above matters are now found in the CCP and Regulations No. 395/1997 on the legal status of arrested persons and on police interrogations. The Regulations also contain provisions on the questioning of witnesses and the receiving of statements, and on sound recording of interrogations and questioning of suspects and witnesses, and detailed rules on the registration of various matters relating to arrests and custody of arrested persons in police detention.

108. According to section 32 of the CCP and section 7 of the Regulations, a suspected person must be informed that he is not obliged to provide replies to questions concerning the alleged criminal act, or provide an independent account of any matter relating to that act. He is also to be informed of his right to the support and assistance of legal counsel during interrogation and at all stages of the procedure. According to section 42 of the CCP and

section 10 of the Regulations, legal counsel may always be present when a suspected person is being interrogated, and the person interrogated may counsel with him, provided the police do not consider that this disturbs the interrogation.

109. Section 33 of the CCP and section 8 of the Regulations contain further provisions on the interrogation procedure, the main content of which will now be described. The questions asked the suspect must be clear and unequivocal, and the suspect must not be confused by untrue information or subjected to any compulsion in word or deed. A suspect must not be promised any concessions or privileges in order to obtain confession or any important information, if such promises are unlawful or if it is not in the power of the interrogator to grant them. A policeman must always conduct an interrogation calmly and tactfully. No methods may be employed which are suited to affect a suspected person's awareness or ability to take decisions. Interrogation of a suspected person believed to be under the influence of alcohol or other inebriating substances shall be avoided if possible. An interrogator shall seek to avoid making the suspect tired, and the suspect shall be offered food at ordinary mealtimes and sufficient sleep and rest. A suspected person must never be interrogated for more than six hours at a time. If a suspected person has been interrogated for 16 hours in the same day, including stays and interruptions, he shall be offered rest for eight hours before resuming interrogation.

110. According to section 72, paragraph 2, of the CCP, police interrogations and other investigative measures shall, if possible, be witnessed by a reliable and trustworthy person. The aim of the provision is both to strengthen the evidential value of the suspect's statement and to protect the suspect against harshness of any description. The latter function is now not as important as it was, after the right of a counsel to be present at all times has been expressly provided for by statute. In practice the witness is usually another policeman or some staff member of the police agency in question, and in fact the most common arrangement is to have the witness only present when the statement received from a suspect is read out to him and his confirmation given. In serious criminal cases, and when a statement is of high importance, for example with regard to the situation of proof, a witness is usually present during the interrogation itself. The attestation of a witness is strictly required to show what the witness has been witnessing, for example whether the witness was present during the interrogation or merely when a statement was read out and confirmed.

111. Finally, the general principle applies that an arrested person is provided with medical assistance when this is requested. Police employ no doctors. If medical assistance is deemed necessary, an arrested person is either taken to the place where emergency medical services are provided to the public, or the doctor on watch who provides emergency services in the particular area is summoned. Medical examination of arrested persons takes place without the presence of police, except if the doctor requires otherwise.

112. The above rules show that the rights of arrested persons are given high emphasis, both by detailed rules on interrogation procedure and, even more importantly, by providing for supervision of the treatment of a suspect. Of chief importance in this context is a person's unreserved right to consult

with his legal counsel at all times and that legal counsel may always be present during interrogation. A witness who is present when interrogation takes place in serious criminal cases also serves an important purpose. It should also be noted that doctors who tend arrested persons are not dependent on police in any way; they are employees of the public health system and the identity of a doctor who provides emergency medical service at any particular time is purely subject to chance. The principle that an arrested person is to be brought before a judge within 24 hours from his arrest, who decides whether he is remanded or set free, should also be recalled.

113. After a person has been remanded on the basis of the provisions of the CCP, the rules described above concerning interrogation and the right to consult with legal counsel continue to apply. Remand accommodation is, however, governed by Regulations No. 179/1992, the substance of which was briefly described above in connection with article 6. The Regulations are voluminous and elaborate, containing 114 sections, and a detailed description of them here is not warranted. The Regulations address the following main subjects: reception and registration of remanded persons; accommodation in and arrangement of remand imprisonment; food of remand prisoners; medical services, which are provided by a prison doctor; visits to remand prisoners; the right of remand prisoners to correspondence, use of telephone and access to mass media; work; liability for damage they may cause, and general provisions on their rights and duties. The provisions on security measures taken with respect to remand prisoners, such as physical searches, use of force, use of handcuffs and confinement to a security cell, are particularly detailed. Finally, the Regulations allow the application of disciplinary measures with respect to remand prisoners in certain situations.

114. It is well to mention again the basic principle of section 108, paragraph 3, of the CCP, that a remand prisoner can always refer matters relating to his imprisonment, including the treatment afforded him, to a judge.

115. The provisions governing the service of criminal sentences in prisons are mainly found in chapter III of the Prisons and Imprisonment Act, No. 48/1988. Chapter IV of the Act contains rules on security in prisons and disciplinary sanctions applied to sentenced prisoners. Regulations No. 119/1990 have been issued in accordance with the Act, concerning correspondence, use of telephone and visits to sentenced prisoners. The general rule is that sentenced prisoners can send and receive letters without interference, unless the prison governor considers necessary to examine them in individual cases for the maintenance of order in the prison or for prevention of crime. The prison authorities are, however, not allowed examination of mail to or from the following parties: the Minister and Ministry of Justice; the Prison and Probation Administration; the courts; the Director of Public Prosecutions; police; the Ombudsman of Parliament; the European Commission on Human Rights and, finally, the prisoner’s legal counsel, irrespective of whether that person was legal counsel for the prisoner in the case leading to the sentence or in some other criminal case prosecuted against him.

116. At the end of this discussion on the practical aspects of the custody of persons deprived of liberty, it is proper to mention again the right of a person committed to hospital against his will under the Legal Competency Act, No. 71/1997, to have a personal counsellor appointed to guard his or her interests.

117. The above account describes the most important rules governing interrogation of arrested persons and persons remanded to custody, and those on the custody and treatment of arrested persons, remanded persons and persons serving sentences. No systematic, overall control is exercised in this field, for example by having a particular party or institution regularly visit places where persons deprived of liberty are accommodated. Nevertheless, it is well to recall the unrestricted right of the CPT to visit such places, have personal interviews with persons deprived of liberty and otherwise to examine their accommodation and treatment. The above account shows that the right of a person deprived of liberty to contact his or her legal counsel, doctor or personal counsellor, in addition to relatives, is emphasized at all times, and that the right to correspond freely with certain public institutions in order to submit a complaint relating to his or her treatment is secured. The purpose is to create conditions where the treatment of such persons is effectively supervised in fact, as Icelandic law ensures that complaints of police or other public servants relating to torture, other ill-treatment or suspicions thereof are effectively examined and addressed. The following discussion of articles 12 and 13 of the Convention describes further the measures taken if the authorities receive a complaint of torture or other ill-treatment, or if a suspicion of such conduct is evoked.

Articles 12 and 13

118. Impartial investigation at the initiative of the competent authorities in case of suspicion of torture, cf. article 12 of the Convention, and the right of a person under article 13 to submit a complaint of torture or other ill-treatment which shall be impartially examined, will be discussed together in the following.

119. Section 25 of the Police Act, No. 90/1996, specifies that if a complaint is received against a policeman alleging a criminal offence in the course of the performance of his duties, or if a suspicion of such offence is evoked, the commissioner of police shall immediately notify the Director of Public Prosecutions. He shall decide whether further investigation of the matter shall take place. There is an investigation department at the office of the National Commissioner of Police, among the functions of which is investigation of such cases. The Director of Public Prosecutions is in charge of such investigation, not the National Commissioner of Police, who is in charge of the investigation in other cases handled by his office. If the investigation leads to the conclusion that criminal conviction is probable, the Director of Public Prosecutions will initiate criminal prosecution. While the complaint is being examined, the policeman will be temporarily suspended from his duties. It depends on the conclusion of the investigation whether the policeman is formally warned by his superior, who is the commissioner of police in question, or permanently relieved of his duties.

120. In the past five years, a few complaints have provided an occasion for investigation concerning misuse of police authority, in all cases concerning use of force in connection with an arrest or in police detention following arrest. There is no example of a complaint alleging that policemen or other persons having to do with legal procedure have compelled a person to confess to a crime or provide information in connection with criminal investigation. The following table presents statistical information on complaints against policemen in the past five years:

Number of complaints against policemen on duty:

| | |
|---|---|
| 1993 | 5 |
| 1994 | 9 |
| 1995 | 5 |
| 1996 | 3 |
| 1997 (to 1 Dec.) | 5 |

121. In one instance (a complaint in 1995), the Director of Public Prosecutions decided to press charges against a policeman for physical assault and an offence committed in official capacity. The policeman was indicted for having surpassed his authority when he involved himself with a man who disregarded an order given him to extinguish a fire he had lit in a public space. There was a struggle between them, with the result that the man's arm was fractured. The policeman was indicted for a violation of section 218, paragraph 1 (in reserve for a violation of section 219, i.e., commission by negligence), and section 138 of the General Penal Code. The District Court of Reykjavik acquitted the policeman of the charges by a judgement rendered 10 September 1996. The court found that the complainant had refused to obey the order of the policemen who had arrived on the scene and assaulted one of them. The police had held him in order to restrain him, but he had struggled with the result that the man's arm was fractured. Given the events preceding the hold applied by the policeman and the situation in other respects, the court found that he had not surpassed his authority when performing the arrest.

122. A complaint from a person alleging torture is not a prerequisite for investigation. The police authorities can request such investigation of their own accord in case of suspicion of such conduct. There is one such example from the past five years, in connection with a criminal case investigated at the initiative of the Commissioner of Police in Reykjavik. Suspicion was aroused that a policeman active with his office had, in the autumn of 1996, evinced conduct involving brutal treatment of a person. Following investigation, the policeman was indicted for having unlawfully treated an arrested man in police detention. The policeman had dealt blows with the fist to the man's chest and side. A judgement of the District Court of Reykjavik found the policeman guilty of physical assault in the lesser degree under section 217 and of an offence committed in official capacity under sections 132 and 138 of the GPC. The court pronounced a sentence of 30 days' penal custody, suspended for two years. Following this judgement the policeman's employment was permanently terminated.

123. In addition to the above criminal judgements, there is one other example from this decade of criminal action against a policeman relating to misuse of

power when conducting an arrest. A judgement of the Supreme Court of 14 November 1991 pronounced a suspended sentence of three months' imprisonment of a policeman for a violation of section 218 of the GPC (grave physical assault), on account of an injury inflicted on a man when he was arrested in a very rough manner. His head hit the ground, seven of his teeth were broken and his face extensively bruised. A Supreme Court judgement of 25 January 1996 awarded him damages from the policeman and the State Treasury for financial and non-financial loss. The right of a person to compensation will be discussed under article 14 of the Convention.

124. Even if a complaint against a policeman on account of harsh treatment or other unlawful conduct does not lead to an indictment, this may be an occasion for a formal warning or admonition by a commissioner of police to a policeman working with his office. Such admonition may precede termination of employment.

125. A prisoner may lodge a complaint on account of torture on the part of a prison warden to the person in charge of the prison, to the Prison and Probation Administration, or directly to the commissioner of police with jurisdiction in the area where the prison is situated. Special rules apply to correspondence from prisoners to police and other public parties. If the matter is deemed to warrant an investigation, this takes place under the auspices of the relevant commissioner of police. The case is then forwarded to the Director of Public Prosecutions, who takes a decision on whether to prosecute the alleged offender. If the Director of the Prison and Probation Administration, who is in charge of that institution, obtains knowledge of torture or other harsh treatment of a prisoner on the part of a prison warden, he can likewise lodge a complaint with the commissioner of police, alleging an offence by a prison warden acting in an official capacity. If the prison warden’s conduct is deemed not to involve torture, but is nevertheless inappropriate, the official in charge of the prison can formally warn the prison warden in question, which measure may precede termination of employment. A prison warden will be temporarily relieved from his duties while an investigation takes place of an alleged criminal offence against a prisoner.

126. During the past five years (in 1996), one complaint has been lodged on account of a prison warden’s treatment of a prisoner. A prisoner serving a sentence reported to police that he had to suffer degrading treatment because of a warden. The police investigated the matter, but found that further involvement was not necessary and closed the case. There are no instances of a formal warning being given a prison warden in this period on account of harsh treatment of a prisoner.

127. In the above cases, no special measures have been requested for protecting a complainant or witnesses against ill-treatment or intimidation as a consequence of a complaint or any evidence given. No rules have been enacted in Iceland for this purpose. In case of need such measures can be taken, for example police protection, if they are regarded necessary. According to the Public Servants Act, No. 70/1996, a policeman will be temporarily relieved from his duties while an investigation takes place of whether a complaint against him is well-founded. His employment is permanently terminated if he turns out to be guilty of criminal conduct. This

ensures, for example, that a remanded prisoner or a prisoner serving a sentence has no contact or interrelation with a public servant whom he has accused of torture or other ill-treatment while an investigation of the matter is in progress.

128. In Part I of this report it was noted that anyone who maintains that he has suffered a wrong at the hands of a holder of public authority could lodge a complaint with the Ombudsman of Parliament. Since the office of Ombudsman was established in 1988, no complaint has been received by him which relates to torture or other harsh or inhumane treatment of a prisoner or a person otherwise deprived of liberty on the part of a person acting in official capacity. It may be noted, however, that the Ombudsman received one complaint on account of unlawful arrest and deprivation of liberty in 1988. This was not examined on its merits by the Ombudsman, as the time which had passed from the arrest until the complaint was lodged was too long. In his response to the complainant the Ombudsman expressed the opinion that, according to the Code of Criminal Procedure, any claims on account of the conduct to which the complaint related were to be referred to the courts, and therefore the complaint did not fall within the sphere of the Ombudsman's duties.

129. A person committed to hospital against his will in accordance with the provisions of the Legal Competency Act can, under section 30 of the Act, refer the decision on his commitment and any compulsory medical treatment afforded, to the courts. Other general recourses open to a patient who maintains that he or she has been afforded ill-treatment in hospital are provided for in the Act on the Rights of Patients, No. 74/1997, and the Health Services Act, No. 97/1990. A patient wishing to complain of his treatment can direct his complaint to the office of the Director General of Public Health or a special committee appointed to resolve disputes that may arise in the relations of the public with persons working within the health-care system. This committee is composed of three members appointed by the Supreme Court. Its chairman shall be a lawyer, and no member may be actively engaged within the health-care system. If the Director General of Public Health or the committee have suspicion of criminal conduct on the part of a health-care worker, the matter will be reported to the police.

130. At the end of this description of the remedies open in accordance with article 13 of the Convention, international avenues, on the one hand to the European Commission on Human Rights and on the other to the committee receiving communications in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights, may be mentioned. As stated in Part I, the Icelandic Government is not aware of any complaints that have been submitted to these bodies alleging that the Icelandic Government has violated its international obligations concerning prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

## Article 14

131. For a person who has suffered torture, Icelandic law provides the remedy of claiming fair and reasonable compensation in court. According to section 176 of the GPC, a person can be awarded damages from the State Treasury on account of arrest, personal search, examination of a person's health or remand custody, if such measures have not been justified by law or

if they have been carried out in an unnecessarily dangerous, damaging or offending manner. Thus, the right to compensation is not limited to torture within the meaning of article 1 of the Convention. Criminal liability on the part of a policeman or other public servant is not a condition for a suspected person's entitlement to compensation.

132. It is a condition for liability for damages on the part of the State Treasury that the policeman or other public servant in question caused the loss in connection with the performance of his functions. Liability of the State Treasury thus comes into play when a public servant exceeds his authority by harsh or abnormal conduct. According to the CCP, compensation can be made for both financial and non-financial loss.

133. A person claiming damages on account of such conduct by a policeman shall be awarded free process in both judicial instances. This is provided for in section 178 of the CCP. He may however be ordered to pay legal costs in accordance with the generally applicable rules if he loses the case.

134. The general rules on compensation for tort are in the Damages Act, No. 50/1993. In case of torture or other ill-treatment at the hands of a person acting in official capacity, which is unrelated to the investigation of a criminal case, damages can be claimed from the State Treasury in accordance with the Damages Act. According to its section 1, the party responsible for physical injury shall pay compensation for loss of work, medical expenses and other financial loss ensued, and also compensation for suffering. If physical injury is of permanent effect, compensation for non-financial loss and disability shall also be paid, i.e., compensation for reduction or loss of earning ability. According to section 26, compensation for non-financial loss can also be awarded in the absence of physical injury. The section provides that a person responsible for an unlawful violation of the liberty, peace, reputation or inviolability of another person shall make compensation to the party suffering such violation.

135. If a court does not sustain a claim against the State Treasury for damages on account of the actions of a public servant, on the grounds that his actions bore no relationship to the performance of his functions, damages can only be claimed from the public servant personally. According to Act No. 69/1995 on compensation to the victims of crime, the State Treasury compensates losses from an offence against the provisions of the General Criminal Code. This ensures that even if the offender cannot make good the damage, the State Treasury accepts liability up to a certain amount. The State Treasury will then seek recovery of the amount paid from the perpetrator, to the extent this may be possible. According to the Act mentioned, the State Treasury compensates the victim for physical injury and for damage to clothing and other personal effects, including a small amount of cash that the victim may have carried at the time of the offence. The State Treasury also compensates non-financial loss and loss of support.

136. The general principles of the law of torts, in particular as evidenced by sections 13 and 14 of the Damages Act, secure the right of both spouses and children to claim compensation for loss of support.

137. Litigation where the State is sued for damages on account of action taken by police cannot be described as infrequent, but torture or other ill-treatment of persons is very seldom invoked. The most frequent cause of action is that legal requirements for investigative measures, for example custody on remand, were not fulfilled, and the courts have to a certain extent sustained such claims, made on the basis of the provisions of the CCP previously described. There are also examples of damages being awarded on the basis of the general principles of the law of torts on account of unlawful deprivation of liberty in connection with commitment to hospitals. It may be noted that the right to compensation on account of unlawful deprivation of liberty, irrespective of whether or not this relates to criminal investigation, is secured by article 67, paragraph 4, of the Constitution.

138. As regards claims for damages on account of torture or other ill-treatment at the hands of persons acting in official capacity, examples can be found of damages being claimed for physical injury during arrest. In the past few years, such instances have been extremely rare. A judgement of the Supreme Court rendered 25 January 1996 awarded a person damages from a policeman and the State Treasury for financial and non-financial loss sustained as a result of physical injury during arrest. The policeman in question had previously been criminally sentenced on account of the injury caused, in accordance with section 218, paragraph 1, of the GPC, by a judgement of the Supreme Court rendered 14 November 1991. That judgement was described in connection with articles 13 and 14 of the Convention. A judgement of the Supreme Court rendered 18 December 1997 (a civil case) found the State Treasury free of the claims of a man who claimed to have suffered a rib fracture in police detention in Reykjavik, where he had been placed for a few hours following arrest in March 1993, and then released. His complaint of police brutality and a claim for damages based on the allegation of unlawful treatment was not proven. However, the Supreme Court concluded in its decision that the investigation of this allegation by the Reykjavik Commissioner of Police and the National Investigating Police (a special body which operated before the National Commissioner of Police was established in 1997) suffered from serious flaws. It was particularly noted, that when the man complained about the conduct of the police, approximately a month after the arrest took place, the Reykjavik Commissioner of Police conducted the investigation in the case, inter alia the interrogations of the suspected police officers, instead of referring the case to the National Investigating Police. The case was later brought to the National Investigating Police, which did not take any further action, but submitted the case to the Director of Public Prosecutions in November the same year. The Director of Public Prosecutions informed the National Investigating Police in April 1994 that further involvement was not necessary and closed the case.

139. It should be noted that the above rules on the right of a person to fair and reasonable compensation apply equally to all, without regard to, for example, nationality or refugee status.

140. Hospitalization or other rehabilitation, both physical and mental, which may be required following torture, is secured by Icelandic health legislation. As a general rule patients are not charged for medical treatment when hospitalized. They are, however, to a certain extent charged for health-care services provided outside hospitals, including the services of specialized

doctors. In the event of costs incurred by reason of medical services rendered a person who has suffered torture, a person found guilty of such an offence would be ordered to pay that cost in addition to compensation for financial and non-financial loss.

Article 15

141. In judicial proceedings, Icelandic legislation does not expressly prohibit the invocation in evidence of a statement that turns out to have been obtained by torture. A judge's free evaluation of evidence is the general rule. Therefore procedural law neither prohibits the introduction of certain evidence, nor provides for legally prescribed assessment of proof in certain situations. The judge of a criminal case is, however, bound by the rule in article 70, paragraph 2, of the Constitution that everyone charged with criminal conduct shall be presumed innocent until proved guilty. The burden of proof rests with the prosecution. In the opinion of the Icelandic Government, Icelandic law concerning criminal proof ensures that a person cannot be convicted on the basis of a confession, if it is established that it was obtained by torture, that the person in question has not validated his confession, and other evidence does not establish his guilt.

142. Direct introduction of evidence in court is another principle of Icelandic criminal procedure, provided for in section 48 of the CCP. A judgement shall be based on evidence brought forth in court when the case in question is in progress. This means that police reports, which are not supported by statements provided in court, have limited evidential value.

143. If a person has confessed to the commission of a crime during police interrogation, and later withdraws his confession in court, the judge will evaluate whether there are reasonable grounds to assume that his confession was false. If a defendant maintains that his confession was obtained by torture and other evidence or facts support that assertion, the matter would immediately be investigated according to the rules described above in connection with articles 12 and 13 of the Convention. If this allegation were confirmed, the policemen in question would be subject to the criminal provisions of Icelandic law, described above in connection with article 4. A defendant's confession obtained in this way would not be used as a basis for imposition of criminal sanctions, as the judge is likely to conclude that it is false. If other evidence than the unlawfully obtained confession were introduced and deemed conclusive as regards the defendant's guilt, he would be found guilty.

144. If, following a judgement of the lower instance which has not been subject to appeal, or following a Supreme Court judgement, a complaint is received to the effect that a confession was obtained by torture, the procedure can be resumed if the conditions provided for in section 184 of the CCP are fulfilled. This can be done at the request of a convicted person in the following situations:

> If new evidence has been discovered, which can be assumed to have had a significant influence for the outcome of the case if it had been submitted in court before the judgement was rendered (paragraph 1);

> If it can be assumed that the judge, prosecutor, investigator or other persons committed criminal acts in the purpose of bringing about the conclusion arrived at for example by faked testimony, forged documents or wilfully wrong statements given by witnesses or others, and that this has resulted in an incorrect judicial resolution (paragraph 2).

145. A convicted person has, in one instance, requested resumption of criminal procedure under this provision. He asserted that his confession to police of having committed certain crimes, which he later confirmed in court, had been obtained by unlawful ill-treatment. This involved one of the largest and most serious criminal cases prosecuted in Iceland in recent times, where six persons were charged of various offences, including two instances of homicide. A judgement of the Supreme Court of 22 February 1980 convicted the man who later requested resumption of the procedure, of grave physical assault against two persons, leading to their deaths. At the time the case was prosecuted in the lower instance in 1977, and before the Supreme Court in 1980, the suspect had withdrawn his confessions. He maintained that the investigators and prison wardens had obtained them by subjecting him to unlawful treatment, leading him in his provision of certain statements, coordinating his statements to the statements of other defendants, and resorting to other inappropriate and unlawful investigative methods. These assertions provided an occasion for a special investigation of alleged brutal treatment of the defendant during his imprisonment on remand. With a view to the conclusions of that investigation the Supreme Court held, in its judgement of 22 February 1980, that his confession could not be seen to have been obtained by unlawful methods on the part of the investigators. The defendant was found guilty on the basis of his confession and other evidence.

146. The man requested in 1994 that the procedure be resumed, in particular on the grounds that new evidence had become available which could be assumed to have been of high importance for the outcome of the case if it had been introduced before adjudication. The Supreme Court decided, on 15 July 1997, to reject his petition, as the conditions set in section 184, paragraph 1, of the CCP had not been fulfilled. This conclusion was mainly based on the consideration that most of the information brought forth in support of his petition had been in the hands of the Supreme Court when its judgement was rendered on 22 February 1980, and had then been taken into account. The Court mentioned in its decision that in its time the Supreme Court had held that the investigation of the case suffered from certain serious faults, which however had not been deemed to justify annulment or acquittal. The faults in question had, however, probably led to a slightly more advantageous outcome for the defendants in the Supreme Court, as compared to the conclusion in the lower instance.

147. The Supreme Court, in its decision of 15 July 1997, accepted that the convicted person had been subjected to unlawful treatment during his remand, in particular during a period of two months. According to the judgement of the Supreme Court of 22 February 1980 this had to a certain extent been known, but further information was brought forth in this context. This fact was considered to be the only one that could come into consideration as a justification for resumed procedure. It related to periods of the remand imprisonment, on the one hand some months after he had provided statements where he had confessed to having had a part in the disappearance of one of the

victims, and on the other hand many months before he confessed to his part in the disappearance of the other victim. It was deemed that the harsh treatment afforded him had in part been meant as disciplinary sanctions in consequence of failure to observe the rules applying to his remand imprisonment. Even though the facts supported to some extent his earlier accusations of harsh treatment in remand custody, the court held that no new information had been submitted which was likely to have changed the conclusion arrived at by the Supreme Court in its judgement of 22 February 1980.

148. The Supreme Court's decision not to grant the petition for resumption of the procedure provided an occasion for extensive debate in society, where the discussion and the media coverage given this criminal case in the late 1970s was recollected. The legislation on criminal procedure then in effect was clearly deficient in various respects, not least as regards the rights of accused persons. During the 20 years which have passed since then, important and radical changes and amendments have been introduced by the enactment of the new Code of Criminal Procedure, which significantly improves the legal status of accused persons. In addition, detailed rules have been issued on police interrogations and the treatment of remanded persons. These were outlined above, in particular in connection with article 11 of the Convention.

Article 16

149. In connection with articles 10–13 of the Convention, measures taken against torture within the meaning of article 1 of the Convention, and measures designed to protect people against cruel, inhuman or degrading treatment or punishment, were described simultaneously. A reference is made to that discussion, which need not be repeated here.

150. Icelandic criminal statutes and rules on protection against misuse of public authority are not limited to torture within the meaning of article 1. The criminal liability of a public official or other person acting in official capacity, in particular under sections 131, 132 and 134 of the GPC, consequently extends to any acts on their part involving cruel, inhuman or degrading treatment or punishment. This can be inferred from the wording of these provisions, as they mention, for example, "unlawful methods" employed in order to obtain evidential statements (section 131); that "correct procedures" are not employed in the handling of a case (section 132), or "misuse of position" on the part of a public servant in order to compel a person to carry out an act (section 134). Thus, Icelandic criminal law provides for a right to complain of cruel, inhuman or degrading treatment or punishment to the relevant investigation authority, as in case of torture.

151. The above rules on compensation, for example for non-financial loss in the absence of physical injury, apply equally to cases not involving torture within the meaning of article 1 of the Convention. If criminal liability is not invoked with respect to a public servant on account of a conduct on his part involving cruel, inhuman or degrading treatment or punishment, such conduct also calls for disciplinary measures under the rules governing his engagement. A public servant can thus be formally warned or admonished, which precedes termination of employment, if he is found to have repeated such an act.

---