
Iceland

Civil Society Report on the Implementation of the ICCPR List of Issues for the consideration of the fifth periodic report (CCPR/C/ISL/5)

The Icelandic Human Rights Centre



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List of issues to be taken up in connection with the consideration of the fifth periodic report of Iceland (CCPR/C/ISL/5)

Constitutional and legal framework within which the Covenant is implemented (art 2)

1. In Iceland there are no procedures in place for implementing the Human Rights Committee's Views under the Optional Protocol. They are regarded as legally non-binding. Following the Committee's View of 2007 the authors of the complaint filed a request to the Supreme Court of Iceland to reconsider its previous judgement in light of the Committee's View. On the 8th of May 2008 the Supreme Court refused their request on grounds of lack of legal basis in Icelandic law. Therefore the authors of the complaint have been unable to seek remedy in accordance with the Committee's View before the judicial authority of Iceland, neither in form of restitution nor before an independent court.

Seemingly the Government perceives the implementation of Views to be in the hands of the executive or legislative branch, not the judiciary. It was declared in the 2009 policy plan by the incumbent government that further actions in response to the Committee's View were needed, *inter alia*, by protecting the freedom of employment and ensuring equality in the allocation of the right to access and utilize fisheries resources that are the common property of the nation.

The Government's endeavours hitherto have been to completely revise the Fisheries Act from 2006 in a recently proposed bill, currently under discussion within the Parliament and yet to be approved. The new Act is considered to be complicated and controversial¹ and has divided the nation in half. The Act's high level of complexity renders it difficult to assess in light of the Committee's recommendations from 2007. The commentaries annexed to the Act merely state that during its drafting, the authors sought to keep in mind the obligations incumbent on Iceland as stipulated in the View and based on the International Covenant on Civil and Political Rights.

On the 5th of June 2012 the Icelandic Government was informed that they had responded to the View in a satisfactory manner and that the case was officially declared closed by the

¹ On 7th of June 2012 the current owners of the fisheries quotas summoned all interested parties to a protest meeting outside of Parliament to protest the new bill on Fisheries Management, but they have for months been campaigning vigorously against the bill by various means, such as TV advertisements. This meeting was counteracted by another group of protesters, who claim that for long enough have the owners of the quota been exploiting the resources that are common to all icelanders, and pledged to the Government to conclude this matter in a way that is for the benefit of the nation as a whole, not just for the benefit of some narrow privileged group of „quota-kings“.

Committee.² As such, Iceland has fulfilled its legal obligations under the Optional Protocol (OP) procedure in respect of the 2007 View.

In order to ensure the effectiveness of the individual complaint procedure under the OP the ICEHR recommends the Government to establish procedures for its implementation under Icelandic law. Those could include the possibility of revising judgments that are contrary to the findings of the Committee and in addition, to allow for compensation for individuals in cases of violations of the ICCPR.

2. Article 10 (2) (b) and 10 (3) of the Convention stipulate that juvenile prisoners shall be separated from adults. A prison facility tailored for the needs of juvenile inmates and separating them from adult inmates does not exist in Iceland. Already there is a problem with lack of space for convicts who sometimes have to wait for months and even years to serve their sentence because of lack of placements. Building a new prison facility in Reykjavik has been on the agenda for more than 50 years. The current plan prescribes that building will start in 2013 and the facility will be ready for use in 2015.³ It is intended to remedy the shortcomings in Icelandic prison facilities, in particular when it comes to the need of separating child prisoners from adult prisoners and providing women with adequate prison facilities. Lack of appropriate facilities have furthermore been the number one obstacle to the ratification of the UN Convention of the Rights of Children by Iceland. Still, the Government has adopted various measures in that direction, and after the building of a new prison facility the ICEHR encourages the Government to withdraw the pertinent reservations and finally ratify the CRC.

Regarding reservations to Article 14 (7) and 10 (1), ICEHR is aware that the Government believes they are fully compatible with the object and purpose of the Convention and their withdrawal does not seem to be on the agenda in the near future.

3. ICEHR reiterates its position on the incorporation of the ICCPR, namely that although provisions of the Covenant have been considered both by courts and in review of legislation, it is nevertheless important to incorporate the Covenant into Icelandic legislation so that individual rights and freedoms under the Covenant are guaranteed for all before domestic courts. That is not the case now since under Icelandic law domestic courts are required to judge only by the law, see Article 61 of the Icelandic Constitution. If international law has not been fully incorporated into domestic legislation in accordance with established procedures, courts lack legal basis for applying any international rule in domestic proceedings. The Icelandic Constitution does not allow for courts to apply international rules that have been ratified by the Government. However, according to Icelandic custom, the courts are required to interpret domestic law, as far as possible, in conformity with ratified international law,

² United Nations Office of the High Commissioner for Human Rights Doc No. G/SO 215/51 ICE (4), Follow-up 1306/2004.

³ Report on Building a new prison facility on Hólmsheiði, Iceland, available at [http://www.fangelsi.is/media/stofnunin/15152_Fangelsi-a-Holmsheidi_Samkeppnislysing\[1\].pdf](http://www.fangelsi.is/media/stofnunin/15152_Fangelsi-a-Holmsheidi_Samkeppnislysing[1].pdf)

even though the latter have not been incorporated into domestic law.⁴ Domestic case law has shown that courts do indeed to a substantial extent refer to the Covenant when interpreting national legislation on human rights, in particular in the last 10-15 years.

The ICEHR recommends that all the provisions of the Covenant will be incorporated into national legislation in order for it to be fully applicable before national courts.

4. The establishment of an NHRI is actively being looked into by the current Government on positive notes but as yet no concrete actions have been taken or decisions been made. ICEHR assumed the function of a National Human Rights Institution upon establishment in 1994 and has offered its expertise and experience to the Government.

The ICEHR would like to inquire whether indeed the government is seriously considering the establishment of a NHRI in Icelandic law and whether the ICEHR is a likely candidate in that regard.

Non-discrimination, minority rights, equality between men and women (arts. 2, para. 1, 3, 18, 26 and 27)

5.-6. ICEHR is aware of the work currently undertaken by the State party since 2009 in preparation for the adoption of general, comprehensive equality legislation. This legislation is intended to incorporate, *inter alia*, the EU Directives on the prohibition of racial discrimination and discrimination relating to employment (2000/43/EB and 2000/78/EB). For a long time ICEHR has encouraged the authorities to enact a coordinated comprehensive legislation prohibiting discrimination on a wide basis. Multidimensional discrimination must be tackled by law, supervised by an effective mechanism and supported by effective penalties that have deterrent effect.

A new Act on Public Media Services No. 38/2011 was adopted by the Parliament last year. With the Act a step was taken forward towards the prevention of prejudice against, *inter alia*, foreigners. Article 27 of the Act stipulates a ban on hate speech and incitement to criminal behaviour by the media on the basis of race, gender, sexual orientation, religious belief, nationality, opinion, or cultural, economic or social standing in the community. This applies to all the media in Iceland, and is monitored by an independent regulatory body, the Media Committee. The Act however only prescribes sanctions on incitement to criminal behaviour not on hate speech. A bill has been brought before the Parliament for sanctions on media for hate speech but it has as yet not been passed. Another problem is also that the Act does not cover social media, which have in later years proven to be the most frequent portals for hate speech.

The ICEHR recommends the Government to evaluate and consider the possibility of prohibiting hate speech in social media and adopt realistic measures to prevent or at least

⁴ Icelandic Supreme Court, Case No. 2000,4480.

mitigate it. Furthermore, the ICEHR encourages the Government to pass the bill providing sanctions on media for hate speech, in order to give real bite to the ban.

The media still frequently disclose the nationality or ethnic origin of persons suspected of criminal offences, even if it has no relevance in the case. This may increase prejudice against foreigners among the general public. While fully respecting the freedom of expression, some measures are needed in order to tackle this. The ICEHR is of the opinion that media professionals should be invited to adopt provisions in their self-regulation codes about this matter. Moreover, the internet should be monitored to prevent dissemination of racist contents.

Articles 233 (a) and 180 of the General Penal Code are intended to combat hate speech on the one hand and discrimination in access to commodities and services on grounds such as race, ethnicity, religion or sexual orientation on the other hand. Even if the wording of Article 233 (a) does not require the person filing a complaint to have to have an individual stake, i.e. a Jew filing charges on hate speech against Jews, a more narrow interpretation of the article has been practiced.. ICEHR is aware of occurrences of flagrant discrimination on some of the above-mentioned grounds, as well as hate speech in violation of Articles 180 and 233 (a) of the General Penal Code. Nevertheless only one person has been convicted on grounds of Article 233 (a) and not a single conviction exists on grounds of Article 180. Moreover, according to the latest list of Decisions by the Parliamentary Ombudsman from 2012, Articles 233 (a) and 180 have never been subjected to the Ombudsman resolution. In a judgment from 2001 the vice-chairman of the Nationalist Association was fined on grounds of Article 233 (a)⁵ for degrading remarks about people of African descent during an interview.

As stated above, given the fact that the two articles mentioned stipulate criminal prosecution for violations, meaning that the initiative for prosecution is in the hands of the police, there seem to be shortcomings with the execution when it comes prosecution for hate speech and discrimination, and it is obvious that these matters are not given priority. In order to address this problem an open meeting with an expert panel was held in Reykjavík in May 2012 by the Ministry of the Interior. Experts from various branches of the Government, as well as NGOs were summoned to give their views on the matter and suggest improvements. Hate speech and discrimination should no longer go unpunished in Icelandic society, the authorities must react accordingly.

In the light of the above-mentioned the ICEHR recommends the Government to place greater emphasis on prosecution in cases of hate speech and the police to be given a clear mandate to ensure that these crimes are not tolerated. Further measures are needed, such

⁵ Supreme Court Case No. 2001, 461.

as awareness-raising for the general public on what constitutes hate speech and that it should not be tolerated in Icelandic society.

7. Granting the Muslim societies in Iceland, the Association of Muslim in Iceland and the new Islamic Cultural Centre of Iceland a free lot in Sogamýri, Reykjavík is now under way and the societies have begun to raise funding for the building of a mosque.

8. According to the World Economic Forum, in 2011 Iceland had the smallest global gender gap, for the third consecutive year.⁶ This is indicated by factors such as economic participation and opportunity, educational attainment, health and survival and political empowerment.

The aim of the 2008 Gender Equality Act is to establish and maintain equal status and opportunities for women and men. It includes stipulations on combating gender-based violence and harassment as well as wage discrimination, increasing education on gender equality and equal influence of women and men in decision-making in society. Efforts must still be made to reduce the gender pay gap which was 16.3% in 2008. It has decreased since, but only due to sectors where employment of men is more predominant being first affected by the crisis. A recent study reveals that males represent 90% of CEOs, executive managers and board members of companies with 50 staff members or more. The new legislation requiring companies with 50 staff members or more to have women at least 40% of board members does not enter into force until fall 2013, so the effects are not evident yet.

Iceland has improved in terms of political representation. The last Parliament election resulted in the highest number of seats (42.9%) for women candidates in Icelandic history. For the first time the country has a female Prime Minister and an equal number of men and women appointed as ministers. In 2010 the highest percentage ever of women in municipal councils was achieved (40%). However, improvement in gender equality in the parliamentary committees is lacking, where only 5 out of 12 meet the 40% quota.

Women hold a total of 66% of positions in government institutions. However, the imbalance is significant in senior positions whereby merely 30% of managers are female, 26.5% of ambassadors and 9% of police officers. The most flagrant gender imbalance lies however with the Supreme Court, where two out of twelve judges are women.

The percentage of women in the private labour market was 48% in 2010, compared to 46% in 2008. The percentage of women employed as managers in Icelandic companies remains low (19%), and only 13% of management positions in the economic and insurance sector are

⁶ Report available here: http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf

held by women. There have been some improvements in middle management within companies, but the situation has not changed much.⁷

A Parliamentary Resolution on a four year gender equality action programme was adopted in 2011, under Article 11 of the Gender Equality Act, for implementation in 2011-2015.⁸ It is split into thematic areas which will be implemented by all ministries. Gender mainstreaming is required in all government policies and decision making, with the objective to ensure the optimal results in all spheres. Other thematic areas of the action plan include government, labour market, political representation, gender pay gap, education, gender based violence and international cooperation.⁹ The implementation of the action plan's activities is under way. In 2011 the government also approved a three year plan on implementing gender budgeting.

The Centre for Gender Equality cooperates with various schools, institutions and others for raising awareness on gender equality issues, including combating negative gender stereotypes. The Centre provides trainings and lectures on gender stereotypes, gender based violence, gender mainstreaming, gender budgeting, amongst many other topics, in addition to organising public events and conferences on various topics. The Centre is also in cooperation with a few municipalities in providing training for educators on gender mainstreaming in their work.

The ICEHR encourages the government to continue its efforts in eliminating gender inequality in public and private sectors alike. In that regard the ICEHR considers it to be of vital importance that the government follow through on the implementation and full enforcement of the new Act on gender quota in large companies and institutions, as mentioned above. Furthermore it is recommended that the Government fully implement the goals set out in the 2011-2015 Action Plan and sufficient finances be allotted for that purpose.

9. The Complaints Committee on Gender Equality operates on the basis of the Gender Equality Act. The Committee considers cases brought before it concerning alleged violations of the Act, and delivers binding decisions on whether or not the Act has been violated. Previously, the Committee could only deliver a non-binding opinion, but measures have been taken now to give its decisions more weight than before. The Committee is an independent administrative committee – neither the Minister nor any other authority can

⁷ All the figures and relevant information are available in the Gender Equality Booklet in Iceland published in 2012: <http://www.jafnretti.is/D10/Files/Gender%20Equality%20in%20Iceland%202012.pdf>

⁸ English version of the action plan can be found here:

<http://www.jafnretti.is/D10/Files/Gender%20Equality%20Action%20Programme%202011-14.pdf>

⁹ A very thorough information booklet on gender equality in Iceland, issued by the ministerial committee on gender equality was published in January 2012, and is available online in english:

<http://www.jafnretti.is/D10/Files/Gender%20Equality%20in%20Iceland%202012.pdf>

give the Committee binding instructions regarding the outcome of a case. The Committee's decisions are final, so they cannot be referred to any other administrative authority. However, the decisions may be referred to a court. In that case the Committee can decide to postpone the legal effects of the decision upon request of either party.

It is debatable how much weight and influence the decisions of the Committee have in fact. Recent practice has shown that although the Committee finds that a governmental authority has violated the Gender Equality Act the courts do not always agree and it is more often the case that the governmental authority refers the Committee's decision to a court rather than accepting it as it is and pay the complainant a settlement.

Most cases brought to Committee involve discrimination in employment matters. Males as well as females mostly complain about hiring procedures. In cases of violations, the successful party can bring the decision before a court and claim compensation. Below is a short extract from two recent decisions;

Case no. 7/2011

A v Akureyri

In June 2011 the town of Akureyri advertised a vacancy for a position as consultant. The applicant, a male, claimed that the Gender Equality Act had been violated when a female applicant was hired for the position instead of him. The applicant moreover claimed that he was more qualified than the female applicant or at least equally qualified. The Committee found that the male applicant not only had higher education, but moreover better work experience than the female who was hired. Consequently, it was incumbent on the Municipality to prove that the woman had not been hired solely on grounds of her gender. As it was unable to do so, the Committee held that the reasons for the female being hired were based on gender considerations only and therefore the town of Akureyri had violated the Gender Equality Act of 2008.

Case no. 3/2010

A v Prime Minister's Office

In March 2010 the Prime Minister's Office (PMO) advertised a vacancy for head of office. The female complainant believed that the Gender Equality Act had been violated when a male was hired instead of her. She claimed to be more qualified than the male applicant. Since the PMO failed to show that the decision to hire the male was grounded on reasons other than gender considerations, the Committee found a violation of the Act.

Prohibition of torture and other cruel, inhuman and degrading treatment or punishment, security of person and treatment of persons deprived of their liberty (arts 7, 9 and 10)

10. Gender based violence and violence in close relationships is a persistent problem in Iceland and has unfortunately been exacerbated by the economic crisis. Despite great improvement in gender equality in recent years, the rate of violence against women was the same in 2008 as it was in 1996. Studies have shown that financial worries and subsequent stress can increase the risk of violence. Alcohol consumption has increased from 4,9 litres per person in 1996 up to 7,5 litres in 2008.¹⁰ In 2011 a total of 174 women and children fled their homes and sought residence at the Women's Shelter, a leading NGO providing shelter for women and their children victims of violence in close relationships. Research shows that 42% of all women over 16 years of age have been subjected to violence at some point in their lives. For violence in close relationships this number was 22.4%.¹¹

More and more women seek assistance from the police and at emergency organizations. Latest statistics from the Women's Shelter show that 2011 was a very busy year for the Shelter. These numbers are consistent with those of previous years, despite last year's adoption of the so-called "Austrian-way", authorizing the police to remove the perpetrator from his home and moreover ban him from returning home for some time. This remedy has only been resorted to once in the past nine months, it nevertheless provides a basis for better protection for women and children suffering from violence in close relationships and is as such, welcomed by ICEHR.

Quarter of all women who turn to the Shelter, return to the same violent situation. Pertinent authorities claim that women hesitate to leave their abusive husbands for fear of not being able to sustain themselves financially. The new Act on Restraining Orders and Expulsion from the Home no. 85/2011 is designed to make it easier to exercise such measures against violent partners and will hopefully make a difference in these cases. One major improvement prescribed by the Act is that the police must now make a decision on restraining orders and/or expulsion requests within three days. The request can come from the victims themselves, their family or any close contacts. If the victim is a child, his or her guardian can make the request as well as the social- or child protection services. In addition, the head of police can on their own initiative take up a case if they deem it to be necessary. This act is a great improvement for the women and children suffering from domestic violence but it should nevertheless be kept in mind that the Act is very recent, merely effectuated on 10 June 2011, so there is little experience of it yet. A precondition for the effectiveness of this new remedy however, is awareness raising and informing about it to all

¹⁰ Information obtained from a report on actions under the National Action Plan against violence in close relationships, Minister of Welfare. Disseminated in the Parliament 2010-2011. Available at <http://www.althingi.is/altext/139/s/pdf/1214.pdf>

¹¹ Elísabet Karlsdóttir og Ásdís A. Arnalds, Study on gender based violence. Experience of women aged between 18-80 in Iceland, Research Institution for child- and family protection. 2010.

people, in particular women and police, but currently this seems to be inadequate. ICEHR is aware of several victims of domestic violence who were simply unaware of the option of having the violent perpetrator removed from their homes or the possibility of requesting a restraining order. Raising awareness and educating women in that regard is of fundamental importance for the law to be effective.

The ICEHR recommends the Government to provide more funding to emergency shelters so that they can adequately perform their crucial function of assisting victims. Awareness-raising is moreover necessary in order to ensure that legal remedies for victims of violence are utilized to their full extent. The police must as well be informed and educated on any new legal remedies regarding cases of domestic violence and rules established on the procedure of handling such cases.

In 2009 a new legislation was passed prohibiting and criminalizing the purchase of prostitution. Unfortunately, it seems that the police do not enforce the law. At the same time as prostitution and trafficking in human beings is on a steady rise in Iceland, for two years, no one has been sanctioned for purchasing sex. This is a great cause for concern, and ICEHR stresses the importance of reprioritisation within the police, whereby trafficking and prostitution will not be ignored, and the law be enforced.

The ICEHR would therefore like to reiterate the need for governmental actions in order to ensure that the police enforce this legislation and that these matters will not be ignored. If the police are understaffed and lacking the resources to do so, the ICEHR recommends the Government to provide adequate funding to the police for investigation and hiring of additional police staff.

11. In March 2010 the Government commenced its work on a new National Action Plan against Domestic and Sexual Violence to be enacted in the years 2011-2015. A complete Action Plan was to be introduced at the end of October 2010, but it is yet to be completed. Its primary focus is to incorporate and implement the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, signed by Iceland in 2011. In 2008 the Government issued an information booklet on violence in close relationship in five versions, each version addressed to different readers, namely the police, social services, midwives, health care system staff and the general public. In 2011 an extensive report was submitted to the Parliament by the Minister of Welfare on actions against violence in close relationships as stipulated in the 2006 National Action Plan.

In addition to the above-mentioned actions, many other achievements have been made. These include educating the police on domestic violence and violence against children and establishing a precise set of working rules on the investigation of sexual offences for the police. In 2010 campaigns were held in order to raise awareness among the public on violence in close relationships. Researches on, and treatment for perpetrators of domestic violence have been conducted for the prevention of further violence against women.

The ICEHR encourages the government to make sure that the implementation of the previous Action Plan against Domestic and Sexual violence will be completed as soon as possible. In addition, the ICEHR would like to remind the government of its plan to introduce a new Action Plan in 2010, but has yet not done so.

12. Domestic violence against immigrant female victims has been a problem in Iceland, in particular because of the difference in power between Icelandic men and their foreign wives who run a risk of losing their right to reside in Iceland if they get a divorce. The Act on Foreigners No. 96/2002 was amended in 2010 to include a special ground for prolonging the validity of a residence permit in cases where the foreigner is a victim of domestic violence. In reality, these women need not fear, but the law being as it is, allowing for an exception but the permit still being dependant on the family situation, this threat has proven to be a very effective one. In 2011, foreign women were 31% of all women seeking assistance and information at the Women's Shelter (the immigrant ratio in Iceland being around 8%) and 52% of those who stayed at the Shelter for longer or shorter periods of time.

An information pamphlet, "Your Rights", for immigrant women was prepared and disseminated in six languages. Brochures containing information on assistance in cases of domestic violence, both for women and children have been issued by the city of Reykjavik. This is all positive, but ICEHR believes more education for foreign women is needed, in particular upon their arrival to Iceland. Courses could be held for immigrants in order to better help them to integrate into Icelandic society and inform them of their rights. An extensive revision of the Act on Foreigners is currently in the offing whereby amendments will be made to residence permits for non-EEA citizens. An open meeting with a panel of experts was hosted by the Ministry of the Interior in relation to the revision of the Act on Foreigners where lively discussions took place. Hopefully the end result will render the position of immigrant women wanting to divorce their abusive husbands without running the risk of deportation even more favourable.

The ICEHR thus stresses the importance of completing the amendments to the Act on Foreigners when it comes to integrating immigrants into Icelandic society. The ICEHR would moreover like to ask the government to evaluate and assess the benefits of adopting more extensive measures thereto, such as holding courses for all immigrants upon their arrival to Iceland to better help them integrate into the society as well as to inform them properly of their rights and obligations under national law.

The Ministry of Welfare sealed a contract with ICEHR on providing free legal counselling for immigrants. Immigrant women and men who need information on their rights can therefore seek assistance and legal counsel with ICEHR free of charge.

13. In February 2012 the Government adopted a Parliamentary Resolution on the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in parallel with a proposal for several amendments to

the General Penal Act No. 19/1940. ICEHR believes those actions are a step in the right direction when it comes to the protection of children against sexual abuse and violence. Nevertheless there are still many actions needed to secure optimal protection for children against violence and moreover for the Convention to be fully incorporated into national law.

ICEHR is particularly concerned over lack of preventive measures coordinated by the Government regarding sexual abuse of children. The preventive measures are limited to NGOs that usually receive little or no governmental support. While there is precedence when it comes to drug, alcohol and smoking prevention education and campaigns, this is not the case with sexual abuse prevention. It is unclear which ministry should take responsibility for such regulations and education. This is a clear breach of Article 34 of the Convention for the Rights of Children where the State parties are obligated to take all appropriate national, bilateral and multilateral measures to *prevent* sexual exploitation and sexual abuse of children. This rule is reiterated in Article 1 of the Council of Europe Convention which stipulates that the Convention's purpose is to "prevent and combat sexual exploitation and sexual abuse of children".

In May 2008 the Parliament adopted a Resolution on a National Policy and Plan of Action for Child protection in Iceland 2008-2010. The National Policy includes detailed objectives to be achieved and outlines specific programmes to be implemented within a certain time frame. The goals are to enhance child protection work by securing funds, preparing legal instruments and by furthering cooperation and collaboration within this field. Many of these measures have been formulated and launched by the GCPA and that is positive. ICEHR is however concerned that seemingly these measures have not been properly introduced to all relevant parties and even the police department has limited knowledge of measures that coincide with their work with children witnessing domestic violence. This reveals lack of coordination, collaboration and communication within governmental bodies in charge of child work and child protection.

The ICEHR recommends the Government to start work on coordinating the mandate and work of the various child protection institutions/organizations.

Regrettably, every year the GCPA receives hundreds of notifications on sexual abuse of children. These notifications are always taken seriously and lead to a pre-investigation. If appropriate, the matter is investigated by police and in cases of likely conviction, the matter is forwarded to the state prosecutor who then decides whether or not the case will be prosecuted. In cases where conviction is presumed to be unlikely, the matter will be closed without further action. Unfortunately there are too few convictions for sexual abuse of children. In 2010 there were a total of 35 police investigations on this kind of abuse, but only

one Supreme Court Conviction.¹² Since January 1st 2009 there have only been six convictions by the Supreme Court for sexual abuse of children.

According to GCPAs latest statistics complaints over child abuse have been on the rise in the past few years and the peak was reached in 2009 when a total of 5,322 cases concerning children were notified to the GCPAs and further investigation was conducted in 58% of cases. In 2010 these numbers were 5,256 and 59.4% were investigated. In 2010 the GCPA and other child committees ordered that 23 children should be put into foster care and courts 5. In 2009 these numbers were 13 and 3 and in 2008 15 and 9.¹³

The ICEHR would like to ask the government to consider that education on violence and sexual assault against children will be included in all curricula and education for people that work with children. The ICEHR furthermore recommends the Government to take special initiative for preventing sexual abuse of all children, including the disabled.

14. Iceland ratified the CAT in October 1996, but has yet to implement its provisions into national law. No specific definition of the term “torture” has been adopted into Icelandic law. Although national law is considered to fulfil the requirements of CAT there is no provision in the General Penal Code that expressly prohibits or defines torture. According to Article 68, paragraph 1 of the Icelandic Constitution No. 33/1944 it is prohibited to subject any person to torture or other inhuman or degrading treatment or punishment. Torture is furthermore classified as a criminal act in the General Penal Code and if a public servant physically tortures a person, it would be considered an infringement of physical inviolability under the General Penal Code as well as any offences committed in an official capacity. The term “torture” however is not specifically defined or used in the pertinent provisions, but they nevertheless apply to any conduct stipulated in Article 1 of CAT. As such physical torture will not go unpunished under the General Penal Code, despite the omission of that specific term in criminal law. Every conduct liable to endanger or threaten people’s life or limbs, including torture is punishable by the General Penal Code in Iceland.

15. This question was already covered in paragraph 2, above.

Elimination of slavery and servitude (art 8)

16. The 2009 National Plan against Trafficking in Human Beings has been implemented to a large extent. Various international and regional conventions have been ratified, although their incorporation into national law is still not fully completed.

The ratification of the Convention against Transnational Organized Crime and the Optional Protocol on trafficking in Women and Children took place in 2010. The Council of Europe

¹² Annual Report of the Head of State Police, p. 24 available at [http://www.logreglan.is/upload/files/%C3%81rsk%C3%BDrsla%202010%20LHS%20vef4\(1\).pdf](http://www.logreglan.is/upload/files/%C3%81rsk%C3%BDrsla%202010%20LHS%20vef4(1).pdf)

¹³ Annual Report of the Government Agency for Child Protection 2008-2010, p. 12, 83 available at <http://www.bvs.is/files/file988.pdf> and Supreme Court Case No. 204/2010.

Convention on Action against Trafficking in Human Beings was furthermore ratified by the Government on 23 February 2012. The ICEHR encourages that the government take positive actions for the Covenants' full incorporation into national law.

Various measures were adopted in the process of ratification, namely amendments of the General Penal Code No. 19/1940 through which the purchase of prostitution has been penalised in Article 206 as well as criminalizing the beneficiaries and perpetrators of trafficking and prostitution in Article 227a (pimps, women in prostitution are not punished). In 2010 the police issued a detailed booklet on trafficking containing information and working rules in cases of trafficking and prostitution.¹⁴ These include detailed information on pertinent legislation, both national and international, guidelines on how to identify victims of trafficking as well as the treatment of victims in cases of detection. A specialist and coordination team was established by the authorities in 2009 with a mandate to deal with and investigate cases of trafficking and prostitution. In spite of all these good measures in fighting prostitution and human trafficking the purchase of prostitution has gone unpunished for two years and the police seem therefore either unable or unwilling to enforce the law. This is very serious since it renders previous effort in the fight against trafficking and prostitution obsolete.

Furthermore, actions in this area are still needed in order to implement the National Plan fully. In particular, assistance and care for victims of trafficking and remedies and precise rules on the process are still somewhat lacking. More attention must be given to establishing channels and methods for assistance. The leading NGO assisting victims of trafficking is Stígamót. They run the House of Kristín (Kristínarhús), which is largely funded by the Government. More funding is needed for this resource as well as for other efforts and assistance programmes for victims of trafficking. The prosecution and conviction of traffickers and buyers of prostitution has severe shortcomings and a reprioritisation within the police and adequate funding must be ensured.

In this regard the ICEHR reiterates the importance of granting sufficient funding to NGOs that assist and provide shelter for victims of violence and trafficking. The police must be adequately supported by both funding and staff in order to fulfil its mandate as provided by the General Penal Code properly. The ICEHR moreover recommends the Government, in accordance with international obligations, to strengthen specialized institutions established for assisting victims of trafficking and prostitution and furthermore establish precise rules on the procedure of such assistance.

The first and only conviction for trafficking was realised in March 2010 by a District Court when five individuals were convicted to five years in prison. They were prosecuted and

¹⁴ <http://www.logreglan.is/upload/files/Mansal%20-%20verklag%20l%F6greglu.pdf>

convicted for trafficking a 19 year old Lithuanian girl to Iceland for prostitution. The Supreme Court reduced the sentences to 4 years.

In July 2010 a female perpetrator was convicted to prison for 15 months by the District Court of Reykjanes for organizing and profiting from the prostitution (“pimping”) of several girls. She was moreover charged with trafficking but was acquitted.¹⁵

In September 2010 the Parliament enacted a legislation amending the Act on Foreigners, adding victims of trafficking to the list of possible grounds for obtaining a residence permit. So far one such permit has been granted.

Expulsion of Foreigners (arts 2, 7 and 13)

17. Article 45 of the Act on Foreigners no. 96/2002 on non-refoulement states that a foreign national shall not enjoy the protection granted to refugees “if there are reasonable grounds to expect he or she poses a threat to national security, has been convicted of a very serious criminal offence or presents for these reasons a danger to society. Article 3 of the European Convention of Human Rights (ECHR), prohibiting torture and degrading treatment, is interpreted by the European Court of Human Rights (ECtHR) to stipulate an absolute ban on the expulsion of a person to a place where he or she faces the risk of torture or ill-treatment.¹⁶ This means that the Act on Foreigners is not in conformity with the ECHR. However, the UN Convention Relating to the Status of Refugees of 1951 provides a comparable exception in Article 33(2) whereby non-refoulement does not apply to those who are, on the basis of reasonable grounds, regarded as a danger to the security of the country or who have been convicted by a final judgement of a particularly serious crime.

The ICEHR would like to ask the government to clarify whether or not Article 45 would be applied in cases where a foreigner does indeed face risk of torture or ill-treatment if he/she would be deported, even though there were reasonable grounds to expect that they pose a threat to national security, or have committed a crime... etc.

A large number of all asylum seekers who seek refuge in Iceland do not come directly from their country of origin but have first been to another European country. Therefore most asylum applications are served under the EU Dublin II regulation. Asylum seekers are thus deported back to the country responsible for their application. The result is that few asylum seekers are granted a refugee status in Iceland, in 2010 12 out of 51 applications were approved.

Iceland has improved the situation of asylum seekers thanks to several changes adopted in 2010. Asylum seekers are now interviewed by the Directorate of Immigration, with

¹⁵ Reykjanes District Court, case no. S-190/2010.

¹⁶ ECRI report on Iceland, 21 February 2012, p 27.

representatives of the Icelandic Red Cross who can provide information to the applicant about the asylum procedure. In addition, asylum seekers have access to free legal aid at the first stage of the procedure. Even if the situation has improved, Iceland still has to make changes. Firstly, the applicant should be entitled to appeal before an independent and impartial judicial body if his application has been rejected (under the current system, they appeal to the Ministry of the Interior, the Directorate of Immigration falls under the scope of this ministry). Secondly, all children of asylum seekers are not guaranteed access to education. Although the Act on Foreigners provides this right, it often only applies to asylum cases which are to be decided in Iceland, whereas many of the applications fall under the scope of the Dublin II Regulation. Thirdly, when the Dublin II Regulation does not apply, asylum seekers have to wait a long time for their application to be processed, even years. Around 10 cases every year raise the problem of refugees trying to reach Canada or the United States of America through Iceland, using false passports. They are arrested and sentenced to up to 30 days of imprisonment and a fine of 100.000 ISK. If they apply for asylum, they usually spend 15 days in prison before being transferred to the asylum reception centre. This practice could raise issues under article 31 of the Convention Relating to the Status of Refugees which states that Contracting States shall not impose penalties on asylum seekers who illegally entered their territory if they fall under the status of refugees.¹⁷

18. & 19. Asylum seekers are entitled to free legal aid when interviewed by the Directorate of Immigration as well as when decisions on asylum applications are appealed (except in cases that are regulated by the Nordic Border Control Agreement or the EU Dublin Regulation no. 343/2003) or when the applicant has been granted a residence permit even if his asylum claim has been rejected. Asylum seekers have a right to an interpreter free of charge in all communication with the authorities.

A committee established in 2009 with the mandate of reviewing legislation on asylum seekers completed submitted a report in July of the same year.¹⁸ Consequently, in 2010 the Act on Foreigners was amended with a view to implement the measures suggested by the committee. Under the Act, a permit on humanitarian grounds can be granted in cases where a foreigner is in grave need for protection, for example if the situation in the country of origin is generally difficult, or on grounds of health concerns or in cases of the applicant being in a socially difficult position or for other reasons that are beyond the responsibility or control of the applicant himself. In cases of children, the fundamental principle of what is in the best interest of the child shall be respected at all times.

Another provision on speedy procedure for asylum applications was implemented in 2010, obligating the Government to process applications as rapidly as possible and to inform the applicants regularly about the status of the process. However, this provision is unfortunately

¹⁷ ECRI report on Iceland, 21 February 2012, p 29.

¹⁸ http://www.innanrikisraduneyti.is/media/Skyrslur/Skyrsla_nefndar_um_medferd_haelisumsokna.pdf

not met with and ICEHR is aware of instances where asylum seekers have waited for up to three years to have their application processed. Lack of resources to the Directorate of Immigration and too few staff members is the primary cause for long delays in processing applications. This has been recognized by the Ministry of the Interior and is currently being addressed in parallel with the complete revision of the Act of Foreigners.

Further amendments made in 2010 include a provision on suspension in cases of appeals lodged by asylum seekers, see Article 32 para. 3.

The ICEHR recommends the Government to provide adequate funding to the Directorate of Immigration so that extra staff can be hired and the application process sped up. Furthermore, the ICEHR is of the opinion that the custom of sentencing foreigners to up to 30 days of prison without probation for presenting a false ID, even though they have sought asylum, should be revised.

Right to a fair trial and the judiciary (art 14)

20. The State party has not increased the number of district court judges after the bank collapse in 2008. In 2010 the Government implemented changes to the Judiciary Act no. 15/1998 with a view to increase judges' independence and remedy the procedure for their appointment. In appointing judges, more weight has been given to the preference of the evaluation committee at the expense of the power of the incumbent minister in office. According to the law as it currently stands, it is prohibited for a minister to appoint an applicant who was not listed as the most qualified candidate by the committee. However, a possible derogation from this exists in cases where Parliament approves a proposition from the Minister of the Interior to appoint another candidate, provided he fulfils all general requirements as stipulated by law.

21. Article 198 of the Code of Criminal Procedure remains the same since the State party's fifth report, and ICEHR is not aware of any plans made for amending the provision. In a recent judgment of Reykjavik District Court, a blogger was sentenced for his blogging and ordered to pay 950.000 ISK in compensation to the victim. His request for appeal was denied even though his lawyer claims the judgment to be defect. ICEHR is concerned that cases that fall under Article 198 as constituting "minor criminal offence" and are therefore not subject to appeal can restrict the rights of those sentenced to a fair trial and judiciary.

The ICEHR is concerned that some convicts are not given full rights to a fair trial and the judiciary in cases where their offence or penalty is concerned as being "minor". What might be regarded as "minor" for the State may not be so for a particular convict who may moreover want to seek his/her rights at a higher level than the District Court. The ICEHR therefore recommends the Government to revise Article 198 and evaluate whether there is room for more flexibility when it comes to appeals to the Supreme Court.

Freedom of conscience and religious belief (art 2, 18 and 26)

22. The Evangelical Lutheran Church is the national church of Iceland, chaired by the Bishop of Iceland. For every registered member the Church receives retrieval fee on an annual basis. The revenues of priests, the Bishop and other staff of the bishop's office are paid through the tax system. In addition, the Church is exempt from paying property tax. In modern times, the public opinion has shifted more and more towards the separation of Church and state. Many believe that the prerogatives of the Church provided by law and the Constitution are contrary to freedom of religion and that the State should neither meddle in peoples' faith nor discriminate between different religions. The opposing rationale has been that the great majority of Icelanders are registered to the Church and that Icelandic culture and history have close relations to it and herefore the Church's prerogatives are natural. Whatever opinion people hold on the matter, no arguments can ever justify discrimination on grounds of religion. There are 36 registered religions in Iceland which do get benefits from the state, such as free lots for the purposes of building a suitable place for practising their religion. Moreover, these religious organizations receive retrieval fee for each member in the same manner as the Church. However, the revenue of their staff is, unlike the Church's, not paid by the state.

In a recent bill proposed by the Minister of the Interior, yet to be approved by Parliament, religious- and non-religious (life stance) organizations are placed on equal footing. ICEHR celebrates this initiative and encourages the Government to adopt it in the near future.

Protection of family life and the right to marry (arts 2, 23 and 26)

23. ICEHR is not aware of any current work undertaken by the Government to revise the Act on Marriage no. 31/1993. The most recent changes were made in June 2010 when same sex couples were given rights to marry under the Act on Marriage.

Dissemination of information relating to the Covenant and the Optional Protocol

24. All reports on human rights situation in Iceland, both from and to UN and Council of Europe monitoring committees are translated into Icelandic and published on the website of the respective ministry. As such, these reports are very accessible online. ICEHR is very active in monitoring and reporting on the human rights situation in Iceland and often does so in collaboration with various other NGOs which concern themselves with human rights.