Viðbótarskýrsla við fjórðu skýrslu Íslands um framfylgd Alþjóðasamnings um borgaraleg og stjórnmálaleg réttindi

Notes on Icelands Fourth periodic report on implementation of the International Covenant on Civil and political rights Pursuant to Article 40 of the Covenant

Introduction

In light of the Human Rights Committee's review of Iceland's Fourth Periodic Report on Implementation of the International Covenant on Civil and Political Rights, which will be considered at the 83rd Session in New York, on 15 March - 1 April 2005, the Icelandic Human Rights Centre has undertaken to provide the following insights regarding Iceland's implementation of the Covenant in co-operation with Icelandic NGOs and human rights experts.

The Government's report provides an extensive overview of national legislative measures that are significant to the implementation of the Covenant. Several issues identified in the report call for improvement.

General Observations

In its Third Periodic Report on the Implementation of the Covenant, the Government of Iceland referred to the establishment in 1994 of the Icelandic Human Rights Centre, similar to those which have existed in the Scandinavian countries for some time. The Report stated:

> *It may be assumed that the Human Rights Office will, among other things, concern itself with the success, or lack thereof, in implementing international human rights instruments in Iceland. Some educational and informational work in the field of human rights has already been undertaken by the Office, for the benefit of both lawyers and the public.*

Unfortunately, the full potential of the Centre has not been fully realized, because of the lack of financial resources. The Althing (Parliament) has supported the activities of the Centre through allotments in the National Budget, but the Ministry of Justice has proposed that the amount provided directly in recent years be halved as from 2005. The Centre will thus have to engage in more active fundraising efforts to be able to fulfil its obligation and purpose of collecting, disseminating and publishing information on human rights issues in Iceland and abroad.

Violence against women

It is commendable that the Government of Iceland has provided the additional information on domestic violence requested by the Committee and that it has carried out several actions with the aim of eliminating domestic violence. It provides funds on a yearly basis to the Women's

Sanctuary and has supported campaigns to raise awareness about domestic violence. In addition to the actions described in the report, mention should be made of the rejuvenation of the project 'Karlar til Ábyrgðar' or 'Responsible men' that aims to provide counselling and treatment for abusive men as part of the Gender Equality Action Plan adopted by the Government in 2004 although unfortunately no funds have been allocated to the project. Furthermore, we applaud the Government's Act No. 94/2000 introducing amendments to the General Penal Code and the Code of Criminal Procedure making possible a restraining order, which is particularly designed for situations of domestic violence where the victim may face repeated harassment or threats in any form by a particular person. The restraining order is to be requested by police and imposed by a judge for a specified period of time. The amendments entered into effect in the spring of 2000, and have been, according to the report, applied by the courts in a few cases. However, although the Act itself is comprehensive and sets out measures that can lead to increased protection of the physical integrity of women in danger of domestic abuse, unfortunately, two main bottlenecks can result in the Act not achieving its aim and restraining orders not being enforced. First, in order to obtain a restraining order, victims of domestic violence have to go through police and the Courts who appear only to grant restraining orders in extreme cases. Furthermore, guidelines and rules on the implementation of restraining orders have not been developed nor have the police or members of the bench and bar received suitable education or sensitisation as regards domestic violence and the implementation of the Act. It is imperative that practitioners dealing with issues concerning violence against women receive adequate training to recognize victims' concerns and that protocols for law enforcement response and implementation of the Act are adopted.

The special reception facility for victims of domestic violence at the Emergency Services Division of the National University Hospital proposed in 1997 and mentioned in the report has not yet become a reality. A special facility of this nature could be an extremely important tool in aiding the victims in getting reparations and to escape the vicious cycle of violence they often cannot find their way out of. The fact that 140 women victims seek assistance at the Emergency Services Division every year clearly demonstrates the need for this facility to be put in place as soon as possible.

Advocates against violence against women applaud the establishment by the Minister of Social Affairs of a committee on domestic violence against women but its work remains to be seen.

Although police statistics indicate that instances of violence against women, including rape and sexual assault, are few, the number of women seeking assistance at emergency wards and organisations concerned with women victims of violence indicates that the majority of attacks go unreported. Sadly, the number of victims seeking assistance at the sexual violence-counselling centre in Reykjavik is steadily rising whilst the number of reported instances with authorities and convictions for violence against women is not; it appears that a majority of victims choose to forego trial or do not press charges. The few convictions and relatively short sentences (judges seldom impose long sentences, generally close to the one year minimum) are a matter of serious concern and contribute to an atmosphere of impunity where the state fails to adequately protect women's rights to physical integrity and effective remedy. On this issue the United Nations Committee on Economic Social and Cultural Rights, when discussing Iceland's Third Periodic Report on the implementation of the Covenant, in its 30th Session in Geneva, 5 to 23 May 2003, 'expressed its surprise at light punishments given to perpetrators of violence against women and suggested that Iceland accordingly amend its penal code.'

Related to the discussion on violence against women are the issues concerning prostitution which is not illegal *per se* although using it as a main source of income is illegal. In 2003 a bill proposing, *inter alia*, the criminalisation of soliciting the services of prostitutes was unfortunately rejected in Parliament.

INFORMATION RELATING TO INDIVIDUAL PROVISIONS

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

Prohibition of discrimination, and equality before the law, is set out in domestic law, most importantly in Article 65 of the Constitution. When an individual person considers that his or her rights protected by the Covenant have been violated, various recourses are open in order to obtain a remedy. The report describes the role of the Ombudsman of Parliament who exercises control of State and municipal administration and shall ensure that the rights of the public vis-à-vis public administration are respected. Anyone claiming to have suffered injustice at the hands of public administrative authorities can lodge a complaint with the Ombudsman. The Ombudsman can also conduct examinations on his or her, own initiative. In his or her conclusions on individual complains the Ombudsman issues an opinion as to whether the action of an administrative authority was contrary to law or accepted administrative standards. The opinions of the Ombudsman have until recently had great influence within public administration, and every effort was made to heed his or her recommendations and proposals and to remedy a complainant's situation accordingly. Unfortunately, of late the authority of the Ombudsman has been undermined due to the fact that a high profile opinion regarding appointment to the Supreme Court of Iceland in 2003 was all but disregarded by the Ministry of Justice - and exacerbated by a second similar appointment in 2004 (see discussion on Article 25 (c)).

As regards non-discrimination in the enjoyment of the rights protected in the Covenant, mention should be made of Act No. 20/2004 amending Act No. 96/2002 on Foreigners, discussed below in relation to several articles of the Covenant. This Act sets out provisions that can result in discrimination against foreigners in Iceland, either grounded in the Act itself or the interpretation of its provisions by the executive. An example is that, in order to obtain a permit to stay in Iceland based on marriage or cohabitation with a foreigner that already has a permit, the partner or spouse must be 24 years of age or older. The Marriage Act, No. 31/1993, stipulates that individuals can marry when they have reached the age of 18. Thus, in this respect foreigners are discriminated against because of their national origin.

The case-law of the Human Rights Committee has demonstrated that sexual orientation either falls under the prohibition of discrimination based on 'sex' or 'other status'. Although the legal situation of gays and lesbians is relatively good in Iceland, several issues call for improvement in order to ensure their equal enjoyment of the rights set out in the Covenant, especially as regards the right to respect for the family and the right to marry. Homosexual couples can enter into confirmed cohabitation which has the same legal effects as marriage but is discriminatory in the sense that the condition is set out that one partner has to be an Icelander and be domiciled in Iceland or both partners have to have been domiciled in Iceland for at least two years before the confirmed cohabitation (Article 1 Act No. 52/2000 amending Article 2 Act No. 87/1996 on Confirmed Cohabitation). The National Church is opposed to religious ceremonies for homosexual individuals. Foster adoption is allowed, i.e. a partner in a confirmed cohabitation may adopt a child of the other partner, but original adoption is not allowed. Furthermore, artificial conception within the health care system is not available to homosexual partners (single women are not allowed to undergo artificial conception either). A

Committee appointed by the Prime Minister in 2003 to examine the legal status of homosexuals has recently published its report recommending several changes to the law, e.g. to allow homosexuals to enter into registered cohabitation such as is available to heterosexual persons, which has various legal effects more limited than marriage and that Article 2 of the Confirmed Cohabitation Act be amended to, *inter alia,* change the nationality and domicile requirement to a requirement that one or both partners be domiciled in a country where laws on confirmed cohabitation, similar to the Icelandic Act, are in effect. The Committee furthermore encouraged the National Church to change its position on providing homosexual couples with the possibility of religious ceremonies as is available to heterosexual couples. On the issue of original adoption the Committee was in agreement to recommend that couples in confirmed cohabitation be allowed original adoptions of Icelandic children. In addition the Committee recommended that specific laws be enacted to prevent discrimination of homosexuals in the labour market. The Committee was split equally for and against allowing original adoptions of foreign children and artificial conception for homosexual couples. Among the arguments against original adoptions of foreign children were that successful co-operation with countries that do not allow homosexual adoptions should not be jeopardized and that the psychological effects on adopted children were unknown. Furthermore, the Committee argued that it was reasonable and in the best interest of the child to limit artificial conception to heterosexual couples. Members of the Committee in favour of allowing original adoptions of foreign children argued that laws of other countries should not influence Icelandic legislation on adoptions and that the Swedish experience, where homosexual adoptions of foreign children are allowed, has shown that this provision has not resulted in any problems in co-operation with other countries with different legal frameworks. These members also recommended that lesbian couples be allowed to undergo artificial conception, arguing that it was discriminatory to prevent lesbian couples from a service that was provided for heterosexual couples.

Article 3. Equal rights of men and women

Although full equality under law has been achieved for men and women as regards civil and political rights provided for in the Covenant, and legally, Article 3 is in full effect, equality *in fact* has not been achieved and tradition prevails. A distressing study has just been published (October 2004) by the official *Statistics Iceland* stating that:

Women's total income from employment was around 62% of men's total income in 2003. Women earned around 75% of men's earnings in the private market, and 77% of men's average hourly wages. Women in the Federation of State and Municipal Employees earned 87% of men's salaries, but 71% of men's total pay. Women's salaries amounted to 90% of men's salaries among members of the Association of Academics.

Women are a minority when it comes to power and influence. They are around 30% of elected members to the Althingi and of elected representatives on local government councils, 25% of government ministers and 19% of municipal managers (mayors). Women are 29% of members in public committees, boards and councils and 21% of managers of state institutions. Very few women are on boards of employers' associations and among senior managers of large enterprises. The boards of employee associations do not reflect the gender division of their members.

The Government has instituted several positive measures to promote gender equality throughout society, especially the Act on Equal Status and Equal Rights of Women and Men No. 96/2000 and the enactment of an Act on Birth Vacations and Parental Vacations, No. 95/2000, which constitutes an important step towards equal rights in the labour market. The Act on Birth Vacations and Parental Vacations is important as it provides equal possibilities

for both parents to spend time with their new-born children. The Act permits both mothers and fathers to take 3 months paid leave upon the birth of a child, with an additional 3 months that parents can take individually or split between them. This law has already had a positive impact, fathers are increasingly making use of this right and by mid 2003 more fathers had taken paternity leave than for the whole year of 2002. Still, in 2003 men took on average 94 days' leave but women 182 days, demonstrating that women still use the bulk of the leave available to parents; 15.9% of men use more than the 3 months but 19.8% less. Payments during leave reflect the gap in wages between men and women as in 2001 women received 58.2% of payments men received, rising to 62.2% in 2003, demonstrating a move in the right direction. In 2004 a ceiling on payments was put in place allowing a maximum of 80% of a monthly wage of 600,000 IKR (approx. 8400 USD) during leave; this clearly affects more men than women. It should be noted that a number of studies have demonstrated that fathers availing themselves of paternity leave is an important factor in changing traditional division of work in the home. It is important to monitor how parents make use of parental leave to determine whether the Act on Birth Vacations and Parental Vacations is achieving its aim, that is, a change in perception of the traditional role of men and women and full gender equality in the labour market.

On this issue the CESCR Committee underlined, in its aforementioned discussion of Iceland's 2003 report, the importance of projects aimed at improving women's self-esteem in order to further reduce the pay gap, and suggested that Iceland take additional steps in this direction.

As described in the report under discussion, the Act on Equal Status and Equal Rights of Women and Men No. 96/2000 requires, *inter alia,* institutions or companies employing more than 25 persons to prepare equal rights plans on wages and general employment terms or providing in particular for equality among men and women in their employment policies. A survey carried out by *Bifröst School of Business* in 2003 shows that of the 100 companies with the most turnover only 25 had formulated equal rights plans, so clearly implementation of this provision leaves much to be desired. Furthermore, there is concern that the Equal Rights Office, established to take on defined tasks as regards controlling the implementation of the Act on Equal Status, has not received adequate funding to be able to carry out its monitoring satisfactorily.

The Minister of Social Affairs appoints a Complaints Committee on Equal Status to adjudicate alleged violations of the Act; the Committee's rulings are non-reviewable but disputes concerning its opinions can be referred to the courts.

The Committee has given a number of opinions but its authority was seriously undermined last year when it found that an appointment to the Supreme Court had violated the Act on Equal Status and Equal Rights of Women and Men. The Committee found that the woman who was passed over was better qualified in terms of both education and experience notwithstanding the fact that only two out of nine Supreme Court judges are women.[1] The Minister of Justice called the Equality Act a 'child of its time' and confirmed his opinion that the man was better qualified, disregarding the Committee's findings. This will be discussed further in relation to Article 25 (c).

Article 7. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The prohibition of torture is not expressly set out in Icelandic law. In its conclusions on Iceland's Second Periodic Report on the implementation of the United Nations Convention on the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in 2003, after commending the authorities for positive legislation, the Committee against Torture

expressed concern that 'Icelandic law does not contain specific provisions ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings' (para 107). The Committee recommended torture be defined as a specific offence in Icelandic law and that legislation concerning evidence obtained through torture be brought into line with the CAT Convention (para 109). (CAT/C/30/CR/3).

Article 8. Prohibition of slavery and compulsory labour

In recent years slavery and forced labour have come to the fore related to anecdotal evidence that women, mainly from the Baltics, may have been trafficked to Iceland to work as exotic dancers. There were also indications that Iceland was being used a transit point for trafficking of women between Europe and the United States. It is therefore commendable that Iceland has signed the United Nations Convention against Transnational and Organized Crime of 15 November 2000, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and it is hoped that the Government ratifies these instruments soon. We also commend the enactment of Act No. 40/2003, introducing into the General Penal Code a specific provision, Article 227(a), on trafficking in persons making criminal provisions on this issue substantially clearer than before when provisions regarding, *inter alia*, 'alien smuggling' had to be resorted to in cases of suspected trafficking. Furthermore, in 2002 the City of Reykjavik and other municipalities enacted a ban on 'private dances', which served in some instances as a front for prostitution, thus apparently destroying the incentive for trafficking to the country as applications for work permits for exotic dancers decreased dramatically.

Article 9. The right to liberty and security of person

In December 2003, the Reykjavik District Court found two Reykjavik police officers guilty of improper arrests and false reports in the cases of two men taken into custody. The court imposed respective prison sentences of 2 and 5 months suspended; the longer term was given to an officer also found guilty of improper use of chemical spray.

In a case recently decided by the European Court of Human Rights, *Hilda Hafsteinsdóttir v. Iceland, Application no. 40905/9, Judgement of 8 June 2004,* the Court found a violation of Article 5(1). The case concerned the applicant's commitment to a detention cell on some occasions in the years 1988-1992 by reason of her intoxication:

The Court's assessment:

1. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

Moreover an essential element of the "lawfulness" of the detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it must also be necessary in the circumstances (see the above cited *Witold Litwa v. Poland*, § 78).

In addition, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by

the Convention, a standard which requires that all law be sufficiently accessible and precise to allow the person – if necessary with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Varbanov v. Bulgaria*, no. 31365/96, § 51 ECHR 2000-X; *Amann v. Switzerland* [GC], no. 27798/95, § 50, ECHR 2000-II; the *Steel and Others v. the United Kingdom* judgment of 23 September 1998, Reports 1998-VII, p. 2735, § 54 and the *Amuur v. France* judgment of 25 June 1996, Reports 1996-III, pp. 850-51, § 50).

2. The Court observes that in its judgment of 10 October 1996 in the compensation case brought by the applicant, the Icelandic Supreme Court found it established that the impugned measures had been taken on account of her conduct in a state of heavy intoxication, causing a breach of the peace or disturbance as described in Articles 2 and 3 of the Reykjavík Police Ordinance. It further considered that the police had sufficient reasons for detaining the applicant for a short period and had no other means at their disposal. Thus the Supreme Court appears to have reached the view that the impugned arrest and detention of the applicant on six occasions between 31 January 1988 and 24 June 1991 had a legal basis and were justified. The Court, bearing in mind the primary role played by national authorities, notably the courts, in interpreting and applying national law, has considered the matter itself and sees no reason for arriving at a contrary conclusion. Although the Supreme Court's reasoning made no express reference to some of the legal sources relied on by the Government, notably Article 61 of the Code of Criminal Procedure, the general customary powers of the police and various police instructions, the Court is satisfied on the evidence before it that the arrest and detention in question conformed to the national substantive and procedural rules. It appears that on each occasion the police had contemplated less serious measures and could reasonably have considered that it was necessary to arrest and detain the applicant.

3. What remains to be examined is whether the relevant national law was of a sufficient quality to meet the autonomous requirement of "lawfulness" in Article 5 § 1.

4. In this regard, the Court first notes that the provisions relied on by the national Supreme Court in the applicant's case referred to disorderly conduct in public places but did not specify what kind of measures the police were authorised to take in respect of a person who, as here, disturbed public order in a state of intoxication.

In the view of the Government, the applicant's arrests were plainly authorised by Article 61 of the Code of Criminal Procedure, in particular § 1, sub-paragraph 7, and § 2. These provisions empowered the police to arrest a person without judicial warrant if the person "loses control in a public place or causes public outrage" and if an immediate arrest was necessary.

However, the applicant disputed that her condition and conduct were such as to fall within those provisions, which in her opinion did not apply.

The Court does not need to resolve the disagreement between the parties in relation to the facts of the case. As far as the law is concerned, it observes that, even though it may be true that, as argued by the Government, the applicability of Article 61 § 2 sub-paragraph 7 to such cases was supported by longstanding and consistent administrative practice, its applicability was not expressly confirmed by the Supreme Court's judgment in the applicant's case nor supported by any other case-law brought to the Court's attention. Moreover Article 61 § 2 only addressed the necessity of "immediate arrest". Neither this nor any other relevant statutory provisions relied on by the Government specifically dealt with detention or the maximum duration of detention or release, as did, for instance, the last sentence of section 16 (2), of the more recent Police Act 1997 ("No person may be held for longer than is necessary" – see paragraph 33 above).

5. It is true that more detailed provisions on these matters were included in the instructions issued by the Reykjavík Police Commissioner (see paragraph 28 above). They contained a number of substantive and procedural rules circumscribing the discretion enjoyed by a police officer in ordering detention for disorderly conduct resulting from the use of alcohol. This is in particular the case of the 1988 Rules, which entered into force on 1 July 1988 and applied, not to the first instance of detention occurring in January 1988, but to the five instances which occurred after 1 July 1988. Under those rules, conduct resulting from the use of alcohol and causing disorder or significant disturbance or inconvenience could warrant detention, provided it was highly likely that this situation would continue if the person were to remain at liberty. Detention was not justified in cases involving intoxication only and when alternative measures could be used, for instance taking the person home. However, the Court notes, although they implied that detention could be ordered only if it was necessary, even those provisions omitted to specify when detention ceased to be justified and the detainee had a right to be released.

The Court further notes the disagreement between the parties as to whether the instructions in question were accessible to ordinary members of the public. The applicant objected to the Government's general submission that "the laws and rules on which the police based their actions were published and accessible to anyone" by submitting that the instructions were "internal documents of the police that [had] never been made public and accessible". The Government responded to the applicant's objection by referring to and maintaining their earlier general submission, but failed to provide the Court with any concrete explanation or information as to how the instructions should have made accessible to the public.

6. Against this background, the Court finds that, at the time of the six disputed events, in one essential respect, namely the duration of the relevant type of detention, the scope and the manner of exercise of the police's discretion were governed by administrative practice alone and, in the absence of precise statutory provisions or case-law, lacked the necessary regulatory framework (see the *Kruslin v. France* and *Huvig v. France* judgments of 24 April 1990, Series A no. 176-A and –B, respectively §§ 35 and 34). Moreover, it appears that, at the time of the first event in January 1988, before the entry into force on 1 July 1988 of the 1988 Rules, not only the duration of the detention but also the decision to detain suffered from that defect.

Moreover the Court is not convinced that the more detailed provisions contained in the above-mentioned instructions had been made accessible to the public.

For these reasons, the Court is not satisfied that the law, as applicable at the material time, was sufficiently precise and accessible to avoid all risk of arbitrariness. Accordingly, it finds that the applicant's deprivation of liberty was not "lawful" within the autonomous meaning of Article 5 § 1 of the Convention, which has therefore been violated.

Article 10. Treatment of persons deprived of liberty

Following its 1998 visit the CPT Committee made various recommendations to the Icelandic authorities for possible improvements, many of which the authorities have taken administrative and legal measures to implement. For instance, facilities used for provisional detention at certain police premises, airport facilities have been enhanced and equipment of some prison cells has been improved.

The CPT Committee made some recommendations relating to medical service to prisoners. The lack of psychiatric services and the absence of a policy or set of guidelines in effect for preventing suicides in prison gave rise to the Committee's concern. On this note, the Ombudsman of Parliament has asked the prison authorities to take steps to ensure adequate

medical treatment for inmates in solitary confinement acting on a complaint filed by an inmate in 2002 whose request to see a psychiatrist was denied. The prison undertook to retrain staff on proper procedures for safeguarding prisoner welfare but conditions for mentally ill prisoners are still unsatisfactory.

In early 2003 an Act on the service of sentences was introduced. Certain provisions were questionable and fortunately the bill was withdrawn for further consideration. The Icelandic Human Rights Centre had, in its criticism of the Bill, *inter alia*, pointed to provisions allowing untried prisoners to be detained with convicted prisoners and allowing convicted prisoners to be detained in provisional detention at certain police premises. The Centre criticized empowering wardens by law to use force without further restrictions such as for instance only in self-defence, for the protection of others or when otherwise strictly necessary. The Bill also proposed a duty of confidence for prison staff as regarding the personal life of staff and inmates, which was reasonable, but the duty also took to the working methods of prisoners and prison authorities, without any provisions providing for external monitoring of prison conditions being set out. One way to interpret this would imply that staff would not be able to bring complaints regarding maltreatment in prisons nor would they be allowed to answer, for instance, the CPT Committee**'**s questions.

In its review of Iceland's initial report in 1999, the U.N. Committee Against Torture noted the use of solitary confinement for pre-trial detainees and recommended that the authorities review the provisions regulating solitary confinement in order to reduce considerably the cases to which solitary confinement could be applicable. This concern was also voiced in the CPT delegation report on its 1998 visit. The CPT found that the use of solitary confinement for investigation purposes had slightly diminished in Iceland in recent years; in particular, the period of such solitary confinement tended to be shorter than in the past. However, it remained the case that nearly all remand prisoners were placed in solitary confinement for a certain time (Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 March to 6 April 1998 para 150). The Government has stated that changes to its law were unnecessary because it only authorized solitary confinement in special circumstances and in moderation. During the year 2003, however, 55 of 69 persons placed in custody spent some time in solitary confinement, on average for 11 days.

The Committee also expressed its concern at the problem of inter-prisoner violence at a particular state prison, which has 'created fear among certain categories of prisoners, leading, *inter alia*, to requests to be placed voluntarily in solitary confinement.' (para 10)(CAT/C/30/CR/3).

In general detention facilities are good but certain issues call for improvement:

- A separate minimum-security facility is maintained for women prisoners but as women prisoners are few, men convicted of non-violent crimes have been incarcerated there.
- There is no separate detention facility for juveniles. Juvenile offenders 15 or older can be sentenced to prison terms but they generally get probation or suspended sentences or are admitted to rehabilitation programs. In the rare instances that they get prison sentences they may have to be held with adults. Authorities have argued that as occurrences of juveniles serving prisons sentences are rare there is no need for establishment of a separate facility. Supervisory bodies monitoring conditions of detention have criticized this practice, recommending that juvenile prisoners shall be held separately from adults and be offered a full programme of educational, recreational and other purposeful activities.

Article 13. The legal status of aliens in case of denial of entry or expulsion

Article 66 (2) of the Constitution provides that the right of aliens to enter Iceland and stay here, and the reasons for which they may be expelled, shall be laid down by law. The provision was introduced into the Constitution in 1995, and in the accompanying explanations a reference was made to ICCPR Article 13 among the international provisions used as its models.

The Government has in certain instances granted refugee status or asylum on humanitarian grounds; unfortunately rather reluctantly. In March 2003 the Government received 24 UNHCR-designated quota refugees originally from Serbia. Iceland has since 1996 received a total of 218 quota refugees but incredibly only one 'independent' asylum seeker has been granted refugee status under the 1951 Convention since it was ratified. It is a matter of concern that the Government has no fixed refugee acceptance requirements and re-evaluates the refugee situation on an annual basis. A few individuals have been granted asylum on humanitarian grounds, i.e. persons alleging that their lives or liberty are in danger if expelled. It should be noted, however, that although the law provides for granting asylum on this basis, it is not clear enough what rights and duties this type of permit entails and on what grounds it can be granted, resulting in the Directorate of Immigration having a very wide margin of appreciation in relation to the granting and revocation of permits of this nature. Normally a permit to stay on humanitarian grounds is granted for one year but the law is not clear on the maximum time or minimum time foreigners can stay in Iceland with this permit. Furthermore, the provision on humanitarian grounds permits does not set out whether permit holders are allowed to work. The Icelandic Human Rights Center is familiar with instances where authorities have revoked the humanitarian grounds permit when the foreigner has applied for a work permit, unreasonably concluding from the application that the person no longer considers him- or herself in need of a humanitarian permit. The result is that provisions regarding 'regular foreigners' are applied to the person, i.e. certain criteria regarding social assistance which do not apply when the person has a permit on humanitarian grounds. Therefore the situation arises that a person originally granted a humanitarian permit can be expelled because he or she fails to comply with conditions set out for a regular permit. It is not clear what applying for a work permit means for a person holding a permit granted on humanitarian grounds as another authority has interpreted the law to signify that a person cannot hold both a humanitarian permit and a work permit and therefore the application for a work permit cancels the humanitarian permit.

In January 2003, a new Act on Foreigners, No. 96/2002 entered into force. The Act contains a number of provisions that substantially clarify matters relating to foreigners and their legal status such as the procedure in cases of denial of entry and matters relating to seekers of asylum. Furthermore, the Act provides that only the Directorate of Immigration may deny admission to asylum seekers. Many provisions are a significant improvement in comparison to older regulation but certain aspects of the Act and subsequent revisions give rise to concern. The Icelandic Human Rights Centre commented on proposed amendments to the Act this year, finding that a number of provisions raised issues under international human rights law. The Act was amended to some extent in Act No. 20/2004. Unfortunately, the Act still contains questionable provisions; *inter alia,* Section 20 has been amended to include 'if he resides illegally in the country' as grounds for expulsion of a foreigner. Expulsion is a severe measure in cases where the foreigner may be residing illegally in the country unbeknownst to himself. The Icelandic Human Rights Centre is familiar with several cases where employers have led foreign workers to believe that all permits are in order, when, in fact, the foreigners are staying and working illegally in the country. In such instances it is unreasonable that the foreigner face such radical consequences as expulsion and the Act therefore does not

adequately take the reality of the experience of foreigners in Iceland into account. Furthermore, Article 16 of Act No. 20/2004 amending Section 57 of Act No. 96/2002 h) makes having a fake passport, identification documents or travel visa punishable by fines or imprisonment of up to two years. It is reasonable that being in possession of a number of counterfeit travel documents or the like (as set out in the explanatory notes) should be punishable by law but the way the provision is phrased could result in it applying to refugees or victims of trafficking, in violation of international law. It should be noted that Article 31 of the 1951 Refugee Convention stipulates, *inter alia*, that penalties shall not be imposed on refugees on account of their illegal entry or presence in a given country. Furthermore, it is common that individuals, victims of trafficking, are in possession of counterfeit travel documents, identification or travel visas. These individuals should not be punished; it could prove even more difficult than it is today to prevent and prosecute cases regarding trafficking if the victims risk imprisonment for their 'crimes'. Notable in this context is the United Nations Convention against Transnational Organized Crime (The Palermo Convention) which stipulates that victims of transnational crime shall be assisted and protected (Article 25) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children sets protective measures for victims of trafficking, stipulating in Article 7, *inter alia*, that states shall consider adopting measures to permit victims of trafficking to remain in their territory in appropriate cases giving appropriate considerations to humanitarian and compassionate factors. Article 10 furthermore stipulates that states are to co-operate in determining whether individuals attempting to cross or crossing international borders with travel documents belonging to others or without documents are perpetrators or victims of trafficking, implying protection, not punishment of the trafficking victim. In light of the above, the wording is not sufficiently narrow to clearly set out to whom the provision is to apply.

The care of asylum seekers was in the hands of the Icelandic Red Cross until the beginning of 2004 when the Government concluded an agreement with the Municipality of Reykjanesbær (close to Iceland's biggest airport) charging the social services of the municipality with taking care of asylum seekers. Advocates have noted that housing the asylum seekers 45 minutes away from the Capital has diminished attention to the difficulties asylum seekers face to some extent, reflecting perhaps an 'out of sight out of mind' policy. Furthermore, during the first months of the new agreement, asylum seekers received no allowance but only necessities in kind which may have resulted in them having difficulties in seeking information and assistance in the Capital were most official institutions are located. Fortunately, because of strong criticism, asylum seekers now receive an allowance, albeit a very modest one. According to provisional figures, from January to 1 October 2004, 59 people have applied for asylum, no-one has been granted refugee status and no individuals have been given asylum on humanitarian grounds. Of these 59, five applications were withdrawn, 24 applications were denied, some on the basis of provisions of the Dublin Convention or Icelandic Immigration Law, two persons disappeared, eight people were sent to their home country, and 17 cases are still pending.

Article 17. The right to privacy

Article 71 of the Icelandic Constitution now contains a clear provision to the effect that everyone shall enjoy freedom from interference with privacy, home, and family life. The second and third paragraphs of the Article impose detailed conditions for limitations to this freedom, i.e., that such limitations must be provided for by law and in certain cases also a judicial order, and that they must be designed to attain a defined aim.

Several issues come to mind in relation to the right to privacy in Iceland. In June 2002 a complaint regarding serious violations of the right to privacy was brought to the Icelandic Data Protection Authority which supervises the Act on Protection of Individuals with regard to the Processing of Personal Data, No. 77/2000. The case regarded a list of members of the Falun Gong held by the Icelandic police and the use of this list by the Ministry of Justice in relation to the official visit of the President of China to Iceland. The Ministry stated that after a police investigation had concluded that a number of people were coming to Iceland to demonstrate, the Ministry had sent the list to Icelandair, asking the airline to deny certain individuals passage who had made reservations with the airline for flights during the Chinese President's visit. The list was also sent to several Icelandic embassies. Between 110 and 120 Falun Gong practitioners were denied entry to the country. One of the applicants, Mr. Xun Li, complained to the Icelandic authorities through the Icelandic Embassy in Canada:

Iceland's "blacklist" of peaceful practitioners of Falun Gong is a serious cause for concern for all free and democratic countries in the world. This is the first time a government other than that of China uses a "blacklist" to block law-abiding citizens from entering their country. It is a breach of personal privacy, security and safety. It also constitutes an attack on the dignity and reputation of the individuals directly concerned as well as on the good standing of Falun Gong practice in general. In fact, practitioners have been commended by Canadian officials as being "model of good order" at events and activities to appeal for an end to the persecution.

The Data Protection Authority found that the dissemination of the Ministry of Justice of information concerning Mr. Xun Li's membership in Falun Gong, to Icelandair and Icelandic embassies in Norway, Denmark, Britain and France with the aim of preventing him from coming to Iceland was unlawful. Mr. Xun Li's lawyer asked the Ministry of Justice to issue an official apology to the group and threatened to take legal action if it did not do so. The lawyer requested the Ombudsman of Parliament to review the case who found preliminarily that it is permissible to bar prospective protesters from entering the country and, alternatively, to make entry 'contingent on signing agreements to follow police orders'. Many complained that this decision set a dangerous precedent for government action whenever it is asserted that a particular group presents a threat to public order.

One of the most debated matters in Iceland in later years is the Act on a Data Base within the Health Sector No. 139/1998, which came into effect 30 December 1998. The purpose of the Act was to permit the compilation and use of a central data base containing health information not traceable to individual persons, received from health institutions, for the purpose of obtaining knowledge for improvement of public health and health care service as well as providing data for genetic research. The handling of files, data and information shall be subject to the conditions deemed necessary by the Data Protection Agency in each case. A patient may decide that information concerning him or her shall not be transferred to the data base, and shall notify the Surgeon General of that decision. In relation to the Act an exclusive license was granted to the biotechnological company DeCode Genetics which was strongly supported by the Icelandic Government. DeCode's monopoly of the country's health records caused much furore as some quarters of the public felt that it had not been consulted when the nation's genetic heritage was 'put up for sale'. Many doctors were also upset and passed this disquiet on to their patients. By June 2003 approximately 20,500 individuals had opted out of the data base, many with the sentiment that their DNA was being exploited despite DeCode's pledge to give its drugs free of charge to Icelanders. In November 2003 the Supreme Court ruled that the Act governing the creation of the data base was not fully compatible with the right to privacy set out in Article 71 of the Constitution. The Court found that the applicant in the case could, in addition to blocking access to her own health records, block access to her father's records as information in them could infringe her right to privacy as she shares half

his DNA. The Court found that the conditions for the operation of the data base must be provided for by statutory law and information untraceable to individuals must be defined. Tasking administrative authorities with issuing rules on such fundamental matters regarding privacy infringed Article 71. It is clear that this judgement is a blow to the health sector data base project and although a review of Act No. 139/1998 is now underway, this issue remains very controversial.

Furthermore, in relation to the right to privacy mention should be made of the Act No. 20/2004 amending the Act on Foreigners No. 96/2002, also discussed above. Act 20/2004 contains questionable provisions: Article 2 amends Section 13 on permits for relatives, setting out conditions regarding age for granting permits to stay in Iceland for family members of foreigners that already have a permit; close family members are now defined as spouses or partners in cohabitation *older than 24*, children under the age of 18 and supported by their parents and parents *older than 66* and dependent on their child. Article 7 (b) stipulates that if, when considering applications for permits to stay in relation to family reunification, the Directorate of Immigration considers proof of kinship lacking, it can request DNA or other biological samples from the applicants. This is a serious infringement of privacy and family life, areas to be interfered with only in exceptional circumstances. The Act grants the Directorate, the executive, broad discretion; it is very questionable to provide for such serious interferences by law without clear limitations.

Another provision of concern is a new provision setting out that if there is reason to believe that a marriage has been entered into for the sole purpose of attaining a permit to stay and it is not conclusively demonstrated that this is not the case, the marriage will not be a ground for granting a permit to stay. The same applies if there is reason to believe that the marriage has not been entered into with the consent of both spouses The Act does not clarify what these 'reasons' could be or how it is 'conclusively demonstrated' that the marriage is not one of convenience. The explanatory notes to the bill enumerate certain 'indications' implying that a 'marriage of convenience has taken place', these include that the couple has not lived together before marrying, that they do not speak each other's language, that there is a large difference in age between them etc. These criteria are clearly not satisfactory to determine whether a marriage of convenience has taken place; for instance, in most societies, people only live together after marriage; in Iceland and other countries people of different ages marry (definition of a considerable age-gap is not set out); and it is extremely uncommon for people from foreign countries to speak Icelandic. It should be noted that a definition of a 'marriage of convenience' is not set out in law and the Marriage Act, No. 31/1993, does not specify that marriage may not be entered into for convenience.

Article 19. Freedom of expression

In recent years well-founded criticisms have been voiced to the effect that ownership of media in Iceland has been concentrated in too few hands. It has been suggested that limitations on ownership are necessary in order to protect the independence and impartiality of the media thereby enabling the discharge of its functions in a democratic society. Early this year the Government submitted to the Althing a bill on ownership of public media proposing amendments to the Radio Broadcasting Act, No. 53/2000, and the Competition Act, No. 8/1998, providing for limitations of ownership of radio media by imposition of certain conditions for the issue of broadcasting licenses. The bill gave rise to extensive public debate and was harshly criticized for infringing in particular the rights of a certain group of companies already active in the media market, a group rather critical of the Government, also owning companies active in unrelated fields. In its criticism of the bill, the Icelandic Human Rights Centre emphasised the importance of independent media for guaranteeing freedom of

expression in Iceland. At present, because of concentration of ownership in the so-called free market as well as the government's political interference with state media, this independence and freedom may not, in the Centre's view, be satisfactorily ensured. Therefore, a bill on the media could be an improvement; however, the bill appeared incredibly one-sided, focusing only on the ownership aspect - and going perhaps to far in restricting ownership - without setting out any provisions to guarantee freedom of expression, although that was the bill's purported aim. The bill was passed into law but the President of the Republic, exercising his powers under Article 26 of the Constitution, decided to reject it. The consequence of such a decision, of which there was no previous instance in the history of the Republic, was that the Law entered into force, but its continued validity was subject to a referendum. Following a period of intense deliberations, the Government acted to have the Law repealed and a new bill is now under consideration.[2]

Article 21. Freedom of assembly

Although the Government generally respects the right to freedom of assembly, two recent instances of interference give rise to concern. According to Icelandic law police have the right to halt a protest if they believe the protesters will incite violence. In 2003 the police halted a demonstration by protesters who displayed anti-NATO signs during the celebration of Iceland's National Day on June 17, destroying the protesters' signs and forcibly removing them from the area. According to witnesses, the protesters appeared to pose no threat to public order.

Another serious interference has to do with the members of Falun Gong mentioned above in relation to Article 17.

Article 23. Protection of the family and the right to marry

See discussion above on Articles 2, 3 and 17. In addition, the CECSR Committee, in its discussion on Iceland's aforementioned 3rd Periodic Report on the implementation of the CESCR, drew attention to the fact that single women (as well as homosexual couples) do not have access to artificial insemination. The experts characterised this practice as discriminatory, prompting Iceland's response that this was done in the interest of the child. The experts also addressed the lack of sufficient support for single parents.

Article 24. The rights of the child

The Children's Ombudsman appointed by the Prime Minister, fulfilling a mandate to protect children's rights and welfare by, *inter alia*, exerting influence on legislation, government decisions, and public attitudes, is very active and her work is laudable. In light of the increased number of enquiries and the continually broadening field of the Ombudsman's work, more resources need to be allocated to the institution.

There has been some criticism of the practice of including children automatically in the national health data base (see discussion on Article 17) unless their parents or guardians explicitly requested otherwise. When children reach the age of 18, they can request that information about them is no longer included in the data base but information already included cannot be removed.

In its 2003 report (CRC/C/15/Add.203 (2003)), the United Nations Committee charged with supervising the implementation of the International Covenant on the Rights of the Child urged the Icelandic Government to, *inter alia*, guarantee by law the separation of detained children and adults, to increase support for families with disabled children and to commit resources to assisting children of foreigners and immigrants who have high drop-out rates from secondary

school. The Committee stated that insufficient support is granted to single parents and that insufficient leave is granted to parents with sick children.

More than 30 committees around the country are charged with managing child protection issues. It has been criticised that many of these do not have access to expert knowledge and this was reinforced last year when testimony at a trial regarding sexual abuse revealed that the six months passed from the time the local committee received the complaint until the police and judicial authorities took action.

In relation to children, mention should be made of the new Act on Registered Religious Associations No. 108/1999 stipulating that children born into unconfirmed cohabitation are automatically registered as belonging to the religious association of the mother, regardless of whether they are baptized or otherwise registered as belonging to a particular religion.

Article 25. Access to public service

In relation to this article there has been much discussion as laws regarding this issue are often violated. Appointments to public positions are often contentious and the law is circumvented in many ways. Twice in recent years controversial appointments have been made to the Supreme Court. The first is the nephew of the Prime Minister who was appointed as judge even though he is younger and less qualified than three other applicants: one woman (passing her over resulted in a violation of the gender equality act – only two out of nine judges at the Supreme Court are women) and two men who referred the matter to the Ombudsman of Parliament (see discussion on Article 3 above).The second position was allotted to a lawyer closely affiliated with the ruling party, again passing over the more qualified woman as well as two other candidates.

Article 26. Equality before the law

See discussion on Article 2 above.

Article 27. The rights of minorities

Although the population is rather homogenous, family- and employment-sponsored immigrants as well as other foreigners are becoming more visible in Icelandic society. Unfortunately the Icelandic term for 'new Icelanders', nýbúi, has taken on a negative meaning and generally there is concern that racism is increasing. In a 2003 report the European Commission against Racism and Intolerance concluded that gaps still remain in the legislative protection offered against racism and discrimination in Iceland and stated:

Although little research data exist, there are indications that the situation of non-citizens and persons of immigrant origin in various fields of life, including employment and education, may not be wholly satisfactory. Manifestations of hostility and discrimination in daily life towards persons who are different from the majority are reported, and there seems to be a lack of an overarching policy vision and strategies to deal with any problems which exist.

In its report the ECRI recommended that the Icelandic authorities take action in a number of fields including the introduction of further criminal and civil and administrative legislative provisions to combat racism and discrimination, the close monitoring and, where necessary, fine-tuning of forthcoming legislation covering the status of non-citizens in Iceland, and the introduction of research in all areas of life concerning the situation of persons of immigrant origin and the extent of racism and discrimination in the country.

[1] The Supreme Court has interpreted the law in regard to the previous Equality Act that if two applicants of different sexes are equally qualified, the person of the sex that is in the minority in the profession shall be appointed, unless the employer can prove that the choice has nothing to do with sex and that the applicant has special qualifications for the post. Exceptions are allowed depending on the nature of the post and other circumstances.

[2] Article 26 of the Icelandic Constitution
If Althingi has passed a bill, it shall be submitted to the President of the Republic for confirmation not later than two weeks after it has been passed. Such confirmation gives it the force of law. If the President rejects a bill, it shall nevertheless become valid but shall, as soon as circumstances permit, be submitted to a vote by secret ballot of all those eligible to vote, for approval or rejection. The law shall become void if rejected, but otherwise retains its force.