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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report

ICELAND*

* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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GENERAL OBSERVATIONS

Introduction

1. In the following, Iceland's Fourth Periodic Report on implementation of the International Covenant on Civil and Political Rights [hereinafter ICCPR] is presented. The Report has been prepared with a view to the Human Rights Committee's guidelines of 26 February 2001 (CCPR/C/66/GUI/Rev.2).

2. In the first part of this Report, the legal amendments effected and the measures taken during the period of slightly more than five years since Iceland's Third Periodic Report on the implementation of the ICCPR was considered by the Human Rights Committee on 21 October 1998, will be described in general terms.

3. Thus, a general description will be presented here of legislative evolution, administrative measures and Icelandic judicial practice in the field of human rights, which can be regarded of significance for the implementation of the Covenant in Iceland until April 2004. Part II presents a further discussion of the substance of legal provisions, the application of various human rights provisions in judicial practice, and specific measures, all in the context of the individual provisions of the Covenant. International instruments of significance to which Iceland has become a party will also be mentioned in Part II, as well as the decisions of the European Court of Human Rights [hereinafter ECHR] and the United Nations Human Rights Committee of applications lodged against the Republic of Iceland in the period under consideration. An effort will also be made here to provide specific replies to the points to which the Committee drew attention in its concluding observations of 8 November 1998 following its consideration of Iceland's Third Periodic Report on the implementation of the ICCPR in Iceland.

The effects of amendments to the human rights provisions of the Constitution in 1995

4. Iceland's Third Periodic Report was compiled in 1995, at about the time when fundamental amendments to the human rights provisions of the Constitution were enacted by Constitutional Act No. 97/1995. Its human rights provisions in effect until then had remained almost unaltered since the adoption of Iceland's first Constitution in 1874, as they had not been changed at the time Iceland became a republic and the present Constitution, No. 33/1944, entered into effect. With the amendment of 1995 a multitude of new human rights provisions were added to the Constitution, and the older provisions were rephrased and modernised. In this, the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter EHRC] and the ICCPR were chiefly used as models. In the general observations accompanying the bill amending the Constitution a reference is made to these instruments as well as to all the other Council of Europe and United Nations human rights instruments of major significance to which Iceland is a party. As regards a further description of these amendments a reference shall be made here to Iceland's Third Periodic Report, and in addition, the Constitution in its entirety is enclosed with this Report. When the Human Rights Committee considered Iceland's Third Periodic Report in the autumn of 1998, various other information was provided as regards the effects of the amendments to the Constitution during the three years that then had passed since their adoption.

5. It is safe to state that in past five years the effects of the amendments to the Constitution within the Icelandic legal system have increased greatly, both as regards legislation and application of law, and that this has augmented considerably the protection of human rights under Icelandic law. Icelandic courts have actively applied the human rights provisions of the Constitution and have in a large number of cases examined whether the actions taken by both the administrative and legislative branches have conflicted with those provisions. In this context, the marked tendency of the courts to interpret the provisions of the Constitution in the light of international human rights obligations, in particular of the ICCPR and the EHRC, has made itself increasingly felt. The courts have also made references in this regard to the provisions of the International Covenant on Economic, Social and Cultural Rights and the European Social Charter, as well as to other instruments. A large number of judgments have been rendered in the past five years where the human rights provisions of the Constitution have been at issue and where references have been made to the ICCPR. They will not all be enumerated in this Report, but some of them will be described in the context of the individual provisions of the Covenant.

6. An administrative decision conflicting with the human rights provisions of the Constitution will be invalidated by the courts of Iceland, and this may make a person suffering loss as a result of the decision entitled to compensation. There are many examples of this in judicial practice. It is recognised, i.a. in the light of Article 60 of the Constitution, that the courts have the power to resolve such questions concerning the actions and decisions of administrative authorities.

7. Legislation conflicting with the human rights provisions of the Icelandic Constitution will not be applied by the Icelandic judiciary, although such legislation will not be formally invalidated. In such a case a person suffering a loss of his rights as a result of such legislation will also be entitled to compensation. The power of the courts of Iceland to reviews the constitutionality of an act of law is not provided for in the Constitution. This power is based on a constitutional custom that can be traced back to the middle of the 20th century, but has been exercised conservatively by the courts. Following the amendments of 1995 the number of court cases involving the new human rights provisions of the Constitution, jointly with the provisions of international human rights instruments such at the ICCPR, has increased significantly. At the same time there has been an increase in the number of court resolutions where legislation has been deemed in conflict with the Constitution. Thus, the Supreme Court of Iceland has pronounced seven judgments in this period declaring legislation incompatible with the Constitution, namely in the following cases:

(a) In a judgment of 4 June 1998, the Court held that the provisions of the Act on Damages, to the effect that a group of injured persons whose disability did not reach a certain level would not receive compensation for non-financial loss, conflicted with the equality provision of Article 65 of the Constitution and its Article 72 protecting the right of ownership;

(b) In a judgment of 3 December 1998, the Court held that the differentiation made by the Fisheries Management Act as regards fishing for occupational purposes conflicted with the equality provision of Article 65 and the freedom of employment provision of Article 75 of the Constitution;

(c) In a judgment of 18 December 2000, the Court held that some provisions of the Children's Act limiting the right of a father to have the status of a party in paternity cases conflicted with Article 70 of the Constitution on the right to access to courts in matters concerning his rights and duties;

(d) In a judgment of 19 December 2000, the Court held that an act of law reducing support payments from the social security system conflicted with Article 76 of the Constitution concerning the right to social assistance, and the equality provision of Article 65 of the Constitution;

(e) In a judgment of 14 November 2002, the Court held that an act of law issued for the purpose of ending a strike in the labour market was, in part, in conflict with Article 74 of the Constitution protecting the right of association;

(f) In a judgment of 28 May 2003, the Court held that an act of law conflicted with the provision of Article 77 of the Constitution prohibiting retroactive taxation statutes;

(g) In a judgment of 16 October 2003, the Court held that retroactive provisions of law restricting entitlement to social security payments conflicted with Article 72 of the Constitution protecting the right of ownership.

8. All the above judgments resulted in amendments of the legislation deemed in conflict with the Constitution. The judgments, in particular those concerning the fisheries management system (2) and the restriction of social security payments (4) gave rise to considerable public debate. This involved, among other things, the fundamental questions whether the courts had exceeded their powers in revising the political decisions taken by the legislator in fields such as social rights or the enforcement of fisheries policy, or whether they were just doing their duty of guarding constitutionally protected human rights. In the judgment concerning the support payments, the courts of Iceland for the first time interpreted Article 76 (1) of the Constitution concerning the right to social assistance in the light of the International Covenant on Economic, Social and Cultural Rights, in particular its Articles 11 and 12, Articles 12 and 13 of the European Social Charter, and Article 26 of the ICCPR. There has been a lively discussion about these matters in Iceland in the past years, which has undoubtedly increased popular awareness of human rights and international agreements in that field, and popular knowledge of the protection afforded by the Constitution. Court cases involving human rights are frequently given a detailed description in the media, and thus public discussion is maintained. The same applies to any conclusions reached by international human rights organisations examining Icelandic cases. There can be no doubt that this promotes public awareness of personal human rights and encourages people to seek their rights recognised by the judiciary, which indeed has been shown to be a realistic way of obtaining redress.

Legislation in fields coming under the scope of the Covenant

9. In the following, an enumeration is given of the chief acts of law that have entered into effect after the middle of 1998 and concern rights protected by the Covenant. Their substance, as well as that of a number of statutes of less importance, will be described further as the occasion arises in the context of the implementation of the various individual provisions of the Covenant in Part II of this Report.

(a) A new comprehensive Act on the Judiciary, No. 15/1998, entered into effect 1 July 1998. The Act governs the organisation of the Icelandic court system in both judicial instances, the rights and duties of judges, and the inner affairs of the courts. A chief aim of its enactment was to secure judicial independence still further with respect to the other branches of government. Among the measures taken for this purpose was the establishment, by the Act, of a particular institution, the Judicial Council, to which all administration and management of the courts of the lower instance was transferred from the Ministry of Justice.

(b) A new Act on Attorneys at Law, No. 77/1998, also took effect 1 July 1998. This introduced various changes, including a duty on the part of Attorneys at Law to be members of the Icelandic Bar Association, necessary in view of the new provision of Article 74 (2) of the Constitution making obligatory membership of associations subject to the fulfilment of certain conditions. This Act, and the Act on the Judiciary, in fact constituted the final stage of the comprehensive revision of law regulating the judicial system and legal procedure, which was commenced 1 July 1992 with the entry into force of the Act separating local judicial and administrative powers, described in detail in Iceland's Second Periodic Report.

(c) A new Act on Registered Religious Associations, No. 108/1999, entered into effect 1 January 2000. The Act introduced clearer rules on the definition of registered religious associations and on their rights and duties, i.a. with a view to the amendments made to the provisions on freedom of religion in Articles 63 and 64 of the Constitution. The condition that the leader of a religious association had to be an Icelandic national was also abolished. The substance of the Act will be described further in the context of Article 18 of the Covenant in Part II hereof.

(d) A new Adoption Act, No. 130/1999, entered into effect 11 July 2000. This introduced into Icelandic law the changes necessary for ratification of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-Country Adoption.

(e) A new Act on Parliamentary Elections, No. 24/2000, entered into effect 19 May 2000 following amendments to Article 31 of the Constitution effected by Constitutional Act No. 77/1999. With this, many changes were made to the system of electoral districts in parliamentary elections, in order to reduce the difference in the weight of votes in individual electoral districts leading from the old system.

(f) A new Act on Protection of Individuals with regard to the Processing of Personal Data, No. 77/2000, entered into effect 1 January 2001. The chief reason for this comprehensive revision of previous legislation in this field, dating from 1989, was the entry into effect of European Union Directive 95/46/EC on these matters, of 24 October 1995.

(g) A new Act on Birth Vacations and Parental Vacations, No. 94/2000, entered into effect 6 June 2000. This introduced fundamental changes as regards the possibilities for fathers to enjoy a paid vacation following birth, this right until then having been largely limited to mothers. The purpose of the Act is to promote a child's association with both parents and to facilitate the coordination of employment and family life for both men and women.

(h) A new Act on Equal Status and Equal Rights of Women and Men, No. 96/2000, entered into effect 6 June 2000. This introduced various organisational changes in order to strengthen equal rights endeavours in all fields and levels of society. It included the establishment of a particular institution, the Equal Rights Office, which was given a defined control role as regards implementation of the Act.

(i) An Act on Implementation of the Rome Statute of the International Criminal Court, No. 43/2001, entered into effect 1 July 2002. This gave domestic effect to Iceland's international obligations resulting from Iceland's status as a party to the Statute.

(j) A new Child Protection Act, No. 80/2002, entered into effect 1 June 2002. This introduced various fundamental changes to the organisation of matters concerning the protection of children, including the important one of transferring the power of decision in cases of deprivation of custody from the child welfare committees to the courts.

(k) A new Act on Foreigners, No. 96/2002, entered into effect 1 January 2003. This replaced an over 35 years old legislation on Control of Foreigners, and introduced fundamental changes to procedure in cases involving foreigners and asylum seekers and clearer provisions on their legal status, inter alia in the light of the new Article 66 (2) of the Constitution, providing that the right of aliens to enter Iceland and stay there, and the reasons for which they may be expelled, shall be laid down by law.

(l) A new Act on the Employment Rights of Foreigners in Iceland, No. 97/2002, entered into effect at the same time as the Act on Foreigners. This forms a part of a comprehensive revision of legislation concerning foreigners.

(m) A new Children's Act, No. 76/2003, entered into effect 1 November 2003. This improves the legal status of children in various respects, including by providing for a mother's duty to have her child's paternity established, registration of children immediately following birth, protection of children against violence, new recourses in cases of violation of rights of access, etc.

(n) Various amendments to the General Penal Code. These include the criminalisation of various acts in the light of new international obligations, and increased penalties on account of crimes of violence and sexual crimes. The chief amendment Acts that concern the provisions of the Convention are the following:

(i) **No. 39/2000:** Introduced a new penal provision in GPC Article 108 on protection of witnesses, and a heavier penalty according to Article 210 for possession of child pornography.

(ii) **No. 94/2000:** Introduction of provisions authorising measures for prevention of harassment, and a penalty provision in case of a violation of a prohibition of access in Article 232.

(iii) **No. 14/2002:** Increased penalty for having sexual relations with a child under 18 years of age for payment.

(iv) **No. 99/2002:** Defines the term "act of terrorism", provides for an increased penalty on account of such acts, and criminalizes the financing of an act of terrorism in GPC Articles 100 (a), (b) and (c), in conformity with the UN Convention for the Suppression of the Financing of Terrorism.

(v) **No. 40/2003:** Provides for increased penalties on account of sexual crimes against children in GPC Articles 201-202. The Act also defines and criminalizes, in GPC Article 227 (a), trafficking in persons, based on the provisions of international instruments relating to such acts.

International agreements ratified or signed by Iceland

10. Iceland acceded to various new international instruments on or relating to human rights since the delivery of the Third Report, and has taken the necessary legislative or other measures for implementing them. Those of significance will now be enumerated, stating the time of ratification or signature.

(a) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, of 6 October 1999. Ratified 6 March 2001.

(b) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, of 25 May 2000. Ratified 9 July 2001.

(c) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, of 25 May 2000. Ratified 1 October 2001.

(d) Rome Statute of the International Criminal Court of 17 July 1998. Ratified 25 May 2000.

(e) Protocol to the European Social Charter of 21 October 1991. Ratified 21 February 2002.

(f) European Convention on Nationality of 6 November 1997. Ratified 2 March 2003.

(g) European Convention on the Participation of Foreigners in Public Life at Local Level of 5 February 1992. Ratified 2 February 2004.

(h) European Agreement relating to persons participating in proceedings of the European Court of Human Rights, of 5 March 1996. Ratified 4 November 1998.

(i) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Signed in December 2003.

(j) Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 2000. Signed 4 November 2000.

(k) Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty. Signed 3 May 2002.

(l) United Nations Convention against Transnational Organized Crime of 15 November 2000, with two protocols. Signed 13 December 2000.

(m) European Convention on Cybercrime of 23 November 2001. Signed 30 November 2001.

(n) Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of racist and xenophobic nature committed through computer systems of 28 January 2003. Signed 9 October 2003.

11. The necessary legal amendments and other measures to provide for the ratification of the international instruments signed are now in preparation. Protocol No. 13 to the EHRC has already been incorporated into Icelandic law by Act No. 128/2003.

Conclusions of the European Court of Human Rights and the Human Rights Committee in Icelandic cases

12. We will begin by stating the Icelandic cases considered on their merits by the ECHR since the delivery of the Third Report, and the reactions of the Icelandic Government thereto. All of them concern rights also afforded protection by the ICCPR. During this period six cases have been declared admissible by the ECHR. Two of these were concluded by friendly settlement in 2000, two were adjudicated in 2003, and adjudication is now pending in two cases.

The following cases were concluded by settlement:

13. ***Siglfirðingur ehf. v. Iceland*** (case no. 34142/96) was concluded by settlement 30 May 2000. The application alleged a breach of Article 2 of Protocol No. 7 to the EHRC concerning the right of appeal in a criminal case, relating to a limitation of the right of appeal to the Supreme Court following imposition of a fine by the Labour Court. Legislation has now been amended, making it possible to appeal against such impositions by the Labour Court to the Supreme Court.

14. ***Vilborg Yrsa Sigurðardóttir v. Iceland*** (case no. 32451/96) was concluded by settlement 30 May 2000. The application concerned a breach of Article 6 (2) EHRC concerning the right to be presumed innocent to until proved guilty, the applicant had been refused financial compensation on account of a detention on remand following a judgment of acquittal, on the basis of a statute setting the condition that she was deemed more likely to be innocent than guilty of the conduct charged. This provision, contained in the Code of Criminal Procedure, has now been abrogated.

Judgments were rendered on the merits in two cases:

15. ***Pétur Þór Sigurðsson v. Iceland*** (case no. 39731/98). The ECHR concluded 10 April 2003 that a breach had taken place against the applicant's right to a fair trial before an independent and impartial tribunal, guaranteed in Article 6 (1) EHRC, as a judge in his private litigation in the Supreme Court had not been impartial.

16. ***Sigurþór Arnarsson v. Iceland*** (case no. 44671/98). The ECHR concluded 15 July 2003 that a breach had occurred against the applicant's right to a fair trial, guaranteed in Article 6 (1) EHRC, as he had been found guilty of a criminal violation by the Supreme Court without oral evidence in his case having been received from the applicant and witnesses by the Supreme Court itself, the Court having instead based its assessment of the evidence on transcripts of their statements received by the district court.

17. The applicants in the two above cases have been paid compensation in accordance with the judgments rendered. The judgments did not, however, call for legal amendments, as the violation involved the application and interpretation of legal provisions that in themselves fulfil the procedural requirements made in Article 6 EHRC.

18. Some applications against Iceland have been dismissed from the ECHR in recent years, as they have not fulfilled the admissibility requirements of EHRC Article 35. The Icelandic Government does however not possess exact information on the number of applications dismissed by decisions of a Chamber of the Court according to Article 28 EHRC, as the Government is not notified thereof.

19. Two cases are now waiting for adjudication by the ECHR. The first one, ***Hilda Hafsteinsdóttir v. Iceland*** (case no. 40905/98) concerns an alleged breach of Article 5 EHRC involving the applicant's commitment to a detention cell on some occasions in the years 1988-1992 by reason of her intoxication. The second one, ***Kjartan Ásmundsson v. Iceland*** (case no. 60669/00) concerns an alleged violation of the free enjoyment of property as protected by Article 1 of Protocol No. 1 to the EHRC, and its Article 14, where the applicant considers that he was discriminated against when amendments were made to the Act on the Seamen's Pension Fund that changed the rules governing the beneficiaries' pension rights in reaction to the Fund's financial difficulties, which resulted in termination of payments to the applicant.

20. One communication against Iceland lodged according to the Optional Protocol to the ICCPR was dismissed from the Human Rights Committee in 2003. This was the case of ***Björn Kristjánsson*** (case no. 951/2000), the author having alleged that the organisation of Icelandic fisheries management was in violation of Article 26 ICCPR. The HRC considered the case inadmissible *ratione personae* on the basis of Article 1 Optional Protocol, and dismissed it by a decision rendered 30 July 2003 (CCPR/C/78/D/951/2000).

Information requested by the Human Rights Committee in its conclusions of 1998

21. We will in the following seek to provide the further information which the Committee, in its conclusions of 8 November 1998 (paragraphs 10-13), requested in Iceland's next Report.

Domestic violence

22. The Committee specially requested information on any measures taken in the struggle against domestic violence against women. The authorities have taken various action, chiefly on the basis of proposals made by three committees appointed by the Minister of Justice for investigating domestic violence and making proposals for its prevention, which competed their tasks in 1997. Some of them will now be described.

23. It should first be mentioned that Act No. 94/2000 introduced amendments to the General Penal Code and the Code of Criminal Procedure making possible a restraining order. This involves prohibiting a person from visiting a specified place or entering a specified area, following or visiting another person against that person's will, or otherwise contacting another person, if there are reasonable grounds to assume that the person to whom the prohibition relates may commit a crime or otherwise disturb the peace of the person to be protected. Violation of such order is furthermore, in Article 232 General Penal Code, made punishable by fines or imprisonment for up to one year, or up to two years in serious cases. This recourse is particularly designed for situations of domestic violence where the victim may face repeated harassment or threats in any form by a particular person. Restraining order is to be requested by police and imposed by a judge. The restraining order is to be imposed for a specified period of time, however not longer than one year, but it can be extended by a new decision. These amendments entered into effect in the spring of 2000, and have been applied by the courts in a few cases.

24. Among the committee proposals to the Minister of Justice in 1997 was the establishment of a specialised reception facility for victims of domestic violence, where they could seek the necessary assistance and support free of charge. It was proposed to locate this at the Emergency Services Division of the National University Hospital. Preparation for a pilot project of this nature commenced there at the end of 2002, making use of the favourable experience gathered by the special reception facility for victims of sexual violence. The annual number of arrivals at the facility for victims of domestic violence is about 140. The number of persons involved is however generally greater, since for example mothers who seek assistance there may be accompanied by their children. The plan is to provide the persons arriving there with specialised assistance by doctors, nurses, social councillors or psychologists, and by representatives with legal training. The service provided would be of a provisional nature, circumscribed and limited in time. The Icelandic health care system is State-operated, and the National University Hospital is subject to the Ministry of Health.

25. At the beginning of 2003, the Minister of Social Affairs appointed a committee on domestic violence against women. The period of its appointment is four years. The task of the committee is to coordinate any measures taken by public authorities coming under different disciplines, which are suited to prevent violence against women. The committee will maintain an overview of the measures already taken and provide counsel on further improvements. The committee is also expected to organise campaigns, and, if deemed necessary, action plans with the purpose of raising public awareness of violence against women and the social misfortunes involved. The committee is composed of five representatives from the Ministry of Social Affairs, the Ministry of Justice, the Ministry of Education, the Ministry of Health and Social Security, and the Union of Local Authorities.

26. Public authorities have provided support to various projects of non-governmental organisations concerned with prevention of domestic violence and violence against women in general. In 2002, some Ministries of the Government, including those of Justice, Social Affairs, and Health and Social Security, with some local authorities in part, provided financial support for a campaign conducted by *Stígamót*, the Women's Sanctuary, and the Women's Advice Agency "Are you dying of love", which was aimed against violence to women. The Ministry of Justice furthermore provided a grant in 2001 for a research project on violence using data collected by the Women's Sanctuary. In 2002, the Ministry of Justice provided travel support to the Women's Sanctuary and *Stígamót* for attending a conference in Vilnius on trafficking in women. Some Ministries and local authorities also provided financial support to the conference "Nordic Women Against Violence", held by *Stígamót* in 2001. The Government also provided support for activities on the occasion of the V-day in 2001 and 2002.

The status of children born out of wedlock as regards Icelandic citizenship

27. In its examination of Iceland's Third Periodic Report, the HRC considered the difference made by the Icelandic Citizenship Act between children of Icelandic fathers and foreign mothers depending on whether the parents were married or not. According to the Citizenship Act, No. 100/1952, the principle was that a child would acquire Icelandic citizenship on birth if born in wedlock, provided its father or mother were Icelandic citizens, or if born out of wedlock, provided its mother was an Icelandic citizen. Thus, a child born out of wedlock of a foreign mother did not automatically acquire Icelandic citizenship. Some fundamental changes have been made to the Act in recent years. Act No. 62/1998 abolished the above arrangement and the discrimination it entailed. Firstly, the term corresponding to "child born out of wedlock" was deleted from the Act. The most important change, however, was that a child born in Iceland of foreign mother to an Icelandic father acquires Icelandic citizenship when the requirements of the Children's Act concerning determination of paternity have been fulfilled, irrespective of whether the parents are married. The differentiation as regards acquisition of Icelandic citizenship when a foreign mother and an Icelandic father are unmarried is therefore abolished for children born in Iceland.

28. It should also be noted that Icelandic citizenship legislation is no longer based on the main principle of preventing double citizenship. Act No. 9/2003 introduced various amendments to the Citizenship Act, aimed at securing for Icelandic citizens continued Icelandic citizenship even if they become citizens of another State, while previously Icelandic citizenship was assumed to be forfeited in such cases.

Publication of Iceland's Third Periodic Report and the conclusions of the Human Rights Committee of 1998

29. Iceland's Third Periodic Report on the implementation of the ICCPR was widely disseminated in Iceland. It was printed in a special edition by the Ministry of Justice soon after its compilation in 1995 and disseminated to the media, public institutions and non-governmental organisations, as well as to bookshops, where it was sold at a small price. The same publication also contained Iceland's Second Periodic Report on the implementation of the ICCPR and the conclusions of the HRC following its consideration of that Report, in Icelandic translation. The Third Periodic Report is published at the Ministry of Justice web site.

30. The conclusions of the HRC of 8 November 1998 following its consideration of the Third Report were translated to Icelandic and sent to all media, accompanied by a news release from the Ministry of Justice. They were also published at the Ministry's web site. Some discussion on the conclusions took place in the Icelandic media.

31. The Icelandic Ministry of Justice maintains a web site which includes all its publications and reports relating to international cooperation. A particular subdivision is intended for reports to international human rights organisations, publishing such reports on the implementation of international human rights agreements in Icelandic and English (http://www.domsmalaraduneyti.is/utgefid-efni/). The Fourth Periodic Report on the implementation of the ICCPR will of course be included there, as well as the conclusions of the HRC following its consideration.

Reservations

32. As noted during the consideration of Iceland's Third Report, two reservations to the Covenant have been recalled, on the one hand relating to its Article 8 (3) (a) concerning forced labour, and on the other relating to Article 13 concerning procedure in denying entry to foreigners. Legislation and organisation concerning these matters was amended more than a decade ago, and now fulfils in every respect the requirements made in the above provisions of the Covenant. Other reservations, i.e. those relating to Article 10 (2) (b) concerning separation of young prisoners from other prisoners, Article 14 (7) concerning reopening of adjudicated court cases, and Article 10 (1) concerning war propaganda, however still remain. There are no plans to withdraw these reservations, as the Icelandic Government considers that the reasons underlying them continue to apply.

INFORMATION RELATING TO THE INDIVIDUAL PROVISIONS OF PARTS I, II AND III OF THE COVENANT

33. We now proceed to describe the substance of new legislation, judicial practice as regards individual human rights provisions, and particular measures taken with respect to the individual provisions of the Covenant. We will not give particular consideration to matters concerning individual provisions of the Covenant in fields where no legal amendments have been made or other measures taken, i.e. where the situation remains unaltered since Iceland's Third Periodic Report was considered.

Article 1. The right of self-determination

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

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

35. As noted in Iceland's Third Periodic Report in the context of this provision, provisions have been introduced into domestic law during the past decade concerning prohibition of

discrimination and equality before the law. The most important provision of this kind is without doubt Article 65 of the Constitution expressing the general equality principle, which has been examined in many court cases, and will be given a special consideration in relation to Article 26 of the Covenant. A mention may also be made of Article 11 of the Administrative Procedures Act of 1993 concerning equality of persons when public administrative authorities exercise their functions, which has been of considerable influence.

36. In the opinion of the Icelandic Government, Article 2 of the Covenant entails an obligation to *guarantee* the protection of the relevant rights by particular measures, for example legislation, in order to prevent individuals from violating each other's rights, including by discrimination. In this respect it may be noted that Act No. 82/1998 introduced specific provisions into the General Penal Code that are especially designed to protect certain minority groups against discrimination. Thus, General Penal Code Article 180 provides for imposition of fines or imprisonment for up to 6 months if a person conducting a business or a service enterprise refuses to provide another person with goods or services on an equal basis with others by reason of that person's nationality, colour, race, religion or sexual orientation. The same Act amended General Penal Code Article 233(a), which makes it punishable to publicly deride, denigrate or threat a person or a group of persons on account of race, colour, nationality, religion, etc, adding sexual orientation to this enumeration. This was done in the purpose of providing special protection to homosexuals.

37. 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 chief ones will now be briefly described.

38. A person considering his or her rights infringed by administrative authorities, such as public institutions or committees, is generally able to lodge an appeal to a superior authority in order to obtain a revision, or an annulment if the action is contrary to constitutional principles. The superior authority is usually a Ministry of the Government or a particular administrative committee with the role of resolving such appeals. This right of appeal, and other rules intended to provide security under the law when administrative functions are being exercised, is guaranteed by the Administrative Procedures Act, No. 37/1993.

39. The role of the Ombudsman of Parliament was described in detail in the Second and Third Reports. The office of the Ombudsman is governed by Act No. 85/1997. He 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 of Parliament. Such complaint can however not take place if appeal to a superior authority is possible and that authority has not decided in the matter. The Ombudsman can also conduct examinations on his own initiative. He monitors, for example, whether legislation conflicts with the Constitution or suffers from other defects, including whether it is in conformity with international human rights agreements to which Iceland is a party. In his conclusions of individual complaint cases 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 had great influence within public administration, and every effort is made to heed his recommendations and proposals and to remedy a complainant's situation

accordingly. As this recourse is of high practical significance, complaints to the Ombudsman have increased greatly in number since his office came into being in 1988, as seen from the following table:

Number of cases	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Complaints	67	150	151	168	190	235	337	329	330	354	278	263	229	246	273	293
Cases examined at the Ombuds-man's initiative	3	4	1	2	4	3	5	4	4	6	10	9	3	2	3	6
Totals	70	154	152	170	194	238	342	333	334	360	288	272	232	248	280	299

40. The decisions of administrative authorities can be referred to the courts for invalidation. The courts examine whether such decisions are made on a lawful basis and whether the correct procedures have been followed in taking them. If the courts consider a decision unlawful by reason of such faults, for example that it conflicts with constitutionally guaranteed rights, they may invalidate the decision. If a person considers a particular legislation in conflict with his or her rights, that person may take legal action, requesting the courts not to apply that legislation with respect to him or her, or to invalidate an administrative decision taken on its basis. If the financial status of a person in this situation precludes such litigation, or if a resolution of the matter is of general public significance or of high private significance, an appeal can be made to the Ministry of Justice for free process. Free process entails that lawyer's fees and other costs of the litigation will be paid by the State Treasury. A particular committee, the Committee on Free Process, provides an opinion on such applications, but a licence of free process is granted by the Minister of Justice. Chapter XX of the Code of Private Procedure, No. 91/1991, and a Regulation on the Rules of Procedure of the Committee on Free Process, No. 69/2000, contain rules on free process in further detail. Persons considering that compulsive measures employed by police, such as arrest, search, seizure, detention on remand or other deprivation of liberty, are unlawful, are granted special rights in order that they may obtain redress. Thus, they are always entitled to free process in litigation against the State for compensation. However, such litigation must be commenced within six months from when the measure was taken or deprivation of liberty ended.

41. It may be repeated that a person considering that legislation enacted by Parliament conflicts with his or her constitutional rights or the rights protected by the Covenant may bring legal action in the general court system requesting a declaratory judgment to the effect that the Act is in conflict with the Constitution. This recourse has proved of practical value, cf. the discussion in Part II above, and the courts have a number of times held that laws have been in conflict with the human rights provisions of the Constitution. The legislature has reacted quickly to such judgments, amending legislation to conform to the conclusions of the judiciary.

Article 3. Equal rights of men and women

42. Much has been done in this field since the time of Iceland's Third Report. It is clear that full equality under law has been achieved for men an women as regards the enjoyment of all civil and political rights provided for in the Covenant, and legally, Article 3 is therefore in full effect. In addition to the general equality principle contained in Article 65 (1) of the Constitution, the

second paragraph of that Article especially reiterates that men and women shall enjoy equal rights in all respects. The effects of this constitutional provision will be discussed in further detail in the context of ICCPR Article 26.

43. Although full legal equality has been achieved, success in securing equal wages for men and women is not complete. Although investigations have shown that the difference as regards wages has been appreciably reduced, examinations of employment terms in the general labour market still demonstrate some difference between the sexes. There also seems to be some wage difference between traditional men's work and traditional women's work. It can well be said that the measures carried out by Icelandic authorities have largely been concerned with these differences. The measures taken will however no be described here in detail, as this would exceed the scope of the Covenant. In this context we refer to the detailed discussion presented in Iceland's Fifth Report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), compiled in March 2003 and recently delivered to the Committee functioning in accordance with its provisions.

44. Nevertheless some recent measures can be mentioned, which have been carried out in the explicit purpose of making the status of men and women equal throughout society. It should first be noted that in 2000, a new Act was passed on the Equal Status and Equal Rights of Men and Women, No. 96/2000. Some chief aims of this legislation and new provisions contained therein will now be mentioned.

(a) A new institution, the Equal Rights Office, was established, coming under the Ministry of Social Affairs, which was given defined tasks as regards controlling the implementation of the Act. The chief change this entailed was that the tasks which under the previous legislation were those of the Equal Rights Council, which is composed of representatives of interest organisations and the social partners, are now committed to a particular public institution.

(b) The leaders of institutions or companies employing more than 25 persons are now obliged to prepare equal rights plans, relating among other matters to wages and general employment terms or providing in particular for equality among men and women in their employment policies. Similar provisions are found in the law of other Nordic countries, and equal rights plans have shown themselves to be a very suitable means of developing institutions and companies in the direction of equal rights.

(c) The Act contains various provisions on the coordination of family life and employment, which has been a particular objective within Nordic cooperation, the Council of Europe, the European Union, and the United Nations.

(d) The Act defines sexual harassment and lays down particular duties for employers and school managers for its prevention, and provides for procedures to be employed in cases of sexual harassment in the workplace or in schools.

(e) The Act contains a particular provision on the analysis of statistical information by sex. This was included with a view to the importance of possessing, in any endeavour in the field of equal rights, exact and accessible information on the status of the sexes in society.

(f) A particular committee, the Equal Rights Complaints Committee, is active under the provisions of the Act. Its tasks are to consider and provide a written, reasoned opinion on cases where a breach of the Act is alleged. Its opinions are not binding in the manner of judgments, but disputes concerning its opinions can be referred to the courts, and they are therefore not subject to appeal to a higher administrative authority. Individuals and associations, in their own name or on behalf of any members who consider that the provisions of the Act have been violated with respect to them, can lodge a complaint with the Committee. The Committee can also, in special cases, consider matters on the request of others. The Committee has received a considerable number of cases in recent years. Since 2000 and to the end of 2003 it has received a total of 40 complaints. It concluded in 12 cases that a violation of the Equal Rights Act had occurred, in 18 cases that a violation had not occurred, 6 cases were concluded by friendly settlement or dismissed, and 4 cases have as yet not been concluded. In three cases conclusions of violation were referred to the courts, where one was affirmed and two were reversed.

45. In addition to the new comprehensive Equal Rights Act, the enactment of a new Act on Birth Vacations and Parental Vacations, No. 95/2000, constitutes an important step in the field of equal rights in the labour market. The objective of the Act is to secure for a child its association with both parents, and also to facilitate the coordination of family life and employment for both parents. The Act thus makes a child's father, in addition to a mother's birth vacation, independently entitled to a father's vacation of three months following its birth, during which he will be paid 80 per cent of his ordinary wages. By contrast, previous legislation limited the right to a paid birth vacation to mothers. The right of a father according to the new Act is not transferable to the mother. The Act established a particular Birth Vacation Fund, which makes payments to parents on birth vacation. The chief aim of the new Act is to facilitate for parents working outside the home, both mothers and fathers, a coordination of the duties they have assumed in employment and in family life. The Act assumes that for success, equal rights policy must be integrated and comprehensive, aiming at a better organisation and flexibility of working time, and facilitating the return of parents to the labour market. In addition to parental vacation on childbirth according to the new rules, both parents are entitled to a period of three months on leave, which either can be enjoyed in its entirety by the mother or the father, or distributed among them. The aims of the distribution thus provided for by law include promotion of equal responsibility among parents and of an equal status of the sexes in the labour market. The measure is time-limited, and is chiefly designed in the favour of men, as experience has shown that in the previous system women have chiefly exercised the right to a childbirth vacation, although in fact both parents are equally entitled to his right.

46. It is worthy of note that the new Act has already brought about fundamental changes as regards the participation of fathers in the care of young children, as fathers have exercised their right to a childbirth vacation to a very large extent. The Act can be said to constitute a milestone in the struggle for equal rights, as regards acceptance of the view that men and women have equally important roles to play in the care of children and in responsibility for the home. This is bound to promote a change of attitude and full equality of wages in the labour market.

Article 4. Measures in time of emergency

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

Article 5. Prohibition of abuse of rights

48. No changes have occurred to law or practice concerning this provision of the Covenant. It may be mentioned that in a relatively recent judgment, rendered by the Supreme Court of Iceland 24 April 2002, a sentence was imposed for the first time under the provision of the General Penal Code criminalizing dissemination of racial prejudices and racial hatred. The district court's judgment, rendered 25 October 2001, included a reference to EHRC Article 17, the purposes of which are akin to those of ICCPR Article 5. The defence that the defendant's freedom of expression permitted him to assault a group of a particular race was not accepted. A further discussion of this judgment will be presented in the context of Article 20 of the Covenant concerning advocacy of racial hatred.

Article 6. The right to life

49. At the end of 2003, Parliament passed Act No. 128/2003 incorporating into law Protocol No. 13 to the EHRC concerning abolition of the death penalty in any circumstances. The Protocol was signed by Iceland 3 May 2002, and will soon be ratified.

50. No other changes have been made as regards Icelandic law concerning the implementation of this provision of the Covenant or to the Protocol relating to the death penalty. We therefore refer to the Third Report for further information on Icelandic law, and to Article 69 (2) of the Icelandic Constitution, which expressly prohibits introduction into law of the death penalty. With the ratification of Protocol No. 13 to the EHRC the protection afforded the citizenry is yet strengthened, and with the ratification the Republic of Iceland also internationally expresses solidarity with the view that the death penalty should be abolished in all circumstances.

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

51. The situation as regards the points referred to in Iceland's Second and Third Reports relating to legislation within the sphere of ICCPR Article 7 remains unaltered in all significant respects. In Article 68 (1) of the Constitution there is a provision comparable to this provision of the Covenant, and the General Penal Code criminalizes conduct on the part of public servants,

which comes under the definition of Article 7 of the Covenant, chiefly within the criminal justice system. No judgments have been rendered in Iceland where this provision has been at issue, nor have any complaints related thereto been sent to international institutions.

52. For further information as regards the status of Icelandic legislation and its implementation a reference may be made to Iceland's Second Report on the implementation of the European Convention for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/59/Add.2), considered by the Committee for Prevention of Torture 1 and 2 May 2003, and the CPT's conclusions of 13 May 2003 (CAT/C/30/CR/3). Among the positive aspects mentioned was the enactment of a new Act on the Protection of Children, No. 80/2000, affording children increased protection against inhuman treatment, and an amendment to the Police Act, providing that alleged offences committed by police personnel shall be referred directly to the Prosecutor General for investigation.

53. Icelandic law does not limit protection against torture or other inhuman treatment to persons deprived of liberty on account of suspicion of crime or the service of a criminal judgment. It is assumed that a danger of such treatment may not only arise in places of detention or imprisonment, but also, for example, with respect to persons deprived of liberty on account of a psychiatric condition and committed to a hospital against their will, or with respect to young persons not criminally responsible who are confined to homes for adolescents. It is also to be kept in mind that such dangers may generally exist where a person is subjected to the domination of another person or is dependent on another person by reason of the precariousness of his position. The treatment of children in a nursery or in schools, or the treatment of patients in hospitals, may also need attention in this context. Law reacts to this to a certain extent by specific provisions applying to such situations, designed to prevent cruel, inhuman or degrading treatment. In the case of patients, they are granted protection against such treatment by the Patients' Rights Act, No. 74/1997. The Act addresses, inter alia, the right of a patient to refuse treatment, cf. its Article 7, and according to its Article 10 a patient's written approval is needed for participation in medical research, such as experiments with new drugs. Thus, specific provisions of law have been enacted in order to secure the rights provided for in the second sentence of Article 7.

Article 8. Prohibition of slavery and compulsory labour

54. Icelandic law prohibits slavery and compulsory labour in any form, a basic principle to this effect being found in Article 68 (2) of the Constitution. Icelandic legislation does not provide for any civil obligations that may be contrary to this provision. Military service has never been provided for in Iceland, and no Icelandic armed forces have come into being. Legislation in fields that may concern this provision of the Covenant remains in all significant respects unaltered, and consequently a reference can be made to Iceland's earlier Reports.

55. In Iceland's Third Report an account was presented, in the context of Article 8, of a new Act on Community Service, No. 55/1994, the aims of community service, and the conditions to be fulfilled for community service. Since then, some amendments have been made to this legislation. By Act No. 123/1997, the provisions of the Community Service Act were incorporated into a particular Chapter of the Prisons and Imprisonment Act, No. 48/1988. With

a view to the experience obtained of community service its application was extended, making possible the service of sentences of up to 6 months by community service, instead of three months under the original Act. Following this change, there has understandably been a noticeable increase in the number of criminal judgments thus served in place of imprisonment. Suitable workplaces for community service are procured by the Prison and Probation Administration. This has met with few difficulties, and the workers thus provided have in every case been well received. The Prison and Probation Administration concludes an agreement with the relevant workplaces before community service commences there for the first time. Such agreements are time-limited and may be terminated by both parties. There, provisions are included on the duties of the community service supervisor. A representative of the Prison and Probation Administration explains community service to the employer and the workplace supervisor in detail, placing heavy emphasis on their duties of supervision. The jobs considered for community service have from the beginning been auxiliary work at public institutions, institutions enjoying public financial support, and private associations. The workplace is expected to provide work that can be easily performed by unskilled persons. This may be divided in two categories, on the one hand pure manual work, such as cleaning, maintenance, or keyboard entry of computer data, and on the other hand care and assistance in the social activities of young persons, senior citizens, or persons disabled for psychiatric or other reasons.

56. It is well to repeat that a person can never be compelled to perform community service work against his or her will. According to Article 23 of the Prisons and Imprisonment Act, No. 48/1988, a sentenced person's application to the Prison and Probation Administration, made in writing and asking for community service in place of imprisonment, is an absolute precondition for community service.

57. It may be noted that in the past few years, slavery and forced labour have been mentioned in Iceland in the context of Iceland's participation in international cooperation concerning suppression of transnational crime and trafficking in persons. In this Iceland has participated actively, such as by police cooperation, and has ratified, or is planning ratification, of the chief international instruments applicable in this field. On 13 December 2000 Iceland signed the United Nations Convention against Transnational and Organized Crime of 15 November 2000, and also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Ratification of the Convention and of the Protocol is now under preparation. A part of this preparation was the enactment of Act No. 40/2003, introducing into the General Penal Code a specific provision, Article 227(a), which is based on the Protocol's definition of "trafficking in persons". According to the new criminal provision in Article 227(a), anyone who becomes guilty of any of the following acts in the purpose if exploiting a person sexually, for compulsory labour, or for removal of organs, shall be punished for trafficking in persons by imprisonment for up to 8 years:

(a) Procuring, transferring, housing or receiving any person who has been subjected to unlawful compulsion as punishable according to Article 225, deprivation of liberty according to Article 226, or threats according to Article 233, or has been subjected to unlawful deception by evoking, strengthening or making use of that person's error as to his or her situation or by any other improper means;

(b) Procuring, transferring, housing or receiving a person under the age of 18 years, or providing payment or other gain in order to secure the approval of a person caring for a child.

A person who accepts payment or other gain as referred to in subparagraph (2) of the first paragraph shall be punished likewise.

58. This legislation contains clearer criminal provisions than were available previously in cases of trafficking in persons. With the ratification of the Protocol, better possibilities will be opened for Icelandic police authorities as regards participation in international investigative cooperation relating to such crimes, application of the means provided for internationally against transnational organised crime, and cooperation with other States parties in suppressing such activity.

Article 9. The right to liberty and security of person

59. No fundamental changes have occurred as regards legislation or practice relating to deprivation of liberty and the legal status of persons deprived of liberty since the HRC's consideration of Iceland's Third Report. It is clear that all the rights protected by Article 9 of the Covenant are protected by Article 67 of the Constitution and, in more detail and at a more practical level, by the Code of Criminal Procedure, No. 19/1991. Article 67 (5) of the Constitution provides for the right of compensation of a person who has been deprived of liberty without sufficient cause. Code of Criminal Procedure Article 176 presents rules on compensation as a result of police measures in further detail. According to that provision, compensation may be ordered on account of arrest, detention on remand or other measures entailing infringement of liberty, if the conditions provided for by law for such measures were lacking, if the measures were not justified in the prevailing situation, or if they were carried out in a unnecessary dangerous, injurious or offending manner. Code of Criminal Procedure Article 177 provides separately for the right of compensation of an innocent person sentenced for a crime, but no legal action has been taken to date on the basis of that provision.

60. Litigation in court for compensation is especially facilitated for a person who considers that his or her liberty has been unlawfully infringed, as Code of Criminal Procedure Article 178 provides that free process is to be granted the plaintiff in both judicial instances. The purpose of this rule is to increase security under the law and to provide for police an incentive to exercise care in carrying out their duties. There are some examples in recent years of litigation for compensation against the State on the basis of Article 176 on account of detention on remand, but chiefly on account of unlawful arrest. In such cases the chief issue is whether there was adequate cause for arrest. In the period from 1988 to 2003, legal action for compensation on account of police arrest and detention in a cell for a brief period of time was brought 36 times. The State was found free 13 times. In 22 cases the State was ordered to pay compensation, and one case was dismissed. These numbers demonstrate that the recourse of legal action by an arrested person, in order to obtain a judicial determination of whether an arrest was permitted by the relevant rules, or whether police have respected the proportionality rule in carrying out their measures, is realistic and practical.

61. It may be mentioned that in its judgment of 30 September 1999 (case no. 65/1999), the Supreme Court examined whether Article 67 of the Constitution permitted arrest when eight persons were arrested in the centre of Reykjavík staging a protest. At the time a direct television broadcast was taking place there of the programme "Good Morning America" under the auspices of an American television network, the people having been arrested while they were carrying demonstration banners and calling out slogans against United States government authorities. The Supreme Court held that in staging their demonstration, the participants had not caused public unrest or given rise to a danger of public unrest, and consequently, that their rights under Article 67 of the Constitution had been violated. The Court also commented that a demonstration of this kind unquestionably constituted "expression" within the meaning of Article 73 of the Constitution, and therefore was also protected by that Article. Strict demands would have to be made for an enacted law authorising the arrest of persons demonstrating in this manner.

Article 10. Treatment of persons deprived of liberty

62. No significant changes have taken place in Icelandic law relating to the treatment of prisoners since the Third Report was considered by the HRC. The chief legislation in this field is the Prisons and Imprisonment Act, No. 48/1988. The Act contains provisions on the direction and organisation of the prison system, matters relating to imprisonment, the rights of prisoners, and community service. There are five prisons in Iceland containing a total of 136 prison places, including both remand prisoners and sentenced prisoners. In 2003 the average number of prisoners on any particular day was 116.

63. Act No. 123/1997, entering into effect 1 January 1998, introduced a new provision into Article 2 of the Prisons and Imprisonment Act, to the effect that prisoners shall, in prisons, enjoy health services comparable to those available to the population at large, in addition to the particular health and medical services provided for in laws and regulations concerning prisoners. The Ministry of Social Affairs and Social Insurance is responsible for the provision of medical care in prisons following consultation with the Prison and Probation Administration. This amendment was chiefly intended to respond to the recommendations of the European Committee for the Prevention of Torture made following its visit to Iceland in the summer of 1993. The conclusions of the Committee were described among the comments relating to this provision of the Covenant in Iceland's Third Report.

64. The European Committee for the Prevention of Torture visited Iceland again in the summer of 1998, and inspected some prisons, police stations, and psychiatric institutions. In its report of 10 December 1998 the Committee states that it had, during its visit, not heard any accusations of torture or otherwise become aware that any such acts took place. The Committee also stated that it had heard very few allegations to the effect that police subjected people to rough treatment of any other nature, and that those it had heard related chiefly to policemen employing unnecessary force when making arrests. It observed that there is little danger of maltreatment of people who have been deprived of their liberty by police. Following this visit the Committee made various recommendations to the Icelandic authorities for possible improvements. Among these was improvement of the facilities used for provisional detention at certain police premises, and improvements to the facilities provided for foreigners who have been denied entry into Iceland at Keflavík Airport and are waiting in the transit area for a flight

from Iceland under police control. The Committee made some comments relating to the prisons visited, for example as regards the equipment of some prison cells it inspected. Finally, the Committee made some recommendations relating to medical service to prisoners. The lack of psychiatric services to prisoners, and that there was no policy or set of guidelines in effect for preventing suicides in prison, gave rise to the Committee's concern. The Icelandic authorities have taken various measures in reaction to the Committee's recommendations. Among other things a new comprehensive Act on prisons and matters relating to prisoners is under preparation, as will be discussed later. A regards further information on the visit and the conclusions of the Committee, a reference may be made to the report itself, found on its web site http://www.cpt.coe.int/documents/isl/1999-01-inf-eng.htm, and to the replies provided by the Icelandic Government found at http://www.cpt.coe.int/documents /isl/1999-13-inf-eng.htm.

65. Although Iceland's reservation as regards Article 10 (2) (b) and the second sentence of paragraph 3 of that Article has not been withdrawn, relating to separation of accused juvenile persons from adults, such separation is in actually in effect although it is not provided for by law in every situation. An important step in the direction of this objective was taken in October 1998. Then, the Prison and Probation Administration and the Child Welfare Office, a central agency in charge of child welfare in Iceland, concluded a cooperation agreement providing for the objective of housing prisoners under the age of 18 years in homes managed pursuant to the Child Welfare Act, providing specialised treatment suitable for their age and legal status. The agreement was renewed 5 November 1999. This represents an endeavour to fulfil the requirements of Article 37 of the Convention on the Rights of the Child, and also the provision of Article 10 (3) ICCPR concerning separation of juveniles deprived of liberty from adults.

66. As there is no prison for juveniles in Iceland, the relevant provisions of the Convention on the Rights of the Child can only be complied with in this manner. As regards the commitment in general, this takes place in accordance with the rules governing commitment of juveniles to the treatment homes subject to the supervision of the Child Welfare Office. When the Prison and Probation Administration receives a judgment for execution by which a person under the age of 18 has been unconditionally sentenced, this is to be notified the Child Welfare Office at once. The Office is to examine the possibilities for the sentenced person to serve the sentence in a treatment home, generally provided that the sentenced person desires to serve the sentence in this manner. If this is possible, the Child Welfare Office shall obtain the relevant child welfare committee's opinion on the matter. The same procedure shall be followed in cases of juveniles detained on remand, but such commitment also takes place in consultation with the authority investigating the case. The Child Welfare Office selects a particular treatment home in each instance and, i.a., evaluates whether the person in question shall be committed to the State treatment home *Stuðlar* for diagnosis and treatment. Before a decision on commitment is taken, an agreement in writing shall be made with the prisoner and his or her custodian on commitment and treatment for a period of at least six months independent of the term of the sentence, or the Child Welfare Office must have rendered a formal decision. The agreement must state what treatment entails and what provisions of law apply thereto. It shall also be provided that if the prisoner violates the conditions set, or the rules of the treatment home, such as by leaving the home of attempting to do so, transfer to a prison will immediately take place for continued service of the sentence. This also applies if the sentenced person is staying in the home at the

time a judgment is received for execution. The Child Welfare Office undertakes to offer prisoners who attain the age of 18 years while staying in a treatment home a continued stay there for up to a maximum of six months, or until their sentence has been served.

67. A comprehensive revision of prison organisation and the rules governing the rights of prisoners is now in progress. A new comprehensive Act on the service of sentences is being prepared, and a bill to this effect was submitted to Parliament in the autumn of 2003. The bill proposes the inclusion of a multitude of legal and administrative provisions concerning the service of sentences in a single act of law governing the rights and duties of sentenced persons. The aim of the bill is both to make the rules now in effect clearer, and to strengthen the legal basis of various provisions. As examples, the bill contains various provisions on the rights and duties of prisoners relating to telephone use and correspondence, the things a prisoner may keep in his cell, his or her right to outdoor activities and leisure, hygiene, access to public media in order to monitor the affairs of society, and the right to contact a priest or a comparable representative of a registered religious organisation. The bill furthermore aims to improve safety and security in prison, for the benefit of prisoners as well as staff. A duty of confidence is proposed, akin to that applying to police personnel. It is also proposed that prison wardens be empowered by law to use force, provided this does not exceed the strictly necessary limits. Such principles have been adhered to until now although they have not been enacted. In this respect the provisions of the bill use for example as models the provisions of the Police Act empowering police to use force. The bill also contains provisions designed to prevent smuggling to prisoners of objects and substances that are banned in prisons. It is proposed that personal and physical searches may take place of visitors to prisoners. The smuggling or attempted smuggling of such objects or substances to prisoners is also declared punishable in the bill.

68. The bill gave rise to considerable debate following its submission, and suffered some criticism for not securing adequately various rights of prisoners, and/or for going too far in limiting those rights. Changes are now being prepared, i.a. in order to react to this criticism, and a renewed submission to Parliament is planned in the autumn of 2004.

Article 11. Prohibition of imprisonment on the ground of inability to fulfil a contractual obligation

69. A reference is made to the discussion of this provision in Iceland's Second and Third Reports. No changes have occurred in Icelandic legislation or practice that relate to the rights provided for here, which are secured in full in conformity with the Article.

Article 12. Liberty of movement

70. No changes have occurred in Icelandic legislation or practice that relate to this provision of the Covenant since the Committee's consideration of Iceland's Third Report. Article 66 (3) of the Constitution provides that no one can be barred from leaving Iceland except by judicial decision; however, a person may be prevented from leaving Iceland by lawful arrest. It is added in Paragraph 4 that every person lawfully staying in Iceland shall be free to choose his residence and

shall enjoy freedom of travel subject to any limitations laid down by law. Both these provisions are new introductions from 1995, using provisions such as ICCPR Article 12 and Article 2 of Protocol No. 4 to the EHRC as models. No judgments have rendered by Icelandic courts where these constitutional provisions have been at issue.

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

71. Article 66 (2) of the Constitution provides for the principle that 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.

72. Important changes relating to this provision have been introduced in to Icelandic law since the consideration of Iceland's Third Report, and a significant evolution has taken place. The most important change is represented by the new comprehensive Act on Foreigners, No. 96/2002, approved in the spring of that year but entering into effect 1 January 2003. The new Act replaced the Act on Control of Foreigners, No. 42/1965. Although that Act had been amended in various ways, the need for a total revision had become apparent, as there was a significant lack of clearer provisions on matters relating to foreigners and their legal status, including procedure in cases of denial of entry, matters relating to seekers of asylum, etc.

73. The new Act contains detailed provisions on the legal status of foreigners in Iceland during arrival, stay and departure. It also provides for the rights of refugees for asylum in Iceland and their protection against persecution. The Act is, to a degree, modelled on Norwegian legislation on foreigners, Norway and Iceland being the only Nordic countries that are parties to the Agreement on the European Economic Area and not members of the European Union, and these two States also are in a similar position vis-à-vis the European Union by their participation in the so-called Schengen cooperation. The central feature of the Schengen cooperation is that the free movement of persons over the internal borders of the participating States is assured, and personal control of individuals travelling between those States is abolished. The Schengen cooperation also extends to other matters relating to legislation on foreigners, for example coordinated personal control at the external borders of the States forming the Schengen Area, visa cooperation involving among other things a uniform visa valid in all States of the Area, and common rules on certain aspects of procedure in cases of asylum applications.

74. The Minister of Justice is in supreme charge of the matters regulated by the Act, and issues administrative provisions relating to the right of foreigners to enter Iceland and to stay here. In other respects the implementation of the Act is the responsibility of the Directorate of Immigration, which is an independent central administrative organ for the whole country subject to the Ministry of Justice, and of the police.

75. The rules on the denial of entry of foreigners are set out in Articles 20-22 of the Act, as amended by Act No. 20/2004. Reasons for denial of entry are exhaustively enumerated in Article 20, being of three kinds, firstly if a foreigner has violated the provisions of the Act, is residing illegally in the country, or failed to heed a decision involving his or her duty to leave the country; secondly if the foreigner has been sentenced for a serious crime; and thirdly if this is

necessary with a view to national security. Various restrictions to denial of entry are provided for in Article 20 (2), and in Article 21 in relation to foreigners born in Iceland or possessing a permit to reside in Iceland.

76. The Directorate of Immigration has the power to decide on denial of entry (Article 22, para. 1). Chapter V of the Act contains detailed rules on procedure in all cases relating to the rights and duties of foreigners, denial of entry included. These reaffirm some principles applying under the provisions of the Administrative Procedures Act, No. 97/1993, such as the right of protest and the duty to provide guidance, but in other respects the Administrative Procedures Act applies directly. According to Article 30 of the Act on Foreigners a decision of denial of entry can always be applied against to the Minister of Justice, which in such an event will revise the decision and either affirm or reverse. The foreigner shall be notified of the right of appeal, and shall make a declaration of appeal within 15 days from when the decision was notified him.

77. Article 34 of the Act, as amended by Act No. 20/2004, provides for legal aid to foreigners. When appealing against a decision relating to denial of entry, expulsion or revocation of a permit, and in cases concerning applications for asylum, a foreigner is entitled to have a spokesman appointed by the relevant administrative authority, and that authority shall inform the foreigner of this right. This does however not apply in cases on account of expulsion by reason of criminal judgments rendered in Iceland or elsewhere, or when a request for asylum is not considered in Iceland, but in another state party to the Dublin Convention (now EU Council Directive No. 343/2003 of 18 February 2003), as this simultaneously involves a resolution of whether a foreigner shall have the legal status of a refugee or not. The provisions of the Code of Criminal Procedure on defence counsels apply as applicable to legal aid to foreigners. Refund of costs paid for legal aid shall be claimed from the foreigner in whole or in part, if he has the means to pay them.

78. In 2002, twenty foreigners were expelled from Iceland on the basis of the Act then in effect, which provided for similar conditions of expulsion as the legislation now in effect. Three of these decisions were appealed against to the Ministry of Justice, and affirmed. The reasons for expulsion were that in 15 cases the persons in question had been found guilty of violation of legislation relating to drugs of abuse and serious drug of abuse violations under the General Penal Code. In two cases expulsion was based on sentences under other provisions of the General Penal Code (fraud and sexual offence), and in three cases legislation on foreigners had been violated. In 2003, 29 foreigners were expelled on the basis of the provisions of the new Act on Foreigners. Two decisions were appealed against to the Ministry of Justice, which affirmed the decision of the Immigration Office in one case, and reversed its decision in the other. The decisions taken on expulsion and prohibition of return were chiefly based on criminal sentences ordered on account of drug of abuse violations (9 cases); violations of the General Penal Code (14 cases), and violations of the Act on Foreigners (one case). Furthermore, five foreigners were expelled on account of an illegal stay in Iceland, which also constitutes a violation of the Act on Foreigners.

Article 14. The right to a fair trial

79. Some amendments have been made to the legislation governing judicial organisation and legal procedure since the Third Report was considered. The chief principles of Article 14 ICCPR are provided for in Article 70 of the Constitution, which was a new introduction into the Constitution in 1995, providing for the right to a fair trial.

80. As described in the General Part if this Report a new act on the Judiciary, No. 15/1998, entered into effect 1 July 1998. The Act applies to judicial organisation in Iceland, the lower instance as well as the Supreme Court, the rights and duties of judges, and management of the courts. Among the chief aims of this legislation was to ensure yet further the independence of the courts with respect to the other branches of government. For this purpose the Act established a separate institution, the Judicial Council, to which all district court administrative functions were transferred from the Ministry of Justice.

81. Various legal amendments have been made to court procedure in criminal cases, designed to secure the legal status of defendants and to affirm various rights that are protected by ICCPR Article 14, and also to improve the status of victims in criminal litigation. These can be traced, in part, to decisions and judgments rendered by the ECHR in Icelandic cases relating to EHRC Article 6 and other procedural rules set out in Protocol No. 7 to the EHRC. The cases in question were briefly described in the General Part of this Report. The amendments to the Code of Criminal Procedure, No. 19/1991, that are of chief significance as regards ICCPR Article 14 were made by Act No. 36/1999, taking effect 1 May 1999. Among the amendments introduced by that Act was a modification of the compensation provisions of Code of Criminal Procedure Article 175. Previously, that Article provided that if a person remanded to custody in the course of a police investigation took legal action for compensation following a judgment of acquittal, compensation was not to be ordered unless he was more likely to be innocent than guilty. The court adjudicating the compensation case was thus in fact to re-evaluate whether the litigant was guilty, although it had already been concluded in the criminal case that he was not guilty. In the light of the rule of presumed innocence until proved guilty, cf. ICCPR Article 14 (2), Article 70 (2) of the Constitution, and EHRC Article 6 (2), and also the rule that anyone deprived of liberty without legitimate cause shall be entitled to compensation, cf. ICCPR Article 9 (5), Article 67 (5) of the Constitution and Article 5 (5) EHRC, this condition was removed from law. Following the amendment, the ECHR case of ***Vilborg Yrsa Sigurðardóttir v. Iceland*** (case no. 32451/96), where this condition had been at issue, was concluded by settlement 30 May 2000.

82. A main aim of the amendments made by Act No. 36/1999 was to strengthen the legal status of victims of crime. A particular effort was made to improve the status of victims of violence of any nature, and particular account was taken of the status of children as victims, which included measures to be taken when receiving statements from children. The reason for this is that victims of crime frequently have, more than others, particular interests to be taken care of in criminal litigation, although they are not parties to such litigation in the manner of the defendant or the prosecutor. The chief change in this respect was that nomination or appointment of a representative for the victim for guarding his or her interests during the court procedure in cases of violence resulting in significant loss, and when the special assistance of such a representative is needed, is made mandatory. The duty of nomination or appointment is

yet stricter in cases of suspected sexual violations against persons under the age of 18 years, as they are entitled to representation in all circumstances. Other amendments include provisions obliging police to provide a victim with guidance as regards his or her rights provided for by law, and the provision that when a suspected sexual offence against a person within 18 years of age is being investigated, a judge shall receive statement from the alleged victim as soon as possible, i.e. prior to the issue of an indictment.

83. Amendments have been made to law in the purpose of strengthening the implementation of Article 14 (5) ICCPR. These can be traced to an Icelandic ECHR case ***Siglfirðingur ehf v. Iceland*** (case no. 34142/96), concerning a breach of Article 2 of Protocol No. 7 to the EHRC. The applicant complained of the fact that an imposition of a fine by the Labour Court, a special court adjudicating cases involving labour law, could not be appealed against to the Supreme Court. The case was concluded by a settlement before the ECHR 30 May 2000. This was followed by an amendment, by Act No. 20/2001, to the Act on Trade Unions and Labour Disputes, No. 80/1938, providing for appeal to the Supreme Court of impositions of fine by the Labour Court.

84. As mentioned in the General Part of this Report, the ECHR concluded in two cases against Iceland in 2003 that breaches had occurred against Article 6 EHRC. The first decision was a judgment of 10 April 2003 in the case of ***Pétur Þór Sigurðsson*** (case no. 39731/98) where the Court held that a judge of the Supreme Court in a private litigation of the applicant had not been impartial. The second one was a judgment of 15 July 2003 in the case of ***Sigurþór Arnarsson*** (case no. 44671/98), concluding that a breach had occurred against Article 6 EHRC, as the applicant had been found guilty of a criminal violation by the Supreme Court following acquittal in the lower instance without oral statements having been received from the applicant or any witnesses by the Supreme Court, the Court having based its decision on written transcripts from the lower court. The applicants in both cases have been paid compensation as adjudicated. These decisions have however not called for amendments to Icelandic law, as the breaches involved application and interpretation of laws that objectively fulfil the procedural requirements of Article 6 EHRC.

85. It may finally be noted that various judgments have been rendered by the courts of Iceland in later years involving interpretation of Article 70 of the Constitution, on matters including access to the judiciary, the right to a fair trial, the rights of defendants, delayed procedure, etc. A judgment of the Supreme Court of 18 December 2000 (case no. 419/2000) is worthy of special mention, involving limitations imposed by the Children's Act then in effect, No. 20/1992, as regards the right of men to the status of a plaintiff in paternity cases, i.e., for obtaining a declaratory judgment establishing their fatherhood. The right to bring such action was limited to mothers and children. In adjudicating the case the Supreme Court referred to the amendments made to the Constitution following the entry into effect of the Children's Act, inserting in its Articles 65 and 70 provisions concerning equality of the citizens and their right to obtain judicial resolutions of their rights and duties. The Court also referred to the important interest of the child in having its paternity correctly established. The Court therefore held that a legislation limiting in these circumstances the right of a man to obtain a judicial resolution in a matter concerning his interests was in conflict with Article 70 of the Constitution, cf. EHRC Article 6, and rejected the view that adequate material reasons justified the differentiation manifested by the provisions of the Children's Act on parties to paternity cases. By reference to

Article 70 of the Constitution the Court therefore concluded that the limitations provided for by the beginning sentence of Article 43 (1) of the Children's Act prevented M from obtaining a judicial resolution on the merits of his claims. As the legislation was deemed in conflict with the Constitution, the limitations in question have been omitted in the new Children's Act, No. 76/2003.

Article 15. No punishment without law

86. General legislation that concerns the rights provided for in ICCPR Article 15 remains unchanged since the consideration of the Third Report by the HRC. As stated in that Report, these rights are now given particular protection in Article 69 (1) of the Constitution. Although that provision was first included in the Constitution in 1995, the rights in question have been protected in Icelandic criminal legislation for decades, and are regarded as belonging to the fundamental principles of Icelandic criminal law.

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

Article 16. The right of recognition as a person before the law

88. Icelandic legislation conforms in full to this provision of the Covenant, although the rule is not expressly stated. Legislation and practice relating to the scope of ICCPR Article 16 is unaltered since Iceland's Third Report was considered, and no issues relating thereto have been brought up.

Article 17. The right to privacy

89. As mentioned in Iceland's Third Report, the constitutional provision on the protection of privacy underwent a significant revision in 1995, the wording of the previous provision having been confined to the inviolability of the home and of correspondence, chiefly aiming to impose certain conditions for the exercise of police authority as regards investigations affecting these rights. Article 71 of the 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. As Article ICCPR 17 is of a very wide scope it is obvious that no single Icelandic enactment is in effect that gives detailed effect to its contents, but many laws are in effect that have the aim of protecting the rights enshrined in Article 17, or influence these rights in one way or another.

90. Various legislation has been enacted in Iceland since the consideration of the Third Report, which relates to Article 17 of the Covenant. The most significant new law in this context is without doubt the Act on Protection of Individuals with regard to the Processing of Personal Data, No. 77/2000, which entered into effect 1 January 2002, replacing the older Act, No. 121/1989, that applied in the same field. The chief reason for the comprehensive revision

undertaken was the entry into effect of a new European Union Directive on these matters, No. 95/46/EC, of 24 October 1995. It is stated in the explanatory notes to the enacted bill that among its purposes is to fulfil the requirements of various international human rights provisions concerning the right to privacy. The provisions referred to in this context include ICCPR Article 17, and a reference is also made to United Nations General Council Resolution No. 45/95 of 14 December 1990 (Guidelines Concerning Computerized Personal Data Files), and to Council of Europe conventions concerning the minimum demands to be made with respect to parties handling personal information. The new Act is quite detailed, and here only a few main features will be mentioned concerning its substance and purposes.

91. The substantial provisions of the Act are in seven chapters: Chapter I concerns purposes, definitions and scope of application; Chapter II general provisions on processing of personal data; Chapter III duty of disclosure and provision of information, warning and reasoning; Chapter IV corrections, erasure, blocking, etc.; Chapter V transfer of personal information to foreign countries; Chapter VI duty of notification, licensing requirements, etc., and Chapter VII control and sanctions. The Act applies to any electronic processing of personal information, and also to manual processing, if the information is, or is to become, a part of a file, which denotes a somewhat wider scope of application than the previous Act. The scope of application is circumscribed with a view to the provisions of Article 3 of the European Union Directive, which provides that the Directive covers the handling of any personal data partially or totally in electronic form, and manual processing if the information is, or is meant to be, a part of a file. The new Act established a separate administrative body, the Data Protection Agency, with the role of supervising the implementation of the Act. The Agency discharges its functions independently in full, and its decisions are not subject to appeal to a higher organ such as a Ministry, but can be referred to the courts for invalidation. The Act greatly increases the rights of the persons to whom the information relates, i.e. the registered persons, which is manifested in three ways. Firstly, the responsible party is obliged to take various measures on its own initiative, designed to ensure that a registered person is able to exercise the rights provided for. Thus that party, i.e. the party who determines the purpose of registration, has the duty of informing the individual to whom the registered information relates of certain matters when information concerning him is being collected. Secondly, the Act provides for some additional or extended rights, which the registered person must exercise on his own initiative. The right to general information on the processing of data, and rules governing the right of a registered person to request reasoning when decisions are taken, are examples of this. Thirdly, the Act provides for general control, in that the Data Protection Agency is to maintain a registry of all processing notified and permitted. This registry shall be open to the public.

92. The Supreme Court has rendered some judgments concerning Article 71 of the Constitution, relating to matters such as police investigation measures, protection of personal reputation, and protection of personal data. Among these was a judgment that affected one of the most debated matters in Iceland in later years, the Act on a Data Base within the Health Sector, No. 139/1998, which went into effect 30 December 1998. The purpose of the Act was to permit the compilation and use of a central database containing health information not traceable to individual persons, received from health institutions, in the purpose of obtaining knowledge for improvement of public health and health care service. 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 shall not be transferred to the database, and shall notify the Surgeon General of that decision.

93. On 27 November 2003 the Supreme Court (case no. 151/2003) adjudicated a woman's claim against the Republic of Iceland for invalidation of the Surgeon General's denial of her request to the effect that health information relating to her deceased father, registered in medical journals, would not be transferred to the health sector database. The Court had regard to the fact that medical journals contain wide-ranging information on people's health, medical treatment, ways of life and social conditions, work and family situations, and a clear statement of the identity of the person to whom this information relates. It held that the provision of Article 71 (1) of the Constitution unquestionably covered this information, and provided every person with protection of its privacy. The Court accepted that the so-called one way encoding of personal information could be carried out with a degree of certainty making decoding well nigh impossible. It was, on the other hand, necessary to bear in mind that Act No. 139/1998 did not specify in any further detail what information from medical journals was to be encoded in this way, or whether any particular information contained in such journals was not to be transferred to the database. The Court also held that although various provisions of Act No. 139/1998 repeatedly stated that health information contained in the health sector database was to be untraceable to individual persons, there was a definite lack of statute provisions adequately securing that this declared objective would actually be attained. Without the aid of certain criteria provided for by statute law, the duties imposed on the legislator by Article 71 (1) of the Constitution could not be replaced by various control measures relating to the preparation and management of the database. With this in mind and with a view to the principles of Icelandic law concerning protection of privacy, the requests of the plaintiff were granted.

94. This judgment gave rise to much renewed debate in society on the health sector database. It is clear from the judgment that the operation of the database as such is not deemed contrary to Article 71 of the Constitution. The judgment however imposes strict demands to the effect that the conditions for its operation must be provided for by statute law, also defining the information that must be untraceable to individual persons. Thus, committing to administrative authorities the task of issuing rules in further detail on matters of such importance affecting privacy was deemed contrary to Article 71. A revision of Act No. 139/1998 has been in preparation since this judgment was rendered, but the operation of the health sector database has not yet been commenced, and no information has been transferred to it so far.

Article 18. Freedom of conscience and religious belief

95. We refer to Iceland's Second and Third Reports as regards constitutional protection of religious belief. The rights enshrined in Article 18 are protected by Articles 63 and 64 of the Constitution, the wording of which was somewhat modified in 1995, as described in the Third Report.

96. A religious organisation is not required by law to apply in advance for a licence to conduct any activity, and registration with the authorities is not required. Such conditions would not be compatible with Article 63 of the Constitution, providing for the right of people to form

religious associations and to practice their religion without interference from public authorities. Registration of a religious organisation is however required in order to enable their officials to perform ceremonies having legal sequels, such as marriage ceremonies. Likewise, registration is a condition for collection by the State of dues to the organisation from the members. It has been deemed necessary, for these reasons, to issue provisions defining the conditions for the registration of religious associations, and the rights and duties of such associations.

97. A new comprehensive Act on Registered Religious Associations has been adopted since the consideration of the Third Report, with the objective of implementing in further detail the relevant constitutional provisions. The Act, No. 108/1999, entered into effect 1 January 2000, replacing the Act on Religious Associations, No. 18/1975. The new Act changed in many ways the legal environment of registered religious associations. The chief ones will now be described.

98. Firstly, as the name of Act No. 108/1999 implies, it applies only to registered religious associations. The Act therefore does not apply in any way to religious associations that have not applied for registration. There is therefore no reason for public authorities to collect information on such organisations or to have them registered. Secondly, the Act provides clearly for the conditions to be fulfilled for registration. Its Article 3 provides that for registration, the association in question must be one that practices faiths or beliefs that are linked to those religions of humanity that have historical or cultural roots. One effect of this condition is that a group of persons can not establish a religious organisation without any reference to the recognised world religions, thus obtaining a share of the income tax that accrues to registered religious associations. Thirdly, the new Act abolished the condition that the leader of a registered religious association must be an Icelandic national. This is for the benefit of religions associations active in Iceland that have links to transnationally organised activities. In fact the arguments in favour of the abolished condition were of limited value as, for example, the official functions of their leaders are limited to marriage ceremonies, the issue of certificates, and provision of reports to public authorities. Fourthly, clearer rules are provided for as regards control of the finances of registered religious associations. Such associations have sources of income provided for by law, and the State collects this income for their benefit by allocating to them a certain proportion of income tax. It is therefore deemed reasonable that an association provides a statement of the use of the funds that convert to them on the basis of the provisions of the Act on Parish Dues, which will be described further shortly.

99. Article 62 of the Constitution provides that the Evangelical Lutheran Church shall be the National Church of Iceland, an arrangement that has been in effect since Iceland received a written Constitution for the first time in 1874. Article 62 (2) provides that this may be changed by an act of law; however, Article 79 (2) of the Constitution provides that any such change shall be submitted to a referendum. A large majority of the population, exceeding 86%, are registered as members of the National Church, but this proportion has been somewhat reduced during the past decade. In recent years opinions have been voiced in the course of public debate advocating constitutional amendments to the nation’s church organisation, but no such proposals have been approved in Parliament.

100. On 1 December 2003, registered membership of religious associations in Iceland, and the number of persons outside religious associations, was as follows:

	Total
Total population	290 490
The National Church	250 051
Reykjavík Free Lutheran Church	5 933
Independent Church	2 496
Hafnarfjörður Free Lutheran Church	4 127
Roman Catholic Church	5 582
Seventh Day Adventists	727
Pentecostal Assembly	1 721
Sjónarhæð Congregation	54
Jehovah's Witnesses	655
Bahá'í	374
Asatru Association	777
The Cross	572
Church of Jesus Christ of Latter Day Saints	190
The Free Church The Way	704
Word of Life	0
The Rock Society	0
The Icelandic Buddhist Movement	518
KEFAS – Christian Fellowship	129
First Baptist Church	10
The Muslim Association of Iceland	289
The Icelandic Church of Christ (Evangelical-Lutheran)	203
The Church of Evangelism	83
Believers' Fellowship	35
Soto Zen Buddhism in Iceland	40
Betania	147
The Russian Orthodox Church in Iceland	97
Serbian Orthodox Church	118
Other religious associations and unspecified	7 929
Outside religious associations	6 929

Article 19. Freedom of opinion and expression

101. Freedom of opinion and expression is protected by Article 73 of the Constitution, which underwent significant changes and improvements with the constitutional amendment of 1995, as described in the Third Report. It may be noted again that in the explanations to the new constitutional provision, express references were made to Article 19 ICCPR and Article 10 EHRC, as Article 73 had been formulated with a particular view to those provisions.

102. Legislation related to the general principles concerning freedom of expression has not been changed in any significant way from what was described in Iceland's Third Report, although it is clear that many new enactments may affect freedom of expression in one way or

another. Since 1997 the Supreme Court of Iceland has rendered more than ten judgments where various fundamental aspects relating to the interpretation of Article 73 have been at issue. These include the various typical issues related to limitation of freedom of expression in cases of libel or slander, also in the course of political debate, and, in addition, new issues to be decided on by the courts of Iceland, such as restriction of promulgation of racial prejudice, the right to stage public protests, access to information with public administrative authorities, prohibition of advertising alcoholic beverages, etc. It is not feasible to discuss but some of these judgments here, namely the most significant ones providing an overview of this evolution. It can be seen from them that following the entry into effect of the new constitutional provision, the courts present a considerably more detailed reasoning than before for their conclusions in cases to which the provision relates. They generally also refer to the provisions of Article 10 EHRC and Article 19 ICCPR. The methods of assessing whether limitations to freedom of expression are justified have also undergone a significant evolution, such as by application of the principle of proportionality and an examination of whether they are to be deemed necessary in a democratic society.

103. In some fields, protection of the freedom of expression has clearly increased by comparison to earlier days. This is especially the case as regards public discussion of public institutions and criticism that may be voiced relating to their functions and their officials. In some Supreme Court judgments, for example of 4 December 1997 (case no. 274/1997 concerning comments relating to the Director of the Prison and Probation Administration), and of 2 April 1998 (case no. 280/1997 concerning comments relating to the staff members of the State Housing Institution), the Court commented especially on the necessity to protect public discussion of matters concerning public interest. The Court also held, in judgment of 30 September 1999 (case no. 65/1999), that the right to protest in public is protected by Article 73 of the Constitution, and that particularly strict demands must be made as regards the clarity and unambiguity of statute provisions limiting this right (the case concerned police arrest of some demonstrators in the centre of Reykjavík who protested against United States government policies). In its judgment of 14 March 2002 (case no. 397/2001), the Supreme Court also held that provisions limiting public access to information with administrative authorities according to the Information Act, No. 50/1996, must be interpreted with a view to the principles relating to freedom of expression, and that their necessity in a democratic society must be demonstrated. A mention may also be made of the Supreme Court's judgment of 24 April 2002 (case no. 461/2001), the first criminal case relating to a violation of Article 233(a) of the General Penal Code prohibiting the dissemination of racial prejudice, which will be further discussed below in the context of Article 20 ICCPR.

104. In late 2003 there was some discussion of ownership of public media in Iceland, which is not regulated by any particular rules in excess of what follows from the general legislation on business competition. Criticisms have been voiced to the effect that ownership of some of the largest radio media and daily papers in Iceland has been concentrated among too few owners, and that limitations must be imposed to this in order to protect the independence and impartiality of the media and enable them to discharge their proper functions in a democratic society. In reaction to this the Minister of Education appointed, at the end of 2003, a committee for examining the desirability of a particular Act on Media Ownership. The committee finished its task in April 2004, proposing the adoption of clear rules concerning ownership and, i.a., that limitations be imposed to ownership proportion in the hands of any single entity in the media

market. In this respect a reference is made to Iceland's international obligations in the Council of Europe forum, to provide for diversity in the field of public media and to secure the independence of public media.

105. At the time of writing of this Report, the Government has recently submitted to Parliament a bill on ownership of public media, based on the committee's proposals. It proposes amendments to the Radio Broadcasting Act, No. 53/2000, and the Competition Act, No. 8/1998, aiming for limitations of ownership of radio media by imposition of new conditions for the issue of broadcasting licences. This would be done by providing that such licences shall not be granted operators partially or totally in the ownership of a company or companies having a dominating market position in any field of business. It is also proposed that a broadcasting licence will not be granted a company if companies within the same group are owners of more than 25% of its equity. Finally, it is proposed that a company can not be granted a broadcasting licence if that company, or a company in the same group of companies, is among the owners of a publisher of a daily newspapers, or if the company is in the partial or total ownership of a company or group of companies publishing a daily newspaper. The bill has given rise to extensive public debate, and has been criticised for infringing in particular the rights of a certain group of companies already active in the media market and also owning companies active in unrelated fields besides a daily newspaper and radio media. The bill, if enacted, will foresee ably affect ownership by this group; however, the bill proposes a period of two years for adaptation to the conditions set.

Article 20. Prohibition of propaganda for war and advocacy of racial hatred

106. Icelandic legislation relating to the substance of Article 20 of the Covenant remains unchanged since the consideration of Iceland's Third Report, and we consequently refer to that Report in this regard. No plans have been made to withdraw the reservation made to the first paragraph of Article 20 concerning prohibition of propaganda for war.

107. The judgment of the Supreme Court of 24 April 2002 (case no. 461/2001) is noteworthy in the context of Article 20 (2). This was the first time when an indictment charging a violation of a provision included in Article 233(a) of the General Penal Code in 1973 in the purpose of suppressing advocacy of racial hatred was resolved by the courts of Iceland. The provision provides for a penalty for assaulting a person or a group of persons by derision, vilification, denigration, threat or otherwise, on account of factors including racial origin. The criminal provision can be traced to Iceland's international obligations under Article 4 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination. The occasion giving rise to the indictment was a newspaper interview of two central pages with the vice chairman of an Association of Icelandic Nationalists published under the title "White Iceland". The interview, to which attention was drawn by a picture of the interviewed person on the front page, contained his comments relating to people of the Negroid race, mainly involving his comparison of an ethnic Icelander and an "African Negro", as stated in the article. He described his opinions of the unquestionable superiority of the white race and pointed out various negative qualities characterising Africans. In other respects the entire interview was devoted to his association and the opinions it represented, its purpose being to bring to an end any immigration of people not of European origin and to protect the Icelandic race. In this, the Supreme Court weighed the conflicting interests, chiefly with a view to protection of the

defendant's freedom of expression. The Court held that the comments he had advanced clearly suited the description of the act declared punishable in General Penal Code Article 233(a); that the purpose of the provision was to prevent racial discrimination and racial hatred and was consequently lawful, and that the limitations the provision imposed to freedom of expression were necessary and in conformity with democratic traditions.

108. This judgment constitutes an important precedent as regards interpretation of General Penal Code Article 233(a), not least because of the detailed reasoning it presents concerning limitations to freedom of expression and the interests of a democratic society to be protected.

Article 21. Freedom of Assembly

109. Freedom of assembly is protected by Article 74 (3) of the Constitution. Legislation relating to freedom of assembly has not been changed since the consideration of the Third Report, but some issues relating to its application have been referred to the courts or to the Ombudsman of Parliament. First to be mentioned is the judgment of the Supreme Court of 30 September 1999 (case no. 65/1999), described above under the heading of Article 19 of the Covenant, concerning police involvement with a public protest meeting where protesters were arrested and transported from the scene of the meeting. The Court observed that the arrest of persons staging a protest of this kind involved a significant restriction of the freedom of expression and freedom of assembly protected in Articles 73 and 74 of the Constitution, and also held that its Article 67, providing that no one may be deprived of liberty unless provided for by law, had been violated.

110. It is also worthy of mention that in June 2002 various issues were brought up relating to restrictions imposed by police to demonstrations by Falun Gong members on the occasion of an official visit of the President of China to Iceland. The measures taken by police included denial of entry to Iceland to a large number of persons from various countries who planned to come here in order to participate in protest demonstrations, and the confinement of their protest activities to circumscribed areas. These measures gave rise to a complaint by Falun Gong members to the Ombudsman of Parliament, alleging that they involved a breach of fundamental human rights, including infringements of the freedom of expression and of peaceful assembly, the freedom of travel, and the right to privacy.

111. Following a preliminary examination of the matter and having received information from Icelandic administrative authorities as requested, the Ombudsman decided on 29 December 2003 to conclude his examination of all aspects of the complaint save one, which related to a decision to deny Falun Gong members access to aircraft bound for Iceland from European and North American airports. In his detailed reasoning, the Ombudsman emphasised that the constitutional provisions on freedom of expression and of assembly did not provide foreign nationals with an independent right to come to Iceland or to stay there. Therefore it could not be concluded that a denial to admit a foreign national to Iceland involved, as such, an infringement of his freedom of expression, provided the denial was based on lawful considerations. The Ombudsman also mentioned that the Constitution did not provide for these rights in all circumstances. He recalled that statute law granted the police authorities, in an extensive measure, an authority to interfere with the citizenry, if they deemed that the situation was such as to fulfil the requirements of the relevant legislation. Such interference could be regarded as a limitation to the constitutionally

protected freedom of expression and peaceful assembly. Thus, it was the role of these authorities to apply and enforce the provisions of the Police Act, No. 90/1996, the provisions of the relevant local police ordinances and other provisions in a manner conforming to the limitations the constitutional provisions allowed. Measures taken by police thus had to be designed to attain a lawful aim, such as securing public order, and, in order to be accepted as necessary in a democratic society and compatible with democratic traditions, they could not lawfully exceed what was necessary in order to attain that aim. He noted that he had not received any evidence demonstrating that Falun Gong members had been prevented from exercising their constitutionally protected rights during their protests at the time of the President's visit, or that the measures taken had exceeded what the Constitution permitted.

Article 22. Freedom of association

112. General legislation concerning establishment of associations and the protection of the freedom of association remains unchanged since Iceland's Third Report was considered. It was mentioned in that Report that the rights under Article 22 ICCPR are protected by the first and second paragraphs of Article 74 of the Constitution. It may well be noted that the constitutional protection exceeds that of Article 22 as regards negative freedom of association, as the second paragraph provides that no one may be obliged to be a member of an association unless provided for by law, if necessary in order to enable the association to discharge its functions in the public interest or on account of the rights of others.

113. In a recent court case relating to Article 74 of the Constitution various fundamental issues were brought up for resolution concerning its scope relative to the protection of the right of trade unions to strike. The Supreme Court adjudicated the case 14 November 2002 (case no. 167/2002), the action having been brought by the Icelandic Federation of Labour against the Confederation of Icelandic Employers and the Republic of Iceland, the matter in controversy being the Act on Seamen's Employment Terms, etc., No. 34/2001. The Act was adopted in order to terminate strikes of seamen within the member unions of the Icelandic Federation of Labour that had been going on for 44 days at the time of its entry into force 16 May 2001, and it also provided for the establishment of a court of arbitration charged with determining certain employment-related terms of fishermen that were members of the associations enumerated in its Article 1. The objective of the Act was to take measures protecting the public interest on account of damage the strike had caused to Icelandic industries, the utilisation of ocean resources, export interests and other factors. References were made to matters such as serious consequences for fish processing workers and for companies and local communities basing their economies on the fishing industry, that the strike was clearly affecting the national economy, and that if no action were taken irreparable damage would ensue. The courts held that the right to strike was of high importance for trade union activities in their endeavours for the benefit of their members, and therefore was protected by Article 74 of the Constitution. This right could however be limited by law if such limitations had a lawful aim and were necessary in order to achieve it.

114. The judgment contains a detailed reasoning relating, i.a., to the effects of various international agreements protecting the freedom of association, and references are made there to Article 11 EHRC as well as Article 22 of the Covenant. The provisions of the European Social Charter and the International Labour Organization Conventions on the rights of trade unions and

the right to strike were also referred to. Act No. 34/2001 however also applied to three unions within the Icelandic Federation of Labour that had not commenced a strike. As regards those unions, it was not accepted that the public interest demanded a prohibition of strikes in areas where no strike was in effect at the time of its entry into force. This was deemed in conflict with Article 74 (1) of the Constitution, and it was concluded that those Icelandic Federation of Labour member unions could, notwithstanding the prohibition of the Act, declare a strike.

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

115. As observed in Iceland's Second and Third Reports, the Icelandic social community is based on the principle that the family is its natural fundamental unit and enjoys the protection of the State as such, although this rule is not expressed anywhere in the Constitution or in enacted law. All legislation concerning the affairs of families and children is based on this premise. Since the Committee's consideration of the Third Report no particular amendments or changes have been introduced to legislation concerning marriage. The chief act of law in that field, the Marriage Act, No. 31/1993, retains that status, and its chief features are described in that Report. The Act is largely based on the views on the inception and termination of marriage, and on the financial affairs of spouses, shared by the legislators of the Nordic countries. Emphasis is placed on the view prominent in contemporary Nordic family law, that marriage is a freely entered agreement between a man and a woman. But as before, it is deemed desirable to provide checks against any impetuous termination of marriage, in particular by providing for the availability of official reconciliation procedure. In cases when spouses are the custodians of children of minor age, such reconciliation procedure is mandatory.

116. The Marriage Act also aims at complete equality between husband and wife, so as to make their status equal with respect to the rights and duties concerning their children, the inception of marriage, and its termination if need be. Various measures have been taken to promote the equal responsibility of husband and wife for the upbringing of their children and the maintenance of their home. The most significant step in this context is without doubt the new legislation on childbirth vacations, Act No. 95/2000, which provides for fathers an independent right to a childbirth and parental vacation, the purpose of which is to ensure for the child association with both parents, and also to make it possible for both men and women to coordinate employment and family life. As regards this Act, a reference is made to the discussion presented in further detail above in the context of Article 3 of the Covenant.

117. The new Children's Act, No. 76/2003 provides for detailed rules on custody of children and custody arrangements in case of separation or divorce. The chief change by comparison to the provisions of the previous Children's Act is that a dispute concerning custody arising in a case of separation or divorce can only be resolved by the courts and not by the Ministry of Justice, while under the previous Act such disputes could be referred to the Ministry for resolution if both parents agreed to do so, instead of a judicial resolution.

118. It may finally be noted in the context of this Article of the Covenant, that some amendments have been made since the preparation of the Third Report as regards the legal status of homosexual persons living together. The bill mentioned in the Third Report was enacted as Act on Confirmed Cohabitation, No. 87/1996. This provides that homosexual couples can obtain a formal, official confirmation of their cohabitation. Religious ceremonies to this effect have not

been provided for by law, but some discussion has taken place on the attitude of the National Church to such ceremonies for homosexual persons, which has remained unchanged. Confirmed cohabitation has the same legal effects as marriage, with the exception that an original adoption of children is not permitted; a foster adoption is however allowed, i.e. a partner in such cohabitation may adopt a child of the other partner. In addition, artificial conception within the health care system is not available to homosexual partners.

119. In the autumn of 2003, the Prime Minister appointed a committee for examining the legal status of homosexual persons, which was to include an examination of whether legislative amendments were needed in order to abolish further discrimination. The committee is to examine the possibility of amendments making it possible for homosexual persons to enter into registered cohabitation such as available to heterosexual persons, which has various legal effects more limited than marriage. The committee is also to examine whether the conditions relating to nationality and domicile set for confirmed cohabitation should be changed, and whether partners in confirmed cohabitation should be allowed original adoptions and artificial conceptions. The committee's proposals are expected later this year.

Article 24. The rights of the child

120. As described in Iceland's Third Report a new provision was added to the Constitution in 1995, in its Article 76 (3), providing that for children, the law shall guarantee the protection and care which their welfare demands, a wording modelled in particular on Article 3 (2) of the United Nations Convention on the Right of the Child. The provision is meant to place an emphasis on the duties of public authorities to adopt laws and other provisions and to take measures designed to secure the rights of children in all circumstances.

121. Many changes have been made to Icelandic legislation relating to the rights of the child since Iceland's Third Report on the implementation of the Covenant was considered. Two new acts of law of main importance in this field have been adopted, on the one hand the new Child Protection Act, No. 80/2002, which entered into effect 1 June 2002, and on the other hand a new Children's Act, No. 76/2003, which entered into effect 1 November 2003. The main features of the new Child Protection Act are given a thorough consideration in Iceland's Second Report to the Committee on the Rights of the Child (CRC/C/83/Add.5) and in the concluding observations of that Committee (CRC/C/15/Add.203) of 31 January 2003 following its consideration of Iceland's Second Report. The main objectives of the new Child Protection Act will now be described. Its chief purpose is stated in its Article 2, which is to ensure that children living under unacceptable conditions, or children who endanger their health and development, are aided as necessary. It is also stated that efforts shall be made to achieve the purposes of the Act by strengthening the upbringing role of the family and resort to measures for the protection of individual children when appropriate. Article 4 outlines in further detail the principles on which child welfare authorities are to base their endeavours, and that the measures considered most likely to promote a child's well-being shall be adopted, having due regard to the views and requests of the child itself as its age and maturity permits, and equality shall always be respected when taking any decisions. The Act emphasises that the child welfare authorities shall as possible ensure that recourses of a general and moderate nature are attempted before taking any other measures. They are also to ensure that any measures adopted are as moderate as possible with a view to achieving the intended aim, thus expressing a principle of proportionality. The

Act introduced various fundamental organisational changes to matters of child welfare and child welfare procedures, including the important new provision of transferring the power of decision in cases involving deprivation of custody from the child welfare committees to the courts. The aim of the provision is to ensure a still more careful procedure in these sensitive cases.

122. The new Children's Act, No. 76/2003, contain various new provisions, the purposes of which include securing the particular rights of children mentioned in the second and third paragraphs of Article 24 of the Covenant. Article 7 of the Act thus especially provides for registration of a child in the National Registry immediately following its birth, in order to ensure an official recognition of this event. Such a provision was not included in previous acts of law, but reflects a practice of long duration concerning registration of births. Other new provisions include that in Article 1, obligating a mother to inform of her child's paternity at the time of birth. The objective of this rule is to secure the child's right to know both its parents, cf. the reference to the United Nations Convention on the Rights of the Child in the explanatory notes to the bill. The Act provides in more detail than previously how a child's paternity shall be established, and provides for the right of a man who considers himself to be a child's father to file a paternity case. As noted in the general observations in this Report, this was in reaction to the judgment of the Supreme Court of 18 December 2000 (case no. 419/2000), declaring that limitations to the right of initiating such lawsuits conflicted with Article 70 of the Constitution on the right of people to obtain judicial resolutions of their rights and duties. Finally, it may again be mentioned that the new Children's Act establishes a new arrangement concerning the power of resolution in custody disputes, committing this to the courts exclusively, instead of the Ministry of Justice, which was empowered by previous law to resolve such disputes.

123. As regards Article 24 (3) of the Covenant concerning the right of children to nationality, a child found in Iceland shall be presumed to be an Icelandic national until such time when some other nationality may be established. It should also be reiterated that Act No. 62/1998, amending the Icelandic Citizenship Act, amended the rules determining the nationality of children of foreign mothers on the basis of whether it was born in wedlock or out of wedlock. The child of a foreign mother and an Icelandic father born in Iceland now acquires Icelandic citizenship when the legal requirements concerning establishment of paternity are fulfilled, and any discrimination on the basis of marital status is thereby abolished.

Article 25. The right to democratic elections

124. As mentioned in Iceland's Third Report, discussions have been going on in Iceland for a long time on whether election legislation should be amended in order to abolish the difference in the weight of votes depending on residence. The chief reason for this difference is the demographic evolution of recent decades, when an ever increasing proportion of the population has come to live in the capital of Reykjavík and the neighbouring municipalities, while the proportion of people living in various other electoral districts has been reduced. This was reacted to by amendments to Article 31 of the Constitution by Constitutional Law No. 77/1999, which was followed by significant changes to the election legislation. The constitutional amendment was made on the basis of the proposals of a committee appointed by the Prime Minister in the autumn of 1997 for reviewing the electoral district system and the organisation of Parliamentary elections in the purpose of reducing the difference in the weight of votes and to adapt to demographic evolution. The committee was composed of representatives

of all political parties, their leaders jointly submitting the bill that was enacted as Constitutional Law No. 77/1999. The chief objective of the amendments to Article 31 of the Constitution was to render the election system at once more flexible and more permanent. Therefore, it was proposed that detailed provisions on election district boundaries and allocation of seats in Parliament would, in the Constitution, be replaced by somewhat fewer and correspondingly more general provisions defining the main features of the election district system and electoral organisation. Elaboration within that framework is then left to Parliament by means of ordinary legislation.

125. The total number of seats in Parliament, 63, and election terms of four years remain provided for in the Constitution, as well as the main features of the election process, such as secret ballot. The general legislator is, on the other hand, empowered to determine the number of election districts and the number of seats in Parliament representing each district within the limits provided for in the Constitution. By this means, certain features of the election district organisation and election arrangements can be changed without any need of constitutional amendments. Article 31 of the Constitution also introduced two new provisions. One was to abolish the arrangement previously in effect that only political organisations for which candidates have been elected in the electoral districts are eligible for allocation of equalisation seats. In place of that rule, the Constitution now provides that only political organisations who have received 5 per cent or more of the total votes cast are eligible for such seats, even if they have not obtained a seat in Parliament on behalf of an electoral district. The other was to empower the National Election Board, in order to prevent the number of votes behind any two representatives in Parliament from exceeding the ratio of 1:2, to transfer seats from one electoral district to another. When the Constitution had been thus amended a new comprehensive Act on Parliamentary Elections, No. 24/2000, was enacted, providing for the following chief changes:

(a) The electoral districts are now six in number, instead of the previous eight. Their limits are to be defined by law, with the exception that the National Election Board is empowered to define the boundaries between the two electoral districts in Reykjavík five weeks before election day, on the basis of the list of inhabitants maintained by the National Registry;

(b) The number of seats in Parliament for each electoral district is laid down so as to result in nine seats elected for each district, plus one or two equalisation seats;

(c) The National Election Board's power to transfer seats between electoral districts in order to reduce differences in the weight of votes is limited to seats elected for each district;

(d) The voters are given increased powers to influence the order in which the first candidates of each political party are listed.

126. The Municipal Elections Act, No. 5/1998, has been amended to provide foreign nationals with the right to vote and eligibility for office subject to certain conditions (Act No. 27/2002, Article 1). This gives the right to vote and eligibility for office in municipal elections to all foreign nationals, except Danish, Finnish, Norwegian and Swedish, who have been residing in Iceland constantly for five years prior to election day. The requirement of continuous residence for three years continues to apply to the nationals of the Nordic countries. It is stated in the notes

accompanying the bill thus enacted that increased political rights are suited to facilitate the adaptation of foreign nationals, and that the amendment constitutes an important step in welcoming them as participants in the affairs of the Icelandic community.

127. No particular amendments have been made to other legislation, or to procedures or practice, relating to ICCPR Article 25, and we consequently refer to Iceland's Second and Third Report as regards subparagraphs (a) and (c) of that Article.

Article 26. Equality before the law

128. As mentioned in Iceland's Third Report, a new provision was introduced in Article 65 of the Constitution in 1995, providing for the equality of all before the law and a prohibition of discrimination. The chief model for this provision was Article 26 of the Covenant, which is referred to in the explanatory notes to the bill enacted. The general equality rule in Article 65 of the Constitution has exerted very marked influence in Icelandic case law, and very many judgments have been rendered on its basis, which however can only be described to a slight extent here. Judgments relating to Article 65 of the Constitution also frequently refer to Article 26 ICCPR.

129. In an attempt to present an overview of some fields of law we will now refer to examples where the equality rule of Article 65 of the Constitution has been of significant influence in judicial practice. Firstly, judgments may be mentioned adjudicating claims of disabled people to enjoy rights on an equal basis with others and the duties of administrative authorities to take measures for their benefit. In the judgment of the Supreme Court of 4 February 1999 (case no. 177/1998), the Court considered a breach of the rights of a disabled student at the University of Iceland to have special measures taken so that she could enjoy, as possible, an equal status with other students. A reference was made to legislation on the rights of the disabled and to Article 65 of the Constitution in this context, and the student was awarded compensation. A judgment of the Supreme Court of 6 May 1999 (case no. 151/1999) adjudicated the claims of deaf persons for interpretation to sign language of the speeches held by the representatives of the political parties on State Television the evening before election day. The Court held, i.a. by reference to the duty of the State Broadcasting Service to broadcast election debates as provided for in the Broadcasting Act, and Article 65 of the Constitution, that the State Broadcasting Service was to ensure broadcasting of such debates in sign language.

130. Some important judgments have been rendered resolving whether unlawful discrimination had occurred, where interpretation of Article 65 of the Constitution has been at issue. In a judgment of 20 February 1997 (case no. 147/1996), the Supreme Court held that loss calculation following disability as a result of a teenage girl's physical injury, based on the conclusions of general wage terms investigations that the average income of women was lower than that of men, was in conflict with Article 65 of the Constitution. In a judgment of 4 June 1998 (case no. 317/1997) the Supreme Court held that the condition set in the Act on Damages for compensation for non-financial loss, that a certain minimum level of such loss had been sustained, conflicted with Article 65. The judgment brought about an amendment of the Act on Damages whereby this condition was abolished.

131. A number of judgments have been rendered on the question whether some restrictions to freedom of employment, which is protected by Article 75 of the Constitution, involve

discrimination, thus violating its Article 65. The cases principally giving rise to dispute concern debates on the Icelandic fisheries management system and the question whether the restrictions imposed by Icelandic law on fishing for occupational purposes and the issue of entitlements to make catches from certain fish stocks are justified with a view to Article 65 of the Constitution. In a judgment of 3 December 1998 (case no. 145/1998) the Supreme Court held that the severe restrictions imposed by the Fisheries Management Act on the issue of fishing permits to the ships of the fishing fleet were in conflict with Articles 65 and 75 of the Constitution. This resulted in amendments to the Act, giving the administrative authorities increased powers to issue fishing permits to new fishing vessels. In a judgment of the Supreme Court of 6 April 2000 (case no. 12/2000) the issue was again brought up for resolution, now in the form of a criminal case where the operator and the captain of a vessel had been indicted for a violation of the Fisheries Management Act, as the latter had gone fishing without any catch entitlements. The Court held that the provisions of the Act restricting the issue of catch entitlements had a legitimate aim, i.e. the protection of Icelandic fish stocks, that fisheries management was important for the Icelandic economy, and that the differentiation the Act involved was based on lawful considerations. The defendants were therefore found guilty. As mentioned in the General Part of this Report one of the defendants referred this conclusion to the Human Rights Committee on the basis of the Optional Protocol to the Covenant, alleging a breach of Article 26 ICCPR. We refer to the detailed submissions of the author and the Icelandic Government to the HRC in the case of ***Björn Kristjánsson*** (case no. 951/2000). The Committee considered, on the basis of Optional Protocol Article 1, that the case was not admissible on its merits *ratione personae*, and dismissed it by a decision of 30 July 2003 (CCPR/C/78/D/951/2000).

132. Finally, the judgment of the Supreme Court of 19 December 2000 (case no. 125/2000) in the case of the Icelandic Federation of the Handicapped against the Republic of Iceland is worthy of particular mention. There, the Court concluded that changes made to the Social Security Act adversely affecting social security payments to disabled persons conflicted with Article 76 (1) and Article 65 of the Constitution. Its Article 76, interpreted with a view to the international obligations provided for by instruments such as the European Social Charter and the International Covenant on Economic, Social and Cultural Rights, was deemed to guarantee protection of a certain minimum of social support, and a reference was also made to Article 26 ICCPR.

Article 27. The rights of minorities

133. As regards the field covered by Article 27, no comprehensive legal amendments have been made in Iceland particularly aiming to protect the rights of Icelandic minority groups. As mentioned in the Second and Third Reports Iceland has, ever since its settlement in the ninth century, been inhabited by a homogenous population with a common historical, cultural, linguistic and religious origin, and there is no aboriginal population. Various changes have however occurred since the time of the Third Report, as there has been a considerable increase in the number of foreigners in Iceland, and their percentage of the population is increasing. On 1 December 2003 the number of persons in Iceland was 290,570, of whom foreign nationals totalled 10,180. The proportion of foreign nationals in Iceland had on that day almost doubled since 1994, from 1.8 to 3.5 per cent of the population. Most foreign nationals, approximately 70 per cent, come from other European countries. Of these, the highest proportion is from Poland, as for a number of years many Polish nationals have sought employment in Iceland,

where working hands are needed in various fields. As regards foreign nationals from regions outside Europe, approximately 17 per cent come from Asian countries, about two thirds of their number being from the Philippines and Thailand.

134. It should be borne in mind that the number of naturalised immigrants and their descendants has increased, and therefore the number of Icelandic nationals born abroad must also be included in the statistics. It must however also be kept in mind that the children of Icelandic parents born abroad are included in their number. On 1 December 2003, Icelanders born abroad totalled 19,072, i.e. nearly 7 per cent of the population. Most of them, i.e. approximately two thirds, were born in European countries or in the United States, but the proportion of Icelandic nationals born in Asian countries has increased much in recent years, their number in December 2003 having slightly exceeded 3,000.

135. Recent years' statistics demonstrate that of the total number of immigrants to Iceland, the proportion of Asian immigrants has shown the greatest increase. They are however not commonly thought or talked of as a particular minority group, as they do not share any other particular distinction. Icelandic government authorities do not place anything in the way of their enjoyment of the rights provided for in Article 27. They are free to practice their culture, establish religious organisations and to practice their religion as all others, and have their religious associations registered according to the applicable laws, as can be deduced from their diversity in the list of religious associations.

136. The Icelandic municipalities, which are in charge of primary schools, have actively supported immigrants and other foreigners in Iceland by various means, within and outside the school system. In this context, the International House in Reykjavík can be specifically mentioned. The International House was established in December 2001 by the City of Reykjavík, the adjacent municipalities, and the Reykjavík Section of the Icelandic Red Cross. There, various activities are pursued on the basis of multicultural society policies adopted by the municipalities, promoting multicultural interrelations. The House employs 12 persons, six of whom are of foreign origin. The House offers various study courses, for native Icelanders as well as for people of foreign origin. These include prejudice programmes, cultural studies, educational courses for the young, and practical Icelandic. The International House also conducts research activities and provides access to various information concerning multicultural society. Foreigners can ask the House for various counsel, for example concerning work permits and permits to stay, social security, or their rights in general. A lawyer providing counsel is among the staff members. Other staff members include specialists in matters such as multicultural education, the affairs of bilingual children, and human rights.

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